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Presidential Documents

Title 3—

The President

Presidential Determination No. 2019–06 of December 7, 2018

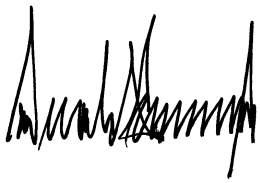
Suspension of Limitations Under the Jerusalem Embassy Act

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States, including section 7(a) of the Jerusalem Embassy Act of 1995 (Public Law 104–45) (the ''Act''), I hereby determine that it is necessary, in order to protect the national security interests of the United States, to suspend for a period of 6 months the limitations set forth in sections 3(b) and 7(b) of the Act.

You are authorized and directed to transmit this determination, accompanied by a report in accordance with section 7(a) of the Act, to the Congress and to publish this determination in the *Federal Register.*

The suspension set forth in this determination shall take effect after you transmit this determination and the accompanying report to the Congress.



THE WHITE HOUSE,
Washington, December 7, 2018

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Rules and Regulations

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DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 5

[Docket No. DHS–2018–0064]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP)–024 CBP Intelligence Records System (CIRS) System of Records

AGENCY: Department of Homeland Security.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a newly established system of records titled, ''DHS/CBP–024 CBP Intelligence Records System (CIRS) System of Records'' from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the ''DHS/CBP–024 CBP Intelligence Records System (CIRS) System of Records'' from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: This final rule is effective December 27, 2018.

ADDRESSES: You may submit comments, identified by docket number DHS–2018–0064, at:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.
- *Mail and hand delivery on commercial delivery:* U.S. Customs and Border Protection, Privacy and Diversity Office, ATTN: Privacy Officer—Debra L. Danisek, 1300 Pennsylvania Ave. NW, Washington, DC 20229.

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

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

FOR FURTHER INFORMATION CONTACT: For privacy issues please contact: Chief Privacy Officer, Privacy Office Philip S. Kaplan at 202–343–1717.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Homeland Security (DHS) U.S. Customs and Border Protection (CBP) published a notice of proposed rulemaking in the **Federal Register** (82 FR 44124, September 21, 2017) proposing to exempt portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. DHS issued the ''DHS/CBP–024 CBP Intelligence Records System (CIRS) System of Records'' in the **Federal Register** at 82 FR 44198, on September 21, 2017, to provide notice to the public that DHS/CBP collects and maintains records generated, received, or collected by the CBP Office of Intelligence, or other offices within CBP that support the law enforcement intelligence mission, that is analyzed and disseminated to CBP executive management and operational units for law enforcement, intelligence, counterterrorism, and other homeland security purposes. CIRS contains data from a variety of sources within and outside of CBP to support law enforcement activities and investigations of violations of U.S. laws, administration of immigration laws and other laws administered or enforced by CBP, and production of CBP law enforcement intelligence products. CIRS is the exclusive CBP SORN for finished intelligence products and any raw intelligence information, public source information, or other information collected by CBP for an intelligence purpose that is not covered by an existing DHS SORN. CIRS records were previously covered by DHS/CBP–006—Automated Targeting System SORN (77 FR 30297, May 22, 2012) and DHS/CBP–017—Analytical Framework for Intelligence SORN (77 FR 13813, June 7, 2012).

DHS/CBP invited comments on both the Notice of Proposed Rulemaking (NPRM) and System of Records Notice (SORN).

II. Public Comments

DHS received thirty-two comments on the CBP CIRS NPRM and four on the CBP CIRS SORN. Of the thirty-six total comments, thirteen were erroneously filed relating to the republication of the DHS Alien File, Index, and National File Tracking system (A-File). DHS will not respond to comments regarding the publication of the A-File SORN in this Final Rule. Of the remaining substantive comments for CIRS: (1) Seventeen related to transparency; (2) two related to the collection of information not specifically relevant to an investigation; and (3) four were duplicates of two formal briefs submitted for both the SORN and the NPRM. The following is an analysis of the substantive comments and questions submitted by the public.

Comment: DHS should not hide what it is collecting by exempting the information from Privacy Act protections.

Response: DHS published the CIRS SORN in compliance with the notification requirements of the Privacy Act, subsection 552a(e)(4), and thus, is being transparent of its collection activities. The CIRS SORN describes the information that DHS collects and retains in association with this system of records. DHS does not seek to hide this collection or exempt it from the notification requirements of the Privacy Act; rather, it seeks exemptions to ensure that records critical to law enforcement and intelligence activities need not be shared in the event that such sharing might jeopardize the investigation or otherwise compromise DHS operations.

Comment: DHS's collection of records in CIRS is overly broad because, as stated in the NPRM, DHS may be collecting information that ''may not be strictly relevant or necessary to a specific investigation.''

Response: In order to conduct a complete investigation, it is necessary for DHS/CBP to collect and review large amounts of data in order to identify and understand relationships between individuals, entities, threats and events, and to monitor patterns of activity over extended periods of time that may be indicative of criminal, terrorist, or other threat.

Comment: The SORN contains materially false claims concerning the status of the rulemaking for Privacy Act exemptions that are directly

contradicted by the Notice of Proposed Rulemaking for those exemptions.

Response: The Secretary of Homeland Security issued a proper NPRM, pursuant to the Privacy Act, the **Federal Register**, and Office of Management and Budget (OMB) requirements, received comments from the public as part of the notice and comment procedures of the Administrative Procedure Act, and is issuing this final rule in conformance with those requirements.

Comment: Proposed routine uses would circumvent Privacy Act safeguards and contravene legislative intent.

Response: DHS's collection of records in CIRS is intended to permit DHS/CBP to review large amounts of data in order to identify and understand relationships between individuals, entities, threats and events, and to monitor patterns of activity over extended periods of time that may be indicative of criminal, terrorist, or other threat. The SORN is consistent with the legislative intent of the Privacy Act to ensure fair practices, collection, and uses of individuals' personal information. The routine uses, as written in the CIRS SORN, and disclosures of such records, are compatible with the purpose for which they are originally collected and used by DHS/CBP.

After consideration and review of the public comments, DHS has determined that the exemptions should remain in place, and will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information, Privacy.

For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.;* Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add paragraph 79 to appendix C to part 5 to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

79. The DHS/CBP–024 CBP Intelligence Records System (CIRS) System of Records consists of electronic and paper records and will be used by DHS and its components. The CIRS is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; and national security and intelligence activities. The CIRS contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, state, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I); (e)(5), and (e)(8); (f); and (g). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(1) and (k)(2), has exempted this system from the following provisions of the Privacy Act, 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f). When this system receives a record from another system exempted in that source system under 5 U.S.C. 552a(k)(1), (k)(2), or (j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here. Exemptions from these particular subsections are justified, on a case by case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process. Information on a completed investigation may be withheld and exempt from disclosure if the fact that an investigation occurred remains sensitive after completion.

(b) From subsection (d) (Access and Amendment to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules) because portions of this system are exempt from the individual access and amendment provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access, amend, and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore, DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's refusal to amend a record, refusal to comply with a request for access to records, failure to maintain accurate, relevant timely and

complete records, or its failure to otherwise comply with an individual's right to access or amend records.

Philip S. Kaplan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2018–27944 Filed 12–26–18; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–14–0079; NOP–14–05]

RIN 0581 AD60

National Organic Program; Amendments to the National List of Allowed and Prohibited Substances (Crops, Livestock and Handling)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the National List of Allowed and Prohibited Substances (National List) provisions of the U.S. Department of Agriculture's (USDA's) organic regulations to implement recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB). This rule changes the use restrictions for seventeen substances allowed for organic production or handling on the National List. This rule also adds sixteen new substances on the National List to be allowed in organic production or handling. In addition, this final rule lists the botanical pesticide, rotenone, as a prohibited substance in organic crop production. This final rule removes ivermectin as an allowed parasiticide for use in organic livestock production and amends our regulations to allow the use of parasiticides in fiber bearing animals. Finally, this rule inserts corrections of instructions and regulation text as listed in the proposed rule.

DATES: *Effective date:* This rule is effective January 28, 2019.

Implementation Dates: This rule will be fully implemented January 28, 2019, except that the amendments for the substances ivermectin, flavors, cellulose, and glycerin will be implemented December 27, 2019.

FOR FURTHER INFORMATION CONTACT: Robert Pooler, Standards Division, National Organic Program. Telephone: (202) 720–3252. Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Secretary published the National List of Allowed and Prohibited Substances in §§ 205.600 through 205.607 of the USDA organic regulations (7 CFR 205.1–205.690). This National List identifies the synthetic substances that may be used and the nonsynthetic (natural) substances that may not be used in organic production. The National List also identifies synthetic, nonsynthetic nonagricultural, and nonorganic agricultural substances that may be used in organic handling. The Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501–6522) (OFPA), and § 205.105 of the USDA organic regulations specifically prohibit the use of any synthetic substance in organic production and handling unless the synthetic substance is on the National List. Section 205.105 also requires that any nonorganic agricultural and any nonsynthetic nonagricultural substance used in organic handling be on the National List. Under the authority of OFPA, the National List can be amended by the Secretary based on recommendations presented by the NOSB. Since the final rule establishing the National Organic Program (NOP) became effective on October 21, 2002, AMS has published multiple rules amending the National List.

This final rule amends the National List to implement NOSB recommendations on 35 amendments to the National List that were submitted to the Secretary on November 17, 2000, September 19, 2002, May 6, 2009, November 5, 2009, October 28, 2010, December 2, 2011, March 20, 2012, October 16, 2012, May 2, 2014, April 30, 2015, October 29, 2015, April 26, 2016, and November 18, 2016.

II. Overview of Amendments

The following provides an overview of the final rule additions and amendments to designated sections of the National List regulations. Application and timeline information on the amendments were addressed in the proposed rule (83 FR 2498) and have not been included in the final rule. In addition, the basis for the NOSB recommendations was presented in the proposed rule. In summary, the NOSB evaluated each substance by applying the OFPA substance evaluation criteria to determine if the substance is compatible with organic production or handling. AMS reviewed each NOSB recommendation and accepted each recommendation for rulemaking. Subsequently, AMS submitted the NOSB recommendations through rulemaking in the proposed rule and this final rule. After considering the received comments, AMS has determined that the additions and amendments described in the proposed rule will be included, with a few minor changes based on comments, in the final rule. Section E of this final rule provides an overview of the comments received and AMS's response on all additions and amendments.

§ 205.601 Synthetic Substances Allowed for Use in Organic Crop Production

This final rule amends § 205.601 by adding three new substances, hypochlorous acid, magnesium oxide, and squid byproducts, to this section and amends this section by changing the annotation of micronutrients as listed in § 205.601 to include other agricultural practices that may be used in maintaining soil fertility.

Hypochlorous Acid

This final rule adds hypochlorous acid to § 205.601 as a chlorine material allowed for use as an algicide, disinfectant, and sanitizer. Paragraph (a)(2)(iii) reads as follows: Hypochlorous acid—generated from electrolyzed water. Upon the effective date of this final rule hypochlorous acid is allowed as an algicide, disinfectant, and sanitizer, including irrigation cleaning systems in organic crop production. AMS has reviewed and agrees with the NOSB recommendation that hypochlorous acid be allowed for use in organic crop production. AMS received comments on the proposed rule for amending hypochlorous acid onto § 205.601.

Magnesium Oxide

This final rule adds magnesium oxide to the National List in § 205.601(j) for use in controlling the viscosity of a clay suspension agent for humates. Paragraph (j)(5) is added to this section to read as follows: Magnesium oxide (CAS # 1309–48–4)—for use only to control the viscosity of a clay suspension agent for humates. Upon the effective date of this rule, magnesium oxide is allowed in organic crop production as an agent for controlling the viscosity of clay suspension for humates. AMS has reviewed and agrees with the NOSB recommendation that magnesium oxide acid be allowed for use in organic crop production. AMS received comments on the proposed rule for amending magnesium oxide onto § 205.601.

Micronutrients

This final rule amends the annotation of micronutrients as listed in § 205.601(j). Paragraph (j)(7) is modified to read as follows: Micronutrients—not to be used as a defoliant, herbicide, or desiccant. Those made from nitrates or chlorides are not allowed. Micronutrient deficiency must be documented by soil or tissue testing or other documented and verifiable method as approved by the certifying agent. This change removes the restriction on documenting micronutrient deficiency that was imposed by allowing soil testing as the only method for demonstrating a soil micronutrient deficiency. This rule change allows alternative verifiable methods, such as tissue testing when approved by the certifying agent, to be used to document micronutrient deficiency. AMS has reviewed and agrees with the NOSB recommendation that the annotation for micronutrients be amended to clarify its use in organic crop production. AMS received comments on the proposed rule for amending the micronutrient annotation listed in § 205.601.

Squid Byproducts

This final rule adds squid byproducts to § 205.601(j) as an allowed substance for use in organic crop production. Paragraph (j)(10) is added to § 205.601 to read as follows: Squid byproducts—from food waste processing only. Can be pH adjusted with sulfuric, citric or phosphoric acid. The amount of acid used shall not exceed the minimum needed to lower the pH to 3.5. Only squid byproducts from food waste processing are permitted for use as a soil amendment in organic crop production. AMS has reviewed and agrees with the NOSB recommendation that squid by-products be allowed for use in organic crop production. AMS received comments on the proposed rule for amending squid by-products onto § 205.601.

§ 205.602 Nonsynthetic Substances Prohibited for Use in Organic Crop Production

This final rule amends § 205.602 by adding rotenone to this section. Nonsynthetic substances are allowed in organic crop production except for those specifically listed as prohibited in § 205.602.

Rotenone

This final rule adds rotenone, a nonsynthetic substance, to § 205.602 which prohibits its use in organic crop production. Paragraph (f) is amended in this section to read as: Rotenone (CAS #83–79–4). After the effective date of this rule, rotenone will be a prohibited nonsynthetic substance in organic crop production. AMS has reviewed and agrees with the NOSB recommendation that rotenone be added to the National List as a prohibited non-synthetic and not allowed for use in organic crop production. AMS received comments on the proposed rule for amending rotenone onto § 205.602.

§ 205.603 Synthetic Substances Allowed for Use in Organic Livestock Production

This final rule adds the following substances to the National List in paragraph § 205.603(a) for use in organic livestock production: Activated charcoal, calcium borogluconate, calcium propionate, hypochlorous acid, kaolin pectin, mineral oil, nutritive supplements—injectable vitamins, trace minerals and electrolytes, propylene glycol, acidified sodium chlorite, and zinc sulfate. This final rule also adds acidified sodium chlorite to § 205.603(b). This final rule also amends the restrictive annotations for the following substances currently allowed in organic livestock production: Chlorhexidine, parasiticides, fenbendazole, moxidectin, and xylazine, § 205.603(a); lidocaine and procaine, § 205.603(b); methionine, § 205.603(d); and excipients, § 205.603(f). In addition, this final rule removes ivermectin, § 205.603(a).

Activated Charcoal

This final rule adds activated charcoal to § 205.603(a) for use in organic livestock production. Paragraph (a)(6) is amended in § 205.603 to read as follows: Activated charcoal (CAS # 7440–44–0)—must be from vegetative sources. After the effective date of this final rule, organic livestock producers may use activated charcoal as a therapeutic treatment on an as-needed basis with mammalian livestock in cases of suspected ingestion of toxic plants and control of diarrhea caused by moldy silage. Synthetic forms of activated charcoal derived from other non-vegetative sources continue to be prohibited in organic livestock production. AMS has reviewed and agrees with the NOSB recommendation that activated charcoal be allowed for use in organic livestock production. AMS received comments on the proposed rule for amending activated charcoal onto § 205.603.

Calcium Borogluconate

This final rule adds calcium borogluconate to § 205.603(a) of the National List for use in organic livestock production. Paragraph (a)(7) is amended in § 205.603 to read as follows: Calcium borogluconate (CAS # 5743–34–0)—for treatment of milk fever only. Organic livestock producers should know that calcium borogluconate cannot be used routinely, but only as an emergency treatment for milk fever. AMS has reviewed and agrees with the NOSB recommendation that calcium borogluconate be allowed for use in organic livestock production. AMS received comments on the proposed rule for amending calcium borogluconate onto § 205.603.

Calcium Propionate

This final rule adds calcium propionate to the National List at § 205.603(a) for use in organic livestock production. Paragraph (a)(8) is amended in § 205.603 to read as follows: Calcium Propionate (CAS #4075–81–4)—for treatment of milk fever only. Specifically, calcium propionate is allowed only as a treatment for milk fever. Organic livestock producers should know that calcium propionate is not to be used routinely, but only as an emergency treatment for milk fever. AMS has reviewed and agrees with the NOSB recommendation that calcium propionate be allowed for use in organic livestock production. AMS received comments on the proposed rule for amending calcium propionate onto § 205.603.

Chlorhexidine

This final rule amends the annotation for chlorhexidine in § 205.603(a). Paragraph (a)(9) is amended to read as follows: Chlorhexidine (CAS #55–56–1)—for medical procedures conducted under the supervision of a licensed veterinarian. Allowed for use as a teat dip when alternative germicidal agents and/or physical barriers have lost their effectiveness. Including this amendment to the annotation of chlorhexidine in the final rule adds to organic livestock producers' ability to establish and maintain preventive livestock health care practices. AMS has reviewed and agrees with the NOSB recommendation that the annotation for chlorhexidine be amended to clarify its use in organic livestock production. AMS received comments on the proposed rule for amending the annotation for chlorhexidine as listed in § 205.603.

Hypochlorous Acid

This final rule adds hypochlorous acid to § 205.603 as a chlorine material allowed for use in disinfecting and sanitizing equipment and facilities in organic livestock production. Paragraph (a)(10)(iii) is modified to read as follows: Hypochlorous acid—generated

from electrolyzed water. As listed in § 205.603, hypochlorous acid is allowed for use as a disinfectant, sanitizer, and medical treatment in organic livestock production. AMS has reviewed and agrees with the NOSB recommendation that hypochlorous acid be allowed for use in organic livestock production. AMS received comments on the proposed rule that supported or opposed amending hypochlorous acid onto § 205.603.

Kaolin Pectin

This final rule adds kaolin pectin to § 205.603(a) of the National List for use as an adsorbent, antidiarrheal, and gut protectant in organic livestock production. Paragraph (a)(17) is modified to read as follows: Kaolin pectin—for use as an adsorbent, antidiarrheal, and gut protectant. Organic livestock producers should know that kaolin pectin is not to be used routinely, but only when an adsorbent, antidiarrheal or gut protectant is needed. AMS has reviewed and agrees with the NOSB recommendation that kaolin pectin be allowed for use in organic livestock production. AMS received comments on the proposed rule for amending kaolin pectin acid onto § 205.603.

Mineral Oil

This final rule adds mineral oil to § 205.603(a) for use in organic livestock production for relief of intestinal impaction. Mineral oil is also on the National List as a topical treatment, external parasiticide, or local anesthetic in § 205.603(b). Paragraph (a)(20) is modified to read as follows: Mineral oil—for relief of intestinal compaction, prohibited for use as a dust suppressant. Organic livestock producers should know that under paragraph (a)(20) mineral oil is only allowed for use to relieve intestinal compaction in livestock. Mineral oil cannot be used as a dust suppressant. AMS has reviewed and agrees with the NOSB recommendation that mineral oil be allowed for use in organic livestock production. AMS received comments on the proposed rule for amending mineral oil onto § 205.603.

Nutritive Supplements—Injectable Vitamins, Minerals, and Electrolytes

This rule adds injectable vitamins, minerals, and electrolytes to § 205.603(a) of the National List for use in organic livestock production. Prior to this rule these substances were allowed under the USDA organic regulations only as part of the total feed ration, either as feed additives (vitamins and minerals per § 205.603(d)) or as medical treatments (electrolytes without antibiotics per § 205.603(a)). Paragraph (a)(21) is modified to read as follows: Nutritive supplements—injectable supplements of trace minerals per 205.603(d)(2), vitamins per 205.603(d)(3), and electrolytes per 205.603(a)(8), with excipients per 205.603(f), in accordance with FDA regulations and restricted to use by or on the order of a licensed veterinarian. Under this rule, an operation is allowed to use these substances individually or in combination. This rule requires that injectable vitamins, minerals, or electrolytes only be administered or ordered by a licensed veterinarian. Organic livestock producers will need to keep records that document the need for any use of these materials. Further, producers and certifying agents need to review the specific formulations intended for use on organic livestock to ensure they comply with the USDA organic regulations. AMS has reviewed and agrees with the NOSB recommendation that injectable vitamins, minerals, or electrolytes be allowed for use in organic livestock production. AMS received comments on the proposed rule for amending injectable minerals, vitamins, and electrolytes onto § 205.603.

Parasiticides, Fenbendazole, and Moxidectin

This rule amends the National List to revise the listing for parasiticides (§ 205.603(a)(23)) and the listings for fenbendazole (§ 205.603(a)(23)(i)) and moxidectin (§ 205.603(a)(23)(iii)). This rule also amends the livestock health care practice standard in § 205.238(b) to allow the use of parasiticides in organic fiber-bearing animals. Paragraph (a)(23) reads as follows: Parasiticides—prohibited in slaughter stock, allowed in emergency treatment for dairy and breeder stock when organic system plan-approved preventive management does not prevent infestation. In breeder stock, treatment cannot occur during the last third of gestation if the progeny will be sold as organic and must not be used during the lactation period for breeding stock. Allowed for fiber bearing animals when used a minimum of 36 days prior to harvesting of fleece or wool that is to be sold, labeled, or represented as organic. AMS has reviewed and agrees with the NOSB recommendation that the annotation for parasiticides be amended to clarify its use in organic livestock production.

Paragraph (a)(23)(i) is revised to read as follows: Fenbendazole (CAS #43210–67–9)—milk or milk products from a treated animal cannot be labeled as provided for in subpart D of this part for: 2 days following treatment of cattle; 36 days following treatment of goats, sheep and other dairy species. AMS has reviewed and agrees with the NOSB recommendation that the annotation for fenbendazole be amended to clarify its use in organic livestock production.

Paragraph (a)(23)(ii) is also revised to read as follows: Moxidectin (CAS #113507–06–5)—milk or milk products from a treated animal cannot be labeled as provided for in subpart D of this part for: 2 days following treatment of cattle; 36 days following treatment of goats, sheep and other dairy species. AMS has reviewed and agrees with the NOSB recommendation that the annotation for moxidectin be amended to clarify its use in organic livestock production.

In addition, paragraph (b)(2) of § 205.238(b) is revised and paragraph (b)(3) is added to § 205.238(b) as follows: (b)(2) Dairy animals, as allowed under § 205.603; and (b)(3) fiber bearing animals, as allowed under § 205.603. AMS has reviewed and agrees with the NOSB recommendation that § 205.238(b) be amended to clarify its use of parasiticides for dairy animals and for fiber bearing animals.

The USDA organic regulations specify conditions under which parasiticides can be used in organic livestock production (§ 205.238(b)) and identify which parasiticides are allowed (§ 205.603(a)(23)). These conditions include: (1) Emergency treatment for dairy and breeder stock only when preventive measures have failed; (2) a parasiticide withdrawal period before milk or milk products from treated animals can be sold as organic; and (3) a prohibition on use in breeder stock during the last third of gestation or during lactation if progeny will be sold as organic. Organic livestock producers are required to use preventive practices as described in § 205.238 before using any parasiticide that is included on the National List. However, animals in need of medical attention cannot be left untreated in order to preserve its organic status.

AMS received comments on the proposed rule for amending the annotation for parasiticides and the annotation for the specific parasiticides fenbendazole and moxidectin listed in § 205.603.

Ivermectin

This rule removes ivermectin from § 205.603(a) as an allowed parasiticide for use in organic livestock production. Ivermectin (CAS #70288–86–7), as listed prior to this final rule in paragraph (a)(17)(ii) has been removed from the National List. The removal of ivermectin from the National List leaves organic

livestock producers with two synthetic parasiticides permitted for emergency treatment, fenbendazole and moxidectin. This final rule removes the requirement for a veterinarian to administer fenbendazole and also reduces the withdrawal times following the use of fenbendazole or moxidectin. AMS has reviewed and agrees with the NOSB recommendation that ivermectin be removed from the National List and prohibited for use in organic livestock production. AMS received comments on the proposed rule for removing ivermectin from § 205.603.

Propylene Glycol

This final rule adds propylene glycol to § 205.603(a) of the National List for use in organic livestock production only as a remedy for ketosis in ruminants. Paragraph (a)(27) reads as follows: Propylene glycol (CAS # 57–55–6)—only for treatment of ketosis in ruminants. Organic livestock producers are required to use preventive practices as described in § 205.238 before using propylene glycol to treat ketosis. However, animals in need of medical attention cannot be left untreated in order to retain organic status. AMS has reviewed and agrees with the NOSB recommendation that propylene glycol be allowed for use in organic livestock production. AMS received comments that either supported or opposed adding propylene glycol to § 205.603(a).

Sodium Chlorite, Acidified

This final rule adds two listings for acidified sodium chlorite for use as a teat dip in organic livestock (dairy) production in § 205.603(a) and in § 205.603(b). Both paragraph (a)(28) and paragraph (b)(8) read as follows: Sodium chlorite, acidified—allowed for use on organic livestock as a teat dip treatment only. Preventive health care is essential for organic production. Preventive care through clean milking parlors and clean animals is essential for reducing mastitis in dairy animals and teat dips are used by dairy producers as an essential tool for preventing mastitis. This rule adds sodium chlorite, acidified to § 205.603(a) as a teat dip when used as a disinfectant, sanitizer, or medical treatment. This rule also adds sodium chlorite, acidified to § 205.603(b) as a teat dip when used as a topical treatment or external parasiticide. AMS has reviewed and agrees with the NOSB recommendation that calcium sodium chlorite, acidified be allowed for use in organic livestock production. AMS received comments on the proposed rule for amending sodium chlorite, acidified onto § 205.603.

Xylazine

This rule amends the annotation of the listing for xylazine in § 205.603(a) by removing the limitation ''*The existence of an emergency*'' on use of this substance. Paragraph (a)(30) reads as follows: Xylazine (CAS # 7361–61–7)—federal law restricts this drug to use by or on the lawful written or oral order of a licensed veterinarian, in full compliance with the AMDUCA and 21 CFR part 530 of the Food and Drug Administration regulations. Also, for use under 7 CFR part 205, paragraph (a)(30 also includes the following requirements:

(i) Use by or on the lawful written order of a licensed veterinarian;

(ii) A meat withdrawal period of at least 8 days after administering to livestock intended for slaughter; and a milk discard period of at least 4 days after administering to dairy animals.

This change allows xylazine to be used for sedation of animals when necessary to perform non-emergency health care procedures in organic livestock. This amendment allows organic livestock producers to improve their ability to establish and maintain preventive livestock health care practices because there are no alternatives to xylazine on the National List or nonsynthetic substances that provide sedative properties. This rule does not affect the provisions for the use of xylazine in the USDA organic regulations that require the written order of a licensed veterinarian and withdrawal periods for slaughter stock and dairy animals. AMS has reviewed and agrees with the NOSB recommendation that the annotation for xylazine be amended to clarify its use in organic livestock production. AMS received comments on the proposed rule for amending the annotation for xylazine as listed in § 205.603.

Zinc Sulfate

This final rule adds zinc sulfate to § 205.603(b) for use in organic livestock production. Paragraph (b)(10) is amended to read as follows: Zinc sulfate—for use in hoof and foot treatments only. This rule allows zinc sulfate to be used in a footbath for control of foot rot in livestock, primarily dairy cattle, sheep and goats. Adding zinc sulfate to the National List provides organic livestock producers with an additional tool to treat foot disease and aids the welfare of the animals. Based upon comments AMS received on amending zinc sulfate onto § 205.603(a & b), zinc sulfate is added only to § 205.603(b). AMS has reviewed and agrees with the NOSB recommendation that zinc sulfate be allowed for use in organic livestock production.

Lidocaine

This final rule amends the annotation of lidocaine in § 205.603(b) to reduce the withholding periods for lidocaine from 90 days to 8 days for slaughter stock and from 7 days to 6 days for milk. Paragraph (b)(4) is modified to read as follows: Lidocaine—as a local anesthetic. Use requires a withdrawal period of 8 days after administering to livestock intended for slaughter and 6 days after administering to dairy animals. A reduction in the withholding time was needed to improve animal welfare because a lengthy withholding time for lidocaine could result in animals not being timely treated, or not treated at all. AMS has reviewed and agrees with the NOSB recommendation that the annotation for lidocaine be amended to clarify its use in organic livestock production. AMS received comments on the proposed rule for amending the annotation for lidocaine as listed in § 205.603.

Procaine

This final rule amends the annotation of procaine in § 205.603(b) to reduce the withholding periods for procaine from 90 days to 8 days for slaughter stock and from 7 days to 6 days for milk. Paragraph (b)(7) reads as follows: Procaine—as a local anesthetic. Use requires a withdrawal period of 8 days after administering to livestock intended for slaughter and 6 days after administering to dairy animals. A reduction in the withholding time was needed to improve animal welfare because a lengthy withholding time for procaine could result in animals not being timely treated, or not treated at all. AMS has reviewed and agrees with the NOSB recommendation that the annotation for procaine be amended to clarify its use in organic livestock production. AMS received comments on the proposed rule for amending the annotation for procaine as listed in § 205.603.

Methionine

This rule amends the annotation for methionine in § 205.603(d) by requiring that maximum methionine levels in feed be calculated as averages over the lifespan of organic poultry rather than as a constant percentage of the feed. Paragraph (d)(1) reads as follows: DL-Methionine, DL-Methionine-hydroxy analog, and DL-Methionine-hydroxy analog calcium (CAS Numbers 59–51–8, 583–91–5, 4857–44–7, and 922–50–9)—for use only in organic poultry production at the following pounds of

synthetic 100 percent methionine per ton of feed in the diet, maximum rates as averaged per ton of feed over the life of the flock: Laying chickens—2 pounds; broiler chickens—2.5 pounds; turkeys and all other poultry—3 pounds. Alternatives to synthetic methionine have yet to be developed for commercial use. This rule change provides organic poultry producers with the ability to adjust methionine supplementation based on the nutritional needs of the birds at specific stages of production that would have positive impacts on animal welfare. In addition, this rule change maintains limits on the use of synthetic methionine, which preserves the incentive to develop viable nonsynthetic methionine alternatives. AMS has reviewed and agrees with the NOSB recommendation that the annotation for methionine be amended to clarify its use in organic livestock production. AMS received several comments on the amending the methionine annotation.

Excipients

This final rule amends the § 205.603 annotation for excipients that are used in animal drugs to treat organic livestock. The rule adds a provision that the excipient must be approved by the USDA Animal and Plant Health Inspection Service (APHIS) for use in veterinary biologics. Paragraph (f) of § 205.603 reads as follows: Excipients—only for use in the manufacture of drugs and biologics used to treat organic livestock when the excipient is: (1) Identified by the FDA as Generally Recognized As Safe; (2) Approved by the FDA as a food additive; (3) Included in the FDA review and approval of a New Animal Drug Application or New Drug Application; or (4) Approved by APHIS for use in veterinary biologics. This change should minimize the variation in certifying agents' interpretations of excipients and enhance consistency of enforcement. AMS has reviewed and agrees with the NOSB recommendation that the annotation for excipients be amended to clarify its use in organic livestock production. AMS received comments on the proposed rule for amending the annotation for excipients as listed in § 205.603.

§ 205.605 Nonagricultural (Nonorganic) Substances Allowed as Ingredients in or on Processed Products Labeled as ''Organic'' or ''Made With Organic (Specified Ingredients or Food Group(s)).''

This final rule adds the following substances to the National List in paragraph § 205.605 for use in organic handling: Hypochlorous acid, potassium lactate, and sodium lactate. This rule also amends the allowances for the following substances currently allowed in organic handling: Alginic acid, flavors, carnauba wax (§ 205.605(a)), and cellulose and chlorine (§ 205.605(b)). In addition, this rule removes glycerin from § 205.605(b) and adds it to § 205.606 as an agricultural product.

Alginic Acid

This final rule amends the National List to reclassify alginic acid from a non-synthetic substance included in § 205.605(a) to a synthetic substance included in § 205.605(b), for use in organic handling. The listing for alginic acid in paragraph (b) reads as follows: Alginic acid (CAS # 9005–32–7). This rule change is based upon updated information on the sourcing of alginic acid and the definition of ''synthetic'' in § 205.2 of the USDA organic regulations. AMS has reviewed and agrees with the NOSB recommendation that the listing of alginic acid be reclassified to clarify its use in organic handling. AMS received comments on the proposed rule for reclassifying alginic acid from § 205.605(a) to § 205.605(b).

Flavors

The final rule amends the National List to revise the annotation of flavors in § 205.605(a) to change the allowance for nonorganic flavors to require the use of organic flavors when they are commercially available. The listing of flavors in paragraph (a) reads as follows: Flavors—non-synthetic flavors may be used when organic flavors are not commercially available. All flavors must be derived from organic or nonsynthetic sources only and must not be produced using synthetic solvents and carrier systems or any artificial preservative. This rule retains requirements that all flavors must be derived from organic or nonsynthetic sources only and must not be produced using synthetic solvents and carrier systems or any artificial preservative. This rule applies to products in the ''organic'' and ''made with organic (specified ingredients or food group(s))'' categories. This rule change does not apply to nonorganic ingredients that may be used in up to 30 percent of ''made with organic'' products. Due to the number of distinctly different natural flavors and the pace of new product development in flavors, AMS has determined it would be impractical to list individual flavors on the National List to indicate which are commercially available in organic form. AMS has reviewed and agrees with the NOSB recommendation that the annotation for flavors be amended to clarify its use in organic handling. AMS received comments on the proposed rule for amending the annotation for flavors as listed in § 205.605.

Carnauba Wax

This final rule reclassifies carnauba wax from a nonagricultural substance on § 205.605(a) to an agricultural product on § 205.606 that may be used in organic handling when organic carnauba wax is not commercially available. Paragraph (a) under § 205.606 reads as follows: Carnauba wax. The basis for this reclassification is new information on how carnauba wax is extracted from the leaves and buds of palm trees. This information shows that carnauba wax extracted from this process meets the definition of an agricultural product in § 205.2 of the USDA organic regulations. AMS has reviewed and agrees with the NOSB recommendation that the listing of carnauba wax be reclassified to clarify its use in organic handling. AMS received comments on the proposed rule for reclassifying carnauba wax from a nonsynthetic listed under § 205.605 to an agricultural product listed under § 205.606.

Cellulose

This final rule amends the current allowance for the use of cellulose in organic processing in § 205.605 of the National List. The listing of cellulose in paragraph (b) in § 205.605 reads as follows: Cellulose (CAS # 9004–34–6)—for use in regenerative casings, powdered cellulose as an anti-caking agent (non-chlorine bleached) and filtering aid. Microcrystalline cellulose is prohibited. The change specifies the type of cellulose allowed for certain uses. This rule adds language to prohibit the use of microcrystalline cellulose to avoid ambiguity about its status. In the proposed rule AMS specifically asked for comments on the need for this additional language concerning microcrystalline cellulose. This rule change prohibits some forms of cellulose, such as microcrystalline cellulose, which may have the same functions as powdered cellulose. AMS has reviewed and agrees with the NOSB recommendation that the annotation for cellulose be amended to clarify its use in organic handling. AMS received comments on the proposed rule for amending the annotation for cellulose as listed in § 205.605.

Chlorine Materials

This final rule amends the listing of chlorine materials in § 205.605(b). This

rule change clarifies what chlorine levels are permitted for use in water in direct contact with food versus in water used as an ingredient in food. The listing of chlorine materials in paragraph (b) in § 205.605 reads as follows: Chlorine materials—disinfecting and sanitizing food contact surfaces, equipment and facilities may be used up to maximum labeled rates. Chlorine materials in water used in direct crop or food contact are permitted at levels approved by the FDA or EPA for such purpose, provided the use is followed by a rinse with potable water at or below the maximum residual disinfectant limit for the chlorine material under the Safe Drinking Water Act. Chlorine in water used as an ingredient in organic food handling must not exceed the maximum residual disinfectant limit for the chlorine material under the Safe Drinking Water Act (Calcium hypochlorite; Chlorine dioxide; and Sodium hypochlorite). AMS has reviewed and agrees with the NOSB recommendation that the annotation for chlorine materials be amended to clarify its use in organic handling. AMS received comments on the proposed rule for amending the annotation for chlorine materials as listed in § 205.605.

Hypochlorous Acid

This final rule adds hypochlorous acid to § 205.605 as a chlorine material allowed for use in disinfecting and sanitizing equipment and facilities in organic handling and processing. The listing of hypochlorous acid in paragraph (b)(iii) in § 205.605 reads as follows: Hypochlorous acid—generated from electrolyzed water. As listed under § 205.605, hypochlorous acid is allowed for use as a disinfectant and sanitizer in organic handling. AMS has reviewed and agrees with the NOSB recommendation that hypochlorous acid be allowed for use in organic handling. AMS received comments on the proposed rule for amending hypochlorous acid onto § 205.605.

Potassium Lactate

This final rule adds potassium lactate to § 205.605(b) as an allowed substance for use in organic handling. The listing of potassium lactate in paragraph (b) in § 205.605 reads as follows: Potassium lactate—for use as an antimicrobial agent and pH regulator only. Including the annotation with this listing limits the use applications of potassium lactate to those uses included in the petition to add potassium lactate to the National List. AMS has reviewed and agrees with the NOSB recommendation that potassium lactate be allowed for use in organic handling. AMS received comments on the proposed rule for amending potassium lactate onto § 205.605.

Sodium Lactate

This final rule adds sodium lactate to § 205.605(b) as an allowed substance for use in organic handling. The listing of sodium lactate in paragraph (b) in § 205.605 reads as follows: Sodium lactate—for use as an antimicrobial agent and pH regulator only. Including the annotation with this listing limits the use applications of sodium lactate to those uses included in the petition to add sodium lactate to the National List. AMS has reviewed and agrees with the NOSB recommendation that sodium lactate be allowed for use in organic handling. AMS received comments on the proposed rule for amending sodium lactate onto § 205.605.

Glycerin

This final rule removes glycerin from § 205.605(b) and amends § 205.606 to include this substance with an annotation. Paragraph (h) in § 205.606 reads as follows: Glycerin (CAS # 56–81–5)—produced from agricultural source materials and processed using biological or mechanical/physical methods as described under § 205.270(a). For organic handling and processing, this action changes the classification of glycerin under the USDA organic regulations from an allowed synthetic substance to an agricultural product that must be an organic product unless such organic products are not commercially available. After preventive measures have been exhausted, synthetic glycerin may still be used for organic livestock practices as described in § 205.603. AMS has reviewed and agrees with the NOSB recommendation that the listing of glycerin be reclassified to clarify its use in organic handling. AMS received comments on the proposed rule for reclassifying glycerin from a synthetic substance listed under § 205.605 to an agricultural product listed under § 205.606.

§ 205.606 Nonorganically Produced Agricultural Products Allowed as Ingredients in or on Processed Products Labeled as ''Organic.''

Colors Derived From Agricultural Products

This final rule amends the USDA organic regulations to replace the Chemical Abstract Services (CAS) numbers included in the annotation of each color listed under National List at § 205.606(d)(1) through (18) with the binomial nomenclature of the agricultural source of the color. Paragraph (d)(1) through (18) in § 205.606 reads as follows:

1. Beet juice extract color—derived from *Beta vulgaris* L., except must not be produced from sugarbeets.
2. Beta-carotene extract color—derived from carrots (*Daucus carota* L.) or algae (*Dunaliella salina*).
3. Black currant juice color—derived from *Ribes nigrum* L.
4. Black/purple carrot juice color—derived from *Daucus carota* L.
5. Blueberry juice color—derived from blueberries (*Vaccinium spp.).*
6. Carrot juice color—derived from *Daucus carota* L.
7. Cherry juice color—derived from *Prunus avium* (L.) L. or *Prunus cerasus* L.
8. Chokeberry, aronia juice color—derived from *Aronia arbutifolia* (L.) Pers. or *Aronia melanocarpa* (Michx.) Elliott.
9. Elderberry juice color—derived from *Sambucus nigra* L.
10. Grape juice color—derived from *Vitis vinifera* L.
11. Grape skin extract color—derived from *Vitis vinifera* L.
12. Paprika color—derived from dried powder or vegetable oil extract of *Capsicum annuum* L.
13. Pumpkin juice color—derived from *Cucurbita pepo* L. or *Cucurbita maxima* Duchesne.
14. Purple sweet potato juice color—derived from *Ipomoea batatas* L. or *Solanum tuberosum* L.
15. Red cabbage extract color—derived from *Brassica oleracea* L.
16. Red radish extract color—derived from *Raphanus sativus* L.
17. Saffron extract color—derived from *Crocus sativus* L.
18. Turmeric extract color—derived from *Curcuma longa* L.

The use of binomial nomenclature in § 205.606(d) clarifies which agricultural sources may be used to derive the color extract. Varieties or cultivars of the same species may be used as sources for a color extract unless otherwise excluded in the annotation. Agricultural sources with the same genus but not the same species will not be eligible for use as a source for a color listed in § 205.606(d). For agricultural products, the application of binomial nomenclature for colors derived from agricultural products is appropriate when classifying colors because it better indicates the agricultural source of the color. The NOSB requested AMS review the use of CAS numbers in annotations of colors derived from agricultural products to determine if there is a better classification for defining colors derived

from agricultural products. The NOSB recommended that the use of CAS numbers is not accurate and that the annotations for colors derived from agricultural products be amended to clarify their use in organic handling. AMS has reviewed and agrees with the NOSB recommendation that the annotations of colors derived from agricultural products be amended. AMS received comments on the proposed rule for amending the annotations of colors derived from agricultural products listed in § 205.606.

III. Related Documents

Thirteen notices were published regarding the meetings of the NOSB and deliberations on recommendations and substances petitioned for amending the National List. Substances and recommendations included in this proposed rule were announced for NOSB deliberation in the following **Federal Register** notices: 65 FR 64657, October 30, 2000; 67 FR 54784, August 26, 2002; 74 FR 11904, March 20, 2009; 74 FR 46411, September 9, 2009; 75 FR 57194, September 20, 2010; 76 FR 62336, October 7, 2011; 77 FR 21067, April 9, 2012; 77 FR 2679, August 30, 2012; 79 FR 13272, March 10, 2014; 80 FR 12975, March 12, 2015; 80 FR 53759, September 8, 2015; 81 FR 14079, March 16, 2016; and 81 FR 50460, August 1, 2016.

The proposal to allow the use of 16 substances, to amend the allowed use of 17 National List substances, and to remove one substance, along with allowing the use of parasiticides in fiber bearing animals, was published on January 18, 2018. Additional information on or about the substances in this final rule, including petitions, technical reports, and NOSB recommendations, is available on the AMS website at *https://www.ams.usda.gov/rules-regulations/organic/national-list*.

IV. Statutory and Regulatory Authority

The OFPA (7 U.S.C. 6501 *et seq.*) authorizes the Secretary to make amendments to the National List based on recommendations developed by the NOSB. The OFPA at 7 U.S.C 6518(k) and 6518(n) authorizes the NOSB to develop recommendations to amend the National List for submission to the Secretary and establish a petition process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List. The National List petition process is implemented under § 205.607 of the NOP regulations. The current petition process (81 FR 12680, March 10, 2016) can be accessed through the NOP Program Handbook on the NOP website at *https://www.ams.usda.gov/rules-regulations/organic/handbook.*

A. Executive Orders 12866 and 13771 and Regulatory Flexibility Act

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

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and to evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The Small Business Administration (SBA) sets size criteria for each industry described in the North American Industry Classification System (NAICS), to delineate which operations qualify as small businesses. The SBA has classified small agricultural producers that engage in crop and animal production as those with average annual receipts of less than $750,000. Handlers are involved in a broad spectrum of food production activities and fall into various categories in the NAICS Food Manufacturing sector. The small business thresholds for food manufacturing operations are based on the number of employees and range from 500 to 1,250 employees, depending on the specific type of manufacturing. Certifying agents fall under the NAICS subsector, ''All other professional, scientific and technical services.'' For this category, the small business threshold is average annual receipts of less than $15 million.

AMS has considered the economic impact of this rulemaking on small agricultural entities. Data collected by the USDA National Agricultural Statistics Service (NASS) and the NOP indicate most of the certified organic production operations in the U.S. would be considered small entities. According to the 2016 Certified Organic NASS Survey, 13,954 certified organic farms in the U.S. reported sales of organic products and total farm gate sales in excess of $7.5 billion. Based on that data, organic sales average $541,000 per farm. Assuming a normal distribution of producers, we expect that most of these producers would fall under the $700,000 sales threshold to qualify as a small business.

According to the NOP's Organic Integrity Database there are 9,633 certified handlers in the U.S. The Organic Trade Association's 2017 Organic Industry Survey has information about employment trends among organic manufacturers. The reported data are stratified into three groups by the number of employees per company: Less than 5; 5 to 49; and 50 plus. These data are representative of the organic manufacturing sector, and the lower bound (50) of the range for the larger manufacturers is significantly smaller than the SBA's small business thresholds (500 to 1,250). Therefore, AMS expects that most organic handlers would qualify as small businesses.

The USDA has 79 accredited certifying agents who provide organic certification services to producers and handlers. The certifying agent that reports the most certified operations, nearly 3,500, would need to charge approximately $4,200 in certification fees in order to exceed the SBA's small business threshold of $15 million. The costs for certification generally range from $500 to $3,500, depending on the complexity of the operation. Therefore, AMS expects that most of the accredited certifying agents would qualify as small entities under the SBA criteria. The economic impact on entities affected by this rule would not be significant. The effect of this rule is to allow the use of additional substances in organic crop or livestock production and organic handling. This action increases regulatory flexibility and gives small entities more tools to use in day-to-day operations. AMS concludes that the economic impact of this rule, if any, would be minimal and beneficial to small agricultural service firms. Accordingly, USDA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

B. Executive Order 12988

E.O. 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly

burdening the court system. This final rule is not intended to have a retroactive effect. To prevent duplicative regulation, states and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or state officials who want to become certifying agents of organic farms or handling operations. A governing state official would have to apply to USDA to be accredited as a certifying agent, as described in section 6514(b) of the OFPA. States are also preempted under §§ 6503 through 6507 of the OFPA from creating certification programs to certify organic farms or handling operations unless the state programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to § 6507(b)(2) of the OFPA, a state organic certification program that has been approved by the Secretary may, under certain circumstances, contain additional requirements for the production and handling of agricultural products organically produced in the state and for the certification of organic farm and handling operations located within the state. Such additional requirements must (a) further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

In addition, pursuant to § 6519(c)(6) of the OFPA, this final rule does not supersede or alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–624), the Poultry Products Inspection Act (21 U.S.C. 451–471), or the Egg Products Inspection Act (21 U.S.C. 1031–1056), concerning meat, poultry, and egg products, respectively, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

C. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by this final rule. Accordingly, OMB clearance is not required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, Chapter 35.

D. Executive Order 13175

This final rule has been reviewed in accordance with the requirements of E.O. 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

E. Comments Received on Proposed Rule AMS–NOP–14–0079; NOP–14–05

During two separate comment periods totaling 90 days, AMS received approximately 130 public comments on proposed rule AMS–NOP–14–0079 from farmers, handlers, ingredient manufactures, universities, consumers, trade associations, certifying agents, and non-governmental organizations. AMS received two requests to extend the comment period near the close of the initial 60-day comment period. Because the request to extend the comment was received late in the comment period, AMS published a notice to reopen the comment period for an additional 30 days after the initial comment period closed. The received comments can be viewed at *http://www.regulations.gov* by searching for the document AMS–NOP–14–0079.

A majority of comments on the proposed rule indicated support for the new substance additions and amendments to the current listings. Several comments stated opposition to adding any of the proposed new substances to the National List. Such comments argued that the addition of any substances would devalue the organic label and weaken the organic standards. There were comments that only addressed a portion of the new additions or amendments, including a few comments that mentioned a specific addition or amendment but did not indicate support or opposition to the proposed addition or amendment. Some comments proposed changes to the proposed rule, including three comments that requested a twelve-month implementation period before the effective date of the final rule. AMS' response to the received comments on the additions or amendments per National List section is described below.

Comments Received on Additions or Amendments to § 205.601

AMS received comments on the three substance additions to § 205.601. Comments on magnesium oxide indicated either support or opposition to its addition to the National List. Almost all comments opposing the addition of magnesium oxide were generally opposed to the addition of any substance to the National List. AMS received comments supporting the addition of hypochlorous acid to § 205.601 from farmers, certifying agents, handlers, and commodity associations. Comments opposing the addition of hypochlorous acid § 205.601 were generally opposed to any National List additions. Many comments on squid byproducts supported the addition to the National List in § 205.601. Comments opposing the addition of squid byproducts to the National List were generally opposed to the addition of any new substance to the National List.

AMS also received comments on the amendment of the annotation for micronutrients included in § 205.601. Comments on this amendment either supported the amendment or were opposed to the change. Some comments supported the amendment, but requested that the proposed annotation be changed, stating that it was too long and confusing and needed to be shortened. AMS' response to these comments is included in the section on *Changes Based Upon Comments* described below.

Comments Received on Additions or Amendments to § 205.602

AMS did not receive any comments that opposed the addition of rotenone to § 205.602. All of the comments received on rotenone supported its addition to § 205.602.

Comments Received on Additions or Amendments to § 205.603

AMS received the most comments on the section of the proposed rule dealing with the eight substance additions and nine substance annotation amendments for § 205.603. AMS received several comments, either in support of or opposition to the additions of activated charcoal, calcium borogluconate, calcium propionate, kaolin pectin, mineral oil and propylene glycol to § 205.603. Several comments questioned whether these substances are still needed in organic livestock production, as these additions are based upon NOSB recommendations that were submitted for rulemaking several years ago. A few comments stated that the additions of calcium borogluconate and calcium propionate are not needed, as these substances are already included on the National List. Other comments on these substances argued that the addition of these substances to § 205.603 violated FDA regulations. Our response to these comments is included in the section on AMS' response to comments.

AMS received comments from livestock farmers, certifying agents, handlers, and livestock associations in support of the addition of hypochlorous acid to § 205.603. AMS also received comments opposing the addition of hypochlorous acid § 205.603. Most of

these latter comments were generally opposed to any National List substance additions. The proposed addition of nutritive supplements—injectable vitamins, minerals, and electrolytes—generated several comments from certifying agents, organic advocacy groups, livestock associations, and producers. Many comments supported adding nutritive substances to § 205.603. One comment supporting the addition requested altering the annotation to remove the requirement for a licensed veterinarian. Some comments opposing the addition of nutritive substances stated that injectable forms of vitamins, minerals, and electrolytes are already on the National List. Our response to these comments is included under the section AMS' Response to Comments.

AMS received several comments on the proposed amendments of substance annotations listed under § 205.603. Although fewer comments on chlorhexidine were received, most of the received comments supported this amendment. One comment opposing the amendment argued that ''. . . under the supervision of a licensed veterinarian'' is not defined, and there are toxicity concerns when used as a teat dip pre-milking. Many comments on the proposed rule supported amending the category of parasiticides and each individual parasiticide, fenbendazole and moxidectin. A few comments opposed the reduction in withdrawal time or opposed allowing parasiticides in fiber bearing animals. However, comments received from livestock producers, certifying agents and trade associations supported adding paragraph (b)(3) to § 205.238, to allow parasiticide use in fiber bearing animals. Our response to these comments is included under the section on AMS' Response to Comments.

Most comments received on ivermectin supported the removal of ivermectin from § 205.603. Comments submitted by consumers, certifying agents, public health advocacy and organic advocacy groups (non-government organizations) supported the removal of ivermectin, stating that it is nonessential and has negative impacts on pasture ecosystems. Some comments supporting the removal of ivermectin stated that the use of preventative management practices in organic production should preclude the need for parasiticides. Comments from a few producers, a parasiticide manufacturer and a dairy producers' association opposed the removal of ivermectin. Some of the producer comments stated that ivermectin was needed as a rotation with other parasiticides to prevent the development of pesticide resistance. One comment opposing ivermectin's removal stated that ivermectin is effective against parasites that are not controlled by remaining parasiticides on the National List. Our response to these comments is included under the section on AMS' Response to Comments.

AMS received many comments from livestock producers that supported the addition of sodium chlorite, acidified onto § 205.603(a) and § 205.603(b). A certifying agent, a dairy producers' association, and a trade association also indicated support for this amendment in their comments. Comments from a second certifying agent and an organic consulting organization supported listing sodium chlorite, acidified in § 205.603(a), but were opposed to its listing in § 205.603(b). Several consumers submitted comments that opposed the addition of sodium chlorite, acidified. These commenters were generally opposed to the addition of any substance to the National List. In the sodium chlorite, acidified recommendation forwarded to the Secretary, the NOSB did not fully clarify its reason for adding sodium chlorite, acidified to both § 205.603(a) and § 205.603(b). However, each of these regulation paragraphs contains substances that are used as teat dips or may be ingredients in teat dip products.

Although AMS received fewer comments on the annotation changes for lidocaine, procaine, and excipients listed in § 205.603, and most of these comments supported the amendments, including comments from certifying agents. Comments opposing these amendments were opposed to any synthetic substance being used in organic production. AMS received many comments from trade association groups, certifying agents, livestock producers and researcher supporting the annotation amendment for methionine. Other comments on methionine opposed the amendment and requested that the use of methionine be phased out of organic production. Our response to comments on methionine is discussed in the section on AMS' Response to Comments.

Comments Received on Additions or Amendments to § 205.605

AMS received few comments on the reclassification of alginic acid, and the received comments supported the change. AMS received comments from industry groups and certifying agents indicating support for the reclassification of carnauba wax, although some received comments expressed opposition to all additions and amendments. Several comments received on the amendment of the allowance for the use of cellulose expressed support for this amendment. A few comments received stated opposition to the prohibition of microcrystalline cellulose. AMS received few comments regarding the proposed amendments to the listing of chlorine in § 205.605(b), and most comments received supported the changes. Most of the comments received regarding the proposed addition of hypochlorous acid to § 205.605 of the National List supported this addition. AMS received one comment from a certifying agent supporting the addition of potassium lactate and sodium lactate to § 205.605(b), while opposing comments were submitted by groups and individuals that are opposed to any synthetic substance being added to the National List. AMS received several comments that supported the removal of glycerin from § 205.605(b) and its addition to § 205.606 as an agricultural product. Comments from manufacturers or industry representatives expressed concern with limits on the manufacturing process or in sourcing glycerin. AMS received several comments on or about the amendment of the annotation for flavors listed in § 205.605, both in support of and in opposition to this rule change. Comments opposed to the change argued that requiring organic flavors to be used when commercially available may adversely impact product formulations. Our response to these comments is discussed in AMS' Response to Comments section.

Comments Received on Additions or Amendments to § 205.606

Colors Derived From Agricultural Products

Nearly all received comments on the use of binomial nomenclature for colors derived from agricultural products supported this change. Some comments proposed adding additional agricultural product sources from the same genus but different species. Other comments offered technical corrections to the nomenclature cited in the proposed rule. These and other comments are discussed in our response to comments in section E.

AMS Response To Comments

Changes Based Upon Comments

Micronutrients

Few comments addressed the amendment of the annotation for micronutrients. Three comments recommended that the annotation be shortened to ''micronutrient deficiency

must be documented'' or that the annotation also require site specific data. These comments recommended shortening the annotation to reduce confusion. Upon considering the totality of comments received, AMS determined that shortening the annotation would reduce the potential for confusion and has modified the amendment accordingly. Paragraph § 205.601(j)(7) reads as follows: (7) Micronutrients—not to be used as a defoliant, herbicide, or desiccant. Those made from nitrates or chlorides are not allowed. Micronutrient deficiency must be documented by soil or tissue testing or other documented and verifiable method as approved by the certifying agent. AMS has determined that the modified amendment includes information sources that producers can use to support their need to use micronutrients to maintain soil fertility while providing more tools to the organic producer. The requirement that certifying agents must approve the method for documenting micronutrient deficiency is retained in the final rule.

Parasiticides for Fiber Bearing Animals

AMS received many comments supporting the use of parasiticides in fiber bearing animals and the proposed changes to § 205.603(a)(23). Many comments indicated the changes would benefit domestic producers by aligning with international organic production standards for fiber bearing animals. Some of these comments, however, argued for a reduction in the parasiticide withdrawal period required prior to harvesting fleece or wool of treated animals, and stated that a 90-day withdrawal period for fiber bearing animals is not based upon withholding times established by the FDA or the Food Animal Residue Avoidance Databank (FARAD), a university-based national program. Comments received from a trade association, a consulting firm, and a sheep producer stated that a 90-day withdrawal period for fiber bearing animals is excessive and problematic for sheep production cycles and requested a 36-day withdrawal period instead. Upon review of the 2016 NOSB recommendation on parasiticides and the FARAD withdrawal interval recommendations, AMS determined that the FARAD-recommended withholding time for milk when goats are treated orally with moxidectin is up to 18 days. No recommendations for withholding times for sheep following treatment with parasiticides were available. The recommendation that was forwarded to the Secretary indicated that for organic production, animal withholding periods following treatment with parasiticides should double those recommended by FARAD. AMS has determined that the 36-day withdrawal period for milk or milk products from goats, sheep and other dairy species treated with fenbendazole or moxidectin (§§ 205.603(a)(23)(i)—(ii)) is consistent with a doubling of FARAD recommendations and aligns with the production criteria established by the OFPA. AMS has considered the totality of comments received, the NOSB recommendations and the withholding periods established by FARAD, and determined that a 36-day withdrawal period for fiber-bearing animals treated with parasiticides aligns with the production criteria established by the OFPA. Therefore, this final rule reduces from 90 days to 36 days the withholding period required before harvesting fleece or wool form fiber-bearing animals treated with parasiticides. Producers are reminded that the use of any individual substance in § 205.603 in a formulated product that is intended or used as a medical treatment is under the authority of FDA and must comply with all FDA regulations.

Methionine

A few of the many comments on methionine that AMS received requested that the term ''maximum'' be added to the amended annotation to illustrate that the intent of the recommendation submitted to the Secretary is to have maximum rates of synthetic methionine supplementation as averages per ton of feed over the life of the bird, rather than as a maximum quantity per ton of feed. Upon review of both the NOSB recommendation, the comments received, and the technical report on methionine, AMS determined that adding the term ''maximum'' is appropriate. Thus, AMS amended the methionine annotation in the final rule to read, ''maximum rates as averaged per ton of feed over the life of the flock.'' This change in the methionine annotation recognizes that methionine requirements change over a bird's life. This change also ensures that a bird's changing nutritional requirements are met which, in turn, should reduce the overfeeding of dietary crude protein.

Zinc Sulfate

AMS received several comments supporting the addition of zinc sulfate to the national List in § 205.603. A few of these comments stated that the NOSB recommended that zinc sulfate should be added only to § 205.603(b) and not added to § 205.603(a). Based upon a review of the NOSB recommendation, AMS determined that zinc sulfate was only recommended for addition to § 205.603(b), and, therefore, that adding zinc sulfate to § 205.603(a) would not comply with OFPA requirements. Based upon this finding, zinc sulfate is added only to § 205.603(b) in this final rule.

Colors Derived From Agricultural Products

Nearly all comments received supported the change to remove chemical abstract (CAS) numbers and replace them with binomial nomenclature to identify colors that are derived from agricultural sources. A few comments stated that using binomial nomenclature to identify colors derived from agricultural products is more accurate than using CAS numbers. Based upon analysis developed for this rulemaking, AMS agrees with these comments. AMS reviewed comments on colors submitted during the 2012 Sunset review. Some of the comments stated that the CAS numbers included in the annotations actually refer to pigments in the color and not the color itself. AMS has determined that CAS numbers are applied to chemical substances and not to agricultural products. As a result, AMS agrees with these comments and has replaced all CAS numbers included within each color product annotation with the appropriate binomial or other taxonomic nomenclature to identify the color derived from agricultural product. Other comments on colors offered technical corrections to some of the binomial nomenclatures cited in the proposed rule. AMS agrees with these comments and has corrected the binomial nomenclatures of all color listings in this final rule using binomial nomenclatures currently listed as accepted by both the Integrated Taxonomic Information System [1] and the USDA Natural Resources Conservation Service Plants Database.[2]

Two comments received from food coloring manufacturers noted that some colors are derived from more than one agricultural source and requested that these additional color sources be added to the National List at § 205.606. AMS considered these comments and determined that adding these additional agricultural sources complies with OFPA. Thus, in this final rule, additional agricultural sources have been added to the color listings for blueberry juice color, cherry juice color, chokeberry— aronia juice color, pumpkin juice color, and purple potato juice color. Three comments received by

[4] U.S. Integrated Taxonomic Information System: *https://www.itis.gov/*. Accessed August 2, 2018.

[5] U.S. Department of Agriculture, Natural Resources Conservation Service Plants Database: *https://plants.usda.gov/java/*. Accessed August 2, 2018.

AMS noted a technical correction to the beet juice extract color listed in the proposed rule. These comments stated that sugarbeet is not the appropriate cultivar of *Beta vulgaris* for use as a source of food coloring, because it is not used by the organic industry. The comments further indicated it would be difficult for the organic industry to source sugarbeet that is not genetically modified. These comments suggested listing as beet root or redbeet instead of sugarbeet. AMS agrees and has modified this listing to indicate any variety of *Beta vulgaris* may be used except for sugarbeet. AMS has received information which indicates sugarbeet varieties are mostly derived from excluded methods as listed in § 205.2 and use of any of these varieties in organic production or handling is prohibited.

Twelve-Month Implementation Period

AMS received a few comments supporting the inclusion of an implementation period for this final rule. These comments argued that an implementation period would allow organic producers and handlers time to comply with the changes in the USDA organic regulations. One comment recommended a twelve-month implementation period. AMS only partially agrees with these comments. Based upon other comments that supported the additions of new substances or amendments to substance annotations, many organic producers and handlers want to use these additional substances as soon as allowed. As such, AMS determined that a twelve-month implementation period would not benefit operations seeking to include any of the new National List substances in their organic system plan. Therefore, AMS has determined that all of the additions to the National List and most of the amendments to the List will be effective 30 days after publication of the final rule, per the **Federal Register** requirements.

AMS does agree that some of the amendments in the final rule will require an implementation period. AMS has determined that changes to the following substances will require a twelve-month implementation before taking effect: Ivermectin, Flavors, Carnauba Wax, Glycerin, and Cellulose. AMS determined a twelve-month implementation period is warranted to permit organic livestock producers to use existing stocks of ivermectin and for organic handlers using flavors, glycerin, or carnauba wax to adjust to the requirement to use organic sources of these substances when organic sources are commercially available. AMS determined that a twelve-month implementation period is also appropriate for the prohibition of microcrystalline cellulose, in order to provide time for industry to modify production practices.

Changes Requested But Not Made

Additions to the National List

AMS received several comments requesting that all of the synthetic substance additions to the National List cited in the proposed rule not be added to the list in the final rule. Because the commenters did not provide any justification for their view, AMS did not have a basis for evaluating their objections. The OFPA at 7 U.S.C. 6517 authorizes the Secretary to add synthetic substances to the National List provided the Secretary determines that the substance meets the criteria in 7 U.S.C. 6517 (c)(1). Section 6517(d)(1) further authorizes the Secretary to propose amendments to the National List based upon recommendations developed by the NOSB. The NOSB recommended adding these 16 synthetic substances to the National List, based upon their review against the OFPA substance evaluation criteria (7 U.S.C 6518(m)). AMS reviewed the recommendations and agrees the substances meet the OFPA criteria for addition to the National List. Therefore, this rule adds the 16 synthetic substances to the National List.

Activated Charcoal, Calcium Borogluconate, Calcium Propionate, Kaolin Pectin, Mineral Oil, and Propylene Glycol

AMS received fewer comments on these substances, however a few comments questioned whether these substances are still needed. These comments recommended that the substances be sent back to the NOSB for the purpose of reviewing new information, because the original NOSB recommendations are now considered dated. A few comments opposing the addition of these substances stated that the associated annotations do not comply with U.S. Food and Drug Administration (FDA) regulations. AMS stated in previous rulemaking (proposed rule, July 17, 2006, 71 FR 40624) that these six substances could not be added to § 205.603(a) as medical treatments because they were not FDA-approved and did not qualify for extra-label use by veterinarians under the Animal Medical Drug Use Clarification Act (AMDUCA) provisions. This proposed rule indicated that AMS would continue consultation with the FDA regarding the use of these six substances in organic livestock production. Subsequently, prior to publication of the proposed rule, AMS conferred with the FDA on the proposed additions and amendments to § 205.603. During this conference, the FDA indicated that their process involves reviewing formulated products for medical treatment approval. FDA indicated they do not review for medical treatment approval of generic materials, as included in this rule. Therefore, individual substances cited in this rule would not be reviewed as medical treatments under the FDA process. Based upon this consultation, AMS believes these substances are not in conflict with FDA regulations. Thus, this final rule adds these six substances to § 205.603.

Ivermectin

A majority of comments on ivermectin received by AMS supported its removal from the National List. A few producers submitting comments on ivermectin opposed its removal, arguing that ivermectin is needed for parasiticide rotation to prevent the development of parasite resistance. A comment from a dairy association opposed the ivermectin removal, arguing that ivermectin is used to control a different set of parasites that are not controlled by either moxidectin or fenbendazole. AMS does not agree with these comments. The USDA regulations stipulate that producers must establish and maintain preventive livestock health care practices before using available healthcare treatments that are on the National List. Only when preventive practices and veterinary biologics are inadequate to prevent sickness can synthetic treatments be administered to livestock, and then only when such treatments are on the National List in § 205.603. AMS review has determined that ivermectin and moxidectin are part of the same chemical class (macrocyclic lactones) with broad spectrum efficacy against both internal parasites and external parasites (*e.g.,* cattle lice). Fenbendazole is a broad spectrum external parasiticide in a different chemical class (*i.e.,* benzimidazoles). Ivermectin and moxidectin appear to have a similar mode of action and may be less effective when used in a two parasiticide rotation to manage the prevention of parasiticide resistance. AMS review of the 2015 Technical Report on Ivermectin developed for the National List petition process identified several livestock management practices that can control parasite infestation and the report also cited multiple alternative non-synthetic substances that are effective as parasiticides. The technical report also

highlighted new research that indicated that when excreted in cattle dung, ivermectin is toxic to dung beetle larvae and causes negative effects to pasture ecosystems. Based on the similar efficacies between ivermectin and moxidectin, and a review of information provided in the technical report, AMS has determined that ivermectin is not essential for organic production. Subsequently, this final rule removes ivermectin from the National List.

Sodium Chlorite, Acidified

AMS received several comments, including a signed petition with several signatures, supporting the addition of sodium chlorite, acidified to the National List. Some of these comments cited its effectiveness in controlling mastitis in dairy animals and its environment compatibility. Other comments grouped sodium chlorite, acidified into opposition to any new additions to the National List. Comments opposing the listing of sodium chlorite, acidified did not provide any justification for their opposition. Consequently, AMS did not have for consideration a basis for their opposition to sodium chlorite, acidified.

AMS also received comments supporting the addition of sodium chlorite, acidified only to § 205.603(a) of the National List. Comments seeking to limit the addition of sodium chlorite, acidified to only § 205.603(a) stated that the intent of the NOSB's recommendation was not for use as a topical treatment. Based upon a review of the NOSB recommendation on sodium chlorite, acidified forwarded to the Secretary, AMS determined that the original recommendation was to add the substance to both § 205.603(a) and § 205.603(b). The recommendation on sodium chlorite, acidified provided for pre-milking and post-milking teat dip treatment, which allows sodium chlorite, acidified to be used as a sanitizer, a use application provided under § 205.603(a), and as a topical treatment, a use application provided udder § 205.603(b). AMS determined that dairy producers use teat dips as a sanitizer and as a topical treatment. AMS also reviewed all substances listed in §§ 205.603(a) and 205.603(b) and determined that substances that may be used in teat dips or as ingredients in teat dip products are listed in both §§ 205.603(a) and 205.603(b). Therefore, this rule adds sodium chlorite, acidified to the National List in §§ 205.603(a) and 205.603(b).

Methionine

AMS received many comments supporting the amendment of the annotation of methionine under § 205.603. A few comments in opposition to this change requested that AMS implement a phase-out of methionine. These comments argued the substance is no longer essential for organic poultry production. One opposing comment recommended that the final rule add an expiration date to the annotation. AMS has considered the totality of comments received and reviewed the historical use and effectiveness of expiration dates for this substance. In previous rulemaking, AMS amended section 205.603 of the National List to allow methionine in organic poultry production with established expiration dates included in the annotation for the substance (October 31, 2003, 68 FR 61987; October 21, 2005, 70 FR 61217; August 24, 2010, 73 FR 54057; March 14, 2011, 75 FR 51919). Expiration dates were included in previous rulemaking in order to emphasize the need to develop alternatives to synthetic methionine that are more compatible with organic production practice standards. AMS subsequently published additional rulemaking that removed the previously established expiration dates from the methionine annotation on September 19, 2012 (77 FR 57985). AMS has determined that the use of expiration dates did not result in the development of effective alternatives to synthetic methionine for use by organic poultry producers. Furthermore, establishing a phase-out in the absence of an effective alternative to methionine would result in a significant reduction in organic poultry and egg production. AMS has determined that the use of synthetic methionine is still essential for organic poultry production. Consequently, this final rule does not include a phase-out of methionine.

Microcrystalline Cellulose

Some comments opposed amending the cellulose annotation in § 205.605(b) that would prohibit microcrystalline cellulose. Upon review of the technical report on cellulose, AMS determined that microcrystalline cellulose is derived from cellulose through additional chemical processing that has not been subjected to the evaluation criteria stipulated in the OFPA § 6581(m). Therefore, AMS has determined that microcrystalline cellulose is not the same substance as cellulose. Furthermore, based on a review of public comments provided during the 2012 National List sunset reviews, AMS determined that some public comments raised concern that microcrystalline cellulose was being interpreted as being an allowed form of cellulose when these commenters indicated microcrystalline cellulose is a prohibited substance. Subsequently, this final rule retains the prohibition of microcrystalline cellulose in § 205.605(b).

Clarifications

U.S. Food and Drug Administration, AMS

Comments from an animal feed association, a dairy association, and an animal health association opposed the additions of several substances to § 205.603. These comments inferred that some of the proposed substance additions are not compliant with FDA regulations or other federal regulations. During the development of the proposed rule, AMS staff conferred with the FDA Center for Veterinary Medicine (CVM) staff regarding the additions and amendments that would be included in § 205.603. Copies of all of the proposed § 205.603 additions and amendments were transmitted to CVM staff before the proposed rule was published. AMS and CVM discussed the proposed changes to § 205.603. Based upon this conference, AMS believes adding these substances to the National List is not inconsistent with FDA or other federal regulations. CVM reviews and approves formulated products as medical treatments. The National List contains individual substances that may be used in organic production. The use of any individual substance in § 205.603 in a formulated product that is intended or used as a medical treatment is under the authority of FDA and must comply with all FDA regulations. The OFPA § 2120(c)(6) stipulates that no provision within the USDA organic regulations supersedes the authority of the FDA regulations.

Comments on Substances Considered To Be Already on the National List

Some comments opposed adding substances such as calcium borogluconate, calcium propionate, and nutritive supplements—injectable forms of vitamins, minerals, or electrolytes, to § 205.603 because they interpret these substances to be currently included on the National List. AMS has considered these comments and determined that calcium borogluconate, calcium propionate, and nutritive supplements—injectable forms of vitamins, minerals, or electrolytes, were individually petitioned for addition to the National List. AMS facilitated the NOSB's petition review process during which public comments were received on each of these substances. After deliberate consideration, the NOSB forwarded to the Secretary separate

recommendations to add these substances to the National List. AMS reviewed these recommendations and determined that the NOSB reviewed each substance against the substance evaluation criteria delineated by the OFPA (§ 6518(m)). AMS agrees that these substances have met the criteria. Therefore, this final rule adds calcium borogluconate, calcium propionate, and nutritive supplements—injectable forms of vitamins, minerals, or electrolytes to § 205.603 of the National List. Organic livestock producers and certifying agents should amend any prior interpretation on the allowance of these substances.

Requirement for Licensed Veterinarian and ''Off Label'' Use

AMS received comments on the proposed rule that addressed the requirement for use by a ''licensed Veterinarian'' or for a substance to be administered under the ''supervision of a licensed Veterinarian.'' Some of these comments argued that inclusion of these requirements with use of the substances as listed under § 205.603 would be confusing or too restrictive. The requirement for use by a licensed veterinarian or the use of a substance under the supervision of a licensed veterinarian is a condition required by FDA regulations. The USDA organic regulations do not supersede FDA regulations. Other comments questioned the oversight of ''off label'' use of some of the substances being added or amended in this rule. As noted above, use of any animal drug in organic production must comply with both the USDA organic regulation requirements and the FDA regulation requirements. Certifying agents should ensure compliance with these regulation requirements during approval of an operation's organic system plan and verification during inspection.

Flavors and Commercial Availability

AMS received a comment from the petitioner of the amendment to the flavors annotation which requires that non-synthetic flavors be used when organic flavors are not commercially available. The petitioner noted that this change should be applied to ''organic'' products and not be applied to non-organic ingredients that make up the 30 percent or less portion of a ''made with organic (specified ingredients)'' product. AMS concurs with the petitioner's comments and interprets the rule to not apply to non-organic ingredients that compose 30 percent or less of ''made with organic'' products. Also, in its comment, the petitioner requested that the National Organic Program develop guidance on commercial availability based upon the NOSB's November 2007 recommendation on commercial availability. Prior to being revised in 2013, the National List petition guidelines included guidance on commercial availability that was based upon a Fall 2006 NOSB recommendation.

Requested Changes Not Addressed in the Proposed Rule

AMS received comments that requested changes to annotations that were not addressed in the proposed rule. These changes, as such, cannot be included in this final rule because they have not been available for comment.

Corrections to Proposed Rule Agricultural Marketing Service, 7 CFR Part 205 [Document Number AMS–NOP–14–0079; NOP–14–05], RIN 0581 AD60 National Organic Program; Amendments to the National List of Allowed and Prohibited Substances (Crops, Livestock and Handling)

This document corrects the regulation text of the proposed rule published in the **Federal Register** of January 17, 2018, regarding National Organic Program; Amendments to the National List of Allowed and Prohibited Substances (Crops, Livestock, and Handling). These corrections clarify that the proposed rule applies prospectively to the plans submitted for approval from the effective date of this final rule. AMS has inserted the following corrections in this final rule:

- In the proposed rule (83 FR 2498), beginning on page 2522 in the issue of January 17, 2018, column C, make the following correction, under the List of Subjects in 7 CFR part 205, 3. Amend § 205.601 as follows: b. Redesignate paragraphs (j)(5) through (j)(8) as (j)(6) through (j)(9), redesignate paragraph (j)(9) as (j)(11), add new paragraphs (j)(5) magnesium oxide and (j)(10) squid byproducts, and revise newly redesignated paragraph (j)(7) micronutrients.
- In the proposed rule (83 FR 2498), beginning on page 2524 in the issue of January 17, 2018, column A, make the following correction, under the List of Subjects in 7 CFR part 205, 6. Amend § 205.605 as follows: Remove ''Alginic'' from the listing for ''Acids'' and remove ''Carnauba wax'' from the listing for ''Waxes'' in paragraph (a). Revise the listing for ''Flavors'' in paragraph (a). Add ''alginic acid'' to paragraph (b). Add ''potassium lactate'' and ''sodium lactate'' to paragraph (b). Revise the substances ''cellulose'' and ''chlorine materials'' in paragraph (b). Remove ''Glycerin—produced by hydrolysis of fats and oils'' from paragraph (b).
- In the proposed rule (83 FR 2498), beginning on page 2524 in the issue of January 17, 2018, column B, make the following correction, under the List of Subjects in 7 CFR part 205, Amend (b), Add ''Potassium lactate—for use as an antimicrobial agent and pH regulator only,'' and ''Sodium lactate—for use as an antimicrobial agent and pH regulator only,'' to paragraph (b). Revise the substances ''cellulose'' and ''chlorine materials'' in paragraph (b). Remove ''Glycerin—produced by hydrolysis of fats and oils'' from paragraph (b).

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205 is amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

■ 2. Amend § 205.238 by revising paragraph (b)(2) and adding paragraph (b)(3) to read as follows:

§ 205.238 Livestock health care practice standard.

* * * * *

(b) * * *

(2) Dairy animals, as allowed under § 205.603.

(3) Fiber bearing animals, as allowed under § 205.603.

* * * * *

■ 3. Amend § 205.601 as follows:

■ a. Redesignate paragraph (a)(2)(iii), as (a)(2)(iv) and add new paragraph (a)(2)(iii); and,

■ b. Redesignate paragraph (j)(9) as (j)(11), redesignate paragraphs (j)(5) through (j)(8) as (j)(6) through (j)(9), add new paragraphs (j)(5) and (j)(10), and revise newly redesignated paragraph (j)(7).

The additions and revision read as follows:

§ 205.601 Synthetic substances allowed for use in organic crop production.

* * * * *

(a) * * *

(2) * * *

(iii) Hypochlorous acid—generated from electrolyzed water.

* * * * *

(j) * * *

(5) Magnesium oxide (CAS # 1309–48–4)—for use only to control the viscosity of a clay suspension agent for humates.

* * * * *

(7) Micronutrients—not to be used as a defoliant, herbicide, or desiccant. Those made from nitrates or chlorides are not allowed. Micronutrient deficiency must be documented by soil or tissue testing or other documented and verifiable method as approved by the certifying agent.

(i) Soluble boron products.

(ii) Sulfates, carbonates, oxides, or silicates of zinc, copper, iron, manganese, molybdenum, selenium, and cobalt.

* * * * *

(10) Squid byproducts—from food waste processing only. Can be pH adjusted with sulfuric, citric, or phosphoric acid. The amount of acid used shall not exceed the minimum needed to lower the pH to 3.5.

* * * * *

■ 4. Amend § 205.602 as follows:

■ a. Remove reserved paragraphs (j)–(z); and

■ b. Redesignate paragraphs (f) through (i) as (g) through (j), and add new paragraph (f) to read as follows:

§ 205.602 Nonsynthetic substances prohibited for use in organic crop production.

* * * * *

(f) Rotenone (CAS # 83–79–4).

* * * * *

■ 5. Amend § 205.603 as follows:

■ a. Revise paragraph (a);

■ b. Revise paragraphs (b)(4) and (7);

■ c. Redesignate paragraph (b)(8) as (b)(9) and add new paragraph (b)(8);

■ d. Add paragraph (b)(10);

■ e. Revise paragraph (d)(1); and

■ f. Revise paragraph (f).

The revisions and addition read as follows:

§ 205.603 Synthetic substances allowed for use in organic livestock production.

* * * * *

(a) As disinfectants, sanitizer, and medical treatments as applicable.

(1) Alcohols.

(i) Ethanol—disinfectant and sanitizer only, prohibited as a feed additive.

(ii) Isopropanol-disinfectant only.

(2) Aspirin-approved for health care use to reduce inflammation.

(3) Atropine (CAS #-51–55–8)—federal law restricts this drug to use by or on the lawful written or oral order of a licensed veterinarian, in full compliance with the AMDUCA and 21 CFR part 530 of the Food and Drug Administration regulations. Also, for use under 7 CFR part 205, the NOP requires:

(i) Use by or on the lawful written order of a licensed veterinarian; and

(ii) A meat withdrawal period of at least 56 days after administering to livestock intended for slaughter; and a milk discard period of at least 12 days after administering to dairy animals.

(4) Biologics—Vaccines.

(5) Butorphanol (CAS #-42408–82–2)—federal law restricts this drug to use by or on the lawful written or oral order of a licensed veterinarian, in full compliance with the AMDUCA and 21 CFR part 530 of the Food and Drug Administration regulations. Also, for use under 7 CFR part 205, the NOP requires:

(i) Use by or on the lawful written order of a licensed veterinarian; and

(ii) A meat withdrawal period of at least 42 days after administering to livestock intended for slaughter; and a milk discard period of at least 8 days after administering to dairy animals.

(6) Activated charcoal (CAS # 7440–44–0)—must be from vegetative sources.

(7) Calcium borogluconate (CAS # 5743–34–0)—for treatment of milk fever only.

(8) Calcium propionate (CAS # 4075–81–4)—for treatment of milk fever only.

(9) Chlorhexidine (CAS # 55–56–1)—for medical procedures conducted under the supervision of a licensed veterinarian. Allowed for use as a teat dip when alternative germicidal agents and/or physical barriers have lost their effectiveness.

(10) Chlorine materials—disinfecting and sanitizing facilities and equipment. Residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act.

(i) Calcium hypochlorite.

(ii) Chlorine dioxide.

(iii) Hypochlorous acid—generated from electrolyzed water.

(iv) Sodium hypochlorite

(11) Electrolytes—without antibiotics.

(12) Flunixin (CAS #-38677–85–9)—in accordance with approved labeling; except that for use under 7 CFR part 205, the NOP requires a withdrawal period of at least two-times that required by the FDA.

(13) Glucose.

(14) Glycerin—allowed as a livestock teat dip, must be produced through the hydrolysis of fats or oils.

(15) Hydrogen peroxide.

(16) Iodine.

(17) Kaolin pectin—for use as an adsorbent, antidiarrheal, and gut protectant.

(18) Magnesium hydroxide (CAS #-1309–42–8)—federal law restricts this drug to use by or on the lawful written or oral order of a licensed veterinarian, in full compliance with the AMDUCA and 21 CFR part 530 of the Food and Drug Administration regulations. Also, for use under 7 CFR part 205, the NOP requires use by or on the lawful written order of a licensed veterinarian.

(19) Magnesium sulfate.

(20) Mineral oil—for treatment of intestinal compaction, prohibited for use as a dust suppressant.

(21) Nutritive supplements—injectable supplements of trace minerals per paragraph (d)(2) of this section, vitamins per paragraph (d)(3), and electrolytes per paragraph (a)(11), with excipients per paragraph (f), in accordance with FDA and restricted to use by or on the order of a licensed veterinarian.

(22) Oxytocin—use in postparturition therapeutic applications.

(23) Parasiticides—prohibited in slaughter stock, allowed in emergency treatment for dairy and breeder stock when organic system plan-approved preventive management does not prevent infestation. In breeder stock, treatment cannot occur during the last third of gestation if the progeny will be sold as organic and must not be used during the lactation period for breeding stock. Allowed for fiber bearing animals when used a minimum of 36 days prior to harvesting of fleece or wool that is to be sold, labeled, or represented as organic.

(i) Fenbendazole (CAS #43210–67–9)—milk or milk products from a treated animal cannot be labeled as provided for in subpart D of this part for: 2 days following treatment of cattle; 36 days following treatment of goats, sheep, and other dairy species.

(ii) Moxidectin (CAS #113507–06–5)—milk or milk products from a treated animal cannot be labeled as provided for in subpart D of this part for: 2 days following treatment of cattle; 36 days following treatment of goats, sheep, and other dairy species.

(24) Peroxyacetic/peracetic acid (CAS #-79–21–0)—for sanitizing facility and processing equipment.

(25) Phosphoric acid—allowed as an equipment cleaner, *Provided,* That, no direct contact with organically managed livestock or land occurs.

(26) Poloxalene (CAS #-9003–11–6)—for use under 7 CFR part 205, the NOP requires that poloxalene only be used for the emergency treatment of bloat.

(27) Propylene glycol (CAS #57–55–6)—only for treatment of ketosis in ruminants.

(28) Sodium chlorite, acidified—allowed for use on organic livestock as a teat dip treatment only.

(29) Tolazoline (CAS #59–98–3)—federal law restricts this drug to use by or on the lawful written or oral order of a licensed veterinarian, in full compliance with the AMDUCA and 21 CFR part 530 of the Food and Drug Administration regulations. Also, for use under 7 CFR part 205, the NOP requires:

(i) Use by or on the lawful written order of a licensed veterinarian;

(ii) Use only to reverse the effects of sedation and analgesia caused by Xylazine; and,

(iii) A meat withdrawal period of at least 8 days after administering to livestock intended for slaughter; and a milk discard period of at least 4 days after administering to dairy animals.

(30) Xylazine (CAS #7361–61–7)—federal law restricts this drug to use by or on the lawful written or oral order of a licensed veterinarian, in full compliance with the AMDUCA and 21 CFR part 530 of the Food and Drug Administration regulations. Also, for use under 7 CFR part 205, the NOP requires:

(i) Use by or on the lawful written order of a licensed veterinarian; and,

(ii) A meat withdrawal period of at least 8 days after administering to livestock intended for slaughter; and a milk discard period of at least 4 days after administering to dairy animals.

(b) * * *

(4) Lidocaine—as a local anesthetic. Use requires a withdrawal period of 8 days after administering to livestock intended for slaughter and 6 days after administering to dairy animals.

* * * * *

(7) Procaine—as a local anesthetic. Use requires a withdrawal period of 8 days after administering to livestock intended for slaughter and 6 days after administering to dairy animals.

(8) Sodium chlorite, acidified—allowed for use on organic livestock as teat dip treatment only.

* * * * *

(10) Zinc sulfate—for use in hoof and foot treatments only.

* * * * *

(d) * * *

(1) DL-Methionine, DL-Methionine—hydroxy analog, and DL-Methionine—hydroxy analog calcium (CAS #'s 59–51–8, 583–91–5, 4857–44–7, and 922–50–9)—for use only in organic poultry production at the following pounds of synthetic 100 percent methionine per ton of feed in the diet, maximum rates as averaged per ton of feed over the life of the flock: Laying chickens—2 pounds; broiler chickens—2.5 pounds; turkeys and all other poultry—3 pounds.

* * * * *

(f) Excipients—only for use in the manufacture of drugs and biologics used to treat organic livestock when the excipient is: (1) Identified by the FDA as Generally Recognized As Safe; (2) Approved by the FDA as a food additive; (3) Included in the FDA review and approval of a New Animal Drug Application or New Drug Application; or (4) Approved by APHIS for use in veterinary biologics.

* * * * *

■ 6. Amend § 205.605 as follows:

■ a. Remove ''Alginic:'' from the listing for ''Acids'' and remove ''Carnauba wax; and'' from the listing for ''Waxes'' in paragraph (a);

■ b. Revise the listing for ''Flavors'' in paragraph (a);

■ c. Add a listing for ''Alginic acid'' to paragraph (b) in alphabetical order;

■ d. Revise the listings for ''Cellulose'' and ''Chlorine materials'' in paragraph (b);

■ e. Remove the listing for ''Glycerin'' from paragraph (b); and

■ f. Add listings for ''Potassium lactate'' and ''Sodium lactate'' to paragraph (b) in alphabetical order.

The revisions and additions read as follows:

§ 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as "organic" or "made with organic (specified ingredients or food group(s))."

* * * * *

(a) * * *

* * * * *

Flavors—nonsynthetic flavors may be used when organic flavors are not commercially available. All flavors must be derived from organic or nonsynthetic sources only and must not be produced using synthetic solvents and carrier systems or any artificial preservative.

* * * * *

(b) * * *

Alginic acid (CAS #9005–32–7)

* * * * *

Cellulose (CAS #9004–34–6)—for use in regenerative casings, powdered cellulose as an anti-caking agent (non-chlorine bleached) and filtering aid. Microcrystalline cellulose is prohibited.

Chlorine materials—disinfecting and sanitizing food contact surfaces, equipment and facilities may be used up to maximum labeled rates. Chlorine materials in water used in direct crop or food contact are permitted at levels approved by the FDA or EPA for such purpose, provided the use is followed by a rinse with potable water at or below the maximum residual disinfectant limit for the chlorine material under the Safe Drinking Water Act. Chlorine in water used as an ingredient in organic food handling must not exceed the maximum residual disinfectant limit for the chlorine material under the Safe Drinking Water Act.

i. Calcium hypochlorite.

ii. Chlorine dioxide.

iii. Hypochlorous acid—generated from electrolyzed water.

iv. Sodium hypochlorite.

* * * * *

Potassium lactate—for use as an antimicrobial agent and pH regulator only.

* * * * *

Sodium lactate—for use as an antimicrobial agent and pH regulator only.

* * * * *

■ 7. Amend § 205.606 as follows:

■ a. Redesignate paragraphs ((g) through (t) as paragraphs (i) through (v); and,

■ b. Redesignate paragraphs (d) through (f) as paragraphs (e) through (g);

■ c. Redesignate paragraphs (a) through (c) as paragraphs (b) through (d).

■ d. Add new paragraph (a).

■ e. Revise newly redesignated paragraphs (d)(1) through (d)(18); and

■ f. Add new paragraph (h).

The additions and revisions read as follows:

§ 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as "organic."

* * * * *

(a) Carnauba wax

* * * * *

(d) * * *

(1) Beet juice extract color—derived from *Beta vulgaris* L., except must not be produced from sugarbeets.

(2) Beta-carotene extract color—derived from carrots (*Daucus carota* L.) or algae (*Dunaliella salina*).

(3) Black currant juice color—derived from *Ribes nigrum* L.

(4) Black/purple carrot juice color—derived from *Daucus carota* L.

(5) Blueberry juice color—derived from blueberries (*Vaccinium spp.).*

(6) Carrot juice color—derived from *Daucus carota* L.

(7) Cherry juice color—derived from *Prunus avium* (L.) L. or *Prunus cerasus* L.

(8) Chokeberry, aronia juice color—derived from *Aronia arbutifolia* (L.) Pers. or *Aronia melanocarpa* (Michx.) Elliott.

(9) Elderberry juice color—derived from *Sambucus nigra* L.

(10) Grape juice color—derived from *Vitis vinifera* L.

(11) Grape skin extract color—derived from *Vitis vinifera* L.

(12) Paprika color—derived from dried powder or vegetable oil extract of *Capsicum annuum* L.

(13) Pumpkin juice color—derived from *Cucurbita pepo* L. or *Cucurbita maxima* Duchesne.

(14) Purple sweet potato juice color—derived from *Ipomoea batatas* L. or *Solanum tuberosum* L.

(15) Red cabbage extract color—derived from *Brassica oleracea* L.

(16) Red radish extract color—derived from *Raphanus sativus* L.

(17) Saffron extract color—derived from *Crocus sativus* L.

(18) Turmeric extract color—derived from *Curcuma longa* L.

* * * * *

(h) Glycerin (CAS # 56–81–5)—produced from agricultural source materials and processed using biological or mechanical/physical methods as described under § 205.270(a).

* * * * *

Dated: December 18, 2018.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2018–27792 Filed 12–26–18; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Docket No. FCIC–14–0001]

RIN 0563–AC45

General Administrative Regulations; Interpretations of Statutory Provisions, Policy Provisions, and Procedures

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the General and Administrative Regulation Subpart X- Interpretations of Statutory and Regulatory Provisions (Subpart X) to incorporate interpretations of procedures previously issued and administered in accordance with Manager's Bulletin MGR–05–018, and to provide a mechanism for interpretations of policy provisions that are not codified in the Code of Federal Regulations. The effect of this action is to provide requestors with information on how to request a final agency determination or an interpretation of FCIC procedures within one administrative regulation, and bring consistency and clarity to the processes used and existing provisions.

DATES: This rule is effective January 28, 2019.

ADDRESSES: Anyone can to search the electronic form of all comments received for any dockets by the name of the person submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for *Regulations.gov* at *http://www.regulations.gov/#!privacyNotice.*

FOR FURTHER INFORMATION CONTACT: Francie Tolle, Director, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141–6205, telephone (816) 926– 7730.

SUPPLEMENTARY INFORMATION:

Background

This rule finalizes changes to Subpart X that were published by FCIC on March 18, 2015, as a notice of proposed rulemaking in the **Federal Register** at 80 FR 14030–14033. The public was afforded 30 days to submit comments after the regulation was published in the **Federal Register**.

A total of 18 comments were received from 5 commenters. The commenters included persons or entities from the following categories: Financial, insurance provider, legal, trade association, and other. The public comments received regarding the proposed rule and FCIC's responses to the comments are as follows:

Comment: A commenter stated Subpart X—Interpretations of statutory provisions could provide asset management improvements. Driving these types of assets would be a dynamic and unprecedented improvement in the field of asset management.

Response: FCIC does not understand the comment and does not see a connection between asset management and interpretations of policy and procedures. Subpart X intended to ensure that the Federal crop insurance program policy provisions and procedures are interpreted in a consistent manner for all participants. No change has been made.

Comment: A commenter questioned the use of ''calendar year(s)'' in § 400.766(a)(1) when § 400.766(a)(2) refers to ''crop years''. For the calendar years 2011–2014 used in the example, these could include policies for crop years from 2010–2016, depending on the time of the calendar year the request was submitted. The commenter suggested only referencing crop years in these two sections.

Response: FCIC agrees that the use of the term calendar year can be confusing since all crop insurance, except for Whole-Farm Revenue Protection, is conducted on a crop year basis. Further, although crop years may differ, since the opinion is about a specific provision in a policy and effects producers with that policy, crop years is more appropriate. FCIC has revised the provisions accordingly.

Comment: A commenter stated in proposed rule § 400.766(a)(2), FCIC states that it will reject requests for interpretations of crop year policy provisions that are older than four years prior to the calendar year in which the request was submitted. The commenter did not understand the purpose of this time limit. It is not unusual for litigation or arbitration to drag on for quite some time due to continuances, changes in attorneys, changes in arbitrators, etc. There may be situations in which it does not become clear that an interpretation of a policy provision or procedure is necessary until the time limit set forth in this section has already passed, particularly if the dispute involves a claim overpayment discovered in a subsequent crop year. As a result, the commenter believed this time limit should be stricken or revised to include any crop year(s) of policies subject to current litigation or arbitration.

Response: As stated above, FCIC is moving to a crop year basis instead of a calendar year basis. However, FCIC does not agree the time limit should be stricken or revised to include any crop years of policies subject to current litigation or arbitration. The policy provisions require filing of a request for mediation, arbitration or litigation within one year of the determination by the insurance provider in the event of a dispute. The current time limit is set to allow an additional two years to pass before an interpretation must be requested to permit time for the appeals process to proceed. FCIC believes that most proceedings initiated within one-year of a determination that is in dispute would be readily able to request an interpretation within the timeframes established by this regulation. Further, the published interpretations state that to the extent the language in the provisions interpreted is identical to the language applicable for any other crop year, including previous crop years, the same interpretation can be applied to such other crop year provided the person seeking to use the published interpretation for a different crop year provided that the language of the

provisions is identical. Therefore, to the extent that policy language is the same, interpretations made for one year may apply to numerous years. No change has been made.

Comment: A commenter recommended the wording in § 400.766(a)(3) be changed to ''. . . starting with the 2014 crop year, you must submit . . .''

Response: FCIC agrees and has revised the provisions accordingly.

Comment: A commenter recommended the wording in § 400.766(b)(2) be changed to ''. . . matters of general applicability and are not. . .''

Response: FCIC agrees with the revisions, however this provision has been moved and can now be found in § 400.766(b)(5).

Comment: A commenter stated, the proposed rule neither defines ''nullify'' or ''nullification'' nor explains the legal process by which FCIC will nullify a mediation, arbitration, or judicial decision. Is the term ''nullify'' synonymous with the term ''vacate'' as used in the Federal Arbitration Act (''FAA'')? Which division within the RMA Compliance Division will manage the nullification process? Will the insurance provider or policyholder be afforded appeal rights if FCIC nullifies an award? If a policyholder disputes the nullification of an award, does a cause of action lie against the insurance provider or FCIC? Because the proposed rule does not describe the process by which FCIC will nullify an award, the commenter cannot adequately evaluate the impact of the proposed rule or assess its risk in the event nullification occurs.

Another commenter also questioned whether FCIC has the authority to nullify an arbitration award as set forth in proposed section § 400.766(b). On a prefatory note, FCIC is not a party to the Common Crop Insurance Policy Basic Provisions (Basic Provisions), is not a party to arbitration arising under the policy and, consequently, may not intervene in an arbitration proceeding. Assuming arguendo that FCIC, as a non-party, may vacate an arbitration award, its ability to do so is subject to Federal Arbitration Association (FAA), which governs arbitration proceedings, including judicial review, arising under section 20 of the Basic Provisions. With respect to the vacation or modification or arbitration awards, section 10 of the FAA provides, in pertinent part:

(a) In any of the following cases the United States court in and for the district where in the award was made may make an order vacating the award upon the application of any party to the arbitration—

(1) where the award was procured by corruption, fraud, or undue means:

(2) Where there was evident partiality or corruption in the arbitrators, or either of them;

(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or any other misbehavior by which the rights of any party have been prejudiced; or

(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. 10. The Supreme Court has held that the FAA's grounds for vacating any award are exclusive. Section 10 does not empower FCIC to nullify an arbitration award simply because the arbitrator did not enforce or request a final agency determination.

The commenter also believed section 10(a)(4) of the FAA is the only provision tangentially related to an arbitrator's enforcement of a final agency determination, and case law demonstrates that FCIC cannot rely on section 10(a)(4) to nullify an arbitration award. When a party invokes section 10(a)(4) of the FAA as a basis for vacating an award on the basis that the arbitrator exceeded his power, the court must:

''. . . determine if the form of the arbitrator's award can be rationally derived either from the agreement between the parties or from the parties' submissions to the arbitrators, and we do not revise the terms of the award ''unless they are 'completely irrational.' ''

The commenter stated this standard of reviews is so deferential, that a Court may overturn an award only if there is ''absolutely no support at all in the record justifying the arbitrator's determinations.'' (A court may not overrule the arbitrator simply because it disagrees. ''There must be absolutely no support at all in the record.'') Thus, even if an arbitrator does not apply a final agency determination to a particular dispute, case law suggests that this alone does not merit vacating an award.

Response: The definition of ''null'' and ''nullification'' is not provided for in the administrative regulation as it intends the common meaning to apply. The term ''null'' is defined in Merriam-Webster's Online Dictionary, as ''having no legal or binding force; invalid.'' This means that if an arbitration award was based upon an interpretation of a policy provision or procedure that was not provided by FCIC, the arbitration award would have no legal or binding force and would be invalid.

While FCIC is not a party to the insurance contract, this is a Federal crop insurance program, and FCIC is the regulator of the program. It is FCIC's duty and obligation to ensure compliance with all policy and procedure, especially since taxpayer dollars are used in part to fund the program. Government funds can only be spent in the manner authorized by law.

In the past, one problem in the program that was reoccurring was inconsistent interpretations of policy and procedures by arbitrators and courts, resulting in the inequitable application of the policy provisions and procedures based on geography. As a result, Congress enacted section 506(r) of the Federal Crop Insurance Act (Act), which mandates that FCIC will provide an interpretation of all statutes and regulations. This ensures that taxpayer dollars are spent in accordance with the law.

With respect to the American Arbitration Act, there is a long-standing legal principle of statutory construction that states that later in time statutes preempt earlier enacted statutes. That is the case here. Section 506(r) of the Act was enacted after the American Arbitration Act and to the extent there is a conflict, section 506(r) of the Act takes precedence. Therefore, while the American Arbitration Act may apply to certain circumstances, it cannot be used to require the payment of awards that would use taxpayer dollars that are not authorized by law. Those provisions of the American Arbitration Act that could be interpreted to require the payment of awards that are otherwise not authorized by law are not applicable.

Congress has determined that FCIC interprets its statutes and regulations, but it left to FCIC the manner in which it does so. In carrying out that mandate, FCIC promulgated Subpart X to administer the process of obtaining the requisite interpretations and, under prevailing Supreme Court precedence, FCIC's administration of section 506(r) of the Act is to be given deference if it is reasonable and not arbitrary, capricious, or not in accordance with the law. FCIC's determination that there must be consequences for failure to obtain an interpretation when required is reasonable. Further, since all parties to the legal proceeding have the obligation to seek an interpretation when there is a dispute regarding the meaning of a provision, the consequences cannot unfairly affect one party over another. Nullification of an

award has been the only process FCIC has determined that will not unfairly affect one party over another. It simply resets the process and the appeal proceeds using the interpretation obtained from FCIC. Requiring nullification of an award when no final agency determination or FCIC interpretation has been sought or it has been disregarded is reasonable and not arbitrary and capricious or is in accordance with the law.

Requiring FCIC to provide interpretations of statutes and regulations ensures that all producers nationwide are treated the same. FCIC determined the only way to effectuate this provision and ensure that its interpretations are binding on all parties, including in the appeals process, is to require that awards that failed to obtain an interpretation or disregarded an interpretation will be nullified. Therefore, if any party in a dispute believes an agreement or award was rendered based on an interpretation of a statutory or regulatory provision that is in dispute and an official interpretation from FCIC was not sought or was disregarded, it is incumbent upon the aggrieved party to request from FCIC whether an official interpretation was sought or disregarded.

Comment: A commenter stated history suggests that FCIC does not nullify arbitration awards if the parties do not request a final agency determination or the arbitrator does not abide by the final agency determination. Instead, RMA issues compliance findings directed at the insurance provider and denies reinsurance on any amount awarded to the policyholder. Although this sanction may be justified if an insurance provider does not request a final agency determination or offers an argument contrary to FCIC interpretation of policy or procedures, this penalty is unconscionable if the insurance provider obtains either a final agency determination or the testimony of an FCIC employee and the arbitrator disregards the FCIC's interpretation. The Standard Reinsurance Agreement (SRA) authorizes the denial of reinsurance or the imposition of other penalties if an insurance provider does not comply with the SRA or FCIC policies and procedures. If an insurance provider obtains and offers a final agency determination during a legal proceeding, and the arbitrator, judge or jury ignores the final agency determination, the insurance provider has not violated the SRA and may not be penalized.

Response: FCIC agrees that if an insurance provider obtains a final agency determination or FCIC interpretation and it is disregarded by the person hearing the appeal, or if no final agency determination or FCIC interpretation has been sought by any party, the proper remedy is nullification of the award under Subpart X.

Comment: A commenter recognized that FCIC expects arbitrators, judges, and juries to adhere to a final agency determination's interpretation of policies and procedures. However, the commenter did not believe that an insurance provider may force an arbitrator or judge to halt proceedings and request a final agency determination if a dispute arises as to the meaning of a policy or procedure. At best, an insurance provider may request that the arbitrator motion the court for a stay in the proceedings. An insurance provider cannot control whether or not an arbitrator or judge grants such a request or motion, and the refusal of an arbitrator or judge to stay proceeding should not be the basis for sanctioning an insurance provider.

Response: FCIC agrees an insurance provider cannot force an arbitrator or judge to halt proceedings and request a final agency determination or FCIC interpretation if a dispute arises as to the meaning of a policy or procedure. However, an insurance provider may request a stay in the proceedings. As stated above, while no judge or arbitrator may be forced to delay a proceeding for the parties to obtain a final agency determination or FCIC interpretation, this rule puts all persons involved in the appeal on notice that failure to obtain a final agency determination or FCIC interpretation when there is a dispute regarding the meaning of a provision will result in the nullification of any agreement or award. It is incumbent upon the aggrieved party to request from FCIC whether an official interpretation was sought or disregarded.

Comment: A commenter stated FCIC should clarify the process for nullification of an award or deem it to occur automatically. The proposed rule indicates that the failure to obtain or adhere to a final agency determination will result in nullification of any award. However, it is not clear from the proposed rule how a party can seek nullification of an arbitration award, or whether nullification is a self-executing, automatic occurrence.

In *Great American Ins. Co.* v. *Moye,* a Federal district court ruled that the Federal Arbitration Act (FAA) (9 U.S.C. 1 *et seq.*) applies to crop insurance arbitrations. The FAA severely limits a reviewing court's ability to review an arbitration award. In that case, which has been cited by many cases since, the court ruled that a ''court will not sit as the arbitrator to re-evaluate the merits,'' and that ''an arbitrator does not exceed his authority every time he makes an interpretive error.'' Therefore, even though the policy terms and regulations in Subpart X require nullification of an award if the arbitrator engages in unauthorized interpretation, the FAA requires a reviewing court to defer to the arbitrator's judgment except in extraordinary circumstances.

The commenter stated it is clear that FCIC intends that the parties have some process for determining whether an arbitration award is nullified, as it recently stated in FAD–232, ''the policy allows for nullification of the award if the party seeking nullification can show that the inconsistent interpretation resulted in an improper award being made.'' It is not clear where there is a process available for a party seeking nullification to make that type of showing. Once the arbitrator has rendered the final award under American Arbitration Association (AAA) rules, the arbitrator's duties are complete (except in very specific circumstances requiring revision for obvious mathematical errors). AAA rules do provide a procedure for appeals, but only in the event that both parties agree, which would be unlikely in the event one party is satisfied with an award in its favor.

FCIC should revise the proposed rule so that nullification is an automatic process, where an arbitration award containing unauthorized interpretation is automatically void and unenforceable in Federal Court. Alternatively, FCIC should make it clear where and how the process for determining nullification must occur, whether that be before the arbitrator who issued the award, through the AAA appeals process made mandatory for crop insurance cases, or through a reviewing court. Otherwise, nullification will usually be unenforceable in practice.

Response: While the courts have agreed that the American Arbitration Act applies in arbitrations, its application cannot be absolute. Taxpayer dollars are used to fund the Federal crop insurance program and FCIC has an obligation to ensure such funds are expended in accordance with policy and procedure. Congress strengthened this obligation by imposing on FCIC the express mandate to provide interpretations of law and regulations in section 506(r) of the Act. This later in time statute supersedes the American Arbitration Act preclusion against reviewing arbitrator's interpretations.

FCIC agrees that if there is a failure to obtain, or adhere to, a final agency determination or FCIC interpretation, any award is nullified but there is no way for anyone to know or the parties may not agree whether such a failure existed. Therefore, FCIC has revised this rule to allow persons to obtain a determination by FCIC when that person believes that a failure to comply with this subpart took place during an arbitration by not obtaining, adhering, or requesting a final agency determination or FCIC interpretation. Once FCIC determines that a final agency determination or FCIC interpretation was required in an arbitration or litigation, the provisions are revised to specify the award is automatically nullified.

Comment: The commenter stated there is a word missing after ''any other'' in the first sentence of proposed rule § 400.766(c)(1).

Response: FCIC has revised § 400.766 and this phrase is no longer used. Therefore, the comment is not applicable.

Comment: A commenter recommended the wording in § 400.767(b)(1) be changed to ''. . . proceeding (*e.g.,* mediation . . .''

Response: FCIC agrees and has revised the provision accordingly.

Comment: A commenter suggested FCIC clarify that nullification of an arbitration award occurs when the decision made by the arbitrator disregards, or the parties fail to obtain, any form of interpretation from FCIC, not just those that are final agency determinations. The proposed rule provides that the parties' failure to submit a timely request for a final agency determination results in ''nullification of any agreement or award'' (proposed § 400.767(b)(3)(ii)(B)). The proposed rule also provides that ''failure of the National Appeals Division, arbitrator, or mediator to adhere to the final agency determination provided under this subpart will result in the nullification of any award or agreement in arbitration or mediation.'' The commenter agreed failure to obtain or adhere to a final agency determination should result in nullification of the award, but the commenter suggested FCIC revise the final rule so that it is clear that the failure to obtain or adhere to any type of interpretation from FCIC results in nullification. Another commenter stated final agency determinations are not the only form of interpretation that FCIC provides under existing processes nor will they be the only form under the proposed revisions to Subpart X. In FAD–225, FCIC acknowledged that the agency has multiple avenues under which it may deliver binding interpretations of policy and procedure, including formal interpretations of procedure under Manager's Bulletin MGR–05–018 and witness testimony pursuant to 7 CFR part 1, subpart H. FCIC further indicated, ''any interpretation provided by FCIC, in writing or orally, will be binding in any mediation or arbitration. Subsequently, the failure to obtain the required interpretation from FCIC or if an arbitrator disregards an interpretation provided by FCIC, the award is nullified.'' As written, the proposed rule does not clearly state that the failure to obtain or adhere to other forms of interpretations from FCIC will result in nullification. Since, the agency has already made clear in a binding final agency determination that it is so, FCIC should incorporate that principle into the final rule.

Response: FCIC agrees with the commenter. Section 20(a)(1)(ii) of the Common Crop Insurance Policy Basic Provisions states ''Failure to obtain any required interpretation from FCIC will result in the nullification of any agreement or award.'' Therefore, FCIC has revised the relevant provisions to clarify that FCIC interpretations may take other forms and the nullification provisions apply to all FCIC interpretations. However, FCIC has revised the language to state that if an official interpretation from FCIC was not sought or was disregarded it is incumbent upon the aggrieved party to request a determination of whether such interpretation was required or disregarded and, if it was, the award is automatically nullified.

Comment: A commenter stated § 400.767(b)(3)(ii) of the proposed rule is missing ''or interpretations of procedure or policy provision not codified in the Code of Federal Regulations'' before ''may result in''.

Response: As stated above, FCIC has revised the provisions to apply to all FCIC interpretations. However, FCIC determined these provisions regarding nullification are more appropriately contained in § 400.766 and has revised the provisions accordingly. Additionally, FCIC has revised the regulation to define ''FCIC interpretation'' as an interpretation of a policy provision not codified in the Code of Federal Regulations or any procedure used in the administration of any Federal crop insurance program. Therefore, any references to ''interpretations of procedure or policy provision not codified in the Code of Federal Regulations'' have been removed and replaced with the term ''FCIC interpretation'' throughout the regulation.

Comment: A commenter requested that FCIC delete the reference to nullification of arbitration awards contained § 400.767(b). Language, which mirrors this provision, is already contained in the Basic Provisions, so it is redundant to include the reference to nullification in this rule.

Response: Proposed section 400.767(b) reiterates and expands the provisions in section 20(a)(1)(ii) of the Basic Provisions which simply states that a failure to obtain any required interpretation from FCIC will result in the nullification of any agreement or award. FCIC has revised the provisions to include requests to be made to FCIC regarding whether there has been non-compliance with section 20 of the Basic Provisions and Subpart X and failure of the National Appeals Division, arbitrator, mediator, or judge to adhere to the final agency determination or FCIC interpretation provided under this subpart will result in the nullification of any award or agreement in arbitration or mediation. However, as stated above, all these provisions regarding nullification have been moved to § 400.766.

Comment: A commenter stated FCIC's stated purpose for promulgating the new regulations is to ''clarify existing provisions, eliminate redundancies, remove or update obsolete references, simplify the regulation to address final agency determinations and interpretations of procedures or policy provisions not codified in the Code of Federal Regulations in the same regulation, simplify program administration, and improve clarity of the requestor and FCIC obligations.'' The commenter supported this worthy goal. However, there are several portions of the proposed rule which the commenter believed require revision or clarification so that the new rule is compatible with the practicalities of policyholder and insurance provider disputes and arbitration proceedings.

The commenter noted the proposed rule describes several types of interpretations by FCIC, including final agency determinations and interpretations of procedure. The commenter stated the proposed rule will promote unnecessary litigation, since it provides that no one may request an interpretation without first initiating arbitration, suit, or mediation (see proposed § 400.767(b)).

Final agency determinations and interpretations of procedure from FCIC should be available to program participants as a tool to resolve disputes before formal dispute resolution processes commence, to avoid costly

and possibly unnecessary arbitration or litigation proceedings. There are times when the policy terms, procedure, or how policies and procedures apply to specific factual situations are not entirely clear, and an insurance provider must seek guidance from FCIC. Those instances may occur during the adjustment of a claim, or when a policyholder disagrees with an insurance provider determination, but has not yet filed a Demand for Arbitration. It has been the commenter's experience that in those cases, a formal interpretation from RMA can help avert or resolve a dispute without having to resort to arbitration, which can be costly for both parties. For that reason, the commenter suggested FCIC remove from the final rule the requirement that arbitration be initiated prior to submission of the request for interpretation.

Another commenter stated proposed rule § 400.767(b) limits requests for interpretations to formal judicial review, mediation, or arbitration. There are frequently situations where insurance providers may need binding clarification of FCIC policies or procedures to ensure that they are accurately administering policies in a uniform manner. It is a benefit to insurance providers, insureds, and the program to be able to submit such requests before the expense and exposure of adversarial proceedings takes place. Although there are other means which insurance providers may use to request an interpretation, they may be inadequate because they do not contain the 90-day time limit imposed by the final agency determination process and may not result in published interpretations. As a result, the commenter believed this section should be deleted or revised to carve out a separate right for insurance providers to request interpretations of policy provisions or procedures even if they are not related to a formal arbitration or mediation.

Response: FCIC agrees and has removed the requirement that formal judicial review, mediation, or arbitration must be initiated before a final agency determination or FCIC interpretation can be requested.

Comment: A commenter stated language in the proposed rule suggests that only the party who initiated arbitration or suit can request an interpretation from FCIC. As currently worded, only the party who actually initiates the legal proceeding may request a final agency determination or an interpretation of procedure. A defendant or arbitration respondent cannot (see proposed § 400.767(b): ''You may request . . . only if you have legally filed or formally initiated. . .''). Both parties to an arbitration should be permitted to request an interpretation from FCIC. It is not uncommon for parties to disagree about whether an interpretation is necessary, and in those cases, one party may need to seek the interpretation unilaterally. Further, respondents in arbitration and defendant in suits, which in most cases will be the insurance providers, have just as much a right to avail themselves of FCIC's interpretation process as claimants/plaintiffs.

Response: Either party may request an interpretation, not just the party that initiated the proceeding. Further, as stated above, parties no longer have to wait until arbitration, mediation or judicial review before a request may be made. The language has been revised accordingly.

Comment: A commenter stated the new request timing requirements in proposed § 400.767(b)(3) will conflict with certain AAA rules and be impractical in many cases. FCIC should clarify how the interpretation request process should proceed in those cases. Section 20 of the Basic Provisions (7 CFR 457.8) provides that the rules of the American Arbitration Association (AAA) apply to disputes regarding insurance provider determinations. The AAA Commercial Arbitration Rules contain a set of ''Expedited Procedures'' that apply in cases where the amount in controversy is $75,000 or less. Those Expedited Procedures require that the hearing occur within 30 days of the appointment of the arbitrator. The proposed rule requires that all interpretation requests be submitted ''90 days before the date the mediation, arbitration or litigation in which the interpretation will be used is scheduled to begin'' (§ 400.767(b)(3)), but not until after arbitration has commenced (§ 400.767(b)). In cases where the AAA Expedited Procedures apply, it would be impossible for the parties to comply with those conflicting requirements.

The commenter suggested FCIC either remove the timeliness requirement, or state clearly in the final rule that any AAA rule that does not allow the parties sufficient time to request an interpretation prior to the hearing is in conflict with the policy terms and does not apply to crop insurance arbitrations.

A commenter also stated the new request timing requirements in § 400.767(b)(3) will be impractical in many cases. FCIC should clarify the meaning of ''proceeding'' in § 400.767(b)(3)(iii) to ensure that necessary interpretations from the agency are available in all cases. Even in cases where the Expedited Procedures do not apply, the timeliness rule will cause difficulty. It is not always clear at the outset of an arbitration that the dispute involves a matter of interpretation. Arbitration demands typically contain only a cursory description of the dispute and it is not until the parties have engaged in some exchange of discovery materials or legal briefing that the parties identify a dispute over interpretation. It is not uncommon for that to occur within 90 days of the arbitration hearing date.

The proposed rule contains a contingency to allow the arbitrator, mediator, or judge to request an interpretation in instances when an interpretation dispute arises ''during the mediation, arbitration, or litigation proceeding.'' It is not clear whether the term ''proceeding'' as used in the proposed rule refers only to the mediation, arbitration hearing, or trial, or whether the term refers to any proceedings, including discovery and briefing occurring in the course of the mediation, arbitration, or litigation. FCIC should clarify the meaning of that term.

The commenter suggested the final rule allow the parties to seek interpretations whenever a dispute arises in the process. If FCIC has a compelling reason to restrict require requests from the parties to be submitted 90-days prior to the hearing, the final rule should provide an avenue for making a request if an interpretation dispute arises within 90-days of the hearing.

Response: The AAA rules only apply to the extent they do not conflict with the policy. The policy requires obtaining an interpretation of policy and procedure if there is a dispute regarding its meaning and Subpart X prescribes how such requests are to be made. Therefore, Subpart X supersedes the AAA rules if there is a conflict. Further, the 90-day time-period is necessary to allow FCIC time to provide an interpretation in writing given its limited resources. In addition, as stated above, FCIC has revised the rule to allow requests for interpretations be made at any time, not just when mediation, arbitration or litigation has been initiated. This should mitigate the timing issues in many cases. However, when it is discovered that an interpretation is required after the proceedings have been initiated, FCIC acknowledges there are times when such a time limit is impracticable. Therefore, FCIC has revised the rule to provide some flexibility when cases are operating under the expedited procedures under AAA rules or there is

an appeal between a producer and RMA before NAD. However, these appeals processes have set deadlines and FCIC is adding flexibility to accommodate them but in all other cases, the parties have the flexibility to set the actual date of the mediation, arbitration, etc. Therefore, FCIC is maintaining the 90-day rule for all other proceedings to allow FCIC sufficient time to go through the administrative process of making an interpretation. Further, FCIC has added a definition of ''proceeding'' that clarifies that the proceeding commences on the day the complaint or notice of appeal is filed for arbitration or litigation and ends when the decision has been rendered so it encompasses the discovery process. This should allow the parties sufficient time to make a request 90 days prior to the date of mediation, hearing, arbitration or trial.

As noted by the commenter, the proposed rule contains a contingency to allow the NAD hearing officer, arbitrator, mediator, or judge, to request an interpretation in instances when a dispute arises during the mediation, arbitration, or litigation proceeding.

Comment: A commenter recommended the wording in § 400.767(c) be changed to ''. . . opposing interpretations, a joint request. . .''

Response: FCIC agrees and has revised the provisions accordingly.

Comment: A commenter recommended the wording in § 400.768(a) be changed to ''. . . regarding, or that contains, specific factual information. . .''

Response: FCIC agrees and has revised the provisions accordingly.

Comment: A commenter recommended the wording in § 400.768(a)(2) be changed to ''. . . those are fact-specific and could. . .''

Response: FCIC agrees and has revised the provisions accordingly.

Comment: A commenter recommended FCIC not forbid parties seeking interpretation requests from offering hypothetical examples. The proposed rule provides at § 400.768(a)(2), ''FCIC will not consider any examples provided in your interpretation because those are fact specific and could be construed as a finding of fact by FCIC,'' and that FCIC will provide any examples that are necessary. Parties should be permitted to provide hypothetical examples. Because an arbitrator cannot decide whether or how a policy provision applies to a specific set of facts, restricting the parties from using illustrative hypotheticals will make it difficult for FCIC to render interpretations regarding whether how policy provisions apply with enough specificity for the arbitrator to render a compliant award.

Section 20(a)(1) of the Basic Provisions exempts from the arbitrator's authority any disputes ''regarding whether a specific policy provision or procedure is applicable to the situation'' or ''how it is applicable.'' If the arbitrator does not have authority to determine how procedure applies to a specific factual situation, the parties must be able to request an interpretation from FCIC with enough specificity so that the response gives the arbitrator clear direction on how the policy terms apply to that type of situation. The best way to do that is with an analogous hypothetical. In many cases, it will not be clear to an arbitrator how to apply an interpretation of the policy to a specific set of facts without an analogous example, and in those cases, the arbitrator will have no choice but to engage in unauthorized interpretation.

In many cases, an interpretive dispute is not even apparent, because the policy terms appear to be unambiguous, but only when presented with a particular set of circumstances, does the need for interpretation arise. It seems unlikely that FCIC would be able to generate examples on its own that will direct an arbitrator with sufficient specificity regarding how to apply the policy to a peculiar factual situation, since FCIC will have no knowledge of the factual situation involved in the case.

The commenter recognized FCIC must avoid making determinations of specific facts relating to individual policies and circumstances, but suggests that in cases where a requesting party's example is too fact-specific, FCIC can still reject the request or disregard the example pursuant to proposed at § 400.768(a)(1) (''Regardless of whether or not FCIC accepts a request, FCIC will not consider specific factual information to situations or cases in any final agency determination.''). The commenter suggested parties be permitted to provide hypothetical examples to aid arbitrators in applying the policy to the facts before them.

Response: Currently, FCIC receives requests for final agency determinations with large amounts of specific factual situation or case information, so if FCIC were to consider that factual information, FCIC would be infringing on the role of the mediator, arbitrator, hearing officer, or judge who decides the facts and applies the law to those facts. Further, what the commenter is suggesting is the use of hypotheticals to let the FCIC inform the arbitrator, mediator, etc. know how to apply the interpretation to the facts. However, that is not the role given to FCIC in section 506(r) of the Act. FCIC's role is simply to provide interpretations of regulations and statutes and policy provisions and procedures. It is the role of the mediator, arbitrator, etc. to apply that interpretation to the particular facts of the case. In addition, hypotheticals can present some facts and not others, which can skew the outcome and FCIC is in no position to make such determinations. FCIC is revising the rule to clarify that it will not accept any request for a final agency determination or FCIC interpretation that contains facts or hypotheticals to ensure that its interpretation is objective and unbiased. To the extent that FCIC believes that a hypothetical will provide clarification of its interpretation, FCIC will provide such hypothetical so it cannot to be construed as any determination of a factual situation. No change has been made.

Comment: A commenter recommended the wording in § 400.768(b) be changed to ''. . . Code of Federal Regulations, but will notify you. . .''

Response: As stated above, FCIC has revised the regulation to include the term ''FCIC interpretation.'' Therefore, the phrase the commenter is referencing is no longer used and is replaced with the term ''FCIC interpretation.''

Comment: A commenter recommended the wording in § 400.768(c) be changed to ''. . . under § 400.768(b), the 90-day time period. . .'', and similarly change the two additional references to 90-day time period in this section.

Response: FCIC agrees and has revised the provisions accordingly.

Comment: A commenter stated in proposed rule § 400.765, the definition of a ''final agency determination'' is limited to interpretations of ''regulations, or any policy provision that is codified in the **Federal Register**'' but Subpart X is being expanded to include interpretations of ''procedure or policy provision not codified in the Code of Federal Regulations'', as referenced throughout the proposed rule. The only distinction for these two types of interpretations is whether or not they are published on RMA's website and binding on all program participants, as indicated in § 400.768(g) and (h). The commenter recommended eliminating § 400.768(h) and include publication of procedure and policies that are not codified in the **Federal Register** in § 400.768(g). These changes ensure that RMA interpretations of procedure or 508(h) and pilot policies, which are not codified in the **Federal Register**, would be published and

binding on all program participants so that all policies and procedures would be administered uniformly by every insurance provider.

Alternatively, eliminating § 400.768(h) would also allow the definition for ''final agency determination'' to be expanded to include ''. . . or interpretations of procedure or policy provision not codified in the Code of Federal Regulations''. Modifying the definition of final agency determination in this way allows the phrase ''or interpretations of procedure or policy provision not codified in the Code of Federal Regulations'' referenced throughout the proposed rule to be eliminated. For example, § 400.766(a) could be simplified to read ''The regulations contained in this subpart prescribe the rules and criteria for obtaining a final agency determination.''

Response: FCIC agrees that the provisions are too narrowly drafted but not for the reasons provided by the commenter. The proposed rule failed to take into consideration other forms of interpretations, such as testimony. Therefore, FCIC is revising a number of provisions to identify final agency determinations and FCIC interpretations. These revisions will also make distinctions between interpretations of statute and regulations and interpretations of unpublished policy provisions and procedures as final agency determinations and FCIC interpretations respectively. Additionally, FCIC has revised the regulation to define ''FCIC interpretation'' as an interpretation of a policy provision not codified in the Code of Federal Regulations or any procedure used in the administration of any Federal crop insurance program. Therefore, any references to ''interpretations of procedure or policy provision not codified in the Code of Federal Regulations'' have been removed and replaced with the term ''FCIC interpretation'' throughout the regulation.

However, the distinction between published and unpublished final determinations and their binding effect stems from section 506(r) of the Act, which gives FCIC express authority to provide interpretations of statute and regulations. Based on this statutory authority, FCIC publishes its final agency determinations and makes them binding on all participants. However, there are policies that are published as regulations and some policies and policy provisions that are not. Those policies that are published as regulations have the force of law. Those policies that are not published as regulations have the force of contracts but not law. However, to ensure consistency and equitable treatment in the program, FCIC interpreted section 506(r) to authorize it to issue all interpretations of policy provisions. The same is true for procedures. FCIC discovered there was disparate interpretations of its procedures and for the sake of consistency and equitable treatment, FCIC included procedures as subject to its interpretation. Since, interpretations of provisions not included in statute or regulation is not statutorily mandated, such FCIC interpretations are only binding on the parties to the dispute, including the arbitrator, mediator, judge, or the National Appeals Division. No change has been made.

Comment: A commenter recommended the wording in § 400.768(i) be changed to ''. . . loss adjuster as it relates to their performance of following FCIC policy provisions. . .''

Response: FCIC agrees and has revised the provisions accordingly.

Executive Orders 12866, 13563, and 13771

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has not reviewed this rule. Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' requires that, in order to manage the costs required to comply with Federal regulations, that for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. This rule is not subject to Executive Order 13771.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by the Office of Management and Budget (OMB) under control number 0563–0055.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

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

The Federal Crop Insurance Corporation has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a Tribe requests

consultation, the Federal Crop Insurance Corporation will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation does not require any more action on the part of the small entities than is required on the part of large entities. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. Interpretations of statutory and regulatory provisions are matters of general applicability and, therefore, no administrative appeals process is available and judicial review may only be brought to challenge the interpretation after seeking a determination of appealability by the Director of the National Appeals Division (NAD) in accordance with 7 CFR part 11. An interpretation of a policy provision not codified in the Code of Federal Regulations or any procedure used in the administration of any Federal crop insurance program (hereinafter referred to as ''FCIC interpretations'') are administratively appealable and the appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought against FCIC.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

List of Subjects in 7 CFR Part 400

Administrative practice and procedure, Crop insurance, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 400 as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

■ 1. The authority citation for part 400 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(o).

■ 2. Revise subpart X to read as follows:

Subpart X—Interpretations of Statutory Provisions, Policy Provisions, and Procedures

Sec.
400.765 Definitions.
400.766 Basis and applicability.
400.767 Requestor obligations.
400.768 FCIC obligations.

Subpart X—Interpretations of Statutory Provisions, Policy Provisions, and Procedures

§ 400.765 Definitions.

The definitions in this section apply to this subpart.

Act. The Federal Crop Insurance Act, 7 U.S.C. 1501–1524.

Approved insurance provider. A private insurance company that has been approved by FCIC to sell and service Federal crop insurance policies under a reinsurance agreement with FCIC.

FCIC. The Federal Crop Insurance Corporation, a wholly owned government corporation within the United States Department of Agriculture.

FCIC interpretation. An interpretation of a policy provision not codified in the Code of Federal Regulations or any procedure used in the administration of the Federal crop insurance program.

Final agency determination. Matters of general applicability regarding FCIC's interpretation of provisions of the Act or any regulation codified in the Code of Federal Regulations, including certain policy provisions, which are applicable to all participants in the Federal crop insurance program and the appeals process.

NAD. The USDA National Appeals Division. See 7 CFR part 11.

Participant. Any applicant for Federal crop insurance, an insured, or approved insurance provider or their agent, loss adjuster, employee or contractor.

Procedure. All FCIC issued handbooks, manuals, memoranda, and bulletins for any crop insurance policy reinsured by FCIC.

Proceeding. The process that starts with the filing of a complaint, notice of appeal, or other such document that commences the appeals process, and ends with the adjudicatory body issuing its decision, and includes all necessary activities, such as discovery, that occur within that time frame.

RMA. The Risk Management Agency, an agency of the United States Department of Agriculture.

You. The requestor of a final agency determination or FCIC interpretation.

§ 400.766 Basis and applicability.

(a) The regulations contained in this part prescribe the rules and criteria for obtaining a final agency determination or a FCIC interpretation.

(1) FCIC will provide a final agency determination or a FCIC interpretation, as applicable, for statutory, regulatory, or other policy provisions or procedures that were in effect during the four most recent crop years from the crop year in which your request was submitted. For example, for a request received in the 2014 crop year, FCIC will consider requests for the 2014, 2013, 2012, and 2011 crop years.

(2) If FCIC determines a request is outside the scope of crop years authorized in paragraph (a)(1) of this section, you will be notified within 30 days of the date of receipt by FCIC.

(3) If the statutory, regulatory or other policy provisions or procedures have changed for the time period you seek an interpretation you must submit a separate request for each policy provision or procedure by year. For example, if you seek an interpretation of section 6(b) of the Small Grains Crop Provisions for the 2012 through 2015 crop years but the policy provisions were revised starting with the 2014 crop year, you must submit two requests, one for the 2012 and 2013 crop years and another for the 2014 and 2015 crop years.

(b) With respect to a final agency determination or a FCIC interpretation:

(1) If there is a dispute between participants that involves a final agency determination or a FCIC interpretation:

(i) The parties are required to seek an interpretation of the disputed provision

from FCIC in accordance with this subpart (This may require that the parties seek a stay of the proceedings until an interpretation is provided, if such proceedings have been initiated); and

(ii) The final agency determination or FCIC interpretation may take the form of a written interpretation or, at the sole discretion of FCIC, may take the form of testimony from an employee of RMA expressly authorized in writing to provide interpretations of policy or procedure on behalf of FCIC.

(2) All written final agency determinations issued by FCIC are binding on all participants in the Federal crop insurance program for the crop years the policy provisions are in effect. All written FCIC interpretations and testimony from an employee of RMA are binding on the parties to the dispute, including the arbitrator, mediator, judge, or NAD.

(3) Failure to request a final agency determination or FCIC interpretation when required by this subpart or failure of NAD, arbitrator, mediator, or judge to adhere to the final agency determination or FCIC interpretation provided under this subpart will result in the nullification of any award or agreement in arbitration or mediation in accordance with the provisions in the ''Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review'' section or similar section in all crop insurance policies.

(4) If either party believes an award or decision was rendered by NAD, arbitrator, mediator, or judge based on a disputed provision in which there was a failure to request a final agency determination or FCIC interpretation or NAD, arbitrator, mediator, or judge's decision was not in accordance with the final agency determination or FCIC interpretation rendered with respect to the disputed provision, the party may request FCIC review the matter to determine if a final agency determination or FCIC interpretation should have been sought in accordance with § 400.767.

(i) Requests should be submitted through one of the methods contained in § 400.767(a)(1);

(ii) If FCIC determines that a final agency determination or FCIC interpretation should have been sought and it was not, or the decision was not in accordance with the final agency determination or FCIC interpretation rendered with respect to the disputed provision:

(A) The award is automatically nullified; and

(B) Either party may appeal FCIC's determination that a final agency determination or FCIC interpretation should have been sought and it was not, or the decision was not in accordance with the final agency determination or FCIC interpretation rendered with respect to the disputed provision to NAD in accordance with 7 CFR part 11.

(5) All written final agency determinations that are published on RMA's website are considered matters of general applicability and are not appealable to NAD. Before obtaining judicial review of any final agency determination, you must obtain an Administrative Final Determination from the Director of NAD on the issue of whether the final agency determination is a matter of general applicability.

(6) With respect to an administrative review of a FCIC interpretation:

(i) If either party to the proceeding does not agree with the written FCIC interpretation, a request for administrative review may be filed in accordance with 7 CFR part 400, subpart J. If you seek an administrative review from FCIC, such request must be submitted in accordance with § 400.767(a).

(ii) FCIC will not accept requests for administrative review from NAD, a mediator, or arbitrator.

(iii) The RMA Office of the Deputy Administrator for Product Management will make a determination on the request for administrative review not later than 30 days after receipt of the request.

(iv) Regardless of whether you have sought administrative review, you may appeal a FCIC interpretation under this subsection to NAD in accordance with 7 CFR part 11.

§ 400.767 Requestor obligations.

(a) All requests for a final agency determination or FCIC interpretation submitted under this subpart must:

(1) Be submitted to the Deputy Administrator using the guidelines provided on RMA's website at *www.rma.usda.gov* through one of the following methods:

(i) In writing by certified mail or overnight delivery, to the Deputy Administrator, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0801, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205;

(ii) By facsimile at (816) 926–3049; or

(iii) By electronic mail at *subpartx@rma.usda.gov;*

(2) State whether you are seeking a final agency determination or FCIC interpretation;

(3) Identify and quote the specific provision in the Act, regulations, procedure, or policy provision for which you are requesting a final agency determination or a FCIC interpretation;

(4) Contain no more than one request for an interpretation (You must make separate requests for each provision if more than one provision is at issue. For example, if there is a dispute with the interpretation of Paragraph 3 of the Loss Adjustment Manual, then one request for an interpretation is required. If there is a dispute with the interpretation of Paragraph 3 of the Loss Adjustment Manual and Paragraph 2 of the Macadamia Nut Loss Adjustment Standards Handbook, then two separate requests for an interpretation are required);

(5) State the crop, crop year(s), and plan of insurance applicable to the request;

(6) State the name, address, and telephone number of a contact person for the request;

(7) Contain your detailed interpretation of the specific provision of the Act, regulations, procedure, or policy provision for which the request for interpretation is being requested; and

(8) Not contain any specific facts, alleged conduct, or hypothetical situations or the request will be returned to the requestor without consideration.

(b) You must advise FCIC if the request for a final agency determination or FCIC interpretation will be used in a judicial review, mediation, or arbitration.

(1) You must identify the type of proceeding (*e.g.,* mediation, arbitration, or litigation), if applicable, in which the interpretation will be used, and the date the proceeding is scheduled to begin, or the earliest possible date the proceeding would likely begin if a specific date has not been established;

(2) The name, address, telephone number, and if applicable, fax number, or email address of a contact person for both parties to the dispute;

(3) Unless the parties elect to use the expedited review process available under the AAA rules or the appeal is before NAD, requests must be submitted not later than 90 days before the date the mediation, arbitration, or litigation proceeding in which the interpretation will be used is scheduled to begin.

(i) If the rules of the court, mediation, or arbitration require the interpretation prior to the date the proceeding begins, add 90 days to the number of days required prior to the proceeding. For example, if a court requires the interpretation 20 days prior to the date the proceeding begins, you must submit

the request 110 days before the proceeding is scheduled to begin.

(ii) Failure to timely submit a request for a final agency determination or FCIC interpretation may result in:

(A) FCIC issuing a determination that no interpretation could be made because the request was not timely submitted; and

(B) Nullification of any agreement or award in accordance with § 400.766 if no final agency determination or FCIC interpretation can be provided.

(iii) Notwithstanding paragraph (b) of this section, if during the mediation, arbitration, or litigation proceeding, an issue arises that requires a final agency determination or FCIC interpretation the mediator, arbitrator, judge, or magistrate must promptly request a final agency determination or FCIC interpretation in accordance with § 400.767(a).

(4) FCIC at its sole discretion may authorize personnel to provide an oral or written final agency determination or FCIC interpretation, as appropriate; and

(5) Any decision or settlement resulting from such mediation, arbitration, or litigation proceeding before FCIC provides its final agency determination or FCIC interpretation can be nullified in accordance with § 400.766.

(c) If multiple parties are involved and have opposing interpretations, a joint request for a final agency determination or FCIC interpretation including both requestor interpretations in one request is encouraged. If multiple insured persons are parties to the dispute, and the request for a final agency determination or FCIC interpretation applies to all parties, one request may be submitted for all insured persons instead of separate requests for each person. In this case, the information required in this section must be provided for each person.

§ 400.768 FCIC obligations.

(a) FCIC will not provide a final agency determination or FCIC interpretation for any request regarding, or that contains, specific factual information to situations or cases, such as acts or failures to act of any participant under the terms of a policy, procedure, or any reinsurance agreement.

(1) FCIC will not consider specific factual information to situations or cases in any final agency determination or FCIC interpretation.

(2) FCIC will not consider any examples or hypotheticals provided in your interpretation because those are fact-specific and could be construed as a finding of fact by FCIC. If an example or hypothetical is required to illustrate an interpretation, FCIC will provide the example in the interpretation.

(b) If, in the sole judgment of FCIC, the request is unclear, ambiguous, or incomplete, FCIC will not provide a final agency determination or FCIC interpretation, but will notify you within 30 days of the date of receipt by FCIC that the request is unclear, ambiguous, or incomplete.

(c) If FCIC notifies you that a request is unclear, ambiguous or incomplete under paragraph (b) of this section, the 90-day time period for FCIC to provide a response is stopped on the date FCIC notifies you. On the date FCIC receives a clear, complete, and unambiguous request, FCIC has the balance of the days remaining in the 90-day time period to provide a response to you. For example, FCIC receives a request for a final agency determination on January 10. On February 10, FCIC notifies you the request is unclear. On March 10, FCIC receives a clarified request that meets all requirements for FCIC to provide a final agency determination. FCIC has sixty days from March 10, the balance of the 90-day time period, to provide a response.

(d) FCIC reserves the right to modify the request if FCIC determines that a request for a final agency determination is really a request for a FCIC interpretation or vice versa.

(e) FCIC will provide you a written final agency determination or a FCIC interpretation within 90 days of the date of receipt for a request that meets all requirements in § 400.767.

(f) If FCIC does not provide a response within 90 days of receipt of a request, you may assume your interpretation is correct for the applicable crop year. However, your interpretation shall not be considered generally applicable and shall not be binding on any other program participants. Additionally, in the case of a joint request for a final agency determination or a FCIC interpretation, if FCIC does not provide a response within 90 days, neither party may assume their interpretations are correct.

(g) FCIC will publish all final agency determinations as specially numbered documents on the RMA website because they are generally applicable to all program participants.

(h) FCIC will not publish any FCIC interpretation because it is only applicable to the parties in the dispute. You are responsible for providing copies of the FCIC interpretation to all other parties.

(i) When issuing a final agency determination or a FCIC interpretation, FCIC will not evaluate the insured, insurance provider, agent, or loss adjuster as it relates to their performance of following FCIC policy provisions or procedures. Interpretations will not include any analysis of whether the insured, insurance provider, agent, or loss adjuster was in compliance with the policy provision or procedure in question.

Martin R. Barbre,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2018–27858 Filed 12–26–18; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

7 CFR Part 800

[Doc. No. AMS–FGIS–18–0063]

Removal of Specific Fee Reference

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Direct final rule.

SUMMARY: The United States Grain Standards Act (USGSA) provides the Secretary with the authority to charge and collect reasonable fees to cover the costs of performing official services and the costs associated with managing the program. The USDA, on behalf of the Agricultural Marketing Service (AMS), is eliminating the published table of fees in the Code of Federal Regulations (CFR). Notice of changes to Schedule A Fees will be published in the **Federal Register** and AMS will make the fee schedule available on the Agency's public website.

DATES: This rule is effective February 11, 2019, unless we receive written adverse comments or written notices of intent to submit adverse comments on or before January 28, 2019. If we receive such comments or notices, we will publish a timely document in the **Federal Register** withdrawing the direct final rule.

ADDRESSES: Submit comments by any of the following methods:

- *Postal Mail:* Please send your comment addressed to Kendra Kline, AMS, USDA, 1400 Independence Avenue SW, Room 2043–S, Washington, DC 20250–3614.
- *Hand Delivery or Courier:* Kendra Kline, AMS, USDA, 1400 Independence Avenue SW, Room 2043–S, Washington, DC 20250–3614.
- *internet:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Denise Ruggles, FGIS Executive Program Analyst, USDA AMS; Telephone: (816)

659–8406; Email: *Denise.M.Ruggles@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: The USDA, on behalf of AMS, is removing the fee tables from the CFR. AMS calculates the tonnage fees according to the regulatory formula in § 800.71(b)(1). In 2015 Congress required Grain Inspection, Packers and Stockyards Administration (GIPSA) to adopt a method of calculation of export tonnage fees based upon ''the rolling 5-year average of export tonnage volumes.'' And, ''[i]n order to maintain an operating reserve of not less than 3 and not more than 6 months, the Secretary shall adjust the fees described . . . not less frequently than annually.'' Since 2016, the Federal Grain Inspection Service (FGIS)—currently a division of AMS—conducts a ministerial review of the amount of funds in the operating reserve at the end of the fiscal year to ensure that it has 4½ months of operating expenses as required by § 800.71(b)(2) of the regulations. If the operating reserve has more or less than 4½ months of operating expenses, then FGIS must adjust all its fees. For each $1,000,000, rounded down, that the operating reserve varies from the target of 4½ months, FGIS adjusts all those fees by 2 percent. FGIS reduces the fees if the operating reserve exceeds the target and it increases the fees if the operating reserve does not meet target. The maximum annual increase or decrease in fees is 5 percent (7 CFR 800.71(b)(2)(i)–(ii)).

However, when creating the formula for fees FGIS administers, FGIS did not remove the published table of fees in the CFR. Under the prior fee publication and adjustment scheme, the agency allowed notice and comment on the fee table because it established the fees, and the fee table provided the ultimate public notice of the fees themselves.

Since the change to 7 CFR 800.71, FGIS no longer establishes fees through publication of the table in the CFR. The current method uses the regulatory formula in § 800.71(b)(1). Comment on the publication of the table in the **Federal Register**, therefore, does not have any impact on the statutorily mandated formula which is the basis of all the fees in the table. For this reason, annual publication of changes to the CFR of the fee table is unnecessary, because the adjustment of fees in 7 CFR 800.71 occurs by formula.

Also, the publication of the table in the **Federal Register** has provided the public with annual notice of the fees. While the publication of the table does provide this important function, FGIS believes there are less expensive but no less effective methods to provide public notice of the formula's required changes to the fees themselves. Annual publication changes to the table in the CFR unnecessarily increases the cost of administering the fees, and is inconsistent with administration priorities to be prudent and financially responsible in the expenditure of funds.

Accordingly, this table is being eliminated from the CFR. AMS will provide public notice of the change in fees through its publication of a notice in the **Federal Register** and posting the fees on its public website by January 1 of each year (7 CFR 800.71(b)(a)(1)). The agency expect that this method of notice of the ultimate fees is a non-controversial change in the manner that the agency publishes notice of the fees and therefore the agency does not expect adverse comment.

GIPSA/AMS Merger

GIPSA formerly fell within the mission area overseen by the Under Secretary for Marketing and Regulatory Programs (MRP), along with AMS. The Under Secretary for MRP's authority over GIPSA is further demonstrated by the published delegations of authority in part 2 of title 7 of the CFR. In 7 CFR 2.22(a)(3), the Secretary of Agriculture delegated to the Under Secretary for MRP authorities ''related to grain inspection, packers and stockyards.'' In 7 CFR 2.81, the Under Secretary for MRP further delegated these authorities to the Administrator of GIPSA.

In a November 14, 2017 Secretary's Memorandum, the Secretary directed that the authorities at 7 CFR 2.81 be re-delegated to the Administrator of AMS, and that the delegations to the Administrator of GIPSA be revoked. These changes did not affect the existing delegations to the Under Secretary of MRP related to grain inspection, packers and stockyards at 7 CFR 2.22(a)(3).

Executive Orders 12866 and 13563

The Office of Management and Budget (OMB) has reviewed this regulatory action in accordance with the provisions of Executive Order 12866, Regulatory Planning and Review, and has determined that it does not meet the criteria for significant regulatory action. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5, 2017).

Direct Final Rule

No adverse comments are anticipated on the changes in this rule. Adverse comments suggest that the rule should not be adopted or that a change should be made to the rule. Unless an adverse comment is received within 30 days from the date of publication, this rule will be effective 45 days from the date of publication. If FGIS receives one or more written adverse comments within 30 days from the date of publication, a document withdrawing the direct final rule prior to its effective date will be published in the **Federal Register** stating that adverse comments were received.

Regulatory Flexibility Act

Since grain export volume can vary significantly from year to year, estimating the impact in any future fee changes can be difficult. AMS recognizes the need to provide predictability to the industry for inspection and weighing fees. AMS collects fees for performing official inspection and weighing services adequately cover the cost of providing those services. While not required by the Reauthorization Act, this rulemaking limits the impact of a large annual change in fees by setting an annual cap of 5 percent for increases or decreases in inspection and weighing fees. The statutory requirement to maintain an operating reserve between 3 and 6 months of operating expenses ensures that AMS can adequately cover its costs without imposing an undue burden on its customers.

Currently, AMS regularly reviews its user-fee financed programs and adjusts the user-fees according to the equations stated in 7 CFR 800.71(b)(2)(ii). The regulations (7 CFR 800.71(a)(1)) also require AMS to publish the adjusted fees by January 1 of each year. These regulations remain unchanged in this rulemaking. AMS will continue to seek out cost saving measures and implement appropriate changes to reduce its costs to provide alternatives to fee increases.

This rulemaking is unlikely to have an annual effect of $100 million or more or adversely affect the economy. Also, under the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–12), AMS has considered the economic impact of this rulemaking on small entities. The purpose of the Regulatory Flexibility Act is to fit regulatory actions to the scale of businesses subject to such actions. This ensures that small businesses will not be unduly or disproportionately burdened. This rulemaking is being issued to ensure that the annual fee

adjustments are published by January 1st and are not hindered by the rulemaking process. AMS will annually publish a Notice in the **Federal Register** on the fee adjustment and publish all fees on the public website.

The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System Codes (NAICS). This rulemaking affects customers of AMS's official inspection and weighing services in the domestic and export grain markets (NAICS code 115114).

Under the USGSA, all grain exported from the United States must be officially inspected and weighed. AMS provides mandatory inspection and weighing services at 43 export facilities in the United States and 7 facilities for U.S. grain transshipped through Canadian ports. Five delegated State agencies provide mandatory inspection and weighing services at 13 facilities. All of these facilities are owned by multi-national corporations, large cooperatives, or public entities that do not meet the requirements for small entities established by the SBA. Further, the provisions of this rulemaking apply equally to all entities. The USGSA requires the registration of all persons engaged in the business of buying grain for sale in foreign commerce. In addition, those persons who handle, weigh, or transport grain for sale in foreign commerce must also register. The regulations found at 7 CFR 800.30 define a foreign commerce grain business as persons who regularly engage in buying for sale, handling, weighing, or transporting grain totaling 15,000 metric tons or more during the preceding or current calendar year. Currently, there are 97 businesses registered to export grain, most of which are not small businesses.

Most users of the official inspection and weighing services do not meet the SBA requirements for small entities. Further, AMS is required by statute to make services available to all applicants and to recover the costs of providing such services as nearly as practicable, while maintaining a 3 to 6 month operating reserve. There are no additional reporting, record keeping, or other compliance requirements imposed upon small entities as a result of this rulemaking. AMS has not identified any other federal rules which may duplicate, overlap, or conflict with this rulemaking. Because this rulemaking does not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not provided.

Paperwork Reduction Act

This final rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Exports, Grains, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, FGIS amends 7 CFR part 800 as follows:

PART 800—GENERAL REGULATIONS

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

Authority: 7 U.S.C. 71–87k.

■ 2. Section 800.71(a)(1) is revised to read as follows:

§ 800.71 Fees assessed by the Service.

(a) * * *

(1) *Schedule A—Fees for official inspection and weighing services performed in the United States and Canada.* For each calendar year, FGIS will calculate *Schedule A* fees as defined in paragraph (b) of this section. FGIS will publish a notice in the **Federal Register** and post *Schedule A* fees on the Agency's public website.

* * * * *

Dated: December 18, 2018.

Greg Ibach,

Under Secretary, Marketing and Regulatory Programs.

[FR Doc. 2018–27787 Filed 12–26–18; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2018–0265]

RIN 3150–AK20

List of Approved Spent Fuel Storage Casks: TN Americas LLC Standardized Advanced NUHOMS® System, Certificate of Compliance No. 1029, Amendment No. 4

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the TN Americas LLC Standardized Advanced NUHOMS® Horizontal Modular Storage System (NUHOMS® System) listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 4 to Certificate of Compliance No. 1029. Amendment No. 4 revises the certificate of compliance's technical specifications to: clarify the applicability of unloading procedures and training modules relative to spent fuel pool availability; credit the use of the installed temperature monitoring system specified in lieu of performing daily visual vent inspections; establish dose rates on the front inlet bird screen and the door of the concrete storage module for the Advanced Horizontal Storage Module; modify the criteria for performing Advanced Horizontal Storage Module air vent visual inspections; identify the blocked vent time limitations for each of the 24PT1 and 24PT4 dry shielded canisters; and provide a new temperature rise value for the Advanced Horizontal Storage Module with a loaded 24PT4 dry shielded canister.

DATES: This direct final rule is effective March 12, 2019, unless significant adverse comments are received by January 28, 2019. If this direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

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

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0265. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m.

(Eastern Time) Federal workdays; telephone: 301–415–1677.

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: William Allen, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–6877; email: *William.Allen@nrc.gov* or Edward M. Lohr, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–0253; email: *Edward.Lohr@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0265 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–2018–0265.
- *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 ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's 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–2018–0265 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. Rulemaking Procedure

This rule is limited to the changes contained in Amendment No. 4 to Certificate of Compliance No. 1029 and does not include other aspects of the TN Americas LLC Standardized Advanced NUHOMS® System design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing certificate of compliance that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on March 12, 2019. However, if the NRC receives significant adverse comments on this direct final rule by January 28, 2019, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule, certificate of compliance, or technical specifications.

For detailed instructions on filing comments, please see the companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, requires that ''the Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the Nuclear Waste Policy Act states, in part, that ''[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' which

contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on January 6, 2003 (68 FR 463), that approved the TN Americas LLC Standardized Advanced NUHOMS® System design and added it to the list of NRC-approved cask designs provided in § 72.214 as Certificate of Compliance No. 1029.

IV. Discussion of Changes

On November 15, 2017, TN Americas LLC submitted a request to the NRC to amend Certificate of Compliance No. 1029 and supplemented its request on February 22, 2018, May 16, 2018, June 26, 2018, and July 18, 2018. Amendment No. 4 revises the technical specifications and final safety analysis report as follows:

- For the 24PT1, 24PT4 and 32PTH dry shielded canisters: (1) Clarify that unloading procedures are only applicable during the time period when the spent fuel pool is available (*i.e.,* prior to decommissioning of the spent fuel pool); and (2) clarify that the option of removing fuel from the dry shielded canisters into the spent fuel pool is performed only if the pool is available.
- Clarify in Technical Specification 5.2.2, ''Training Program,'' that training modules associated with unloading operations only need to address reflooding if applicable.
- For the 24PT4 dry shielded canister stored in the Advanced Horizontal Storage Module, increase the temperature limit associated with a blocked vent accident condition based on dual thermocouple locations.
- For the 24PT1 dry shielded canister, credit the use of the installed temperature monitoring system specified in Technical Specification 5.2.5(b) in lieu of performing daily visual vent inspections.
- For the 24PT1 and 24PT4 dry shielded canisters, establish dose rate limits at the front inlet bird screen and at the door of the concrete storage module in Technical Specification 5.4.
- For the 24PT1 dry shielded canister, modify the criteria for performing Advanced Horizontal Storage Module air vent visual inspections.
- For 24PT1 and 24PT4 dry shielded canisters, identify blocked vent time limitations for each canister, instead of using one blocked vent time limitation for both dry shielded canisters.
- For Technical Specification 5.4, provide more specificity regarding the locations at which dose rate measurements are performed, and make Technical Specification 5.4 applicable to all dry shielded canisters and storage modules authorized for use under Amendment No. 4 to Certificate of Compliance No. 1029 by adding ''Advanced Horizontal Storage Module [AHSM] or,'' removing ''Advanced Horizontal Storage Module High Burnup and High Seismic [AHSM–HS],'' or removing ''32PTH2,'' as appropriate.

As documented in the preliminary safety evaluation report, the NRC performed a detailed safety evaluation of the proposed certificate of compliance amendment request. There are no significant changes to cask design requirements in the proposed certificate of compliance amendment. Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of containment, shielding, and criticality control in the event of an accident. This amendment does not reflect a significant change in design or fabrication of the cask. In addition, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 4 would remain well within the 10 CFR part 20 limits. There will be no significant change in the types or amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for, or consequences from, radiological accidents.

This direct final rule revises the TN Americas LLC Standardized Advanced NUHOMS® System listing in § 72.214 by adding Amendment No. 4 to Certificate of Compliance No. 1029. The amendment consists of the changes previously described, as set forth in the revised certificate of compliance and technical specifications. The revised technical specifications are identified and evaluated in the preliminary safety evaluation report.

The amended TN Americas LLC Standardized Advanced NUHOMS® cask design, when used under the conditions specified in the certificate of compliance, technical specifications, and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be ensured. When this direct final rule becomes effective, persons who hold a general license under § 72.210 may, consistent with the license conditions under § 72.212, load spent nuclear fuel into those TN Americas LLC Standardized Advanced NUHOMS® System casks that meet the criteria of Amendment No. 4 to Certificate of Compliance No. 1029.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the TN Americas LLC Standardized Advanced NUHOMS® System design listed in § 72.214. This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR chapter I. Although an Agreement State may not adopt program elements reserved to the NRC, and the Category ''NRC'' does not confer regulatory authority on the State, the State may wish to inform its licensees of certain requirements by means consistent with the particular State's administrative procedure laws.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883).

VIII. Environmental Assessment and Finding of No Significant Environmental Impact

A. The Action

The action is to amend § 72.214 to revise the TN Americas LLC Standardized Advanced NUHOMS® System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 4 to Certificate of Compliance No. 1029. Under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part

51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the NRC has determined that this direct final rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has made a finding of no significant impact on the basis of this environmental assessment.

B. The Need for the Action

This direct final rule amends the certificate of compliance for the TN Americas LLC Standardized Advanced NUHOMS® System design within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. Specifically, Amendment No. 4 updates the certificate of compliance as described in Section IV, ''Discussion of Changes,'' of this document, for the use of the TN Americas LLC Standardized Advanced NUHOMS® System.

C. Environmental Impacts of the Action

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was initially analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for this Amendment No. 4 tiers off of the environmental assessment for the July 18, 1990, final rule. Tiering on past environmental assessments is a standard process under the National Environmental Policy Act of 1969, as amended.

The TN Americas LLC Standardized Advanced NUHOMS® System is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an independent spent fuel storage installation, the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, include tornado winds and tornado-generated missiles, a design basis earthquake, a design basis flood, an accidental cask drop, lightning effects, fire, explosions, and other events.

Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of confinement, shielding, and criticality control in the event of an accident. If there is no loss of confinement, shielding, or criticality control, the environmental impacts resulting from an accident would be insignificant. This amendment does not reflect a significant change in design or fabrication of the cask. Because there are no significant design or process changes, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 4 would remain well within the 10 CFR part 20 limits. Therefore, the proposed certificate of compliance changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or amounts of any effluent released, no significant increase in individual or cumulative radiation exposures, and no significant increase in the potential for or consequences of radiological accidents. The NRC documented its safety findings in a preliminary safety evaluation report.

D. Alternative to the Action

The alternative to this action is to deny approval of Amendment No. 4 and not issue the direct final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load spent nuclear fuel into the TN Americas LLC Standardized Advanced NUHOMS® System in accordance with the changes described in proposed Amendment No. 4 would have to request an exemption from the requirements of §§ 72.212 and 72.214. Under this alternative, interested licensees would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee. Therefore, the environmental impacts of the alternative action would be the same as, or more likely greater than, the preferred action.

E. Alternative Use of Resources

Approval of Amendment No. 4 to Certificate of Compliance No. 1029 would result in no irreversible commitment of resources.

F. Agencies and Persons Contacted

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

G. Finding of No Significant Impact

The environmental impacts of the action have been reviewed under the requirements in the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51. Based on the foregoing environmental assessment, the NRC concludes that this direct final rule entitled ''List of Approved Spent Fuel Storage Casks: TN Americas LLC Standardized Advanced NUHOMS® System, Certificate of Compliance No. 1029, Amendment No. 4'' will not have a significant effect on the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this direct final rule.

IX. Paperwork Reduction Act Statement

This direct final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget control number.

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this direct final rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and TN Americas LLC. These entities do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810).

XI. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's certificate of compliance, and the conditions of the

general license are met. A list of NRC-approved cask designs is contained in § 72.214. On January 6, 2003 (68 FR 463), the NRC issued an amendment to 10 CFR part 72 that approved the TN Americas LLC Standardized Advanced NUHOMS® System design by adding it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1029.

On November 15, 2017, and as supplemented on February 22, 2018, May 16, 2018, June 26, 2018, and July 18, 2018, TN Americas LLC submitted an application to amend the Standardized Advanced NUHOMS® System as described in Section IV, ''Discussion of Changes,'' of this document.

The alternative to this action is to withhold approval of Amendment No. 4 and to require any 10 CFR part 72 general licensee seeking to load spent nuclear fuel into the TN Americas LLC Standardized Advanced NUHOMS® System under the changes described in Amendment No. 4 to request an exemption from the requirements of §§ 72.212 and 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of this direct final rule is consistent with previous NRC actions. Further, as documented in the preliminary safety evaluation report and environmental assessment, this direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of this direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and therefore, this action is recommended.

XII. Backfitting and Issue Finality

The NRC has determined that the backfit rule (§ 72.62) does not apply to this direct final rule. Therefore, a backfit analysis is not required. This direct final rule revises Certificate of Compliance No. 1029 for the TN Americas LLC Standardized Advanced NUHOMS® System, as currently listed in § 72.214. The revision consists of adding Amendment No. 4, which revises the certificate of compliance's technical specifications as described in Section IV, ''Discussion of Changes,'' of this document.

Amendment No. 4 to Certificate of Compliance No. 1029 for the TN Americas LLC Standardized Advanced NUHOMS® System was initiated by TN Americas LLC and was not submitted in response to new NRC requirements, or an NRC request for amendment. Amendment No. 4 applies only to new casks fabricated and used under Amendment No. 4. These changes do not affect existing users of the TN Americas LLC Standardized Advanced NUHOMS® System, and the current renewed Amendment Nos. 1 through 3 continue to be effective for existing users. While current certificate of compliance users may comply with the new requirements in Amendment No. 4, this would be a voluntary decision on the part of current users. Additionally, the clarifications to the text of the rule are editorial in nature, and as such, do not fall within the definition of backfitting.

For these reasons, Amendment No. 4 to Certificate of Compliance No. 1029 does not constitute backfitting under § 72.62 or § 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. Accordingly, the NRC has not prepared a backfit analysis for this rulemaking.

XIII. Congressional Review Act

This direct final rule is not a rule as defined in the Congressional Review Act.

XIV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No./Web link/**Federal Register** Citation
TN Americas LLC Request to Add Amendment No. 4 to Certificate of Compliance No. 1029, letter dated November 15, 2017.	ML17326A125 (Package).
Revision to TN Americas LLC Request to Add Amendment No. 4 to Certificate of Compliance No. 1029, letter dated February 22, 2018.	ML18065A362.
Revision to TN Americas LLC Request to Add Amendment No. 4 to Certificate of Compliance No. 1029, letter dated May 16, 2018.	ML18138A289.
Revision to TN Americas LLC Request to Add Amendment No. 4 to Certificate of Compliance No. 1029, letter dated June 26, 2018.	ML18179A174.
Revision to TN Americas LLC Request to Add Amendment No. 4 to Certificate of Compliance No. 1029, letter dated July 18, 2018.	ML18201A202.
TN Americas LLC Amendment No. 4 Certificate of Compliance No. 1029	ML18263A046.
Technical Specifications for TN Americas LLC Amendment No. 4 to Certificate of Compliance No. 1029.	ML18263A045.
Preliminary Safety Evaluation Report for TN Americas LLC Amendment No. 4 to Certificate of Compliance No. 1029.	ML18263A047.

The NRC may post materials related to this document, including public comments, on the Federal Rulemaking website at *http://www.regulations.gov* under Docket ID NRC–2018–0265. The Federal Rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2018–0265); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974,

as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH–LEVEL RADIOACTIVE WASTE, AND REACTOR–RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, Certificate of Compliance 1029 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1029.

Initial Certificate Effective Date: February 5, 2003.

Amendment Number 1 Effective Date: May 16, 2005.

Amendment Number 2 Effective Date: Amendment not issued by the NRC.

Amendment Number 3 Effective Date: February 23, 2015.

Amendment Number 4 Effective Date: March 12, 2019.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized Advanced NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1029.

Certificate Expiration Date: February 5, 2023.

Model Number: Standardized Advanced NUHOMS® − 24PT1, − 24PT4, and − 32PTH2.

* * * * *

Dated at Rockville, Maryland, this 19th day of December, 2018.

For the Nuclear Regulatory Commission.

Margaret M. Doane,

Executive Director for Operations.

[FR Doc. 2018–27949 Filed 12–26–18; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 104 and 109

[Notice 2018–17]

Reporting Multistate Independent Expenditures and Electioneering Communications

AGENCY: Federal Election Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting final rules to address reporting of independent expenditures and electioneering communications that relate to presidential primary elections and that are publicly distributed in multiple states but that do not refer to any particular state's primary election.

DATES: This rule is subject to subject to Congressional review. 52 U.S.C. 30111(d). The effective date is March 31, 2019. However, at the conclusion of the Congressional review, if the effective date has been changed, the Commission will publish a document in the **Federal Register** to establish the actual effective date.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Ms. Joanna S. Waldstreicher, Attorney, 1050 First St. NE, Washington, DC 20463, (202) 694–1650 or (800) 424–9530. Documents relating to the rulemaking record are available on the Commission's website at *http://sers.fec.gov/fosers,* reference REG 2014–02.

SUPPLEMENTARY INFORMATION: The Commission is revising its regulations concerning independent expenditures and electioneering communications as they apply to communications that relate to presidential primary elections and that are publicly distributed in multiple states but that do not refer to any particular state's primary election (a ''multistate independent expenditure'' or ''multistate electioneering communication''). The Act and Commission regulations require persons who make independent expenditures and electioneering communications to report certain information to the Commission within specified periods of time. *See* 52 U.S.C. 30104(b)–(c), (f), (g); 11 CFR 104.3, 104.4, 104.20, 109.10. The Commission is revising its regulations to clarify when and how multistate independent expenditures and multistate electioneering communications must be reported.

Although the Commission also proposed revising its regulations concerning independent expenditures by authorized committees of candidates, the Commission could not reach agreement to revise those regulations at this time. *See* Independent Expenditures by Authorized Committees; Reporting Multistate Independent Expenditures and Electioneering Communications, 83 FR 3996, 3999–4000 (Jan. 29, 2018). The Commission may reconsider revisions to those regulations in a separate rulemaking at a later date.

Transmission of Final Rules to Congress

Before final promulgation of any rules or regulations to carry out the provisions of the Federal Election Campaign Act, the Commission transmits the rules or regulations to the Speaker of the House of Representatives and the President of the Senate for a thirty-legislative-day review period. 52 U.S.C. 30111(d). The effective date of this final rule is March 31, 2019. However, at the conclusion of the Congressional review, if the effective date has been changed, the Commission will publish a document in the **Federal Register** to establish the actual effective date.

Explanation and Justification

I. Background

The Act and Commission regulations require that political committees report all disbursements. 52 U.S.C. 30104(b)(4); 11 CFR 104.3(b). Political committees must also itemize their disbursements according to specific categories. 52 U.S.C. 30104(b)(4); 11 CFR 104.3(b)(1)–(2). An ''independent expenditure'' is an expenditure that expressly advocates the election or defeat of a clearly identified federal candidate and is not coordinated with such candidate (or his or her opponent) or political party. 52 U.S.C. 30101(17); *see also* 11 CFR 100.16(a). Under existing regulations, a political committee (other than an authorized committee) that makes independent expenditures must itemize those expenditures on its regular periodic reports, stating, among other things, the name of the candidate whom the expenditure supports or opposes and the office sought by that candidate. 52 U.S.C. 30104(b)(4)(H)(iii), (6)(B)(iii); 11 CFR 104.4(a). Any person other than a political committee that makes independent expenditures aggregating in excess of $250 during a calendar year must disclose the same information in a statement filed with the Commission.[1] 52 U.S.C. 30104(c); 11 CFR 109.10(b).

[1] Further, Commission regulations provide that persons other than political committees ''shall file a report or statement . . . in any quarterly reporting

In addition, any person that makes independent expenditures aggregating $10,000 or more for an election in any calendar year, up to and including the 20th day before an election, must report the expenditures within 48 hours. 52 U.S.C. 30104(g)(2)(A); 11 CFR 104.4(b)(2), 109.10(c). Additional reports must be filed within 48 hours each time the person makes further independent expenditures aggregating $10,000 or more with respect to the same election. 52 U.S.C. 30104(g)(2)(B); 11 CFR 104.4(b)(2), 109.10(c).

Any person that makes independent expenditures aggregating at least $1,000 less than 20 days, but more than 24 hours, before the date of an election must report the expenditures within 24 hours. 52 U.S.C. 30104(g)(1)(A); 11 CFR 104.4(c), 109.10(d). Additional reports must be filed within 24 hours each time the person makes further independent expenditures aggregating $1,000 or more with respect to the same election. 52 U.S.C. 30104(g)(1)(B); 11 CFR 104.4(c), 109.10(d).

The 48- and 24-hour filing requirements begin to run when the independent expenditures aggregating at least $10,000 or $1,000, respectively, are ''publicly distributed or otherwise publicly disseminated.'' 11 CFR 104.4(b)(2), (c), (f), 109.10(c)–(d). For purposes of calculating these expenditures and determining if a communication is ''publicly distributed'' within an applicable 20-day pre-election period, each state's presidential primary election is considered a separate election. *See* Advisory Opinion 2003–40 (U.S. Navy Veterans' Good Government Fund) at 3–4 (noting that ''publicly distributed'' in § 104.4 has same meaning as the term in 11 CFR 100.29(b)(3)(ii)(A), under which each state's presidential primary election is a separate election) (citing Bipartisan Campaign Reform Act of 2002 Reporting, 68 FR 404, 407 (Jan. 3, 2003); Electioneering Communications, 67 FR 65190, 65194 (Oct. 23, 2002)).

An ''electioneering communication,'' in the context of a presidential election, is a broadcast, cable, or satellite communication that refers to a clearly identified candidate for President or Vice President and is ''publicly distributed'' within 60 days before a general election or 30 days before a primary election or nominating convention. 52 U.S.C. 30104(f)(3)(A)(i); 11 CFR 100.29(a). If the candidate identified in the communication is seeking a party's nomination for the presidential or vice presidential election, ''publicly distributed'' means the communication can be received by at least 50,000 people in a state where a primary election is being held within 30 days, or that it can be received by at least 50,000 people anywhere in the United States within the period between 30 days before the first day of the national nominating convention and the conclusion of the convention. 11 CFR 100.29(b)(3).

A person who makes electioneering communications that aggregate in excess of $10,000 in a calendar year must file a statement with the Commission disclosing certain information about the electioneering communication, including the election to which the electioneering communication pertains. 52 U.S.C. 30104(f); 11 CFR 104.20(b)–(c). As with independent expenditures, each state's presidential primary election is considered a separate election for purposes of determining whether an electioneering communication is ''publicly distributed'' within the pre-election reporting window. *See* Advisory Opinion 2003–40 (U.S. Navy Veterans' Good Government Fund) at 3–4.

The Commission's current regulations do not specifically address how the public distribution criteria and other reporting requirements apply to independent expenditures or electioneering communications that are made in the context of a presidential primary election and that are distributed in multiple states. In particular, the regulations do not specify which state's primary election date is relevant for determining whether the communication falls within the 24-hour reporting window (for independent expenditures) or the 30-day definitional window (for electioneering communications).

In a 2012 advisory opinion, the Commission considered how the independent expenditure reporting requirements applied to independent expenditures that supported or opposed a presidential primary candidate and were distributed nationwide without referring to any specific state's primary election. *See* Advisory Opinion 2011–28 (Western Representation PAC). In that advisory opinion, the Commission concluded that a political committee making such an independent expenditure should divide the cost of the independent expenditure by the number of states that had not yet held their primary elections, and should use the resulting amounts to determine whether the committee must file 24- and 48-hour reports and for which states. *Id.*

In 2014, the Commission made available for public comment three alternative draft interpretive rules on this topic. Draft Notices of Interpretive Rule Regarding Reporting Nationwide Independent Expenditures in Presidential Primary Elections (Jan. 17, 2014) (''Draft Interpretive Rules'').[2] Draft A would have followed the approach set forth in Advisory Opinion 2011–28 (Western Representation PAC), instructing persons making a nationwide independent expenditure to divide the cost of the nationwide independent expenditure by the number of states with upcoming presidential primary elections. Draft B would have instructed persons making a nationwide independent expenditure to report it as a single expenditure without indicating a state where the expenditure was made, instead using ''memo text'' [3] to indicate that the independent expenditure was made nationwide. Draft B also would have instructed filers to use the first day of the candidate's national nominating convention as the election date for determining whether they must file 24- and 48-hour reports. Finally, Draft C would have provided the same reporting guidance as Draft B, except that Draft C would have instructed filers to use the date of the next presidential primary election (rather than the beginning of the national nominating convention) as the election date.

The Commission received two comments on the Draft Interpretive Rules.[4] Both comments generally supported Draft B. Both comments also argued that the approach in Draft A was unnecessarily complex and would not provide clear information to the public about the reported independent expenditures. After reviewing the comments and engaging in further deliberation, the Commission determined that this issue would be better addressed through regulatory

period thereafter in which additional independent expenditures are made.'' 11 CFR 109.10(b).

[2] *Available at https://transition.fec.gov/law/policy/nationwideiereporting/draftnationwideiereporting.pdf.* The Draft Interpretive Rules referred to the type of independent expenditures that are the subject of this rulemaking as ''nationwide independent expenditures.'' As discussed below, however, the Commission has determined that an independent expenditure or electioneering communication need not be distributed in all states to fall under the proposed rules. Accordingly, such communications are referred to in this document as ''multistate''—rather than ''nationwide'' — independent expenditures and electioneering communications.

[3] ''Memo text'' refers to a means of including additional information or explanation about a receipt or disbursement on a Commission form. *See* FEC, Campaign Guide for Nonconnected Committees (2008), *https://www.fec.gov/resources/cms-content/documents/nongui.pdf.*

[4] These comments are available on the Commission's website at *http://www.fec.gov/law/policy.shtml.*

amendments than through an interpretive rule.

The Commission published a Notice of Proposed Rulemaking (''NPRM'') in the **Federal Register** on January 29, 2018. Independent Expenditures by Authorized Committees; Reporting Multistate Independent Expenditures and Electioneering Communications, 83 FR 3996 (Jan. 29, 2018). The NPRM provided three alternative sets of proposed rules—Alternative A, Alternative B, and Alternative C—and sought public comment on each of them. The comment period ended on March 30, 2018. The Commission received 11 substantive comments from 14 commenters in response to the NPRM.[5]

II. Revised 11 CFR 104.3 and 104.4—Reporting Multistate Independent Expenditures by Political Committees

As set forth below, the Commission is revising § 104.3, concerning the content of independent expenditure reports by political committees, and § 104.4, concerning the timing of independent expenditure reports by political committees. The Commission is making these revisions to clarify the reporting obligations of a political committee when it makes a multistate independent expenditure. Of the three alternatives proposed in the NPRM for revising these regulations, the Commission is adopting Alternative B.

1. New 11 CFR 104.3(b)(3)(vii)(C)—Content of Reports

As described above, political committees—other than authorized committees—must provide for each reported disbursement in connection with an independent expenditure the date, amount, and purpose of the independent expenditure, a statement indicating whether the independent expenditure was in support of, or in opposition to, a candidate, the name and office sought by that candidate, and a certification that the expenditure was, in fact, independent. 52 U.S.C. 30104(b)(6)(B); 11 CFR 104.3(b)(3)(vii).

The Commission proposed three alternatives for revising this paragraph to more clearly indicate how political committees should provide the required information for multistate independent expenditures. Alternatives A and B both would add a new paragraph (b)(3)(vii)(C), requiring that when a political committee makes an independent expenditure in support of or in opposition to a candidate in a presidential primary election, and the communication is publicly distributed or otherwise disseminated in more than a specified number of states but does not refer to any particular state, the political committee must report the independent expenditure as a single expenditure and use memo text to indicate the states where the communication is distributed. Under Alternatives A and B, the Commission would also redesignate current paragraph (b)(3)(vii)(C) as paragraph (b)(3)(vii)(D).

Under Alternative C, which also would have added a new paragraph (b)(3)(vii)(C), political committees would allocate the amount of the independent expenditure among the states where it is distributed whose primary elections have yet to occur, according to a ratio based on the number of U.S. House of Representatives districts apportioned to each state, and report the amount spent for each such state.

In addition to comments on the proposals generally, the Commission specifically sought comment on the number of states that would be the threshold for a communication to fall within the new paragraph. Requiring an independent expenditure to be ''nationwide''—*i.e.,* disseminated in all fifty states plus the District of Columbia (and possibly Puerto Rico, Guam, and American Samoa)—would exclude some independent expenditures that are distributed in a large number of states (*e.g.,* the entire continental United States). This would significantly limit the benefits and application of the proposed reporting rule. Alternatively, applying the new provision to independent expenditures that are disseminated in only a handful of states might result in independent expenditures that are targeted to a specific state's primary—but partially distributed in neighboring states that share its media markets—being misleadingly reported as ''multistate'' communications.

Most of the commenters were in agreement that either Alternative A or Alternative B would be preferable to the reporting method identified in the Western Representation PAC advisory opinion or the one proposed in Alternative C. These commenters generally agreed that Alternatives A and B are both improvements over the existing guidance, in terms of the transparency and accuracy of the information provided to the public as well as the burden on the filer. Many of the commenters also agreed that Alternative C is similar to the approach of Advisory Opinion 2011–28 (Western Representation PAC), and is more complex and less transparent than Alternatives A and B.

Many of the commenters expressed a preference for Alternative A due to its simplicity for filers, and one commenter also opined that Alternative A would operate better for digital ads because they are more frequently intended to influence the general election on a national basis. One commenter preferred Alternative B, contending that Alternative A would not satisfy the 24-hour reporting requirement of the Act. Another commenter argued that both alternatives would effectively require reporting multistate independent expenditures of more than $1,000 in the aggregate rather than $1,000 per state of distribution as required by statute. The commenter recommended that the Commission modify either of these alternatives to set the threshold amount for reporting multistate independent expenditures at $1,000 per state in which it is distributed, to better implement the statutory reporting requirement. *Id.*

Six commenters addressed the minimum number of states in which a communication would have to be publicly distributed before being considered a multistate independent expenditure. The suggested number of states ranged from two to ten, though there was no consensus among commenters on the actual number that should be used. However, several commenters did agree that the Commission should take into consideration the fact that many media markets cross state lines, and that a communication distributed in multiple states may in fact be targeted at only one state's primary election.

Based on the comments received and the applicable statutory requirements, the Commission has decided to add new paragraph (b)(3)(vii)(C) in § 104.3, as proposed in Alternatives A and B. The Commission agrees with the commenters who expressed the view that these Alternatives are preferable to Alternative C because Alternatives A and B would be less complex than Alternative C and would provide more accurate information to the public concerning the true costs of multistate independent expenditures. The new paragraph requires that when a political committee makes an independent expenditure in support of or in opposition to a candidate in a presidential primary election, and the communication is publicly distributed or otherwise disseminated in six or more states but does not refer to any particular state, the political committee must report the independent

[5] The Internal Revenue Service also submitted a comment indicating that it sees no conflict between this rulemaking and the Internal Revenue Code or Treasury regulations. *See* 52 U.S.C. 30111(f).

expenditure as a single expenditure and use memo text to indicate the states where the communication is distributed. The political committee must also indicate the state with the next upcoming presidential primary among those states where the independent expenditure is distributed, as specified in new § 104.4(f)(2) and explained below. The Commission is also redesignating current paragraph (b)(3)(vii)(C) as paragraph (b)(3)(vii)(D).

The Commission's determination that the new § 104.3(b)(3)(vii)(C) should apply to an independent expenditure that is publicly distributed or otherwise disseminated in at least six states is based on the fact that U.S. media markets often overlap state lines. Some media markets include parts of up to four states, and in one case, four states and the District of Columbia.[6] An independent expenditure distributed in a single such media market could be targeted to a single state's primary election, but would be considered a ''multistate'' independent expenditure if the Commission set the threshold number for the new provision lower than six.

The Commission also proposed modifying the instructions for its forms to conform them to the new reporting provisions. The Commission intends that the instructions will provide a political committee with flexibility on how to report the states where a multistate independent expenditure is distributed, in order to allow for timely and complete information to be available to the public. After considering the comments received, the Commission has concluded that filers may use descriptive memo text to indicate either the specific states or the regions where a multistate independent expenditure is distributed, such as ''nationwide'' or ''New England,'' so long as the description is sufficient to allow a member of the public to understand where the communication was distributed. The Commission will publish non-exhaustive lists of adequate and inadequate descriptions similar to its existing lists of adequate and inadequate ''purpose of disbursement'' descriptions. *See* Purposes of Disbursement, *https://www.fec.gov/help-candidates-and-committees/purposes-disbursement/*. Filers should also indicate the state with the next upcoming presidential primary among those states where the independent expenditure is distributed, as specified in § 104.4(f)(2).

For independent expenditures distributed in fewer than six states, there is no change in reporting requirements. Each state's presidential primary election is deemed a separate election, and therefore filers will continue to report independent expenditures that do not fall within new § 104.3(b)(3)(vii)(C) by itemizing each such independent expenditure by state and aggregating the amount allocated to each state with other independent expenditures in that state.

2. New 11 CFR 104.4(f)(2)—Timing of Reports

In § 104.4, the Commission proposed to redesignate current paragraph (f) as paragraph (f)(1) and add new paragraph (f)(2), concerning when a political committee must file a 24- or 48-hour report for a multistate independent expenditure. As described above, the Act and Commission regulations require any person who makes independent expenditures aggregating at or above certain threshold amounts and within certain periods prior to an election to report those independent expenditures within 48 or 24 hours. 52 U.S.C. 30104(g)(1)(A), (2)(A); 11 CFR 104.4(b)(2), (c), 109.10(c)–(d). The Commission proposed three alternative revisions to §§ 104.4 and 109.10 to clarify which state's primary election date is relevant for determining whether the communication falls within the 24-hour reporting window when an independent expenditure is publicly distributed in multiple states but the communication does not refer to a particular state's primary.

Under Alternative A, a political committee making a multistate independent expenditure would report it as a single expenditure, as discussed above, and would use the date of the national nominating convention for the clearly identified candidate's party as the date of the election for purposes of determining whether the independent expenditure is within the 20 days before the election and is therefore subject to the 24-hour reporting requirement under 52 U.S.C. 30104(g)(1). Under Alternative B, the political committee would use the date of the next upcoming presidential primary among those to be held in the states in which the independent expenditure is distributed or disseminated. Under Alternative C, the political committee would allocate the amount of the expenditure among the states where it is distributed whose primary elections have yet to occur, according to a ratio based on the number of U.S. House of Representatives districts apportioned to each state. The political committee would use the date of the next upcoming primary election among the states where the independent expenditure was distributed to determine whether the independent expenditure was distributed within the 20 days before the election, and the amount of the expenditure allocated to that state to determine whether the political committee's aggregate spending in that state had exceeded the applicable threshold for reporting.

Most of the commenters agreed that either Alternative A or Alternative B would be preferable to the existing reporting method described in Advisory Opinion 2011–28 (Western Representation PAC) or the proposal in Alternative C. The commenters were generally in agreement that both Alternative A and Alternative B would provide greater transparency and more accurate information to the public, and would reduce the burden on filers. Many of the commenters expressed a preference for Alternative A due to its simplicity for filers, while one commenter preferred Alternative B, contending that Alternative A would not satisfy the 24-hour reporting requirement of the Act.

After considering the comments received and the applicable statutory requirements, the Commission has decided to redesignate current paragraph (f) in § 104.4 as paragraph (f)(1) and add new paragraph (f)(2) as proposed in Alternative B, concerning when a political committee must file a 24- or 48-hour report for a multistate independent expenditure. As described in the NPRM, a political committee that makes a multistate independent expenditure must report it as a single expenditure, as discussed above, and the political committee must use the date of the next upcoming presidential primary among the presidential primaries to be held in the states in which the independent expenditure is distributed or disseminated as the date of the election to determine whether the independent expenditure is within the 20 days before the election and is therefore subject to the 24-hour reporting requirement under 52 U.S.C. 30104(g)(1).

The Commission agrees with those commenters who expressed the view that Alternative C is complex and would not improve the information available to the public about the true costs of multistate independent expenditures. The Commission is adopting the new paragraph (f)(2) as proposed in Alternative B because it implements the requirement in 52 U.S.C. 30104(g)(1)

[6] Comment from Campaign Legal Center, March 29, 2018, at 3 (citing Kantar Media, *DMA County Coverage as Defined by Nielsen Media Research* (Fall 2016)).

that independent expenditures aggregating $1,000 or more after the 20th day, but more than 24 hours, before an election be reported within 24 hours, more accurately than Alternative A would do. The major parties' nominating conventions are held after all of the presidential primary elections have taken place, more than five months after the earliest state presidential primary elections and typically more than 20 days after even the latest primary elections.[7] Under Alternative A, multistate independent expenditures distributed in proximity to most, if not all, state primary elections would effectively not be subject to the 24-hour reporting requirement because they would be distributed more than 20 days before the nominating conventions, and the public would be deprived of timely information about expenditures intended to influence those primary elections. Because the state presidential primary elections are typically held more than 20 days before the national nominating conventions, Alternative A would, in practice, require 24-hour reports only for multistate independent expenditures intended to influence the national conventions or the general election, even though such independent expenditures would fall outside the 20-day window before the general election. By contrast, under Alternative B, the 24-hour reporting requirement would apply to independent expenditures with the ability to influence multiple states' presidential primary elections, such as those held on Super Tuesday,[8] as well as those distributed within the 20-day period before the national nominating conventions. *See* 52 U.S.C. 30101(1)(B) (defining an ''election,'' in part, to include ''a convention or caucus of a political party, which has authority to nominate a candidate'').

The Commission acknowledges that it might be less burdensome for reporting committees to comply with Alternative A because that proposal relies on a single election date rather than multiple dates, but the Commission may not opt for ease of compliance at the expense of conforming to the statute. Therefore the Commission is adopting Alternative B, because it best complies with the statutory reporting requirement while also serving the public's interest in timely disclosure.

IV. Revised 11 CFR 109.10—Reporting Multistate Independent Expenditures by Persons Other Than Political Committees

The Commission proposed to incorporate into 11 CFR 109.10(e)—which addresses the content of independent expenditure reports filed by persons other than political committees—the new requirements for reporting multistate independent expenditures that the Commission is adding to § 104.3(b)(3)(vii)(C). Two commenters addressed this proposal, agreeing generally that the same 24- and 48-hour reporting framework proposed for multistate independent expenditures should apply to political committees and other persons.

Taking into account the comments received and the reasons explained above regarding the adoption of new § 104.3(b)(3)(vii)(C), the Commission concludes that applying the same 24- and 48-hour independent expenditure reporting requirements to persons other than political committees would lessen the chance of confusion among both filers and the public, best serving the public's interest in timely disclosure. Accordingly, the Commission is incorporating into 11 CFR 109.10(e)—which addresses the content of independent expenditure reports filed by persons other than political committees—the requirements for reporting multistate independent expenditures that the Commission is adding to § 104.3(b)(3)(vii)(C). Specifically, revised § 109.10(e)(1)(iv) provides that when a person other than a political committee makes an expenditure meeting the criteria set forth in § 104.3(b)(3)(vii)(C) (*i.e.,* an independent expenditure that supports or opposes a presidential primary candidate and that is distributed in six or more states but does not refer to any particular state), the person must report the expenditure pursuant to the provisions of § 104.3(b)(3)(vii)(C).

V. Revised 11 CFR 104.20—Electioneering Communications

In § 104.20(c), which concerns the content of reports regarding electioneering communications, the Commission proposed to add a new paragraph if it adopted Alternative A or B described above. The new paragraph would apply when the relevant election is a presidential primary election and the electioneering communication is distributed in more than a specified number of states but does not refer to any particular state's primary election. This new paragraph would parallel the new reporting requirements for multistate independent expenditures discussed above, providing that the reporting person must report the electioneering communication as a single communication and use a memo text to indicate the states in which the communication constitutes an electioneering communication (as defined in 11 CFR 100.29(a)). Two commenters addressed this proposal, one supporting it and one calling for modifications to clarify the threshold amount for reporting.

The Commission concludes that adopting reporting requirements for multistate electioneering communications that parallel the reporting requirements for multistate independent expenditures will lessen the chance of confusion among both filers and the public, best serving the public's interest in timely disclosure. Accordingly, the Commission is adding a new paragraph (c)(7) in § 104.20, and redesignating current paragraphs (c)(7)–(9) as paragraphs (c)(8)–(10). New paragraph (c)(7) applies when the relevant election, which the reporting person must identify under paragraph (c)(5), is a presidential primary election and the electioneering communication is distributed in six or more states but does not refer to any particular state's primary election. In such situations, this new paragraph parallels the new reporting requirements for multistate independent expenditures in new § 104.3(b)(3)(vii)(C). New paragraph (c)(7) of § 104.20 provides that the reporting person must report the electioneering communication as a single communication and use a memo text to indicate the states in which the communication constitutes an electioneering communication (as defined in 11 CFR 100.29(a)).

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached rules will not have a significant economic impact on a substantial number of small entities. The rules provide for consolidated reporting of certain independent expenditures and electioneering communications that the Commission's current reporting guidance indicates should be allocated among elections in multiple states. The Commission anticipates that the consolidation of these reports will generally result in a modest reduction of the administrative burdens on reporting entities, and it will not impose any new

[7] For example, in 2016 the Republican national nominating convention was held July 18–21 and the Democratic national nominating convention was held July 25–28, while the earliest state primary election was Feb. 9 (New Hampshire) and the latest was June 14 (District of Columbia). The full calendar of 2016 state presidential primary elections can be found at *https://www.nytimes.com/interactive/2016/us/elections/primary-calendar-and-results.html*?.

[8] In 2016, Super Tuesday was March 1, when 11 states held presidential primary elections. *See https://www.nytimes.com/elections/2016/results/2016-03-01.*

reporting obligations. Thus, to the extent that any entities affected by these proposed rules might fall within the definition of ''small businesses'' or ''small organizations,'' the economic impact of complying with these rules will not be significant.

List of Subjects

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 109

Elections, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, subchapter A of chapter I of title 11 of the Code of Federal Regulations is amended as follows:

PART 104—REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS (52 U.S.C. 30104)

■ 1. The authority citation for part 104 continues to read as follows:

Authority: 52 U.S.C. 30101(1), 30101(8), 30101(9), 30102(i), 30104, 30111(a)(8) and (b), 30114, 30116, 36 U.S.C. 510.

■ 2. In § 104.3:
■ a. Revise paragraph (b)(3)(vii)(B).
■ b. Redesignate paragraph (b)(3)(vii)(C) as paragraph (b)(3)(vii)(D) and revise newly redesignated paragraph (b)(3)(vii)(D).
■ c. Add new paragraph (b)(3)(vii)(C).

The revision and addition read as follows:

§ 104.3 Contents of Reports (52 U.S.C. 30104(b), 30114).

* * * * *

(b) * * *

(3) * * *

(vii) * * *

(B) For each independent expenditure reported, the committee must also provide a statement which indicates whether such independent expenditure is in support of, or in opposition to a particular candidate, as well as the name of the candidate and the office sought by such candidate (including State and Congressional district, when applicable), and a certification, under penalty of perjury, as to whether such independent expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, any candidate or authorized committee or agent of such committee; and

(C) For an independent expenditure that is made in support of or opposition to a presidential primary candidate and is publicly distributed or otherwise publicly disseminated in six or more states but does not refer to any particular state, the political committee must report the independent expenditure as a single expenditure—*i.e.,* without allocating it among states—and must indicate the state with the next upcoming presidential primary among those states where the independent expenditure is distributed, as specified in § 104.4(f)(2). The political committee must use memo text to indicate the states in which the communication is distributed.

(D) The information required by paragraphs (b)(3)(vii)(A) through (C) of this section shall be reported on Schedule E as part of a report covering the reporting period in which the aggregate disbursements for any independent expenditure to any person exceed $200 per calendar year. Schedule E shall also include the total of all such expenditures of $200 or less made during the reporting period.

* * * * *

■ 3. In § 104.4:
■ a. In paragraph (b), remove ''FEC Form 3X'' everywhere it appears and add in its place the words ''the applicable FEC Form''.
■ b. Revise paragraph (f).

The revision reads as follows:

§ 104.4 Independent expenditures by political committees (52 U.S.C. 30104(b), (d), and (g)).

* * * * *

(f) *Aggregating independent expenditures for reporting purposes.* (1) For purposes of determining whether 24-hour and 48-hour reports must be filed in accordance with paragraphs (b) and (c) of this section and 11 CFR 109.10(c) and (d), aggregations of independent expenditures must be calculated as of the first date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated, and as of the date that any such communication with respect to the same election is subsequently publicly distributed or otherwise publicly disseminated. Every person must include in the aggregate total all disbursements during the calendar year for independent expenditures, and all enforceable contracts, either oral or written, obligating funds for disbursements during the calendar year for independent expenditures, where those independent expenditures are made with respect to the same election for Federal office.

(2) For purposes of determining whether 24-hour or 48-hour reports must be filed in accordance with paragraphs (b) and (c) of this section and 11 CFR 109.10(c) and (d), if the independent expenditure is made in support of or opposition to a candidate in a presidential primary election and is publicly distributed or otherwise publicly disseminated in six or more states but does not refer to any particular state, the date of the election is the date of the next upcoming presidential primary election among the presidential primary elections to be held in the states in which the independent expenditure is publicly distributed or disseminated.

■ 4. In § 104.20:
■ a. Revise paragraphs (c)(5) and (6).
■ b. Redesignate paragraphs (c)(7) through (9) as paragraphs (c)(8) through (10).
■ c. Add new paragraph (c)(7).

The revision and addition read as follows:

§ 104.20 Reporting electioneering communications (52 U.S.C. 30104 (f)).

* * * * *

(c) * * *

(5) All clearly identified candidates referred to in the electioneering communication and the elections in which they are candidates; and

(6) The disclosure date, as defined in paragraph (a) of this section.

(7) If the election identified pursuant to paragraph (c)(5) of this section is a presidential primary election and the electioneering communication is publicly distributed or otherwise disseminated in six or more states but does not refer to any particular state, the electioneering communication shall be reported as a single communication, indicating the state with the next upcoming presidential primary among those states where the electioneering communication is distributed, and the states in which it constitutes an electioneering communication (as defined in 11 CFR 100.29(a)) shall be indicated in memo text.

* * * * *

PART 109—COORDINATED AND INDEPENDENT EXPENDITURES (52 U.S.C. 30101(17), 30116(a) AND (d), AND PUB. L. 107–155 SEC. 214(C))

■ 5. The authority citation for part 109 continues to read as follows:

Authority: 52 U.S.C. 30101(17), 30104(c), 30111(a)(8), 30116, 30120; Sec. 214(c), Pub. L. 107–155, 116 Stat. 81.

■ 6. Revise § 109.10(e)(1)(iv) to read as follows:

§ 109.10 How do political committees and other persons report independent expenditures?

* * * * *

(e) * * *

(1) * * *

(iv) A statement that indicates whether such expenditure was in support of, or in opposition to a candidate, together with the candidate's name and office sought; if the expenditure meets the criteria set forth in 11 CFR 104.3(b)(3)(vii)(C), memo text must be used to indicate the states in which the communication is distributed, as prescribed in that section;

* * * * *

On behalf of the Commission.

Dated: December 18, 2018.

Caroline C. Hunter,

Chair, Federal Election Commission.

[FR Doc. 2018–27800 Filed 12–26–18; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2018–18]

Civil Monetary Penalties Annual Inflation Adjustments

AGENCY: Federal Election Commission.

ACTION: Final rules.

SUMMARY: As required by the Federal Civil Penalties Inflation Adjustment Act of 1990, the Federal Election Commission is adjusting for inflation the civil monetary penalties established under the Federal Election Campaign Act, the Presidential Election Campaign Fund Act, and the Presidential Primary Matching Payment Account Act. The civil monetary penalties being adjusted are those negotiated by the Commission or imposed by a court for certain statutory violations, and those imposed by the Commission for late filing of or failure to file certain reports required by the Federal Election Campaign Act. The adjusted civil monetary penalties are calculated according to a statutory formula and the adjusted amounts will apply to penalties assessed after the effective date of these rules.

DATES: The final rules are effective on January 1, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Mr. Joseph P. Wenzinger, Attorney, Office of General Counsel, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (the ''Inflation Adjustment Act''),[1] as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the ''2015 Act''),[2] requires federal agencies, including the Commission, to adjust for inflation the civil monetary penalties within their jurisdiction according to prescribed formulas. A civil monetary penalty is ''any penalty, fine, or other sanction'' that (1) ''is for a specific monetary amount'' or ''has a maximum amount'' under federal law; and (2) that a federal agency assesses or enforces ''pursuant to an administrative proceeding or a civil action'' in federal court.[3] Under the Federal Election Campaign Act, 52 U.S.C. 30101–45 (''FECA''), the Commission may seek and assess civil monetary penalties for violations of FECA, the Presidential Election Campaign Fund Act, 26 U.S.C. 9001–13, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031–42.

The Inflation Adjustment Act requires federal agencies to adjust their civil penalties annually, and the adjustments must take effect no later than January 15 of every year.[4] Pursuant to guidance issued by the Office of Management and Budget,[5] the Commission is now adjusting its civil monetary penalties for 2019.[6]

The Commission must adjust for inflation its civil monetary penalties ''notwithstanding Section 553'' of the Administrative Procedures Act (''APA'').[7] Thus, the APA's notice-and-comment and delayed effective date requirements in 5 U.S.C. 553(b)–(d) do not apply because Congress has specifically exempted agencies from these requirements.[8]

Furthermore, because the inflation adjustments made through these final rules are required by Congress and involve no Commission discretion or policy judgments, these rules do not need to be submitted to the Speaker of the House of Representatives or the President of the Senate under the Congressional Review Act, 5 U.S.C. 801 *et seq.* Moreover, because the APA's notice-and-comment procedures do not apply to these final rules, the Commission is not required to conduct a regulatory flexibility analysis under 5 U.S.C. 603 or 604. *See* 5 U.S.C. 601(2), 604(a). Nor is the Commission required to submit these revisions for congressional review under FECA. *See* 5 U.S.C. 30111(d)(1), (4) (providing for congressional review when Commission ''prescribe[s]'' a ''rule of law'').

The new penalty amounts will apply to civil monetary penalties that are assessed after the date the increase takes effect, even if the associated violation predated the increase.[9]

Explanation and Justification

The Inflation Adjustment Act requires the Commission to annually adjust its civil monetary penalties for inflation by applying a cost-of-living-adjustment (''COLA'') ratio.[10] The COLA ratio is the percentage that the Consumer Price Index (''CPI'')[11] ''for the month of October preceding the date of the adjustment'' exceeds the CPI for October of the previous year.[12] To calculate the adjusted penalty, the Commission must increase the most recent civil monetary penalty amount by the COLA ratio.[13] According to the Office of Management and Budget, the COLA ratio for 2019 is 0.02522, or 2.522%; thus, to calculate the new penalties, the Commission must multiply the most recent civil monetary penalties in force by 1.02522.[14]

The Commission assesses two types of civil monetary penalties that must be adjusted for inflation. First are penalties that are either negotiated by the Commission or imposed by a court for violations of FECA, the Presidential Election Campaign Fund Act, or the Presidential Primary Matching Payment Account Act. These civil monetary penalties are set forth at 11 CFR 111.24. Second are the civil monetary penalties assessed through the Commission's Administrative Fines Program for late filing or non-filing of certain reports required by FECA. *See* 52 U.S.C. 30109(a)(4)(C) (authorizing Administrative Fines Program), 30104(a) (requiring political committee treasurers

[1] Public Law 101–410, 104 Stat. 890 (codified at 28 U.S.C. 2461 note), *amended by* Debt Collection Improvement Act of 1996, Public Law 104–134, sec. 31001(s)(1), 110 Stat. 1321, 1321–373; Federal Reports Elimination Act of 1998, Public Law 105–362, sec. 1301, 112 Stat. 3280.

[2] Public Law 114–74, sec. 701, 129 Stat. 584, 599.

[3] Inflation Adjustment Act sec. 3(2).

[4] Inflation Adjustment Act sec. 4(a).

[5] *See* Inflation Adjustment Act sec. 7(a) (requiring OMB to ''issue guidance to agencies on implementing the inflation adjustments required under this Act''); *see also* Memorandum from Mick Mulvaney, Director, Office of Management and Budget, to Heads of Executive Departments and Agencies, M–19–04 (Dec. 14, 2018), *https://www.whitehouse.gov/wp-content/uploads/2017/11/m_19_04.pdf* (''OMB Memorandum'').

[6] Inflation Adjustment Act sec. 5.

[7] Inflation Adjustment Act sec. 4(b)(2).

[8] *See, e.g., Asiana Airlines* v. *FAA,* 134 F.3d 393, 396–99 (DC Cir. 1998) (finding APA ''notice and comment'' requirement not applicable where Congress clearly expressed intent to depart from normal APA procedures).

[9] Inflation Adjustment Act sec. 6.

[10] The COLA ratio must be applied to the most recent civil monetary penalties. Inflation Adjustment Act, sec. 4(a); *see also* OMB Memorandum at 2.

[11] The Inflation Adjustment Act, sec. 3, uses the CPI ''for all-urban consumers published by the Department of Labor.''

[12] Inflation Adjustment Act, sec. 5(b)(1).

[13] Inflation Adjustment Act, sec. 5(a), (b)(1).

[14] OMB Memorandum at 1.

to report receipts and disbursements within certain time periods). The penalty schedules for these civil monetary penalties are set out at 11 CFR 111.43 and 111.44.

1. 11 CFR 111.24—Civil Penalties

FECA establishes the civil monetary penalties for violations of FECA and the other statutes within the Commission's jurisdiction. *See* 52 U.S.C. 30109(a)(5), (6), (12). Commission regulations in 11 CFR 111.24 provide the current inflation-adjusted amount for each such civil monetary penalty. To calculate the adjusted civil monetary penalty, the Commission multiplies the most recent penalty amount by the COLA ratio and rounds that figure to the nearest dollar.

The actual adjustment to each civil monetary penalty is shown in the chart below.

Section	Most recent civil penalty	COLA	New civil penalty
11 CFR 111.24(a)(1)	$19,446	1.02522	$19,936
11 CFR 111.24(a)(2)(i)	41,484	1.02522	42,530
11 CFR 111.24(a)(2)(ii)	68,027	1.02522	69,743
11 CFR 111.24(b)	5,817	1.02522	5,964
11 CFR 111.24(b)	14,543	1.02522	14,910

2. 11 CFR 111.43, 111.44 —Administrative Fines

FECA authorizes the Commission to assess civil monetary penalties for violations of the reporting requirements of 52 U.S.C. 30104(a) according to the penalty schedules ''established and published by the Commission.'' 52 U.S.C. 30109(a)(4)(C)(i). The Commission has established two such schedules: The schedule in 11 CFR 111.43(a) applies to reports that are not election sensitive, and the schedule in 11 CFR 111.43(b) applies to reports that are election sensitive.[15] Each schedule contains two columns of penalties, one for late-filed reports and one for non-filed reports, with penalties based on the level of financial activity in the report and, if late-filed, its lateness.[16] In addition, 11 CFR 111.43(c) establishes a civil monetary penalty for situations in which a committee fails to file a report and the Commission cannot calculate the relevant level of activity. Finally, 11 CFR 111.44 establishes a civil monetary penalty for failure to file timely reports of contributions received less than 20 days, but more than 48 hours, before an election. *See* 52 U.S.C. 30104(a)(6).

To determine the adjusted civil monetary penalty amount for each level of activity, the Commission multiplies the most recent penalty amount by the COLA ratio and rounds that figure to the nearest dollar. The new civil monetary penalties are shown in the schedules in the rule text, below.

List of Subjects in 11 CFR Part 111

Administrative practice and procedures, Elections, Law enforcement, Penalties.

For the reasons set out in the preamble, the Federal Election Commission amends subchapter A of chapter I of title 11 of the Code of Federal Regulations as follows:

PART 111—COMPLIANCE PROCEDURE (52 U.S.C. 30109, 30107(a))

■ 1. The authority citation for part 111 continues to read as follows:

Authority: 52 U.S.C. 30102(i), 30109, 30107(a), 30111(a)(8); 28 U.S.C. 2461 note; 31 U.S.C. 3701, 3711, 3716–3719, and 3720A, as amended; 31 CFR parts 285 and 900–904.

§ 111.24 [Amended]

■ 2. Section 111.24 is amended in the table below by, for each section indicated in the left column, removing the number indicated in the middle column, and adding in its place the number indicated in the right column as follows:

Section	Remove	Add
111.24(a)(1)	$19,446	$19,936
111.24(a)(2)(i)	41,484	42,530
111.24(a)(2)(ii)	68,027	69,743
111.24(b)	5,817	5,964
111.24(b)	14,543	14,910

■ 3. Section 111.43 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 111.43 What are the schedules of penalties?

(a) The civil money penalty for all reports that are filed late or not filed, except election sensitive reports and pre-election reports under 11 CFR 104.5, shall be calculated in accordance with the following schedule of penalties:

Table 1 to paragraph (a)

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$1–4,999.99 [a]	[$35 + ($6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$341 × [1 + (.25 × Number of previous violations)].
$5,000–9,999.99	[$68 + ($6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$410 × [1 + (.25 × Number of previous violations)].
$10,000–24,999.99	[$146 + ($6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$684 × [1 + (.25 × Number of previous violations)].

[15] Election sensitive reports are certain reports due shortly before an election. *See* 11 CFR 111.43(d)(1).

[16] A report is considered to be ''not filed'' if it is never filed or is filed more than a certain number of days after its due date. *See* 11 CFR 111.43(e).

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$25,000–49,999.99	[$290 + ($28 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1230 × [1 + (.25 × Number of previous violations)].
$50,000–74,999.99	[$437 + ($110 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$3925 × [1 + (.25 × Number of previous violations)].
$75,000–99,999.99	[$581 + ($146 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$5086 × [1 + (.25 × Number of previous violations)].
$100,000–149,999.99	[$871 + ($182 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$6541 × [1 + (.25 × Number of previous violations)].
$150,000–199,999.99	[$1164 + ($217 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$7994 × [1 + (.25 × Number of previous violations)].
$200,000–249,999.99	[$1453 + ($254 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$9446 × [1 + (.25 × Number of previous violations)].
$250,000–349,999.99	[$2181 + ($290 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$11,627 × [1 + (.25 × Number of previous violations)].
$350,000–449,999.99	[$2908 + ($290 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$13,080 × [1 + (.25 × Number of previous violations)].
$450,000–549,999.99	[$3633 + ($290 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$13,806 × [1 + (.25 × Number of previous violations)].
$550,000–649,999.99	[$4360 + ($290 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$14,535 × [1 + (.25 × Number of previous violations)].
$650,000–749,999.99	[$5086 + ($290 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$15,260 × [1 + (.25 × Number of previous violations)].
$750,000–849,999.99	[$5813 + ($290 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$15,987 × [1 + (.25 × Number of previous violations)].
$850,000–949,999.99	[$6541 + ($290 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$16,713 × [1 + (.25 × Number of previous violations)].
$950,000 or over	[$7267 + ($290 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$17,440 × [1 + (.25 × Number of previous violations)].

[a] The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(b) The civil money penalty for election sensitive reports that are filed late or not filed shall be calculated in accordance with the following schedule of penalties:

Table 1 to paragraph (b)

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$1–$4,999.99 [a]	[$68 + ($13 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$684 × [1 + (.25 × Number of previous violations)].
$5,000–$9,999.99	[$137 + ($13 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$820 × [1 + (.25 × Number of previous violations)].
$10,000–24,999.99	[$205 + ($13 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1230 × [1 + (.25 × Number of previous violations)].
$25,000–49,999.99	[$437 + ($35 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1913 × [1 + (.25 × Number of previous violations)].
$50,000–74,999.99	[$654 + ($110 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$4360 × [1 + (.25 × Number of previous violations)].
$75,000–99,999.99	[$871 + ($146 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$5813 × [1 + (.25 × Number of previous violations)].
$100,000–149,999.99	[$1308 + ($182 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$7267 × [1 + (.25 × Number of previous violations)].
$150,000–199,999.99	[$1744 + ($217 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$8719 × [1 + (.25 × Number of previous violations)].
$200,000–249,999.99	[$2181 + ($254 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$10,901 × [1 + (.25 × Number of previous violations)].
$250,000–349,999.99	[$3270 + ($290 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$13,080 × [1 + (.25 × Number of previous violations)].
$350,000–449,999.99	[$4360 + ($290 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$14,535 × [1 + (.25 × Number of previous violations)].
$450,000–549,999.99	[$5450 + ($290 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$15,987 × [1 + (.25 × Number of previous violations)].
$550,000–649,999.99	[$6541 + ($290 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$17,440 × [1 + (.25 × Number of previous violations)].
$650,000–749,999.99	[$7630 + ($290 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$18,895 × [1 + (.25 × Number of previous violations)].
$750,000–849,999.99	[$8719 + ($290 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$20,347 × [1 + (.25 × Number of previous violations)].
$850,000–949,999.99	[$9810 + ($290 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$21,799 × [1 + (.25 × Number of previous violations)].

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$950,000 or over	[$10,901 + ($290 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$23,254 × [1 + (.25 × Number of previous violations)].

[a] The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(c) If the respondent fails to file a required report and the Commission cannot calculate the level of activity under paragraph (d) of this section, then the civil money penalty shall be $7,994.

* * * * *

§ 111.44 [Amended]

■ 4. Amend § 111.44(a)(1) by removing ''$142'' and adding in its place ''$146''.

On behalf of the Commission.

Dated: December 18, 2018.

Caroline C. Hunter,

Chair, Federal Election Commission.

[FR Doc. 2018–27801 Filed 12–26–18; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 19 and 109

Notification of Inflation Adjustments for Civil Money Penalties

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notification of Monetary Penalties 2019.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is providing notice of its maximum civil money penalties as adjusted for inflation. The inflation adjustments are required to implement the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: The adjusted maximum amount of civil money penalties in this document are applicable to penalties assessed on or after January 1, 2019, for conduct occurring on or after November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Lee Walzer, Counsel, Chief Counsel's Office, (202) 649–5490, or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency.

SUPPLEMENTARY INFORMATION:

This document announces changes to the maximum amount of each civil money penalty (CMP) within the OCC's jurisdiction to administer to account for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (the 1990 Adjustment Act),[1] as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Adjustment Act).[2] Under the 1990 Adjustment Act, as amended, federal agencies must make annual adjustments to the maximum amount of each CMP the agency administers. The Office of Management and Budget (OMB) is required to issue guidance to federal agencies no later than December 15 of each year providing an inflation adjustment multiplier (*i.e.* the inflation adjustment factor agencies must use) applicable to CMPs assessed in the following year. The agencies are required to publish their CMPs, adjusted pursuant to the multiplier provided by OMB, by January 15 of the applicable year.

To the extent an agency has codified a CMP amount in its regulations, the agency would need to update that amount by regulation. However, if an agency has codified the formula for making the CMP adjustments, then subsequent adjustments can be made solely by notice.[3] In 2017, the OCC codified the formula for making CMP adjustments in its rules.[4] In 2018, the OCC published a final regulation to remove the CMP amounts from its regulations, while updating those amounts for inflation through the notice process.[5]

On December 14, 2018, the OMB issued guidance to affected agencies on implementing the required annual adjustment, which included the relevant inflation multiplier.[6] The OCC has applied that multiplier to the maximum CMPs allowable in 2018 for national banks and federal savings associations as listed in the 2018 CMP notice to calculate the maximum amount of CMPs that may be assessed by the OCC in 2019.[7] There were no new statutory CMPs administered by the OCC during 2018.

The following charts provide the inflation-adjusted CMPs for use beginning on January 1, 2019, pursuant to 12 CFR 19.240(b) and 109.103(c) for conduct occurring on or after November 2, 2015:

PENALTIES APPLICABLE TO NATIONAL BANKS

U.S. Code Citation	Description and Tier (if applicable)	Maximum Penalty Amount (in Dollars) [1]
12 U.S.C. 93(b)	Violation of Various Provisions of the National Bank Act:	
	Tier 1	10,067
	Tier 2	50,334
	Tier 3	[2] 2,013,399
12 U.S.C. 164	Violation of Reporting Requirements:	
	Tier 1	4,027
	Tier 2	40,269

[1] Pub. L. 101–410, Oct. 5, 1990, 104 Stat. 890, *codified at* 28 U.S.C. 2461 note.

[2] Pub. L. 114–74, Title VII, section 701(b), Nov. 2, 2015, 129 Stat. 599, *codified at* 28 U.S.C. 2461 note.

[3] See OMB Memorandum M–18–03, ''Implementation of the 2018 Annual Adjustment Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015'' at 4, which permits agencies that have codified the formula to adjust CMPs for inflation to update the penalties through a notice rather than a regulation.

[4] 82 FR 8584 (January 27, 2017).

[5] 83 FR 1517 (January 12, 2018) (final rule); 83 FR 1657 (Jan. 12, 2018) (2018 CMP Notice).

[6] The inflation adjustment multiplier for 2019 is 1.02522. *See* OMB Memorandum M–19–04, ''Implementation of Penalty Inflation Adjustments for 2019, Pursuant to the Federal Civil Penalties Inflation Adjust Act Improvements Act of 2015'' at 1 (Dec. 14, 2018).

[7] Penalties assessed for violations occurring prior to November 2, 2015, will be subject to the maximum amounts set forth in the OCC's regulations in effect prior to the enactment of the 2015 Adjustment Act.

PENALTIES APPLICABLE TO NATIONAL BANKS—Continued

U.S. Code Citation	Description and Tier (if applicable)	Maximum Penalty Amount (in Dollars) [1]
	Tier 3	[2] 2,013,399
12 U.S.C. 481	Refusal of Affiliate to Cooperate in Examination	10,067
12 U.S.C. 504	Violation of Various Provisions of the Federal Reserve Act:	
	Tier 1	10,067
	Tier 2	50,334
	Tier 3	[2] 2,013,399
12 U.S.C. 1817(j)(16)	Violation of Change in Bank Control Act:	
	Tier 1	10,067
	Tier 2	50,334
	Tier 3[2] 2,013,399.	
12 U.S.C. 1818(i)(2) [3]	Violation of Law, Unsafe or Unsound Practice, or Breach of Fiduciary Duty:	
	Tier 1	10,067
	Tier 2	50,334
	Tier 3	[2] 2,013,399
12 U.S.C. 1820(k)(6)(A)(ii)	Violation of Post-Employment Restrictions:	
	Per violation	331,174
12 U.S.C. 1832(c)	Violation of Withdrawals by Negotiable or Transferable Instrument for Transfers to Third Parties:	
	Per violation	2,924
12 U.S.C. 1884	Violation of the Bank Protection Act	292
12 U.S.C. 1972(2)(F)	Violation of Anti-Tying Provisions regarding Correspondent Accounts, Unsafe or Unsound Practices, or Breach of Fiduciary Duty:	
	Tier 1	10,067
	Tier 2	50,334
	Tier 3	[2] 2,013,399
12 U.S.C. 3110(a)	Violation of Various Provisions of the International Banking Act (Federal Branches and Agencies):	46,013
12 U.S.C. 3110(c)	Violation of Reporting Requirements of the International Banking Act (Federal Branches and Agencies):.	
	Tier 1	3,682
	Tier 2	36,809
	Tier 3	[2] 1,840,491
12 U.S.C. 3909(d)(1)	Violation of International Lending Supervision Act	2,505
15 U.S.C. 78u–2(b)	Violation of Various Provisions of the Securities Act, the Securities Exchange Act, the Investment Company Act, or the Investment Advisers Act:	
	Tier 1 (natural person)—Per violation	9,472
	Tier 1 (other person)—Per violation	94,713
	Tier 2 (natural person)—Per violation	94,713
	Tier 2 (other person)—Per violation	473,566
	Tier 3 (natural person)—Per violation	189,427
	Tier 3 (other person)—Per violation	947,130
15 U.S.C. 1639e(k)	Violation of Appraisal Independence Requirements:	
	First violation	11,563
	Subsequent violations	23,125
42 U.S.C. 4012a(f)(5)	Flood Insurance:	
	Per violation	2,187

[1] The maximum penalty amount is per day, unless otherwise indicated.
[2] The maximum penalty amount for a national bank is the lesser of this amount or 1 percent of total assets.
[3] These amounts also apply to CMPs in statutes that cross-reference 12 U.S.C. 1818, such as 12 U.S.C. 2804, 3108, 3349, 4309, and 4717 and 15 U.S.C. 1607, 1693o, 1681s, 1691c, and 1692*l*.

PENALTIES APPLICABLE TO FEDERAL SAVINGS ASSOCIATIONS

U.S. Code Citation	CMP Description	Maximum Penalty Amount (in Dollars) [1]
12 U.S.C. 1464(v)	Reports of Condition:	
	1st Tier	4,027
	2nd Tier	40,269
	3rd Tier	[2] 2,013,399
12 U.S.C. 1467(d)	Refusal of Affiliate to Cooperate in Examination	10,067
12 U.S.C. 1467a(r)	Late/Inaccurate Reports:	
	1st Tier	4,027
	2nd Tier	40,269
	3rd Tier	[2] 2,013,399
12 U.S.C. 1817(j)(16)	Violation of Change in Bank Control Act:	
	Tier 1	10,067
	Tier 2	50,334

PENALTIES APPLICABLE TO FEDERAL SAVINGS ASSOCIATIONS—Continued

U.S. Code Citation	CMP Description	Maximum Penalty Amount (in Dollars) [1]
	Tier 3	[2] 2,013,399
12 U.S.C. 1818(i)(2) [3]	Violation of Law, Unsafe or Unsound Practice, or Breach of Fiduciary Duty	
	Tier 1	10,067
	Tier 2	50,334
	Tier 3	[2] 2,013,399
12 U.S.C. 1820(k)(6)(A)(ii)	Violation of Post-Employment Restrictions:	
	Per violation	331,174
12 U.S.C. 1832(c)	Violation of Withdrawals by Negotiable or Transferable Instruments for Transfers to Third Parties:	
	Per violation	2,658
12 U.S.C. 1884	Violation of the Bank Protection Act	292
12 U.S.C. 1972(2)(F)	Violation of Provisions regarding Correspondent Accounts, Unsafe or Unsound Practices, or Breach of Fiduciary Duty:.	
	Tier 1	10,067
	Tier 2	50,334
	Tier 3	[2] 2,013,399
15 U.S.C. 78u–2(b)	Violations of Various Provisions of the Securities Act, the Securities Exchange Act, the Investment Company Act, or the Investment Advisers Act:	
	1st Tier (natural person)—Per violation	9,472
	1st Tier (other person)—Per violation	94,713
	2nd Tier (natural person)—Per violation	94,713
	2nd Tier (other person)—Per violation	473,566
	3rd Tier (natural person)—Per violation	189,427
	3rd Tier (other person)—Per violation	947,130
15 U.S.C. 1639e(k)	Violation of Appraisal Independence Requirements:	
	First violation	11,563
	Subsequent violations	23,125
42 U.S.C. 4012a(f)(5)	Flood Insurance:	
	Per violation	2,187

[1] The maximum penalty amount is per day, unless otherwise indicated.
[2] The maximum penalty amount for a federal savings association is the lesser of this amount or 1 percent of total assets.
[3] These amounts also apply to statutes that cross-reference 12 U.S.C. 1818, such as 12 U.S.C. 2804, 3108, 3349, 4309, and 4717 and 15 U.S.C. 1607, 1681s, 1691c, and 1692*l*.

Dated: December 18, 2018.

Bao Nguyen,

Acting Senior Deputy Comptroller and Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2018–27784 Filed 12–26–18; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 25 and 195

[Docket ID OCC–2018–0033]

RIN 1557–AE54

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R–1642]

RIN 7100–AF32

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AE97

Community Reinvestment Act Regulations

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint final rule; technical amendment.

SUMMARY: The OCC, the Board, and the FDIC (collectively, the Agencies) are amending their Community Reinvestment Act (CRA) regulations to adjust the asset-size thresholds used to define ''small bank'' or ''small savings association'' and ''intermediate small bank'' or ''intermediate small savings association.'' As required by the CRA regulations, the adjustment to the threshold amount is based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W).

DATES: *Effective Date:* January 1, 2019.

FOR FURTHER INFORMATION CONTACT:

OCC: Emily Boyes, Senior Attorney or Daniel Sufranski, Attorney, Chief Counsel's Office, (202) 649–5490; for persons who are deaf or hearing impaired, TTY, (202) 649–5597; or Vonda Eanes, Director for CRA and Fair Lending Policy, Compliance Risk Policy Division, (202) 649–5470, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Amal S. Patel, Counsel, (202) 912–7879, or Cathy Gates, Senior Project Manager, (202) 452–2099, Division of Consumer and Community Affairs; or Clinton N. Chen, Senior Attorney, (202) 452–3952, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

FDIC: Patience R. Singleton, Senior Policy Analyst, Supervisory Policy Branch, Division of Depositor and Consumer Protection, (202) 898–6859; or Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background and Description of the Joint Final Rule

The Agencies' CRA regulations establish CRA performance standards for small and intermediate small banks and savings associations. The CRA regulations define small and intermediate small banks and savings associations by reference to asset-size criteria expressed in dollar amounts, and they further require the Agencies to publish annual adjustments to these dollar figures based on the year-to-year change in the average of the CPI–W, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million. 12 CFR 25.12(u)(2), 195.12(u)(2), 228.12(u)(2), and 345.12(u)(2). This adjustment formula was first adopted for CRA purposes by the OCC, the Board, and the FDIC on August 2, 2005, effective September 1, 2005. 70 FR 44256 (Aug. 2, 2005). At that time, the Agencies noted that the CPI–W is also used in connection with other federal laws, such as the Home Mortgage Disclosure Act. *See* 12 U.S.C. 2808; 12 CFR 1003.2. On March 22, 2007, and effective July 1, 2007, the former Office of Thrift Supervision (OTS), the agency then responsible for regulating savings associations, adopted an annual adjustment formula consistent with that of the other federal banking agencies in its CRA rule previously set forth at 12 CFR part 563e. 72 FR 13429 (Mar. 22, 2007).

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[1] effective July 21, 2011, CRA rulemaking authority for federal and state savings associations was transferred from the OTS to the OCC, and the OCC subsequently republished, at 12 CFR part 195, the CRA regulations applicable to those institutions.[2] In addition, the Dodd-Frank Act transferred responsibility for supervision of savings and loan holding companies and their non-depository subsidiaries from the OTS to the Board, and the Board subsequently amended its CRA regulation to reflect this transfer of supervisory authority.[3]

The threshold for small banks and small savings associations was revised most recently in December 2017 and became effective January 1, 2018. 82 FR 61143 (Dec. 27, 2017). The current CRA regulations provide that banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than $1.252 billion are small banks or small savings associations. Small banks and small savings associations with assets of at least $313 million as of December 31 of both of the prior two calendar years and less than $1.252 billion as of December 31 of either of the prior two calendar years are intermediate small banks or intermediate small savings associations. 12 CFR 25.12(u)(1), 195.12(u)(1), 228.12(u)(1), and 345.12(u)(1). This joint final rule revises these thresholds.

During the 12-month period ending November 2018, the CPI–W increased by 2.59 percent. As a result, the Agencies are revising 12 CFR 25.12(u)(1), 195.12(u)(1), 228.12(u)(1), and 345.12(u)(1) to make this annual adjustment. Beginning January 1, 2019, banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than $1.284 billion are small banks or small savings associations. Small banks and small savings associations with assets of at least $321 million as of December 31 of both of the prior two calendar years and less than $1.284 billion as of December 31 of either of the prior two calendar years are intermediate small banks or intermediate small savings associations. The Agencies also publish current and historical asset-size thresholds on the website of the Federal Financial Institutions Examination Council at *http://www.ffiec.gov/cra/.*

Administrative Procedure Act and Effective Date

Under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find (and incorporate the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

The amendments to the regulations to adjust the asset-size thresholds for small and intermediate small banks and savings associations result from the application of a formula established by a provision in the respective CRA regulations that the Agencies previously published for comment. *See* 70 FR 12148 (Mar. 11, 2005), 70 FR 44256 (Aug. 2, 2005), 71 FR 67826 (Nov. 24, 2006), and 72 FR 13429 (Mar. 22, 2007). As a result, §§ 25.12(u)(1), 195.12(u)(1), 228.12(u)(1), and 345.12(u)(1) of the Agencies' respective CRA regulations are amended by adjusting the asset-size thresholds as provided for in §§ 25.12(u)(2), 195.12(u)(2), 228.12(u)(2), and 345.12(u)(2).

Accordingly, the Agencies' rules provide no discretion as to the computation or timing of the revisions to the asset-size criteria. For this reason, the Agencies have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary.

The effective date of this joint final rule is January 1, 2019. Under 5 U.S.C. 553(d)(3) of the APA, the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except, among other things, as provided by the agency for good cause found and published with the rule. Because this rule adjusts asset-size thresholds consistent with the procedural requirements of the CRA rules, the Agencies conclude that it is not substantive within the meaning of the APA's delayed effective date provision. Moreover, the Agencies find that there is good cause for dispensing with the delayed effective date requirement, even if it applied, because their current rules already provide notice that the small and intermediate small asset-size thresholds will be adjusted as of December 31 based on 12-month data as of the end of November each year.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking when a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the Agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) states that no

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] *See* OCC interim final rule, 76 FR 48950 (Aug. 9, 2011).

[3] *See* Board interim final rule, 76 FR 56508 (Sept. 13, 2011).

agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Agencies have determined that this final rule does not create any new, or revise any existing, collections of information pursuant to the Paperwork Reduction Act. Consequently, no information collection request will be submitted to the OMB for review.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), 2 U.S.C. 1532, requires the OCC to prepare a budgetary impact statement before promulgating any final rule for which a general notice of proposed rulemaking was published. As discussed above, the OCC has determined that the publication of a general notice of proposed rulemaking is unnecessary. Accordingly, this joint final rule is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 195

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 228

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

For the reasons discussed in the **SUPPLEMENTARY INFORMATION** section, 12 CFR parts 25 and 195 are amended as follows:

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2908, and 3101 through 3111.

■ 2. Section 25.12 is amended by revising paragraph (u)(1) to read as follows:

§ 25.12 Definitions.

* * * * *

(u) * * *

(1) *Definition. Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.284 billion. *Intermediate small bank* means a small bank with assets of at least $321 million as of December 31 of both of the prior two calendar years and less than $1.284 billion as of December 31 of either of the prior two calendar years.

* * * * *

PART 195—COMMUNITY REINVESTMENT

■ 3. The authority citation for part 195 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1814, 1816, 1828(c), 2901 through 2908, and 5412(b)(2)(B).

■ 4. Section 195.12 is amended by revising paragraph (u)(1) to read as follows:

§ 195.12 Definitions.

* * * * *

(u) * * *

(1) *Definition. Small savings association* means a savings association that, as of December 31 of either of the prior two calendar years, had assets of less than $1.284 billion. *Intermediate small savings association* means a small savings association with assets of at least $321 million as of December 31 of both of the prior two calendar years and less than $1.284 billion as of December 31 of either of the prior two calendar years.

* * * * *

Federal Reserve System

12 CFR Chapter II

For the reasons set forth in the **SUPPLEMENTARY INFORMATION** section, the Board of Governors of the Federal Reserve System amends part 228 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

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

Authority: 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 *et seq.*

■ 6. Section 228.12 is amended by revising paragraph (u)(1) to read as follows:

§ 228.12 Definitions.

* * * * *

(u) * * *

(1) *Definition. Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.284 billion. *Intermediate small bank* means a small bank with assets of at least $321 million as of December 31 of both of the prior two calendar years and less than $1.284 billion as of December 31 of either of the prior two calendar years.

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the **SUPPLEMENTARY INFORMATION** section, the Board of Directors of the Federal Deposit Insurance Corporation amends part 345 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 345—COMMUNITY REINVESTMENT

■ 7. The authority citation for part 345 continues to read as follows:

Authority: 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2908, 3103–3104, and 3108(a).

■ 8. Section 345.12 is amended by revising paragraph (u)(1) to read as follows:

§ 345.12 Definitions.

* * * * *

(u) * * *

(1) *Definition. Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.284 billion. *Intermediate small bank* means a small bank with assets of at least $321 million as of December 31 of both of the prior two calendar years and less than $1.284 billion as of December 31 of either of the prior two calendar years.

* * * * *

Dated: December 18, 2018.

Bao Nguyen,

Acting Senior Deputy Comptroller and Chief Counsel.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 17, 2018.

Ann E. Misback,

Secretary of the Board.

By order of the Board of Directors.

Dated at Washington, DC, this 13th day of December, 2018.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2018–27791 Filed 12–26–18; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 30

[Docket ID OCC–2018–0028]

RIN 1557–AE51

OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; Technical Amendments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final guidelines.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its enforceable guidelines relating to recovery planning standards for insured national banks, insured federal savings associations, and insured federal branches (Guidelines) by increasing the average total consolidated assets threshold for applying the Guidelines from $50 billion to $250 billion. In addition, the OCC is changing the Guidelines to decrease from 18 months to 12 months the time within which a bank should comply with the Guidelines after the bank becomes subject to them. Finally, the OCC is making technical amendments to remove outdated compliance dates.

DATES: The final guidelines are effective on January 28, 2019.

FOR FURTHER INFORMATION CONTACT: Andra Shuster, Senior Counsel or Rima Kundnani, Attorney, Chief Counsel's Office, (202) 649–5490; or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

The 2008 financial crisis provided valuable lessons about the need for financial institutions to have strong risk governance frameworks, including plans for how to respond to and recover from the financial effects of severe stress. This was particularly true for larger, more complex banks given the potential they pose for systemic risk. In response to these lessons, on September 29, 2016, the OCC published the Guidelines establishing minimum standards for recovery planning by insured national banks, insured federal savings associations, and insured federal branches of foreign banks (banks) with average total consolidated assets [1] equal to or greater than $50 billion (covered banks).[2] The Guidelines state that a recovery plan should identify (1) quantitative or qualitative indicators of the risk or existence of severe stress that reflect a covered bank's particular vulnerabilities and (2) a wide range of credible options that a covered bank could undertake in response to the stress to restore its financial strength and viability.

Under the Guidelines, a recovery plan should also address: (1) Procedures for escalating decision-making to senior management or the board of directors, (2) management reports, and (3) communication procedures. In addition, the Guidelines explain how a bank should calculate its average total consolidated assets and reserve the OCC's authority to apply the Guidelines to a bank below the $50 billion threshold if the agency determines a bank is highly complex or otherwise presents a heightened risk. Finally, the Guidelines set out phased-in compliance dates based on bank size.

II. Description of the Proposal, Comments Received, and Final Guidelines

The OCC received three comments on the proposal. One comment came from an individual, one from a trade association (Trade Association Comment), and the other from four regional national banks (Banks Comment).

Asset Threshold. The OCC noted in the **SUPPLEMENTARY INFORMATION** section of the Guidelines that large, complex institutions should undertake recovery planning to be able to respond quickly to and recover from the financial effects of severe stress on the institution. Based on its experience to date in reviewing recovery plans, the OCC believes that it is appropriate to raise the threshold for the Guidelines to focus on those institutions that present greater risk to the banking system. These larger, more complex, or potentially more interconnected banks present the types of risks that could benefit most from having the types of governance and planning processes that identify and assist in responding to significant stress events.

In addition, at the time the Guidelines were published, the $50 billion recovery planning threshold was consistent with the scope of Federal Deposit Insurance Corporation and Board of Governors of the Federal Reserve System regulations [3] that require certain entities to prepare resolution plans under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[4] On May 24, 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act (Act) was enacted to promote economic growth, provide tailored economic relief, and enhance consumer protections.[5] Section 401 of the Act raises from $50 billion to $250 billion the section 165 resolution planning threshold.

Accordingly, the OCC proposed to increase from $50 billion to $250 billion the average total consolidated assets threshold at which the Guidelines apply to banks.[6] This change would reduce the number of covered banks to which the Guidelines apply from 25 to 8, based on the most recent data available.

All three of the comments received addressed the threshold change. The individual commenter expressed concern that raising the Guidelines' asset threshold would provide too much leniency for banks in light of the 2008 financial crisis. The Trade Association Comment strongly supported the OCC's proposal to raise the threshold for the Guidelines from $50 billion to $250 billion in average total consolidated assets because it provides burden relief to the affected banks and permits the OCC to allocate its resources over a smaller number of banks. The Banks

[1] Average total consolidated assets is defined in the Guidelines and means the average total consolidated assets of the bank or covered bank as reported on the bank's or covered bank's Consolidated Reports of Condition and Income for the four most recent consecutive quarters. *See* 12 CFR part 30, appendix E, paragraph I.E.1.

[2] 81 FR 66791 (Sep. 29, 2016). The Guidelines were issued pursuant to section 39 of the Federal Deposit Insurance Act, 12 U.S.C. 1831p-1, which authorizes the OCC to prescribe enforceable safety and soundness standards.

[3] *See* 12 CFR 381.2(f) and 243.2(f), respectively. *See also* 12 CFR 360.10.

[4] Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

[5] Public Law 115–174, 132 Stat. 1296 (May 24, 2018).

[6] 83 FR 47313 (Sep. 19, 2018).

Comment suggested that the OCC replace the threshold with a risk-sensitive alternative that more accurately reflects a bank's business model and risk profile, like the systemic indicator score, which was described as a more useful and better-calibrated measure of the complexity and risk inherent in a bank's business model.

The OCC believes this threshold change is consistent with providing necessary and appropriate burden relief to the affected banks while retaining the requirements for the largest, most complex institutions. Furthermore, the increased threshold is consistent with section 401 of the Act's increase in the section 165 resolution planning threshold applicable to systemically important bank holding companies. Therefore, the OCC is adopting as final the proposed Guidelines' $250 billion average total consolidated assets threshold.

Tailoring Approach for Banks Subject to the Guidelines. Both the Trade Association Comment and the Banks Comment requested that the OCC consider a tailored approach to the application of the Guidelines to covered banks in order to focus recovery planning on issues that are most relevant to the bank based on its risk profile and business model. The trade association also requested that the OCC consider whether the Guidelines should be applicable to all covered banks given the varying degree of riskiness and complexity of these banks.

The Guidelines already recognize that each covered bank is unique and expressly permit a bank to tailor its recovery plan so that it is ''specific to that covered bank and appropriate for its individual size, risk profile, activities, and complexity, including the complexity of its organizational and legal entity structure.'' [7] Therefore, a covered bank that is less complex or has less risk may tailor its recovery plan under the Guidelines accordingly. Given this flexibility, the OCC does not think it is necessary to specifically tailor the Guidelines based on different business models and risk profiles of the covered banks nor do we think it is appropriate to further reduce the number of banks subject to the Guidelines. In fact, it may be even more important for a covered bank that is less complex or has less risk due to fewer interconnections to have a robust recovery plan. Such a bank may have identified fewer options for recovery and therefore may be constrained in its ability to restore financial strength in severe stress.

Biennial Cycle. Both the Trade Association Comment and the Banks Comment suggested that the OCC should consider moving from an annual to a biennial recovery plan cycle. The Trade Association Comment noted that as was the case with resolution planning, this would give the OCC more time to provide feedback and would give the covered banks more time to prepare the plans, likely resulting in a better quality plan. Both commenters also requested that the OCC allow each covered bank to elect the timing of its two-year recovery plan cycle. This would permit each bank to make a determination of whether or not to align the preparation of its recovery plan with the preparation of its resolution plan. Further, the Trade Association Comment requested that the OCC not require re-approval of the recovery plan by the board of directors if there has been no material change or event that has had a fundamental and major impact on the covered bank's recovery plan since the board previously approved the recovery plan.

The recovery plan and the recovery planning framework are important to a bank's safety and soundness and enterprise governance and, thus, the OCC believes that covered banks should review and revise the recovery plan as necessary at least annually. With regard to electing the timing of the recovery plan cycle, the preamble to the Guidelines noted that ''management should have flexibility to conduct its annual reviews on its preferred schedule'' and that ''OCC examiners will assess the appropriateness and adequacy of the covered bank's ongoing recovery planning process as part of the agency's regular supervisory activities . . . [to] provide covered banks with the flexibility they need.'' [8] In addition to this flexibility, the Guidelines already permit an appropriate committee of the board, rather than the entire board, to review and approve the recovery plan.[9] Therefore, no change has been made to this part of the Guidelines.

Transparency of Standards and Horizontal Review. The Trade Association Comment suggested that recovery planning standards should be more transparent in the future and that a supervisory horizontal review of recovery plans may be difficult and less meaningful given the differences in risk profiles and business models among the covered banks. The OCC believes that the current process, which includes discussion between the examiners and the covered banks, provides the necessary transparency for recovery planning standards. While other agencies may use horizontal review for resolution planning purposes, the OCC does not intend to use such reviews in connection with recovery planning.

Clarification for Banks under $250 Billion. The Trade Association Comment requested that the OCC immediately clarify that no recovery plans are expected of banks on or after January 1, 2019 if they do not meet the $250 billion average total consolidated assets threshold in order to avoid the significant and needless burden associated with preparing the recovery plan. Given that these revised final Guidelines will be effective in a short period of time, the OCC would not expect banks with less than $250 billion in average total consolidated assets to complete the annual process for review by management and review and approval by the board of their 2018 recovery plans or to begin preparing a 2019 recovery plan.

Compliance Date. Under the current Guidelines, a bank with less than $50 billion in average total consolidated assets that subsequently becomes a covered bank is required to comply with the Guidelines within 18 months. The OCC proposed amending this provision so that a bank that has less than $250 billion in average total consolidated assets on the effective date of the final rule and subsequently becomes a covered bank should comply with the Guidelines within 12 months. Based upon supervisory experience, the OCC has observed that 12 months is a sufficient period of time for any bank that becomes a covered bank to comply with the Guidelines. Finally, the OCC proposed technical amendments to remove the compliance dates listed in the current Guidelines, as the dates have all passed. The OCC did not receive any comments on these changes. Therefore, these amendments will be adopted as proposed.

Regulatory Analysis

Regulatory Flexibility Act

In general, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires that in connection with a rulemaking, an agency prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities. Under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and

[7] Appendix E to part 30, II.A. *See also* Comptroller's Handbook for Recovery Planning, version 1.0 April 2018 at p. 6.

[8] 81 FR 66797 (Sept. 29, 2016).

[9] Appendix E to part 30, III.B.

publishes its certification and a brief explanatory statement in the **Federal Register** along with its rule.

As part of its analysis, the OCC considered whether these revised final Guidelines will have a significant economic impact on a substantial number of small entities, pursuant to the RFA. Because these revised final Guidelines will generally have no impact on banks with less than $50 billion in total consolidated assets, no OCC-supervised small entities will be affected. Therefore, the OCC certifies that these revised final Guidelines will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995

These revised final Guidelines include changes to an approved collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). In accordance with the PRA, the OCC may not conduct or sponsor, and an organization is not required to respond to, an information collection unless the information collection displays a currently valid Office of Management and Budget (OMB) control number.

The OCC submitted the information collection requirements contained in the rule to the OMB at the proposed rule stage. Pursuant to 5 CFR 1320.11(c), the OMB filed a comment on the submission directing the OCC to examine any public comment in response to the information collection requirements, prepare a description of how the OCC has responded to the comments (including comments on maximizing the practical utility of the collection and minimizing the burden), and resubmit the information collection requirements in connection with these revised final Guidelines.

The Guidelines found in 12 CFR part 30, appendix E, sections II.B., II.C., and III contain information collection requirements previously approved by the OMB. Section II.B. specifies the elements of the recovery plan, including an overview of the covered bank; triggers; options for recovery; impact assessments; escalation procedures; management reports; and communication procedures. Section II.C. addresses the relationship of the plan to other covered bank processes and coordination with other plans, including the processes and plans of its bank holding company. Section III outlines management's and the board's responsibilities. The threshold triggering these requirements is being changed under these revised final Guidelines, resulting in a reduction in the number of respondents under this collection.

The following revised information collection was submitted to OMB for review.

Title: OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches

OMB Control No.: 1557–0333.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit organizations.

Burden Estimates:

Total Number of Respondents: 8 National Banks.

Total Burden per Respondent: 7,543 hours.

Total Burden for Collection: 60,344 hours.

Comments were invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the OCC's functions, including whether the information has practical utility; (2) the accuracy of the OCC's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. We received no comments on the proposed information collection.

Unfunded Mandates Reform Act of 1995

The OCC analyzed these revised final Guidelines under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether these revised final Guidelines include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted for inflation). The OCC has determined that these revised final Guidelines do not impose new mandates. Therefore, we conclude that these revised final Guidelines will not result in an expenditure of $100 million or more annually by State, local, and tribal governments, or by the private sector.

Effective Date

The Administrative Procedure Act (APA) requires that a substantive rule must be published not less than 30 days before its effective date, unless, among other things, the rule grants or recognizes an exemption or relieves a restriction. Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that regulations imposing additional reporting, disclosure, or other requirements on insured depository institutions take effect on the first day of the calendar quarter after publication of the final rule, unless, among other things, the agency determines for good cause that the regulations should become effective before such time. These revised final Guidelines will be effective 30 days after publication in the **Federal Register**, which meets the APA effective date requirements. Given that these revised final Guidelines do not impose any additional reporting, disclosure, or other requirements on insured depository institutions, but rather reduce reporting requirements, the effective date of 30 days after publication in the **Federal Register**, rather than the first day of the calendar quarter following publication, is consistent with RCDRIA.

Section 302 of RCDRIA also requires the OCC to consider, consistent with the principles of safety and soundness and the public interest, any administrative burdens these revised final Guidelines would place on insured depository institutions, including small depository institutions, and their customers as well as the benefits of such regulations when determining the effective date and administrative compliance requirements of new regulations that impose new reporting, disclosure, or other requirements on insured depository institutions. The OCC has considered the changes made by these revised final Guidelines and believes that the effective date of 30 days after publication in the **Federal Register** is appropriate.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act (12 U.S.C. 4809(a)), requires the OCC to use plain language in all proposed and final rules published after January 1, 2000. The OCC received no comment on these matters and believes that these revised final Guidelines are written plainly and clearly.

List of Subjects in 12 CFR Part 30

Banks, Banking, Consumer protection, National banks, Privacy, Safety and soundness, Reporting and recordkeeping requirements.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the preamble, and under the authority of 12 U.S.C. 93a and 12 U.S.C. 1831p–1, chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 30—SAFETY AND SOUNDNESS STANDARDS

■ 1. The authority citation for part 30 continues to read as follows:

Authority: 12 U.S.C. 1, 93a, 371, 1462a, 1463, 1464, 1467a, 1818, 1828, 1831p–1, 1881–1884, 3102(b) and 5412(b)(2)(B); 15 U.S.C. 1681s, 1681w, 6801, and 6805(b)(1).

■ 2. Appendix E to part 30 is amended by:

■ a. Removing the phrase ''$50 billion'' and adding in its place the phrase ''$250 billion'' everywhere that it appears;

■ b. Revising section I.B.1;

■ c. Removing section I.B.2 and I.B.3;

■ d. Redesignating section I.B.4 as section I.B.2;

■ e. In newly redesignated section I.B.2:

■ i. Removing ''January 1, 2017'' and adding in its place the words''January 28, 2019''; and

■ ii. Removing the phrase ''18 months'' and adding in its place the phrase ''12 months''.

The revision reads as follows:

Appendix E to Part 30—OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches

* * * * *

I. * * *

B. * * *

1. A covered bank with average total consolidated assets, calculated according to paragraph I.E.1. of this appendix, equal to or greater than $250 billion as of January 28, 2019 should be in compliance with this appendix on January 28, 2019.

* * * * *

Dated: December 18, 2018.

William A. Rowe,

Chief Risk Officer.

[FR Doc. 2018–27952 Filed 12–26–18; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No.FAA–2018–0918; Notice No. 23–291–SC]

Special Conditions: Innovative Solutions & Support, Inc.; Textron Aviation, Inc. Model B200-Series Airplanes; Autothrust Functions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Textron Aviation, Inc. B200-series airplanes. These airplanes as modified by Innovative Solutions & Support, Inc., will have a novel or unusual design feature associated with an autothrust system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: These special conditions are effective December 27, 2018.

FOR FURTHER INFORMATION CONTACT: Jeff Pretz, AIR–691, Regulations & Policy Section, Small Airplane Standards Branch, Policy & Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 901 Locust; Kansas City, Missouri 64106; telephone (816) 329–3239; facsimile (816) 329–4090; email *Jeff.Pretz@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On December 14, 2017, Innovative Solutions & Support, Inc. (Innovative Solutions), applied for a supplemental type certificate for installation of an autothrust system (ATS)—also known as an autothrottle system—in Textron Aviation, Inc., (Textron) B200-series airplanes. The B200-series airplanes are powered by two Pratt & Whitney PT6A turbo-propeller engines—depending on airplane model—that can carry thirteen passengers, including two flightcrew members. These airplanes have a service ceiling up to 35,000-feet and a maximum takeoff weight of up to 12,500 pounds in the normal category. These airplanes are approved for single-pilot operation.

The installation of an ATS in Textron B200-series airplanes is intended to reduce pilot workload. The ATS is useable in all phases of flight except below decision height on approach. The system includes torque control and airspeed modes along with monitors to prevent the system from exceeding critical engine or airspeed limits. Throttle movement is provided by a stepper motor acting through a linear actuator, which acts as a link between the stepper motor and throttle. The liner actuator can be overridden by pilot movement of the throttle and automatically disengages upon disagreement in the expected throttle position versus its actual position.

Section 23.1329, amendment 23–49, only contained requirements for automatic pilot systems that act on the airplane flight controls. Autothrust systems are automatic systems that act on the thrust controls. These systems provide enhanced automation and safety, but may also introduce pilot confusion, countering the safety benefit. Transport Airplane regulation 14 CFR 25.1329, amendment 25–119, addresses these concerns. Therefore, these special conditions are based on § 25.1329 and provide additional requirements to standardize the pilot interface and system behavior and enhance pilot awareness of system active and armed modes.

Type Certification Basis

Under the provisions of § 21.101, Innovative Solutions must show that B200-series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate (TC) No. A24CE [2] or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in TC No. A24CE are as follows: 14 CFR part 23, amendments 23–1 through 23–9, plus various later part 23 amendments—depending on the model and serial number of the airplane—as noted on Type Certification Data Sheet A24CE.

If the Administrator finds the applicable airworthiness regulations (*i.e.,* 14 CFR part 23) do not contain adequate or appropriate safety standards for B200-series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model(s) for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on

[2] *See http://rgl.faa.gov/.*

the same type certificate to incorporate the same or similar novel or unusual design feature, the FAA would apply these special conditions to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, B200-series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.101.

Novel or Unusual Design Features

Textron B200-series airplanes will incorporate the following novel or unusual design features:

Autothrust system, which provides commands to two linear actuators, one attached to each throttle lever, that automatically control thrust on each engine. The autothrust system can be operated in either Torque Control Mode or Airspeed Mode.

Discussion

The part 23 airworthiness regulations in the type certification basis do not contain appropriate safety standards for an ATS installation; hence, the need for special conditions. However, part 25 regulations contain appropriate airworthiness standards; therefore, these special conditions are derived from § 25.1329, amendment 25–119. Sections 23.143, amendment 23–50, and 23.1309, amendment 23–62, would be used instead of the corresponding part 25 regulations referenced in § 25.1329.

Discussion of Comments

Notice of proposed special conditions No. 23–18–03–SC for Textron B200-series airplanes was published in the **Federal Register** on October 26, 2018.[3] We received comments from two commenters.

An individual commenter requested that we clarify the wording of or include definitions for ''normal,'' rare-normal,'' and ''non-normal'' conditions to establish a clear intent relating to the probability of significant transients instead of using 14 CFR part 25 language. In support of this request, the commenter stated that because the special conditions do not define ''normal,'' ''rare-normal,'' and ''non-normal'' conditions in reference to allowable transients, this results in an undefined probability of ''non-fatal injuries'' as contained in the significant transient definition in paragraph 1(l)(2) of the proposed special condition.

We agree and clarify the terms ''normal,'' ''rare-normal,'' and ''non-normal'' in these special conditions. These terms are defined in Advisory Circular 25.1329–1C, ''Approval of Flight Guidance Systems.'' Retaining common terms and definitions—when possible—across product lines for standardization are beneficial to all stakeholders. We have added footnotes to the terms in the special conditions language to identify where the definitions may be found.

Another individual commenter supports these special conditions. However, the commenter requests specific information about the safety hazards.

Additional information about safety hazards and the considerations that should be made when conducting a safety assessment may also be found in Advisory Circular 25.1329–1C. We did not make any changes to the proposed special conditions based on this comment.

Except for the change previously discussed, these special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to Textron B200-series airplanes. Should Innovative Solutions apply at a later date for a supplemental type certificate to modify any other model included on TC No. A24CE to incorporate the same novel or unusual design feature, the FAA would apply these special conditions to that model as well.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the supplemental type certification date for the Textron Aviation B200 series airplanes is imminent, pursuant to 5 U.S.C. 553(d) the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44702, 44704, Pub. L. 113–53, 127 Stat. 584 (49 U.S.C. 44704) note.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Textron Aviation, Inc., B200-series airplanes, as modified by Innovative Solutions & Support, Inc.

1. Autothrottle System

In addition to the requirements of §§ 23.143, 23.1309, and 23.1329, the following apply:

(a) Quick disengagement controls for the autothrust functions must be provided for each pilot. The autothrust quick disengagement controls must be located on the thrust control levers. Quick disengagement controls must be readily accessible to each pilot while operating the thrust control levers.

(b) The effects of a failure of the system to disengage the autothrust functions when manually commanded by the pilot must be assessed in accordance with the requirements of § 23.1309.

(c) Engagement or switching of the flight guidance system, a mode, or a sensor may not cause the autothrust system to affect a transient response that alters the airplane's flight path any greater than a minor transient, as defined in paragraph 1(l)(1) of this section.

(d) Under normal conditions,[4] the disengagement of any automatic control function of a flight guidance system may not cause a transient response of the airplane's flight path any greater than a minor transient.

(e) Under rare normal and non-normal conditions,[5] disengagement of any automatic control function of a flight guidance system may not result in a transient any greater than a significant transient, as defined in paragraph 1(l)(2) of this section.

(f) The function and direction of motion of each command reference control, such as heading select or vertical speed, must be plainly indicated on, or adjacent to, each control if necessary to prevent inappropriate use or confusion.

(g) Under any condition of flight appropriate to its use, the flight guidance system may not produce

[3] *See* 83 FR 54057.

[4] Normal conditions are defined in Advisory Circular 25.1329–1C, Approval of Flight Guidance Systems. You may find a copy of this document at *http://rgl.faa.gov/*.

[5] Rare normal and non-normal conditions are defined in Advisory Circular 25.1329–1C, Approval of Flight Guidance Systems. You may find a copy of this document at *http://rgl.faa.gov/*.

hazardous loads on the airplane, nor create hazardous deviations in the flight path. This applies to both fault-free operation and in the event of a malfunction, and assumes the pilot begins corrective action within a reasonable period of time.

(h) When the flight guidance system is in use, a means must be provided to avoid excursions beyond an acceptable margin from the speed range of the normal flight envelope. If the airplane experiences an excursion outside this range, a means must be provided to prevent the flight guidance system from providing guidance or control to an unsafe speed.

(i) The flight guidance system functions, controls, indications, and alerts must be designed to minimize flight crew errors and confusion concerning the behavior and operation of the flight guidance system. Means must be provided to indicate the current mode of operation, including any armed modes, transitions, and reversions. Selector switch position is not an acceptable means of indication. The controls and indications must be grouped and presented in a logical and consistent manner. The indications must be visible to each pilot under all expected lighting conditions.

(j) Following disengagement of the autothrust function, a caution (visual and auditory) must be provided to each pilot.

(k) During autothrust operation, it must be possible for the flightcrew to move the thrust levers without requiring excessive force. The autothrust may not create a potential hazard when the flightcrew applies an override force to the thrust levers.

(l) For purposes of this section, a transient is a disturbance in the control or flight path of the airplane that is not consistent with response to flight crew inputs or environmental conditions.

(1) A minor transient would not significantly reduce safety margins and would involve flightcrew actions that are well within their capabilities. A minor transient may involve a slight increase in flight crew workload or some physical discomfort to passengers or cabin crew.

(2) A significant transient may lead to a significant reduction in safety margins, an increase in flight crew workload, discomfort to the flightcrew, or physical distress to the passengers or cabin crew, possibly including non-fatal injuries. Significant transients do not require, in order to remain within or recover to the normal flight envelope, any of the following:

(i) Exceptional piloting skill, alertness, or strength.

(ii) Forces applied by the pilot that are greater than those specified in § 23.143(c).

(iii) Accelerations or attitudes in the airplane that might result in further hazard to secured or non-secured occupants.

Issued in Kansas City, Missouri on December 17, 2018.

Pat Mullen,

Manager, Small Airplane Standards Branch, Aircraft Certification Service.

[FR Doc. 2018–28116 Filed 12–26–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0938; Product Identifier 2018–NE–36–AD; Amendment 39–19480; AD 2018–22–07]

RIN 2120–AA64

Airworthiness Directives; Engine Alliance Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Engine Alliance (EA) GP7270, GP7272, and GP7277 model turbofan engines. This AD requires inspection of the stage 6 seal ring for correct installation and inspection of the high-pressure compressor (HPC) stages 2–5 spool for cracks. This AD also requires replacement of the HPC stages 2–5 spool if the stage 6 seal ring is incorrectly installed or if the HPC stages 2–5 spool is found cracked. This AD was prompted by a shop finding of axial cracks in the interstage 5–6 seal teeth of the HPC stages 2–5 spool spacer arm, due to an incorrectly installed stage 6 seal ring. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 11, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 11, 2019.

We must receive comments on this AD by February 11, 2019.

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 Engine Alliance, 411 Silver Lane, East Hartford, CT 06118; phone: 800–565–0140; email: *help24@pw.utc.com;* website: *www.enginealliianceportal.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–2018–0938.

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–2018–0938; 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: Matthew Smith, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7735; fax: 781–238–7199; email: *Matthew.C.Smith@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We were informed about the discovery of axial cracks in the interstage 5–6 seal teeth of the HPC stages 2–5 spool spacer arm, due to an incorrectly installed stage 6 seal ring, in a GP7270 model turbofan engine. The incorrect installation of the stage 6 seal ring created a leakage path from the aft cavity to the forward cavity of the HPC stage 6 disk. This leakage elevated the

temperature in the cavity and adversely affected the material properties of the HPC stages 2–5 spool. This condition, if not addressed, could result in failure of the HPC stages 2–5 spool, an uncontained HPC stages 2–5 spool release, 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 EA Alert Service Bulletin (ASB) EAGP7–A72–395, Revision No. 2, dated August 2, 2018. The SB describes procedures for performing a borescope inspection of the installed HPC stages 2–5 spool for cracks, visual inspection of the stage 6 seal ring for correct installation, visual inspection of the interstage 5–6 seal teeth for damage, and removal and replacement of parts if damage or defects are found that are outside serviceable limits, within the identified cycles. 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 inspection of the stage 6 seal ring for correct installation and inspection of the HPC stages 2–5 spool for cracks. This AD also requires removal and replacement of the HPC stages 2–5 spool if the stage 6 seal ring is incorrectly installed or the interstage 5–6 seal teeth are found cracked.

FAA's Justification and Determination of the Effective Date

No domestic operators use this product. Therefore, we find good cause that notice and opportunity for prior public comment are unnecessary. In addition, for the reason 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–2018–0938 and Product Identifier 2018–NE–36–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 zero 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
Borescope inspection of stage 6 seal ring and interstage 5–6 seal teeth forward and aft faces only.	4 work-hours × $85 per hour = $340	$0	$340	$0

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of HPC stages 2 to 5 spool	8 work-hours × $85 per hour = $680	$346,540	$347,220

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):

AD 2018–22–07 Engine Alliance: Amendment 39–19480; Docket No. FAA–2018–0938; Product Identifier 2018–NE–36–AD.

(a) Effective Date

This AD is effective January 11, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Engine Alliance (EA) GP7270, GP7272, and GP7277 model turbofan engines.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a shop finding of axial cracks in the interstage 5–6 seal teeth of the high-pressure compressor (HPC) stages 2–5 spool spacer arm, due to an incorrectly installed stage 6 seal ring. We are issuing this AD to prevent failure of the HPC stage 5–6 seal teeth and uncontained HPC stages 2–5 spool release. The unsafe condition, if not addressed, could result in an uncontained failure of the HPC stages 2–5 spool, 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

(1) Borescope inspect the stage 6 seal ring location in accordance with the Accomplishment Instructions, paragraph 1.F, in EA Alert Service Bulletin (ASB) EAGP7–A72–395, Revision No. 2, dated August 2, 2018, and within the compliance times specified in Table 1 to paragraph (g) of this AD. If the stage 6 seal ring is incorrectly installed, remove the HPC stages 2–5 spool from service within 50 cycles and replace with a part eligible for installation.

(2) Borescope inspect the interstage 5–6 seal tooth aft face and interstage 5–6 forward face for cracks and missing coating in accordance with the Accomplishment Instructions, paragraphs 2.C and 2.E, in EA ASB EAGP7–A72–395, Revision No. 2, dated August 2, 2018, and within the compliance times specified in Table 1 to paragraph (g) of this AD.

(i) If coating is missing on the interstage 5–6 seal tooth forward or aft faces, repeat the borescope inspection required by paragraph (g)(2) of this AD for cracks every 150 cycles.

(ii) If cracks are found in the interstage 5–6 seal tooth forward or aft faces, remove the HPC stages 2–5 spool from service and replace with a part eligible for installation before further flight.

Table 1 to Paragraph (g) of this AD – Compliance Times

Cycles Since New (CSN) on HPC Stages 2-5 Spool as of the effective date of this AD	Complete the Inspection
2499 or less	Within 900 cycles after the effective date of this AD, not to exceed 2,850 CSN
2500 to 3499	Within 350 cycles after the effective date of this AD, not to exceed 3.600 CSN
3500 or more	Within 100 cycles after the effective date of this AD

(h) 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 (i) 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.

(i) Related Information

For more information about this AD, contact Matthew Smith, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7735; fax: 781–238–7199; email: *Matthew.C.Smith@faa.gov*.

(j) Material Incorporated by Reference

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

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

(i) Engine Alliance (EA) Alert Service Bulletin EAGP7–A72–395, Revision No. 2, dated August 2, 2018.

(ii) [Reserved]

(3) For EA service information identified in this AD, contact Engine Alliance, 411 Silver Lane, East Hartford, CT 06118; phone: 800–565–0140; email: *help24@pw.utc.com*; website: *www.enginealliianceportal.com*.

(4) You may view this service information at 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.

(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 December 19, 2018.

Robert J. Ganley,

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

[FR Doc. 2018–27926 Filed 12–26–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0711; Product Identifier 2018–NM–062–AD; Amendment 39–19533; AD 2018–26–03]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 757–200 series airplanes. This AD was prompted by reports of uncommanded movement of the captain's and first officer's seats. This AD requires, for the captain's and first officer's seats, repetitive horizontal actuator identifications, repetitive checks of the horizontal movement system (HMS), a detailed inspection of the HMS, as applicable, and applicable on-condition actions. This AD also requires a general visual inspection to determine the seat part numbers of the captain's and first officer's seats, a cable adjustment check on seats with certain seat part numbers, and applicable on-condition actions. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 31, 2019.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 31, 2019.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0711.

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–2018–0711; 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 address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Myra Kuck, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5316; fax: 562–627–5210; email: *myra.j.kuck@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 757–200 series airplanes. The NPRM published in the **Federal Register** on August 16, 2018 (83 FR 40710). The NPRM was prompted by reports of uncommanded movement of the captain's and first officer's seats. The NPRM proposed to require, for the captain's and first officer's seats, repetitive horizontal actuator identifications, repetitive checks of the HMS, a detailed inspection of the HMS, as applicable, and applicable on-condition actions. The NPRM also proposed to require a general visual inspection to determine seat part numbers of the captain's and first officer's seats, a cable adjustment check on seats with certain seat part numbers, and applicable on-condition actions.

Comments

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

Support for the NPRM

Air Line Pilots Association, International (ALPA) stated its support for the NPRM. United Airlines stated that it has no technical objections to the NPRM.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing (APB) stated that the installation of winglets per Supplemental Type Certificate (STC) ST01518SE does not affect the accomplishment of the manufacturer's service instructions.

We agree with APB that STC ST01518SE does not affect the accomplishment of the manufacturer's service instructions. Therefore, the installation of STC ST01518SE does not affect the ability to accomplish the actions required by this AD. We have not changed this AD in this regard.

Request To Add Airplane Models to Applicability

Delta Air Lines (DAL) requested that the FAA consider expanding the applicability of the proposed AD to address all affected fleets that share the identified unsafe condition, or consider requiring effectivity at the manufacturer part number. DAL reasoned that expanding the applicability of the proposed AD to include all affected airplane models or affected manufacturer part numbers would ease the burden on operators by allowing them to forgo commenting on multiple proposed fleet ADs and processing separate AD-related service information by individual fleet type. DAL pointed out that this would greatly assist operators with implementation for operators that share the same affected part number among different affected fleets.

We disagree with the commenter's request. Not all of the service information for all affected airplane models is available, and we do not agree to delay issuance of this AD until new service information is released. Moreover, adding airplanes to the applicability would necessitate (under the provisions of the Administrative Procedure Act) reissuing the notice,

reopening the comment period, considering additional comments subsequently received, and eventually issuing a final rule. In consideration of the urgency of the unsafe condition identified in this final rule, we have determined that delay of this final rule is not appropriate. However, we might consider further rulemaking on this issue. We have not changed this AD in this regard.

Request To Establish Predetermined Interval for Performing Service Information

Air Astana Airlines commented that although its Boeing Model 767 fleet is not affected by Boeing Special Attention Service Bulletin 757–25–0308, Revision 1, dated June 7, 2018, Boeing Special Attention Service Bulletin 757–25–0309, Revision 1, dated July 2, 2018, or the proposed AD, its fleet is affected by similar Boeing Service Bulletin 767–25–0549. The commenter stated that it would be useful to perform this inspection at a predetermined interval.

We acknowledge Air Astana Airlines' recommendation, and we infer that the commenter is asking whether Boeing Service Bulletin 767–25–0549 will be mandated by an AD. We may consider issuing similar rulemaking for other Boeing airplanes using seats in the flight deck that have the same actuators identified in this final rule. We have not changed this AD in this regard.

Request To Clarify Relationship of Seat Actuators Between Different Airplane Models

Boeing explained that the relationship of seat actuators among the Boeing Model 757, 767, and 777 fleet is inaccurate in the ''Discussion'' section. Boeing points out that the seat actuators are the same among the Boeing Model 757, 767, and 777 airplanes, not necessarily the seats themselves.

We agree that the description provided by the commenter is more accurate. Since that section of the preamble does not reappear in the final rule, however, we have not changed the final rule regarding this issue.

Request for Alternative Compliance Method

DAL requested that paragraph (g) of the proposed AD be revised to explicitly allow the seats in the flight compartment to be removed prior to performing the requirements of paragraph (g) of the proposed AD. We infer from the comment that DAL contends that Boeing Special Attention Service Bulletin 757–25–0308, Revision 1, dated June 7, 2018, appears to specify that the detailed inspection of the captain's seat HMS can be performed only in the flight compartment. DAL pointed out that removing the seats and performing the detailed inspection in a dedicated shop would increase the level of safety by improving the inspection conditions.

We disagree with the request to revise paragraph (g) of the proposed AD. We note that the seat removal step, which is Step 1, Part 1, of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–25–0308, Revision 1, dated June 7, 2018, is exempt from Required for Compliance (RC) steps, meaning that the RC requirement does not apply to this step in accordance with the provisions of paragraph (j)(4) of this AD. The detailed inspection of the captain's seat HMS as specified in Part 1 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–25–0308, Revision 1, dated June 7, 2018, may be accomplished either in the flight compartment or on a suitable test fixture in a dedicated shop or other appropriate location. Additionally, the service information referenced within Part 1 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–25–0308, Revision 1, dated June 7, 2018, allows for the detailed inspection to be completed on the aircraft or on a test fixture in a dedicated shop or other appropriate location, such as the one suggested by DAL. We have not changed this AD in this regard.

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Special Attention Service Bulletin 757–25–0308, Revision 1, dated June 7, 2018. This service information describes procedures for repetitive horizontal actuator identifications, repetitive checks of the HMS, a detailed inspection of the HMS, as applicable, and applicable on-condition actions. On-condition actions include an overhaul of the HMS and checks of the HMS.

We reviewed Boeing Special Attention Service Bulletin 757–25–0309, Revision 1, dated July 2, 2018. This service information describes procedures for a general visual inspection to determine the seat part numbers on the captain's and first officer's seats, and, for seats with certain part numbers, a manual override cable adjustment check of the captain's and first officer's seats, and applicable on-condition actions. On-condition actions include moving the adjustment nut, tightening the lock nut, and readjusting the control lever.

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

Costs of Compliance

We estimate that this AD affects 17 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Identification/ Check.	Up to 11 work-hours × $85 per hour = $935 per identification/ check cycle.	Up to $4,820	Up to $5,755 per identification/ check cycle.	Up to $97,835 per identification/ check cycle.
Inspection	Up to 1 work-hour × $85 per hour = $85.	$0	Up to $85	Up to $1,445.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Certain configurations of captain's and first officer's seats may require special tooling to align the seats. Special tooling for one set of captain's and first officer's seats will cost $22,000, and a certain other set will cost $23,000. If an operator owns both combinations of seats, the special tooling will cost up to $45,000 per operator.

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 transport category airplanes and associated appliances to the Director of the System Oversight 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):

2018–26–03 The Boeing Company: Amendment 39–19533; Docket No. FAA–2018–0711; Product Identifier 2018–NM–062–AD.

(a) Effective Date

This AD is effective January 31, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 757–200 series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Unsafe Condition

This AD was prompted by reports of uncommanded movement of the captain's and first officer's seats. We are issuing this AD to address the uncommanded movement of the captain's or first officer's seat, which could lead to reduced controllability of the airplane.

(f) Compliance

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

(g) Identification, Check, Inspection, On-Condition Actions (Includes Overhaul of Horizontal Movement System), and Repetitive Actions

For airplanes identified in Boeing Special Attention Service Bulletin 757–25–0308, Revision 1, dated June 7, 2018: Except as required by paragraph (h) of this AD, at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 757–25–0308, Revision 1, dated June 7, 2018, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–25–0308, Revision 1, dated June 7, 2018.

(h) Exceptions to Service Information Specifications

For purposes of determining compliance with the requirements of this AD: Where Boeing Special Attention Service Bulletin 757–25–0308, Revision 1, dated June 7, 2018, uses the phrase ''the original issue date of this service bulletin,'' this AD requires using ''the effective date of this AD.''

(i) Seat Inspection, Adjustment Check for Certain Seats, and On-Condition Actions

For airplanes identified in Boeing Special Attention Service Bulletin 757–25–0309, Revision 1, dated July 2, 2018: Within 36 months after the effective date of this AD, do all applicable actions identified as RC in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–25–0309, Revision 1, dated July 2, 2018. A review of the airplane maintenance records may be used for the seat inspection if the part number can be conclusively determined from that review.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(4) For service information that contains steps that are labeled as RC, the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is

labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

For more information about this AD, contact Myra Kuck, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5316; fax: 562–627–5210; email: *myra.j.kuck@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Boeing Special Attention Service Bulletin 757–25–0308, Revision 1, dated June 7, 2018.

(ii) Boeing Special Attention Service Bulletin 757–25–0309, Revision 1, dated July 2, 2018.

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

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

(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 Des Moines, Washington on December 13, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–27886 Filed 12–26–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

17 CFR Parts 404 and 449

Disclosure Update

AGENCY: Office of the Assistant Secretary for Financial Markets, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (Treasury) is issuing this final rule to amend certain regulations issued under the Government Securities Act of 1986 (GSA). Treasury's recordkeeping and reporting requirements for registered government securities brokers and dealers cross-reference existing Securities and Exchange Commission (SEC) regulations, with modifications. The SEC recently amended certain of its disclosure requirements that may have become redundant, duplicative, overlapping, outdated, or superseded as a result of changes to U.S. Generally Accepted Accounting Principles (U.S. GAAP). The technical amendments to the Treasury recordkeeping rules and Form G–405, referenced in the regulations, conform to SEC amendments regarding the reporting of extraordinary gains and losses, the cumulative effect of changes in accounting principles, and comprehensive income on the annual reports and Form X–17A–5 (Financial and Operational Combined Uniform Single Report or ''FOCUS Report'').

DATES: This final rule is effective January 1, 2019.

ADDRESSES: This final rule is available at *http://www.treasurydirect.gov* and *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Lori Santamorena, Executive Director, or Kevin Hawkins, Associate Director, Department of the Treasury, Bureau of the Fiscal Service, Government Securities Regulations Staff, (202) 504–3632 or email us at *govsecreg@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The GSA requires the Secretary of the Treasury to adopt rules with respect to transactions in government securities effected by government securities brokers and dealers in the areas of financial responsibility, protection of investor securities and funds, recordkeeping, reporting, and audit. The regulatory framework established by the GSA requires the Secretary in promulgating these rules to ''consider the sufficiency and appropriateness of then existing law and rules applicable'' to government securities brokers and dealers.[1] In issuing the final GSA rules, Treasury considered existing regulation with a view toward preventing overly burdensome and duplicative regulation.[2] Treasury's GSA rules therefore generally provide that compliance by registered government securities brokers and dealers with certain applicable SEC rules constitutes compliance with the GSA rules. Treasury seeks to maintain consistency, where practical, with parallel rules that have been adopted or amended by the SEC for registered brokers and dealers.

Treasury's recordkeeping rules in part 404 (Recordkeeping and Preservation of Records), and the reporting requirements in part 405 (Reports and Audit) for registered government securities brokers and dealers, cross-reference existing SEC regulations, with modifications. The format of reporting under the GSA regulations in part 405 is also substantially similar to that required pursuant to SEC rules. Sections 17 CFR 405.2 and 449.5 of the GSA regulations require that registered government securities brokers and dealers use Form G–405 (Report on Finances and Operations of Government Securities Brokers and Dealers, or the ''FOGS Report'') to make the required monthly, quarterly and annual financial reports to the SEC or to their self-regulatory organization.

Treasury adopted the FOGS Report in 17 CFR 449.5 of the GSA regulations based on the SEC's FOCUS Report. Registered government securities brokers and dealers are required to file financial reports which include information on their assets, liabilities, liquid capital, total haircuts, and ratio of liquid capital to total haircuts, among other items, on the FOGS Report.

II. Analysis

Certain SEC rules contain accounting and disclosure requirements including U.S. GAAP accounting standards. The SEC periodically reviews and amends its disclosure requirements to eliminate rules that become redundant, duplicative, or overlapping as the Financial Accounting Standards Board (FASB) updates U.S. GAAP.

In keeping with this practice, on August 17, 2018, the SEC amended several of its disclosure requirements related to information that is addressed by more recently updated U.S. GAAP requirements.[3] This included amendments regarding the reporting of

[1] Public Law 99–571, 100 Stat. 3208 (1986).

[2] 52 FR 27910 (July 24, 1987).

[3] Securities Act Release No. 33–10532, Disclosure Update and Simplification, retrieved from *https://www.sec.gov/rules/final/2018/33–10532.pdf.*

extraordinary gains or losses, the cumulative effect of changes in accounting principles, and comprehensive income on the annual reports required by paragraph (d) of the Securities Exchange Act Rule 17a–5 and Parts II, IIA, IIB, and III of the FOCUS Report.

Various SEC disclosure requirements and forms, including the FOCUS Report, that referred only to an income statement (or similar term) were no longer consistent with U.S. GAAP because the FASB replaced the income statement with the statement of comprehensive income.[4] In contrast to net income, which does not include some changes in equity, comprehensive income includes all non-owner changes to equity.

To update its disclosure requirements regarding the annual reports and the FOCUS Report, the SEC's references to ''income statement'' or ''statement of income'' are supplemented by ''statement of comprehensive income.''[5]

As a result of the SEC's amendments regarding the reporting of comprehensive income on the annual reports and FOCUS Report, Treasury determined that it is necessary to make conforming changes to certain rules and financial reports that registered government securities brokers and dealers are required to file.

17 CFR 404.2 incorporates language from Securities Exchange Act Rule 17h–1T, with modifications. Treasury is amending 17 CFR 404.2 by adding the same note contained in the SEC's Rule 17h–1T amendment. The SEC amended Rule 17h–1T (Risk assessment recordkeeping requirements for associated persons of brokers and dealers) by adding a note indicating that statements of comprehensive income must be included in place of income statements, if required by the applicable generally accepted accounting principles.

Treasury is amending the FOGS Report by inserting new line items for reporting comprehensive income or loss when required by U.S. GAAP and eliminating line items for reporting extraordinary gains and losses and the cumulative effect of changes in accounting principles. The general instructions to Parts II and IIA of the FOGS Report will also be amended to reflect these changes.

III. Effective Date

The amendments to 17 CFR 404.2 and the FOGS Report become effective January 1, 2019, and apply to FOGS Reports covering reporting periods ending after December 31, 2018.[6] Treasury has consulted with staff from the SEC and the Financial Industry Regulatory Authority (FINRA) regarding the implementation of the form changes. Treasury understands that FINRA will make available the amended FOGS Report to its members that are registered government securities brokers and dealers. Copies of the FOGS Report may also be obtained by downloading the form from the *TreasuryDirect.gov* website.

IV. Special Analysis

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action for purposes of Executive Order 12866.

Because the final rule makes no substantive change to the existing rules and imposes no additional reporting requirements, we find under 5 U.S.C. 553(b)(B) that there is good cause that notice and public procedures are unnecessary, and that the rule can be issued in final form. For the same reasons, we find that a delayed effective date is unnecessary and good cause exists pursuant to 5 U.S.C. 553(d)(3) to issue the rule with less than a 30-day delay.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. These amendments reflect Treasury's continuing interest in meeting its informational needs while minimizing the cost and burden on those entities affected by the regulations.

The amendments to 17 CFR 404.2 and the FOGS Report collectively affect approximately two government securities brokers and dealers who must file periodic reports with the SEC and FINRA, based on the number of registered government securities brokers and dealers who filed these financial reports in September 2018. Treasury shares the SEC's belief that respondents currently provide information in response to U.S. GAAP or other SEC disclosure requirements that have been updated more recently, rather than the superseded requirements covered by the amendments. As a result, we do not believe that these amendments would result in a change to respondents' overall paperwork burden.

List of Subjects in 17 CFR Parts 404 and 449

Banks, banking, Brokers, Government securities, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, 17 CFR parts 404 and 449 are amended as follows:

PART 404—RECORDKEEPING AND PRESERVATION OF RECORDS

■ 1. The authority citation for part 404 continues to read as follows;

Authority: 15 U.S.C. 78o–5(b)(1)(B), (b)(1)(C), (b)(2), (b)(4).

■ 2. Amend § 404.2 by adding Note 1 to Paragraph (v) of the quoted text in paragraph (b)(4) to read as follows:

§ 404.2 Records to be made and kept current by registered government securities brokers and dealers; records of non-resident registered government securities brokers and dealers.

* * * * *

(b) * * *

(4) * * *

''(v) * * *

Note 1 to paragraph 240.17h–1T(a)(1)(v). Statements of comprehensive income (as defined in 17 CFR 210.1–02) must be included in place of income statements, if required by the applicable generally accepted accounting principles.

* * * * *

[4] *See* ASU No. 2011–05, *Comprehensive Income (Topic 220): Presentation of Comprehensive Income.* As defined in the FASB's *Accounting Standards Codification* (ASC), comprehensive income is the change in equity of a business entity during the period from transactions and other events and circumstances from nonowner sources.

[5] The FASB also eliminated the concept of extraordinary items from U.S. GAAP noting that preparers found it ambiguous, unnecessary, and rarely used. The FASB noted that eliminating the concept would save time and reduce costs for preparers while alleviating uncertainty for preparers, auditors, and regulators. The FASB also eliminated from U.S. GAAP the requirement to report cumulative effect of a change in accounting principle in the income statement. U.S. GAAP now requires, unless impracticable or otherwise provided for in a newly issued accounting standards update, retrospective application of a change in accounting principle to all prior periods, with the cumulative effect reported in the opening balance of retained earnings for the earliest period presented.

[6] The January 1, 2019 effective date aligns with SEC staff's no-action relief regarding the effective date of the SEC's changes to its FOCUS Report. *See* SEC No Action Letter, *Implementation of Effective Date of Disclosure Update and Simplification Adopting Release for Broker-Dealer Reports* (October 29, 2018).

PART 449—FORMS, SECTION 15C OF THE SECURITIES EXCHANGE ACT OF 1934

■ 3. The authority citation for part 449 continues to read as follows;

Authority: 15 U.S.C. 78o–5(a), (b)(1)(B), (b)(4).

■ 4. Amend Form G–405 Part II (FOGS Report) (referenced in § 449.5):
■ a. Under the heading ''Statement of Financial Condition'' by revising paragraph 29, redesignating paragraphs 29.E and F as paragraphs 29.F and G, respectively, and adding a new paragraph 29.E; and
■ b. By revising the heading ''Statement of Income (Loss)'' and under that heading, revising the subheading ''Net Income'', reserving paragraphs 31, 31.A and 32, revising paragraph 33, redesignating paragraph 34 as paragraph 36, adding new paragraph 34 and paragraphs 34.A and 35, and revising newly redesignated paragraph 36.

The revisions and additions read as follows:

Note: The text of Form G–405 Part II does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM G–405

REPORT ON FINANCES AND OPERATIONS OF GOVERNMENT SECURITIES BROKERS AND DEALERS

PART II 11

* * * * *

STATEMENT OF FINANCIAL CONDITION

* * * * *

29. * * *

E. Accumulated other comprehensive income _____1797

F. Total _____1795

G. Less capital stock in treasury (_____)1796

* * * * *

STATEMENT OF INCOME (LOSS) or STATEMENT OF COMPREHENSIVE INCOME (as Defined in § 210.1–02 of Regulation S–X), as Applicable

* * * * *

NET INCOME/COMPREHENSIVE INCOME

* * * * *

31. [RESERVED]

A. [RESERVED]

32. [RESERVED]

33. Net income (loss) after Federal income taxes $ _____ 4230

34. Other comprehensive income (loss) _____ 4226

A. After Federal income taxes of _____ 4227

35. Comprehensive income (loss) $ _____ 4228

MONTHLY INCOME

36. Income (current month only) before provision for Federal income taxes $ _____ 4211

* * * * *

■ 5. Amend the Form G–405 Part II (FOGS Report) (referenced in § 449.5) General Instructions by:
■ a. Revising the heading ''Statement of Income (Loss)'' and removing from under that heading the subheadings ''Extraordinary Items'' and ''Effect of Changes in Accounting Principles'' and their related text; and
■ b. Revising under the heading ''Statement of Changes in Ownership Equity (Sole Proprietorship, Partnership or Corporation)'' the text related to the subheading ''Net Income (Loss) For Period.''

The revisions read as follows:

Note: The text of Form G–405 Part II General Instructions does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM G–405, PART II

REPORT ON FINANCES AND OPERATIONS OF GOVERNMENT SECURITIES BROKERS AND DEALERS GENERAL INSTRUCTIONS

* * * * *

STATEMENT OF INCOME (LOSS) or STATEMENT OF COMPREHENSIVE INCOME (as Defined in § 210.1–02 of Regulation S–X), as Applicable

If there are no items of other comprehensive income in the period presented, the broker or dealer is not required to report comprehensive income.

* * * * *

STATEMENT OF CHANGES IN OWNERSHIP EQUITY

(SOLE PROPRIETORSHIP, PARTNERSHIP OR CORPORATION)

* * * * *

Net Income (Loss) for Period

Report the amount of net income (loss) for the period reported on the Statement of Income (Loss) or Statement of Comprehensive Income, as applicable.

* * * * *

■ 6. Amend Form G–405 Part IIA (FOGS Report) (referenced in § 449.5) by:
■ a. Revising under the heading ''Statement of Financial Condition for Noncarrying, Nonclearing and Certain other Government Securities Brokers or Dealers'' paragraph 23 by redesignating current paragraphs 23.E and F as paragraphs 23.F and G, respectively and adding a new paragraph 23.E; and
■ b. Revising the heading ''Statement of Income (Loss)'' and under that heading, revising the subheading ''Net Income'', removing and reserving paragraphs 19, 19.A and 20, revising paragraph 21, redesignating current paragraph 22 as paragraph 24, adding new paragraph 22 and paragraphs 22.A and 23, and revising newly redesignated paragraph 24.

The revisions and additions read as follows:

Note: The text of Form G–405 Part IIA does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM G–405

REPORT ON FINANCES AND OPERATIONS OF GOVERNMENT SECURITIES BROKERS AND DEALERS

PART IIA 12

* * * * *

STATEMENT OF FINANCIAL CONDITION FOR NONCARRYING, NONCLEARING AND CERTAIN OTHER GOVERNMENT SECURITIES BROKERS OR DEALERS

* * * * *

23. * * *

E. Accumulated other comprehensive income _____1797

F. Total __1795

G. Less capital stock in treasury 16 (__)1796

* * * * *

STATEMENT OF INCOME (LOSS) or STATEMENT OF COMPREHENSIVE INCOME (as Defined in § 210.1–02 of Regulation S–X), as Applicable

* * * * *

NET INCOME/COMPREHENSIVE INCOME

* * * * *

19. [RESERVED]

a. [RESERVED]

20. [RESERVED]

21. Net income (loss) after Federal income taxes $ _____ 4230

22. Other comprehensive income (loss) _____ 4226

a. After Federal income taxes of _____ 4227

23. Comprehensive income (loss) $ _____ 4228

MONTHLY INCOME

24. Income (current month only) before provision for Federal income taxes $ _____ 4211

* * * * *

■ 7. Amend the General Instructions to Form G–405 Part IIA (FOGS Report) (referenced in § 449.5) by:

■ a. Revising the heading ''Statement of Income (Loss)'' and removing from under that heading paragraphs 19 and 20; and

■ b. Revising under the heading ''Statement of Changes in Ownership Equity (Sole Proprietorship, Partnership or Corporation)'' the text related to the subheading ''Net Income (Loss) For Period.''

The revisions read as follows:

Note: The text of Form G–405 Part IIA General Instructions does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM G–405, PART IIA

REPORT ON FINANCES AND OPERATIONS OF GOVERNMENT SECURITIES BROKERS AND DEALERS

GENERAL INSTRUCTIONS

* * * * *

STATEMENT OF INCOME (LOSS) or STATEMENT OF COMPREHENSIVE INCOME (as Defined in § 210.1–02 of Regulation S–X), as Applicable

If there are no items of other comprehensive income in the period presented, the broker or dealer is not required to report comprehensive income.

* * * * *

STATEMENT OF CHANGES IN OWNERSHIP EQUITY

(SOLE PROPRIETORSHIP, PARTNERSHIP OR CORPORATION)

* * * * *

Net Income (Loss) For Period

Report the amount of net income (loss) for the period reported on the Statement of Income (Loss) or Statement of Comprehensive Income, as applicable.

* * * * *

■ 8. Amend the Form G–405 Part III (FOGS Report) (referenced in § 449.5) by revising under the heading ''Oath or Affirmation'' checkbox (c) to read as follows:

Note: The text of Form G–405 Part III does not, and this amendment will not, appear in the Code of Federal Regulations.

ANNUAL AUDITED REPORT

FORM G–405 PART III

* * * * *

OATH OR AFFIRMATION

* * * * *

☐ (c) Statement of Income (Loss) or, if there is other comprehensive income in the period(s) presented, a Statement of Comprehensive Income (as defined in § 210.1–02 of Regulation S–X).

* * * * *

Brian Smith,

Deputy Assistant Secretary for Federal Finance.

[FR Doc. 2018–28051 Filed 12–26–18; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. FDA–2017–F–2130]

Food Additives Permitted in Feed and Drinking Water of Animals; Formic Acid

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations for a required labeling statement for use of formic acid in complete feed for swine and poultry. This action is being taken to improve the accuracy and clarity of the regulations.

DATES: This rule is effective December 27, 2018.

FOR FURTHER INFORMATION CONTACT: Chelsea Trull, Center for Veterinary Medicine (HFV–224), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6729, *chelsea.trull@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is amending the food additive regulations for a required labeling statement in 21 CFR 573.480 *Formic acid* for use of formic acid in complete feed for swine and poultry. In error, we did not revise all parts of the regulation necessary to reflect the approval of BASF Corp.'s FAP 2301 (83 FR 20, January 2, 2018). These revisions are entirely within the approved conditions of use of formic acid under FAP 2301. This action is being taken to improve the accuracy and clarity of the regulations.

Publication of this document constitutes final action under the Administrative Procedures Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment to the regulations provides only technical changes to correct an inaccurate statement and is nonsubstantive.

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and the Public Health Service Act, and under the authority delegated to the Commissioner of Food and Drugs, 21 CFR part 573 is amended as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

■ 1. The authority citation for part 573 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

§ 573.480 [Amended]

■ 2. In § 573.480, amend paragraph (b) introductory text by removing ''complete swine and poultry feeds'' and in its place adding ''complete feed for swine and poultry'' and paragraph (b)(4)(ii) by removing ''swine'' both times it appears.

Dated: December 18, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–27966 Filed 12–26–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 148

Qualified Financial Contracts Recordkeeping Related to Orderly Liquidation Authority

AGENCY: Department of the Treasury.

ACTION: Notification of exemption.

SUMMARY: The Secretary of the Treasury (the ''Secretary''), as Chairperson of the Financial Stability Oversight Council, after consultation with the Federal Deposit Insurance Corporation (the ''FDIC''), is issuing a determination regarding a request for an exemption from certain requirements of the rule implementing the qualified financial contracts (''QFC'') recordkeeping requirements of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'' or the ''Act'').

DATES: The exemption granted is effective December 27, 2018.

FOR FURTHER INFORMATION CONTACT: Peter Phelan, Deputy Assistant Secretary for Capital Markets, (202) 622–1746; Peter Nickoloff, Financial Economist, Office of Capital Markets,

(202) 622–1692; Steven D. Laughton, Assistant General Counsel (Banking & Finance), (202) 622–8413; or Stephen T. Milligan, Acting Deputy Assistant General Counsel (Banking & Finance), (202) 622–4051.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 2016, the Secretary published a final rule pursuant to section 210(c)(8)(H) of the Dodd-Frank Act requiring certain financial companies to maintain records with respect to their QFC positions, counterparties, legal documentation, and collateral that would assist the FDIC as receiver in exercising its rights and fulfilling its obligations under Title II of the Act (the ''rule'').[1]

Section 148.3(c)(3) of the rule provides that one or more records entities may request an exemption from one or more of the requirements of the rule by writing to the Department of the Treasury (''Treasury''), the FDIC, and the applicable primary financial regulatory agency or agencies, if any.[2] The written request for an exemption must: (i) Identify the records entity or records entities or the types of records entities to which the exemption would apply; (ii) specify the requirements from which the records entities would be exempt; (iii) provide details as to the size, risk, complexity, leverage, frequency and dollar amount of QFCs, and interconnectedness to the financial system of each records entity, to the extent appropriate, and any other relevant factors; and (iv) specify the reasons why granting the exemption will not impair or impede the FDIC's ability to exercise its rights or fulfill its statutory obligations under sections 210(c)(8), (9), and (10) of the Act.[3]

The rule provides that, upon receipt of a written recommendation from the FDIC, prepared in consultation with the primary financial regulatory agency or agencies for the applicable records entity or entities, that takes into consideration each of the factors referenced in section 210(c)(8)(H)(iv) of the Act[4] and any other factors the FDIC considers appropriate, the Secretary may grant, in whole or in part, a conditional or unconditional exemption from compliance with one or more of the requirements of the rule to one or more records entities.[5] The rule further provides that, in determining whether to grant an exemption, the Secretary will consider any factors deemed appropriate by the Secretary, including whether application of one or more requirements of the rule is not necessary to achieve the purpose of the rule.

Request for Exemption

On April 19, 2017, Morgan Stanley submitted, on behalf of Morgan Stanley Smith Barney LLC (''MSSB''), a request for an exemption from the rule to Treasury, the FDIC, and, as the primary financial regulatory agencies for MSSB, the Securities and Exchange Commission (''SEC'') and the Commodity Futures Trading Commission (''CFTC''), which Morgan Stanley supplemented with information provided on March 26, 2018.[6] Morgan Stanley requested an exemption for MSSB from compliance with sections 148.3 and 148.4 of the rule for MSSB's current and future QFC portfolio consisting of QFCs entered into by MSSB on behalf of customers and booked and carried in accounts for the benefit of customers, referred to in the request as ''client activity QFCs,'' and QFCs with central counterparties under which client transactions executed by MSSB are cleared and settled. Morgan Stanley also requested that the exemption apply to inter-affiliate QFCs entered into for the purpose of fulfilling client activity QFCs, funding its client activity QFCs, or hedging risks arising from such QFCs or for similar purposes in support of its business relating to such QFCs. As an alternative, Morgan Stanley requested that the Secretary allow MSSB to comply with the recordkeeping requirements of the rule by maintaining the records that MSSB already maintains on its QFCs for business reasons and pursuant to other regulatory requirements.

In support of its request, Morgan Stanley submitted information detailing the types and large volume of client activity and related QFCs, measured by both number of QFCs and market value, to which MSSB is a party. Morgan Stanley represented that the client activity QFCs are generally cash transactions entered into by retail customers, including individuals and small and medium sized businesses, that are executed on standardized terms, and loans to retail customers such as margin loans and demand lines of credit that are subject to standardized terms and documentation. Morgan Stanley represented that MSSB's client activity QFCs are typically not leveraged and that with respect to client activity QFCs that are margin loans or foreign exchange (''FX'') products whereby MSSB extends credit, such QFCs are typically over-collateralized in compliance with applicable law. Morgan Stanley also stated that MSSB's interconnectedness to the rest of the financial system is limited, given that it serves retail customers and given the limited complexity of the products it offers. Morgan Stanley has a separate U.S. broker-dealer subsidiary, Morgan Stanley & Co. LLC, that serves institutional clients. Morgan Stanley noted that only a very small percentage of MSSB customers are also customers of Morgan Stanley & Co. LLC.[7] Furthermore, MSSB is not registered with the CFTC as a swap dealer or a futures commission merchant; the lack of these registrations restricts its ability to transact in certain types of QFCs, including OTC derivatives. Finally, Morgan Stanley asserted that the extent and nature of its business with respect to client activity QFCs, as described above, support its view that granting the requested exemption would not impair or impede the FDIC's ability to exercise its rights under section 210(c)(8), (9), and (10) of the Act.

Treasury received a final recommendation from the FDIC, prepared in consultation with the SEC and CFTC, regarding the exemption request, and, after consultation with the FDIC, Treasury is making the determination discussed below.[8]

Evaluation of the Exemption Request

As discussed more fully in the preamble to the final rule,[9] the FDIC has the authority under Title II of the Dodd-Frank Act to transfer the assets and liabilities of any financial company for which it has been appointed receiver under Title II (a ''covered financial company'') to either a bridge financial company established by the FDIC or to another financial institution.[10] The

[1] 31 CFR part 148; 81 FR 75624 (Oct. 31, 2016).

[2] 31 CFR 148.3(c)(3).

[3] 12 U.S.C. 5390(c)(8), (9), and (10).

[4] 12 U.S.C. 5390(c)(8)(H)(iv).

[5] 31 CFR 148.3(c)(4)(i).

[6] MSSB is registered with the SEC as a broker-dealer under the Securities Exchange Act of 1934 and as an investment adviser under the Investment Advisers Act of 1940 and is registered with the CFTC as an introducing broker under the Commodity Exchange Act.

[7] Morgan Stanley & Co. LLC was not included within the exemption request.

[8] All exemptions to the recordkeeping requirements of the rule are made at the discretion of the Secretary, and the Secretary's discretion is not limited by any recommendations received from other agencies. Exemptions to the FDIC's recordkeeping rules under 12 CFR part 371 (Recordkeeping Requirements for Qualified Financial Contracts) are at the discretion of the board of directors of the FDIC and entail a separate request and process and separate policy considerations. References to the FDIC in this notice should not be taken to imply that the FDIC has determined that similar exemptions under Part 371 would be available.

[9] *See* 81 FR at 75624–25.

[10] *See, e.g.,* 12 U.S.C. 5390(a)(1)(G)(i).

FDIC generally has broad discretion under Title II as to which QFCs it transfers to the bridge financial company or to another financial institution subject to certain limitations, including the requirement that, if the FDIC is to transfer a QFC with a particular counterparty, it must transfer to a single financial institution (i) all QFCs between the covered financial company and such counterparty and (ii) all QFCs between the covered financial company and any affiliate of such counterparty.[11] Similarly, if the FDIC determines to disaffirm or repudiate any QFC with a particular counterparty, it must disaffirm or repudiate (i) all QFCs between the covered financial company and such counterparty and (ii) all QFCs between the covered financial company and any affiliate of such counterparty.[12] This requirement is referred to as the ''all or none rule.''

Separately, if the FDIC is appointed receiver of a covered financial company that is a broker-dealer and the FDIC establishes a bridge financial company to assist with the resolution of that broker-dealer, the FDIC must, pursuant to section 210(a)(1)(O) of the Act,[13] unless certain conditions are met, transfer to the bridge financial company all ''customer accounts'' of the broker-dealer and all associated ''customer name securities'' and ''customer property,'' as those terms are defined by reference to the Securities Investor Protection Act of 1970, as amended (''SIPA'').[14] There are two conditions under which the FDIC is permitted not to transfer all such customer accounts, customer name securities, and customer property to the bridge financial company: (i) If the FDIC determines, after consulting with the Securities Investor Protection Corporation and the SEC, that such customer accounts, customer securities, and customer property are likely to be promptly transferred to another registered broker-dealer or (ii) if the transfer would materially interfere with the ability of the FDIC to avoid or mitigate serious adverse effects on financial stability or economic conditions in the United States.[15] If neither such condition is met and a bridge financial company is established by the FDIC, the QFCs that would be transferred to the bridge financial company pursuant to section 210(a)(1)(O) would include QFCs entered into by the broker-dealer with its customers.

Not all of a broker-dealer's clients are treated as ''customers'' of that broker-dealer under SIPA. For instance, a client of a broker-dealer that engaged in an FX spot transaction or an FX forward would not be a ''customer'' under SIPA with respect to those transactions.[16] Even if such a client were otherwise to have a customer relationship with the broker-dealer under SIPA, such as by virtue of having a brokerage account for the trading of securities, then, although that customer account would be required to be transferred pursuant to section 210(a)(1)(O) of the Act, the FX spot transaction or forward would not be required to be transferred pursuant to section 210(a)(1)(O) of the Act. However, pursuant to the all or none rule, if the FDIC were to transfer a customer account that held QFCs between the broker-dealer and the client, the FDIC would be required to transfer (i) all QFCs between the broker-dealer and the client and, if the client is a non-natural person, (ii) all QFCs between the broker-dealer and any affiliates of such client. For example, if the broker-dealer were a party to a margin loan with a client, the client would be deemed to be a customer for purposes of SIPA and thus the margin loan would be transferred pursuant to section 210(a)(1)(O) of the Act. If, in addition, the broker-dealer were also a party to an FX spot agreement with that same client, the client would not be deemed to be a customer for purposes of SIPA with respect to that FX spot agreement. Nevertheless, because the FDIC, pursuant to section 210(a)(1)(O) of the Act, would be required to transfer the margin loan to the bridge financial company, the FDIC also would be required to transfer the FX spot transaction, pursuant to the all or none rule.

In a contrasting example, a client could be a ''customer'' of MSSB under SIPA, such as by having a brokerage account with MSSB, yet not have any QFCs outstanding with MSSB in that account. If such a client had a QFC with MSSB that was not the type of QFC that would make it a customer under SIPA (such as an FX spot agreement) and if the client (and, in the case of a non-natural person, its affiliates) had no other QFCs outstanding with MSSB, then that QFC would not be required to be transferred to the bridge financial company pursuant to either section 210(a)(1)(O) of the Act, because section 210(a)(1)(O) would not apply to that QFC, or the all or none rule, because the all or none rule would not apply if there were no other outstanding QFCs between the parties. However, given the limited nature of MSSB's business and the limited types of QFCs entered into by MSSB with its clients, as represented by Morgan Stanley, the likelihood that the FDIC would determine to retain such a QFC in the receivership despite transferring the customer account, customer name securities, and customer property of such customer would seem relatively low.

Determination of Exemption

Given the above-discussed restrictions on the FDIC's discretion as to whether or not to transfer QFCs from a broker-dealer, the limited nature of MSSB's business, and the limited types of QFCs entered into by MSSB with its clients, Treasury has determined to exempt MSSB from the recordkeeping requirements of the rule with respect to any QFCs of MSSB with clients that are customers of MSSB under SIPA with respect to any transactions or accounts they have with MSSB, subject to the conditions stipulated below.[17] Treasury does not expect that granting this exemption will unduly interfere with the FDIC's ability to avoid or mitigate serious adverse effects on financial stability or economic conditions in the United States. In MSSB's case, the size, risk, complexity, and leverage of its QFCs with its customers do not present a high likelihood that the financial stability exception to the transfer requirement of section 210(a)(1)(O) of the Act would be met. If the financial stability exception is not met, the FDIC would likely either transfer, pursuant to section 210(a)(1)(O), all of a broker-dealer's customer accounts, customer name securities, and customer property included in such customer accounts and any other QFCs with such customer to the bridge financial company or transfer all such accounts, securities, and property to another broker-dealer. In either case, the FDIC would not need the detailed records required by the rule with respect to QFCs to accomplish the transfer.

[11] 12 U.S.C. 5390(c)(9)(A)

[12] 12 U.S.C. 5390(c)(11).

[13] 12 U.S.C. 5390(a)(1)(O).

[14] 15 U.S.C. 78aaa *et seq. See also* section 201(a)(10) of the Dodd-Frank Act (12 U.S.C. 5381(a)(10)) (providing that the terms ''customer,'' ''customer name securities,'' and ''customer property'' as used in Title II shall have the same meaning as provided in SIPA).

[15] 12 U.S.C. 5390(a)(1)(O)(i)(I)–(II).

[16] *See* 15 U.S.C. 78lll(2) (defining ''customer'' as ''. . . any person (including any person with whom the debtor deals as principal or agent) who has a claim on account of *securities* received, acquired, or held . . .'' (emphasis added); 15 U.S.C. 78lll(14) (defining ''security'' to exclude currency and rights to buy and sell currency other than FX options and other derivatives executed on a national securities exchange).

[17] As used in the remainder of this notification of exemption, the term ''customer'' means a person who is a customer as defined in SIPA with respect to any transaction or account it has with MSSB.

Treasury is also exempting MSSB from the recordkeeping requirements of the rule with respect to any QFC entered into by MSSB with a clearing organization for the purpose of facilitating the clearance or settlement of any QFC subject to the exemption discussed above. As used in the exemption, the term ''clearing organization'' includes, among other things, clearing agencies registered with the SEC and derivatives clearing organizations registered with the CFTC.[18] The records required by the rule regarding such clearing organization QFCs should not be needed by the FDIC to address the clearance or settlement of MSSB's exempted customer QFCs.

Further, given the limited nature of MSSB's business and the limited types of QFCs entered into by MSSB with its clients, Treasury is exempting MSSB from the recordkeeping requirements of the rule with respect to any QFC between MSSB and an affiliate of MSSB if (i) the affiliate is required to maintain the records described in section 148.4 of the rule and (ii) the QFC is entered into by MSSB in order to enable MSSB to fulfill its obligations under QFCs with its customers or to hedge risk arising from QFCs with its customers. Such QFCs could include, for example, a securities lending agreement MSSB may enter into with an affiliate in order to obtain securities to lend to MSSB's customers or a QFC MSSB may enter into with an affiliate to hedge risk arising from QFCs MSSB engages in with its customers. Treasury is limiting the scope of this exemption to QFCs with affiliates of MSSB that are themselves records entities because if the FDIC is appointed as receiver of MSSB, the FDIC would, by reference to records of the inter-affiliate QFCs maintained by such affiliated records entities, be able to decide whether or not to transfer such QFCs to a bridge financial company. Treasury has determined not to provide an exemption with respect to such QFCs with affiliates of MSSB that are not records entities because the size of such QFCs and the risks they impose could be such that the FDIC would need the records required by the rule to make a transfer determination.

Conditions of the Exemption

The exemption granted below is based on the factual representations made by Morgan Stanley on behalf of MSSB to Treasury, the FDIC, the SEC, and the CFTC in its submissions, including the factual representations regarding MSSB's registration as a broker-dealer, investment advisor, and introducing broker, the limitations on its business lines, the limitations on the types of clients it serves and the types of products and services it offers its clients, the frequency, size, and dollar amounts of QFCs with clients, the lack of complexity of the QFCs it has with clients, and the number of client accounts it maintains.

Treasury reserves the right to rescind or modify the exemption at any time. Further, Treasury intends to reassess the exemption in five years. At that time, Treasury, in consultation with the FDIC and the primary financial regulatory agencies, would evaluate any material changes in the nature of MSSB's business as well as any relevant changes to market structure or applicable law or other relevant factors that might affect the reasons for granting the exemptions. Treasury may request an updated submission from MSSB as to its business at that time. Treasury expects that it would provide notice to MSSB prior to any modification or rescission of the exemption and that, in the event of a rescission or modification, Treasury would grant MSSB a limited period of time in which to come into compliance with the applicable recordkeeping requirements of the rule.

Terms and Conditions of the Exemption

MSSB is hereby granted an exemption from the requirements of 31 CFR 148.3 and 148.4 for (i) any QFC entered into by MSSB with or on behalf of any customer of MSSB that is booked and carried in accounts at MSSB maintained for the benefit of such customer; (ii) any QFC entered into by MSSB with a clearing organization in order to facilitate the clearance or settlement of any QFC referenced in clause (i); and (iii) any QFC entered into by MSSB with an affiliate of MSSB in order to enable MSSB to fulfill its obligations under QFCs referenced in clause (i) or to hedge risk arising from QFCs referenced in clause (i), provided that such affiliate is a records entity required to maintain the records specified in 31 CFR 148.4. For purposes of the exemption, ''customer'' means a person who is a customer as defined in 15 U.S.C. 78lll(2) with respect to any transactions or accounts it has with MSSB, and ''clearing organization'' has the meaning provided in 12 U.S.C. 4402.

The exemption is subject to modification or revocation at any time the Secretary determines that such action is necessary or appropriate in order to assist the FDIC as receiver for a covered financial company in being able to exercise its rights and fulfill its obligations under sections 210(c)(8), (9), or (10) of the Act. The exemption extends only to MSSB and to no other entities.

Dated: December 17, 2018.

Peter Phelan,

Deputy Assistant Secretary for Capital Markets.

[FR Doc. 2018–28074 Filed 12–26–18; 8:45 am]

BILLING CODE 4810–25–P

[18] The exemption cross-references the definition from section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 4402.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2017–0926]

RIN 1625–AA09

Drawbridge Operation Regulation; Hudson River, Albany and Rensselaer, NY

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the CSX Transportation Bridge (alternatively referred to as the ''Livingston Ave Bridge'') across the Hudson River, mile 146.2, between Albany and Rensselaer, New York. The bridge owner, National Railroad Passenger Corporation (Amtrak), submitted a request to allow the bridge to require four hours notice for bridge openings. This final rule would extend the notice required for bridge opening during the summer months due to the infrequent number of requests, and reduce burden on the bridge tender.

DATES: This rule is effective January 28, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*. Type USCG–2017–0926 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Miss Stephanie E. Lopez, Bridge Management Specialist, First Coast Guard District, telephone (212) 514–4335, email *Stephanie.E.Lopez@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking (Advance, Supplemental)
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On August 10, 2018, the Coast Guard published a notice of proposed rulemaking entitled ''Proposed Rule Drawbridge Operations: Hudson River, Albany and Rensselaer, New York'' in the **Federal Register** (83 FR 39636). No comments were received on this rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

The CSX Transportation Bridge (Livingston Ave) Bridge at mile 146.2, across the Hudson River, between Albany and Rensselaer, New York, has a vertical clearance of 25 feet at mean high water and 32 feet at mean low water. Vertical clearance is unlimited when the draw is open. Horizontal clearance is approximately 98 feet.

The existing drawbridge regulation is 33 CFR 117.791(c). The existing regulation requires the draw of the Livingston Avenue Bridge to open on signal; except that, from December 16 through March 31, the draw shall open on signal if at least 24 hours notice is given.

The owner of the bridge, National Railroad Passenger Corporation, requested a change to the drawbridge operating regulations to allow the bridge owner to require 4 hours notice before the draw opens on signal between April 1 and December 15, 11 p.m. and 7 a.m. due to infrequent requests to open the bridge. This rule change will allow for more efficient and economical operation of the bridge while still meeting the needs of navigation.

Review of the bridge logs in the last three years between 11 p.m. and 7 a.m. from April 1 to December 15 shows that the bridge averages 24 openings during this period per year. The waterway users include recreational and commercial vessels including tugboat/barge combinations as well as tour/dinner boats.

IV. Discussion of Comments, Changes and the Final Rule

The Coast Guard provided 60 days for comment and no comments were received. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

V. Discussion of Final Rule

The rule provides that from April 1 through December 15; between the hours of 7:00 a.m. and 11:00 p.m., the draw shall open on signal, and between the hours of 11:00 p.m. and 7:00 a.m., the draw shall open on signal if at least 4 hours notice is given. It is our opinion that this rule meets the reasonable needs of marine and rail traffic.

VI. 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 protesters.

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, it 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 ability that vessels can still open the draw and transit the bridge given advanced notice. We believe that this change to the drawbridge operation regulations at 33 CFR 117.791(c) will meet the reasonable needs of navigation.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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.

The bridge provides 25 feet of vertical clearance at mean high water that should accommodate all the present vessel traffic except deep draft vessels. The bridge will continue to open on signal for any vessel provided at least 4 hour advance notice is given.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section VI.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**, above.

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 calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Government

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

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

responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2–1, paragraph (32)(e), of the Instruction.

A preliminary Record of Environmental Consideration and a Memorandum for the Record are not required for this 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.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.791(c) to read as follows:

§ 117.791 Hudson River.

* * * * *

(c) The draw of the CSX Transportation Bridge, mile 146.2 between Albany and Rensselaer, shall open on signal; except that, from April 1 through December 15, from 11:00 p.m. to 7:00 a.m., the draw shall open on signal if at least 4 hours notice is given and from December 16 through March 31, the draw shall open on signal if at least 24 hours notice is given.

* * * * *

Dated: December 3, 2018.

A.J. Tiongson,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2018–28122 Filed 12–26–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–1093]

RIN 1625–AA00

Safety Zone; Ohio River, Miles 73 to 74, Wellsburg, WV

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Ohio River, extending the entire width of the river, from mile marker (MM) 73 to MM 74. This safety zone is necessary to protect persons, property, and the marine environment from potential hazards associated with a fireworks display. Entry of persons or vessels into this zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh or a designated representative.

DATES: This rule is effective from 11:30 p.m. on December 31, 2018 through 12:45 a.m. on January 01, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–1093 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Charles Morris, Marine Safety Unit Pittsburgh, U.S. Coast Guard; telephone 412–221–0807, email *Charles.F.Morris@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Marine Safety Unit Pittsburgh
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

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)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. This safety zone must be established by December 31, 2018 and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule. The NPRM process would delay the establishment of the safety zone until after the date of the fireworks display and compromise public safety.

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 this rule would be contrary to the public interest because immediate action is necessary to respond to the potential safety hazards associated with this 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 Marine Safety Unit Pittsburgh (COTP) has determined that potential hazards associated with this fireworks display will be a safety hazard for anyone within a half-mile stretch of the Ohio River. The rule is needed to protect persons, property, and the marine environment in the navigable waters within the safety zone before, during, and after the fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone from 11:30 p.m. December 31, 2018 to

12:45 a.m. January 1, 2019. The safety zone will cover all navigable waters of the Ohio River, extending the entire width of the river, from mile marker (MM) 73 to MM 74. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters before, during, and after the fireworks display. No vessel or person will be 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 Marine Safety Unit Pittsburgh. Persons and vessels seeking 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 by telephone at (412) 221–0807. Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful instructions of the COTP or a designated representative. The COTP or a designated representative will inform the public of the enforcement period for the safety zone as well as any changes in the schedule through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Broadcasts (MSIBs) as appropriate.

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, time, duration, and location of the safety zone. This safety zone encompasses a one-mile stretch of the Ohio River for 1 hour and 15 minutes on one evening. Moreover, the Coast Guard will issue MSIBs, LNMs, and BNMs 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 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 temporary 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 involves a safety zone lasting 1 hour and 15 minutes that will prohibit entry on a one-mile stretch of the Ohio River. 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.T08–1093 to read as follows:

§ 165.T08–1093 Safety Zone; Ohio River, Miles 73 to 74, Wellsburg, WV.

(a) *Location.* The following area is a safety zone: all navigable waters of the Ohio River, extending the entire width of the river, from mile marker (MM) 73 to MM 74.

(b) *Effective period.* This section is effective from 11:30 p.m. on December 31, 2018 through 12:45 a.m. on January 1, 2019.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into this zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh (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 Marine Safety Unit Pittsburgh.

(2) Persons and vessels seeking 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 by telephone at (412) 221–0807.

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

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public of the enforcement period for the safety zone as well as any changes in the schedule through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Broadcasts (MSIBs) as appropriate.

Dated: December 20, 2018.

A.W. Demo,

Commander, U.S. Coast Guard, Captain of the Port Marine Safety Unit Pittsburgh.

[FR Doc. 2018–28132 Filed 12–26–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0168]

RIN 1625–AA00

Safety Zone; Ohio River, Louisville, KY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing an emergency temporary safety zone for all navigable waters of the Ohio River extending from mile marker (MM) 530.6 to MM 533.0. This emergency safety zone is needed to protect life, vessels, and the marine environment due to the increase in river level, extreme currents and excessive drift causing vessels to allide with Markland Lock and Dam. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative.

DATES: This rule is effective without actual notice from December 27, 2018 through January 20, 2019. For the purposes of enforcement, actual notice will be used from December 20, 2018 until December 27, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0168 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Riley Jackson, Sector Ohio Valley, U.S. Coast Guard; telephone 502–779–5347, email *SECOHV-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Ohio Valley
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 it is impracticable and contrary to the public interest. In the past 36 hours, increase in the river level, extreme currents and excessive drift were noted as causal factors for two allisions with the long wall to the Markland Lock approach. The safety zone must be established immediately to protect people and vessels transiting the Ohio River, and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to protect personnel, vessels, and the marine environment from potential hazards due to the increase in the river level, and extreme currents and drift conditions.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the river current at Markland Lock and Dam will be a safety concern for anyone on within the 3.6-mile span of the Ohio River. This rule is necessary to protect persons, vessels, and the marine environment in the navigable waters within the safety zone.

IV. Discussion of the Rule

The Coast Guard is establishing a temporary emergency safety zone for all navigable waters on the Ohio River from Mile Marker (MM) 530.6 and MM 533.0, extending the entire width of the Ohio River. Transit into and through this area is prohibited for all traffic beginning December 20, 2018 and will continue through January 20, 2019 or until the hazard has been decreased, whichever occurs first. The COTP or a designated representative will terminate the enforcement of this safety zone before January 20, 2019 if the river conditions decrease. Entry into this safety zone is prohibited unless specifically authorized by the COTP or his 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 Ohio Valley.

Requests for entry will be considered and reviewed on a case-by-case basis. The COTP may be contacted by telephone at 502–779–5422 or can be reached by VHF–FM channel 16. 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.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. This safety zone will restrict vessel traffic from entering or transiting within a 3.6 mile area of navigable waterways on the Ohio River between MMs 530.6 and 533.0. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the safety zone, and the rule allows vessels to seek permission to enter the safety 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 temporary safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(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 is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. Because this safety zone is established in response to an emergency situation a Record of Environmental Consideration (REC) is not required, but if necessary, will be

made available as 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.T08–0168 to read as follows:

§ 165.T08–0168 Safety Zone; Ohio River, Louisville, KY.

(a) *Location.* The following area is a safety zone: All navigable waters of the Ohio River from Mile Marker (MM) 530.6 to MM 533.0, extending the entire width of the river.

(b) *Enforcement period.* This section is effective without actual notice from December 27, 2018 through January 20, 2019, or until the hazard has decreased, whichever occurs first. For the purposes of enforcement, actual notice will be used from December 20, 2018 until December 27, 2018.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (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 Ohio Valley.

(2) Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. To seek entry into the safety zone, contact the COTP or the COTP's representative by telephone at 502–779–5422 or on VHF–FM channel16.

(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 of any changes in the planned schedule.

Dated: December 20, 2018.

M.B. Zamperini,

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

[FR Doc. 2018–28131 Filed 12–26–18; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201, 202, 211, and 212

[Docket No. 2018–1]

Streamlining the Single Application and Clarifying Eligibility Requirements

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is amending its regulations to update the eligibility requirements for its application forms to reflect recent technical updates. The final rule clarifies that the Single Application may be used to register one work that is created and solely owned by one author and is not a work made for hire. It also confirms that this application may be used to register one sound recording and one musical work, literary work, or dramatic work, notwithstanding the fact that a sound recording and the work embodied in that recording are separate works. The final rule further clarifies the eligibility requirements for the Standard Application, which may be used to register certain works that are not eligible for the Single Application. It updates the eligibility requirements for the paper applications of both the Single Application and Standard Application by clarifying that these forms may be certified with a typed, printed, or handwritten signature, and by eliminating the ''short form'' version of these forms. The rule also makes several technical amendments to the regulations governing preregistration, mask works, vessel designs, the unit of publication registration option, and the group registration option for database updates.

DATES: Effective January 28, 2019.

FOR FURTHER INFORMATION CONTACT: Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice; Erik Bertin, Deputy Director of Registration Policy and Practice; or Anna Bonny Chauvet, Assistant General Counsel, by telephone at 202–707–8040 or by email at *rkas@copyright.gov, ebertin@copyright.gov,* or *achau@copyright.gov.*

SUPPLEMENTARY INFORMATION: Section 408(a) of the Copyright Act provides that a copyright owner or the owner of any of the exclusive rights in a work may seek a registration by delivering an application, filing fee, and an appropriate deposit to the U.S. Copyright Office (the ''Office''). 17 U.S.C. 408(a). The statute gives the Register of Copyrights the authority to issue regulations concerning the specific nature of the deposit that should be submitted, the amount of the fee, and the information that should be included in the application. 17 U.S.C. 408(c)(1), 409(10), 702, 708(b).

On February 6, 2018, the Office issued a notice of proposed rulemaking (the ''NPRM'') proposing to update the regulations governing its application forms to coincide with technical upgrades to its current electronic registration system. 83 FR 5227 (Feb. 6, 2018). The NPRM proposed changes to the regulations governing the Single Application to reflect changes in the Office's electronic registration system and made a number of technical amendments. With respect to the Single Application, the proposed rule clarified that the Single Application may be used if (i) the claim is limited to one work, (ii) the work was created by one individual, (iii) all of the content appearing in the work was created by that individual, (iv) the author is sole owner of all rights in the work, and (v) the work is not a work made for hire. *See* 83 FR at 5228, 5229.

One exception is made for sound recordings that embody separate musical, literary, or dramatic works. The NPRM explained current Copyright Office practice that the Single Application may be used to register one sound recording and one musical work, literary work, or dramatic work together if certain requirements have been met, notwithstanding the fact that a sound recording and the work embodied in that recording are separate works. In particular, (i) the author of the sound recording and the work embodied in that recording must be the same individual, (ii) the author must own the copyright in both works, and (iii) the author must be the only performer

featured in the recording. *See id.* at 5228. The Office also invited comment on whether the last requirement should be modified to allow for situations where other performers are featured in the sound recording. *See id.* at 5228–29.

Finally, the NPRM made clear that the Single Application may be submitted by the author/owner of the work or by a duly authorized agent of the author/owner, provided that the agent is identified in the correspondent section of the application. The Office noted that the filing fee for the Single Application is lower than the fee required for its other applications, but that the vast majority of these claims are submitted by publishers, producers, distributors, or other corporate entities. The Office thus questioned whether these types of entities need a discounted filing fee, and invited comment on whether they should be allowed to submit the Single Application on the author/owner's behalf. *See id.* at 5229.

The NRPM also proposed a number of technical amendments. First, the NPRM made explicit Copyright Office practice that the Standard Application may be used to register any work that is eligible for registration under sections 408(a) and 409 of the Copyright Act, but it may not be used to seek a supplementary registration, a registration for a restored work, or a registration for a mask work or vessel design. It also clarified that the Standard Application may not be used to seek a group registration unless it is specifically permitted by the regulations. *See id.*

Second, the proposed rule updated the regulations governing paper applications by clarifying that these forms may be certified with a typed, printed, or handwritten signature. *See id.*[1]

Third, the proposed rule eliminated the ''short form'' version of the paper applications. *See id.* at 5229–30.

Fourth and finally, the proposed rule removed the word ''single'' from various places in the regulations to avoid potential confusion with the Single Application.

The Office received one comment from one individual who expressed support for allowing ''the Single Application to be used to register one sound recording and one musical work, literary work, or dramatic work notwithstanding the fact that a sound recording and the work embodied in that recording are separate works.''[2] Accordingly, the Office is issuing a final rule nearly identical to the proposed rule, with a few additional technical changes. First, the final rule accounts for amendments resulting from a recent final rule on group registration of newsletters and serials. *See* 83 FR 61546 (Nov. 30, 2018). Second, the rule clarifies that claims should be submitted for registration in the administrative class that is most appropriate for the work being claimed, regardless of whether the paper or online application is used, and that sound recording claims should be submitted for registration in Class SR.

The Office did not receive comments on any other aspect of the proposed rule, including the Office's question whether the author of a sound recording that features performers other than the author should be allowed to use the Single Application. The Office is accordingly maintaining the requirement that the author of the sound recording be the only performer on (and thus the sole author of) the sound recording. The Office remains open to revisiting this requirement in the course of its registration modernization process and encourages interested members of the public to provide views on this question in connection with those efforts. Similarly, due to the lack of comment, the Office is maintaining the ability for third parties to file Single Applications on behalf of the author/owner of the work, but will continue to monitor the usage of the Single Application. If corporate entities continue to be the predominant users of the Single Application, the Office may narrow the eligibility requirements, or reevaluate the need for that application entirely.

* * *

List of Subjects

37 CFR Part 201

Cable television, Copyright, Jukeboxes, Recordings, Satellites.

37 CFR Part 202

Claims, Copyright.

37 CFR Part 211

Computer technology, Science and technology, Semiconductor chip products.

37 CFR Part 212

Vessels.

Final Regulations

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR parts 201, 202, 211, and 212 as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. In § 201.3, revise paragraph (c)(1) introductory text to read as follows:

§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

* * * * *

(c) * * *

Registration, recordation and related services	Fees ($)
(1) Registration of a claim in an original work of authorship:	
* * * * *	

* * * * *

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

■ 3. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

■ 4. Amend § 202.3 as follows:

■ a. Revise the heading for paragraph (b)(2)(i) and add introductory text to paragraph (b)(2)(i).

■ b. Revise paragraphs (b)(2)(i)(A) and (B).

■ c. In paragraph (b)(2)(i)(C):

■ i. Remove the word ''submission'' and add in its place ''application'';

■ ii. Remove the words ''application fee'' and add in their place ''filing fee''; and

■ iii. Remove the word ''fund'' and add in its place ''funds''.

■ c. In paragraph (b)(2)(i)(D), remove the word ''payment'' and add in its place ''filing fee''.

■ d. Add a heading to paragraph (b)(2)(ii) and revise paragraph (b)(2)(ii)(A).

■ e. Remove paragraphs (b)(2)(ii)(B) and (C).

■ f. Redesignate paragraph (b)(2)(ii)(D) as paragraph (b)(2)(ii)(B).

■ g. Redesignate paragraph (b)(3) as paragraph (b)(2)(ii)(C) and remove the heading from newly redesignated paragraph (b)(2)(ii)(C).

■ h. Add paragraph (b)(2)(iii) and reserved paragraph (b)(3).

[1] The proposed rule made this change only with respect to copyright registration applications submitted on paper. The final rule eliminates the handwritten signature requirements in other kinds of paper forms as well. *See* 37 CFR 202.17(g)(2)(ii)(B) (Form RE); *id.* § 211.4(b)(3)(ii) (Form MW); *id.* 212.8(c)(1)(x)(A) (Form DC).

[2] A copy of this comment may be found on the Office's website at *https://www.copyright.gov/rulemaking/streamlining-single/*.

■ i. In paragraph (b)(5)(i) introductory text, remove the words ''a single application'' and add in their place ''one application'' and remove the words ''a single registration'' and add in their place ''a group registration''.
■ j. In paragraph (b)(5)(i)(F), remove the words ''a single'' and add in their place ''the same''.
■ k. In paragraph (b)(5)(ii) introductory text:
■ i. Remove the words ''single registration'' and add in their place ''group registration'';
■ ii. Remove the words ''a single date'' wherever they appear and add in their place ''one date''; and
■ iii. Remove the words ''a single calendar'' and add in their place ''the same calendar''.
■ l. In paragraph (b)(5)(ii)(A), remove ''(b)(2)'' and add in its place ''(b)(2)(ii)(A).''
■ m. Revise paragraphs (c)(1) through (3).

The revisions and additions read as follows:

§ 202.3 Registration for copyright.

* * * * *

(b) * * *

(2) * * *

(i) *Online applications.* An applicant may submit a claim through the Office's electronic registration system using the Standard Application, the Single Application, or the applications designated in § 202.4.

(A) The Standard Application may be used to register a work under sections 408(a) and 409 of title 17, including a work by one author, a joint work, a work made for hire, a derivative work, a collective work, or a compilation. The Standard Application may also be used to register a unit of publication under paragraph (b)(4) of this section, or a sound recording and a literary, dramatic, or musical work under paragraphs (b)(1)(iv)(A) through (C) of this section.

(B)(*1*) The Single Application may be used only to register one work by one author. All of the content appearing in the work must be created by the same individual. The work must be owned by the author who created it, and the author and the claimant must be the same individual.

(*2*) The Single Application may be used to register one sound recording and one musical work, dramatic work, or literary work if the conditions set forth in paragraphs (b)(1)(iv)(A) through (C) and (b)(2)(i)(B)(*1*) of this section have been met.

(*3*) The following categories of works may *not* be registered using the Single Application: collective works, databases, websites, architectural works, choreographic works, works made for hire, works by more than one author, works with more than one owner, or works eligible for registration under § 202.4 or paragraph (b)(4) or (5) of this section.

* * * * *

(ii) *Paper applications.* (A) An applicant may submit an application using one of the printed forms prescribed by the Register of Copyrights. Each form corresponds to one of the administrative classes set forth in paragraph (b)(1) of this section. These forms are designated ''Form TX,'' ''Form PA,'' ''Form VA,'' ''Form SR,'' and ''Form SE.'' These forms may be used to register a work under sections 408(a) and 409 of title 17, including a work by one author, a joint work, a work made for hire, a derivative work, a collective work, or a compilation.

* * * * *

(iii) *Application class.* Applications should be submitted in the class most appropriate to the nature of the authorship in which copyright is claimed. In the case of contributions to collective works, applications should be submitted in the class representing the copyrightable authorship in the contribution. In the case of derivative works, applications should be submitted in the class most appropriately representing the copyrightable authorship involved in recasting, transforming, adapting, or otherwise modifying the preexisting work. In cases where a work contains elements of authorship in which copyright is claimed that fall into two or more classes, the application should be submitted in the class most appropriate to the predominant type of authorship in the work as a whole. However, in any case where registration is sought for a work consisting of or including a sound recording in which copyright is claimed, the application shall be submitted for registration in Class SR.

* * * * *

(c) * * *

(1) As a general rule, an application for copyright registration may be submitted by any author or other copyright claimant of a work, the owner of any exclusive right in a work, or the duly authorized agent of any such author, other claimant, or owner. A Single Application, however, may be submitted only by the author/claimant or by a duly authorized agent of the author/claimant, provided that the agent is identified in the application as the correspondent.

(2) All applications shall include the information required by the particular form, and shall be accompanied by the appropriate filing fee, as required in § 201.3(c) of this chapter, and the deposit required under 17 U.S.C. 408 and § 202.20, § 202.21, or § 202.4, as appropriate.

(3) All applications submitted for registration shall include a certification.

(i) As a general rule, the application may be certified by an author, claimant, an owner of exclusive rights, or a duly authorized agent of the author, claimant, or owner of exclusive rights. A Single Application, however, may be certified only by the author/claimant or by a duly authorized agent of the author/claimant.

(ii) For online applications, the certification shall include the typed name of a party identified in paragraph (c)(3)(i) of this section. For paper applications, the certification shall include the typed, printed, or handwritten signature of a party identified in paragraph (c)(3)(i) of this section, and if the signature is handwritten it shall be accompanied by the typed or printed name of that party.

(iii) The declaration shall state that the information provided within the application is correct to the best of the certifying party's knowledge.

(iv) For online applications, the date of the certification shall be automatically assigned by the electronic registration system on the date the application is received by the Copyright Office. For paper applications, the certification shall include the month, day, and year that the certification was signed by the certifying party.

(v) An application for registration of a published work will not be accepted if the date of certification is earlier than the date of publication given in the application.

* * * * *

§ 202.16 [Amended]

■ 5. Amend § 202.16(c)(4) by:
■ a. Removing the words ''Preregistration as a single work'' and add in their place ''Unit of publication'';
■ b. Removing the words ''a single application'' and add in their place ''one application'';
■ c. Removing the words ''a single preregistration fee'' and add in their place ''one filing fee'';
■ d. Removing the words ''a single unit'' and add in its place ''the same unit''; and
■ e. Removing the words ''a single work'' and add in their place ''one work''.

■ 6. Amend § 202.17 by revising paragraph (g)(2)(ii)(B) to read as follows:

§ 202.17 Renewals.

* * * * *

(g) * * *
(2) * * *
(ii) * * *
(B) The typed, printed, or handwritten signature of such claimant, successor or assignee, or agent, accompanied by the typed or printed name of that person if the signature is handwritten;
* * * * *

PART 211—MASK WORK PROTECTION

■ 7. The authority citation for part 211 continues to read as follows:

Authority: 17 U.S.C. 702, 908.

■ 8. Amend § 211.4 by revising paragraphs (b)(3)(ii) and (d) introductory text to read as follows:

§ 211.4 Registration of claims of protection in mask works.

* * * * *
(b) * * *
(3) * * *
(ii) The typed, printed, or handwritten signature of the applicant, accompanied by the typed or printed name of that person if the signature is handwritten.
* * * * *
(d) *Registration for one mask work.* Subject to the exceptions specified in paragraph (c)(2) of this section, for purposes of registration on one application and upon payment of one filing fee, the following shall be considered one work:
* * * * *

PART 212—PROTECTION OF VESSEL DESIGNS

■ 9. The authority citation for part 212 continues to read as follows:

Authority: 17 U.S.C. chapter 13.

■ 10. Amend § 212.3 as follows:
■ a. In paragraph (f)(1):
■ i. Remove the words ''a single make'' and add in their place ''the same make'';
■ ii. Remove the words ''a single application'' and add in their place ''one application'';
■ iii. Remove the words ''used for all designs'' and add in their place ''used to register all the designs''; and
■ iv. Remove both instances of the words ''each of the designs'' and add in their place ''each design''.
■ b. Revise paragraph (f)(2).
■ c. In paragraph (f)(4), remove the words ''a single'' and add in their place ''one''.
The revision reads as follows:

§ 212.3 Registration of claims for protection of eligible designs.

* * * * *
(f) * * *
(2) *One application.* Where one application for multiple designs is appropriate, a separate Form D–VH/CON must be used for each design beyond the first appearing on Form D–VH. Each Form D–VH/CON must be accompanied by deposit material identifying the design that is the subject of the Form D–VH/CON, and the deposit material must be attached to the Form D–VH/CON. The Form D–VH and all the Form D–VH/CONs for the application must be submitted together.
* * * * *

■ 11. Amend § 212.8 by revising paragraphs (c)(1)(x)(A) and (B) to read as follows:

§ 212.8 Correction of errors in certificates of registration.

* * * * *
(c) * * *
(1) * * *
(x) * * *
(A) The typed, printed, or handwritten signature of the owner of the registered design or of the duly authorized agent of such owner (who shall also be identified);
(B) The date of the signature and, if the signature is handwritten, the typed or printed name of the person whose signature appears; and
* * * * *

Dated: November 30, 2018.

Karyn A. Temple,

Acting Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2018–27823 Filed 12–26–18; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2017–0597; FRL–9988–51–Region 10]

Air Plan Approval; AK: Fine Particulate Matter Infrastructure Requirements; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The Environmental Protection Agency (EPA) issued a final rule on November 27, 2018, entitled ''Air Plan Approval; AK: Fine Particulate Matter Infrastructure Requirements.'' This document makes a minor change to the November 27, 2018, action to correct a typographical error in the regulatory text for the rule.

DATES: This document is effective on December 27, 2018.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at (206) 553–6357, *hall.kristin@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The EPA issued ''Air Plan Approval; AK: Fine Particulate Matter Infrastructure Requirements'' as a final rule on November 27, 2018 (83 FR 60769). This final rule approved the Alaska SIP as meeting specific infrastructure requirements for the fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). For more information, please see the EPA's rulemaking action at *https://www.regulations.gov* under Docket ID No. EPA–R10–OAR–2017–0597, and the **Federal Register** publications for the proposed rule on January 23, 2018 (83 FR 3101), and the final rule on November 27, 2018 (83 FR 60769).

Need for Correction

As published, the regulatory text in the final rule contains a minor error that, if not corrected, prevents publication of the regulatory amendment in the Code of Federal Regulations. The EPA finds that there is good cause to make this correction without providing for notice and comment because neither notice nor comment is necessary and would not be in the public interest due to the nature of the correction which is minor, technical and does not change the obligations already existing in the rule. The EPA finds that the corrections are merely correcting the wording in the amendatory language so that the provision may be published in the Code of Federal Regulations.

Corrections of Publication

In the regulatory text to the final rule for ''Air Plan Approval; AK: Fine Particulate Matter Infrastructure Requirements'' published November 27, 2018 (83 FR 60769), the EPA is correcting a minor error in amendatory instruction number 2.b. Instruction number 2.b. reads ''Adding entries 'Infrastructure Requirements—2012 $PM_{2.5}$ NAAQS' and 'Infrastructure Requirements—1997, 2006, and 2012 $PM_{2.5}$ NAAQS' after entry 'Interstate Transport Requirements—2010 SO_2 NAAQS'.'' However, there is no entry ''Interstate Transport Requirements—2010 SO_2 NAAQS''. The EPA is correcting this error so that amendatory instruction number 2.b. reads ''Adding

entries 'Infrastructure Requirements—2012 $PM_{2.5}$ NAAQS' and 'Infrastructure Requirements—1997, 2006, and 2012 $PM_{2.5}$ NAAQS' after entry 'Infrastructure Requirements—2010 SO_2 NAAQS' ''.

In FR Doc. 2018–25681, published November 27, 2018 (83 FR 60769), make the following correction:

§ 52.70 [Corrected]

■ 1. On page 60773, in the right column, in the amendatory instruction for § 52.70, amendatory instruction 2.b. is corrected to read ''Adding entries ''Infrastructure Requirements—2012 $PM_{2.5}$ NAAQS'' and ''Infrastructure Requirements—1997, 2006, and 2012 $PM_{2.5}$ NAAQS'' after entry ''Infrastructure Requirements—2010 SO_2 NAAQS'' ''.

Dated: December 13, 2018.

Chris Hladick,

Regional Administrator, Region 10.

[FR Doc. 2018–27909 Filed 12–26–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R05–OAR–2018–0368; EPA–R05–OAR–2018–0556; FRL–9988–38–Region 5]

Air Plan Approval; Illinois; Indiana; Revised Designation of Illinois and Indiana 2012 $PM_{2.5}$ Unclassifiable Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving Illinois' May 8, 2018 request to revise the designation for the entire State of Illinois from unclassifiable to unclassifiable/attainment and Indiana's July 3, 2018 request to revise the designation for the Indiana portions of the Chicago IL–IN and Louisville KY–IN areas from unclassifiable to unclassifiable/attainment for the 2012 primary and secondary annual fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). EPA is approving these requests because valid, quality-assured, and certified ambient air monitoring data show that the $PM_{2.5}$ monitors in the areas are meeting the 2012 primary and secondary annual $PM_{2.5}$ NAAQS.

DATES: This final rule is effective on January 28, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2018–0368 (Illinois) or EPA–R05–OAR–2018–0556 (Indiana). All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Michelle Becker, Life Scientist, at (312) 886–3901 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Michelle Becker, Life Scientist, at (312) 886–3901, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3901, *becker.michelle@epa.gov.*

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

I. Background
II. What action is EPA taking?
III. Statutory and Executive Order Reviews

I. Background

On December 14, 2012, EPA revised the primary annual NAAQS for $PM_{2.5}$ to a level of 12 micrograms per cubic meter ($\mu g/m^3$), based on a 3-year average of annual mean $PM_{2.5}$ concentrations. See 78 FR 3085 (January 15, 2013). EPA established the standard based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to particulate matter.

The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the Clean Air Act (CAA). On January 15, 2015 (80 FR 2206) and April 7, 2015 (80 FR 18535), EPA designated areas across the country as nonattainment, unclassifiable, or unclassifiable/attainment for the $PM_{2.5}$ NAAQS based upon air quality monitoring data from monitors for calendar years 2011–2013 or 2012–2014.

In the first action, EPA designated the entire State of Illinois, including the multi-State areas of Chicago, IL–IN and St. Louis, MO–IL as unclassifiable because the ambient air quality monitoring sites lacked complete data for the relevant periods, which were from 2011–2013. Therefore, EPA could not determine, based on available information, whether those areas were meeting the 2012 $PM_{2.5}$ NAAQS. EPA also designated the Louisville, KY–IN area as nonattainment, based on monitoring data for Indiana counties Clark and Floyd for 2011–2013 showing that a monitor in Clark County had a design value above the standard.

However, in the April 7, 2015 (80 FR 18535) action, EPA changed the designation for Louisville, KY–IN area from nonattainment to unclassifiable due to invalid monitoring data for Jefferson County, Kentucky.

On May 8, 2018, Illinois submitted a request to revise the designation for the entire State of Illinois from unclassifiable to unclassifiable/attainment and on July 3, 2018 Indiana submitted a request to revise the designation for the Indiana portions of the Chicago IL–IN and Louisville KY–IN areas from unclassifiable to unclassifiable/attainment for the 2012 annual $PM_{2.5}$ NAAQS.

In a notice of proposed rulemaking (NPRM) published on October 9, 2018 (83 FR 50556), EPA proposed to approve Illinois' request to revise the entire State of Illinois from unclassifiable to unclassifiable/attainment, and Indiana's request to similarly revise the designation for the Indiana portions of the Chicago IL–IN and Louisville KY–IN, for the 2012 annual $PM_{2.5}$ NAAQS. The details of Illinois' and Indiana's submittals and the rationale for EPA's actions are further explained in the NPRM. EPA did not receive any adverse comments on the proposed action.

II. What action is EPA taking?

EPA is approving Illinois' May 8, 2018 request to revise the designation of the entire State from unclassifiable to unclassifiable/attainment as well as Indiana's July 3, 2018 request to similarly revise the designation of the Indiana portions of the Louisville and Chicago areas for the 2012 annual $PM_{2.5}$ NAAQS. The revised designations change the legal designation, found at 40 CFR part 81, for the Illinois and Indiana counties of Lake, Porter, Clark, and Floyd from unclassifiable to unclassifiable/attainment for the 2012 annual $PM_{2.5}$ NAAQS.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission

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

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

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

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

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 February 25, 2019. 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 81

Environmental protection, Air pollution control, Particulate matter.

Dated: December 12, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

40 CFR part 81 is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

■ 2. Section 81.314 is amended by removing the table entitled ''Illinois—2012 24-Hour $PM_{2.5}$ NAAQS'' and adding the table entitled ''Illinois—2012 Annual $PM_{2.5}$ NAAQS'' in its place to read as follows:

§ 81.314 Illinois.

* * * * *

ILLINOIS—2012 ANNUAL $PM_{2.5}$ NAAQS

[Primary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
Chicago, IL–IN:				
Cook County		Unclassifiable/Attainment.		
DuPage County		Unclassifiable/Attainment.		
Grundy County (part)		Unclassifiable/Attainment.		
Goose Lake and Aux Sable Townships		Unclassifiable/Attainment.		
Kane County		Unclassifiable/Attainment.		
Kendall County (part)		Unclassifiable/Attainment.		
Oswego Township		Unclassifiable/Attainment.		
Lake County		Unclassifiable/Attainment.		
McHenry County		Unclassifiable/Attainment.		
Will County		Unclassifiable/Attainment.		
Davenport-Moline-Rock Island, IL:				
Rock Island County		Unclassifiable/Attainment.		
Henry County		Unclassifiable/Attainment.		

ILLINOIS—2012 ANNUAL $PM_{2.5}$ NAAQS—Continued

[Primary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
Mercer County		Unclassifiable/Attainment.		
St. Louis, MO–IL:				
Madison County		Unclassifiable/Attainment.		
Monroe County		Unclassifiable/Attainment.		
Randolph County (part)		Unclassifiable/Attainment.		
Baldwin Village		Unclassifiable/Attainment.		
St. Clair County		Unclassifiable/Attainment.		
Rest of State:				
Adams County		Unclassifiable/Attainment.		
Alexander County		Unclassifiable/Attainment.		
Bond County		Unclassifiable/Attainment.		
Boone County		Unclassifiable/Attainment.		
Brown County		Unclassifiable/Attainment.		
Bureau County		Unclassifiable/Attainment.		
Calhoun County		Unclassifiable/Attainment.		
Carroll County		Unclassifiable/Attainment.		
Cass County		Unclassifiable/Attainment.		
Champaign County		Unclassifiable/Attainment.		
Christian County		Unclassifiable/Attainment.		
Clark County		Unclassifiable/Attainment.		
Clay County		Unclassifiable/Attainment.		
Clinton County		Unclassifiable/Attainment.		
Coles County		Unclassifiable/Attainment.		
Crawford County		Unclassifiable/Attainment.		
Cumberland County		Unclassifiable/Attainment.		
DeKalb County		Unclassifiable/Attainment.		
De Witt County		Unclassifiable/Attainment.		
Douglas County		Unclassifiable/Attainment.		
Edgar County		Unclassifiable/Attainment.		
Edwards County		Unclassifiable/Attainment.		
Effingham County		Unclassifiable/Attainment.		
Fayette County		Unclassifiable/Attainment.		
Ford County		Unclassifiable/Attainment.		
Franklin County		Unclassifiable/Attainment.		
Fulton County		Unclassifiable/Attainment.		
Gallatin County		Unclassifiable/Attainment.		
Greene County		Unclassifiable/Attainment.		
Grundy County (remainder)		Unclassifiable/Attainment.		
Hamilton County		Unclassifiable/Attainment.		
Hancock County		Unclassifiable/Attainment.		
Hardin County		Unclassifiable/Attainment.		
Henderson County		Unclassifiable/Attainment.		
Iroquois County		Unclassifiable/Attainment.		
Jackson County		Unclassifiable/Attainment.		
Jasper County		Unclassifiable/Attainment.		
Jefferson County		Unclassifiable/Attainment.		
Jersey County		Unclassifiable/Attainment.		
Jo Daviess County		Unclassifiable/Attainment.		
Johnson County		Unclassifiable/Attainment.		
Kankakee County		Unclassifiable/Attainment.		
Kendall County (remainder)		Unclassifiable/Attainment.		
Knox County		Unclassifiable/Attainment.		
La Salle County		Unclassifiable/Attainment.		
Lawrence County		Unclassifiable/Attainment.		
Lee County		Unclassifiable/Attainment.		
Livingston County		Unclassifiable/Attainment.		
Logan County		Unclassifiable/Attainment.		
McDonough County		Unclassifiable/Attainment.		
McLean County		Unclassifiable/Attainment.		
Macon County		Unclassifiable/Attainment.		
Macoupin County		Unclassifiable/Attainment.		
Marion County		Unclassifiable/Attainment.		
Marshall County		Unclassifiable/Attainment.		
Mason County		Unclassifiable/Attainment.		
Massac County		Unclassifiable/Attainment.		

ILLINOIS—2012 ANNUAL $PM_{2.5}$ NAAQS—Continued

[Primary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
Menard County		Unclassifiable/Attainment.		
Montgomery County		Unclassifiable/Attainment.		
Morgan County		Unclassifiable/Attainment.		
Moultrie County		Unclassifiable/Attainment.		
Ogle County		Unclassifiable/Attainment.		
Peoria County		Unclassifiable/Attainment.		
Perry County		Unclassifiable/Attainment.		
Piatt County		Unclassifiable/Attainment.		
Pike County		Unclassifiable/Attainment.		
Pope County		Unclassifiable/Attainment.		
Pulaski County		Unclassifiable/Attainment.		
Putnam County		Unclassifiable/Attainment.		
Randolph County (remainder)		Unclassifiable/Attainment.		
Richland County		Unclassifiable/Attainment.		
Saline County		Unclassifiable/Attainment.		
Sangamon County		Unclassifiable/Attainment.		
Schuyler County		Unclassifiable/Attainment.		
Scott County		Unclassifiable/Attainment.		
Shelby County		Unclassifiable/Attainment.		
Stark County		Unclassifiable/Attainment.		
Stephenson County		Unclassifiable/Attainment.		
Tazewell County		Unclassifiable/Attainment.		
Union County		Unclassifiable/Attainment.		
Vermilion County		Unclassifiable/Attainment.		
Wabash County		Unclassifiable/Attainment.		
Warren County		Unclassifiable/Attainment.		
Washington County		Unclassifiable/Attainment.		
Wayne County		Unclassifiable/Attainment.		
White County		Unclassifiable/Attainment.		
Whiteside County		Unclassifiable/Attainment.		
Williamson County		Unclassifiable/Attainment.		
Winnebago County		Unclassifiable/Attainment.		
Woodford County		Unclassifiable/Attainment.		

[1] Includes Indian Country located in each county or area, except as otherwise specified.
[2] This date is January 28, 2019, unless otherwise noted.

* * * * *

■ 3. Section 81.315 is amended by revising the entries ''Louisville, KY–IN:'' and ''Chicago Area, IL–IN:'' in the table entitled ''Indiana—2012 Annual $PM_{2.5}$ NAAQS'' to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—2012 ANNUAL $PM_{2.5}$ NAAQS

[Primary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
Louisville, KY–IN:				
Clark County	1/28/2018	Unclassifiable/Attainment..		
Floyd County	1/28/2018	Unclassifiable/Attainment..		
Chicago Area, IL–IN:				
Lake County	1/28/2018	Unclassifiable/Attainment..		
Porter County	1/28/2018	Unclassifiable/Attainment..		

* * * * * * *

[1] Includes areas of Indian country located in each county or area, except as otherwise specified.
[2] This date is April 15, 2015, unless otherwise noted.

* * * * *

[FR Doc. 2018–27903 Filed 12–26–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 18–320; RM–11817; DA 18–1242]

Digital Television Broadcast Stations (Morehead and Richmond, Kentucky)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of ION Media Lexington License, Inc. (ION), licensee of television station WUPX–TV, channel 21, Morehead, Kentucky (WUPX), the Commission amends the DTV Table of Allotments to reallot channel 21 from Morehead, Kentucky, to Richmond, Kentucky.

DATES: Effective December 27, 2018.

FOR FURTHER INFORMATION CONTACT: Darren Fernandez, Media Bureau, at *Darren.Fernandez@fcc.gov;* or Joyce Bernstein, Media Bureau, at *Joyce.Bernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the *Report and Order* in MB Docket No. 18–320; RM–11817; DA 18–1242, adopted December 11, 2018, and released December 11, 2018. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW, Washington, DC 20554, or online at *http://apps.fcc.gov/ecfs/.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

§ 73.622 [Amended]

■ 2. Amend § 73.622(i), the Post-Transition Table of DTV Allotments under Kentucky, by removing Morehead, channel 21, and adding, in alphabetical order, Richmond, channel 21.

[FR Doc. 2018–27865 Filed 12–26–18; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140819687–5583–02]

RIN 0648–XG697

2018–2019 Commercial Trip Limit Reduction for Spanish Mackerel in the Atlantic Southern Zone

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

ACTION: Temporary rule; trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit of Atlantic migratory group Spanish mackerel in or from the exclusive economic zone (EEZ) in the Atlantic southern zone to 1,500 lb (680 kg), in round or gutted weight, per day. This commercial trip limit reduction is necessary to maximize the socioeconomic benefits of the fishery.

DATES: This temporary rule is effective from 6 a.m., local time, on December 26, 2018, until 12:01 a.m., local time, on March 1, 2019.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, or email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish includes king mackerel, Spanish mackerel, and cobia, and is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All weights for the Atlantic migratory group of Spanish mackerel (Atlantic Spanish mackerel) described apply as either round or gutted weight, and the fishing year is March through the end of February.

Framework Amendment 1 to the FMP (79 FR 69058, November 20, 2014) implemented a commercial annual catch limit (equal to the commercial quota) of 3.33 million lb (1.51 million kg) for Atlantic Spanish mackerel. Atlantic Spanish mackerel are divided into a northern and southern zone for management purposes. The southern zone consists of Federal waters off South Carolina, Georgia, and the east coast of Florida. The southern zone boundaries for Atlantic Spanish mackerel extend from the border of North Carolina and South Carolina (which is a line extending southeast in a direction of 135°34′55″ from true north beginning at 33°51′07.9″ N lat. and 78°32′32.6″ W long. to the intersection point with the outward boundary of the EEZ) to the border of Miami-Dade and Monroe Counties, Florida (at 25°20′24″ N lat.). Framework Amendment 2 to the FMP (80 FR 40936, July 14, 2015) revised the commercial trip limits for Atlantic Spanish mackerel in the southern zone to streamline the commercial trip limit system and increase the social and economic benefits of the fishery.

The southern zone commercial quota for Atlantic Spanish mackerel is 2,667,330 lb (1,209,881 kg). Seasonally variable trip limits are based on an adjusted commercial quota of 2,417,330 lb (1,096,482 kg). The adjusted commercial quota is calculated to allow continued harvest in the southern zone at a set rate for the remainder of the current fishing year, through February 28, 2019, in accordance with 50 CFR 622.385(b)(2).

As specified at 50 CFR 622.385(b)(1)(ii)(B), after 75 percent of the adjusted commercial quota of Atlantic Spanish mackerel is reached or is projected to be reached, Atlantic Spanish mackerel in or from the EEZ in the southern zone may not be possessed onboard or landed from a vessel issued a Federal permit for Atlantic Spanish mackerel in amounts exceeding 1,500 lb (680 kg) per day.

NMFS has determined that 75 percent of the adjusted commercial quota for Atlantic Spanish mackerel will be reached by December 25, 2018. Accordingly, the commercial trip limit of 1,500 lb (680 kg) per day applies to Atlantic Spanish mackerel in or from the EEZ in the southern zone effective from 6 a.m., local time, on December 26, 2018, until 12:01 a.m., local time, on March 1, 2019, unless changed by subsequent notification in the **Federal Register**.

Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of Atlantic Spanish mackerel and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.385(b)(1)(ii)(B) and is exempt from review under Executive Order 12866.

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

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to immediately reduce the trip limit for the commercial sector for Atlantic Spanish mackerel constitutes good cause to waive the requirements to provide prior notice and the opportunity for public comment pursuant to 5 U.S.C. 553(b)(B) as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rules implementing the quotas and trip limits have already been subject to notice and comment, and all that remains is to notify the public of the trip limit reduction.

Prior notice and opportunity for public comment is contrary to the public interest, because any delay in the trip limit reduction of the commercial harvest could result in the commercial quota being exceeded. There is a need to immediately implement this action to protect the Atlantic Spanish mackerel resource, because the capacity of the fishing fleet allows for rapid harvest of the commercial quota. Prior notice and opportunity for public comment would require additional time and could potentially result in a harvest well in excess of the established commercial quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: December 20, 2018.

Karen H. Abrams,

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

[FR Doc. 2018–28039 Filed 12–20–18; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 180207141–8999–03]

RIN 0648–BH74

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Groundfish Bottom Trawl and Midwater Trawl Gear in the Trawl Rationalization Program; Correction

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

ACTION: Final rule; correction.

SUMMARY: NMFS published a final rule on December 3, 2018, to implement management measures revising Federal regulations that currently restrict the use and configuration of bottom and midwater trawl gear for vessels fishing under the Pacific Coast Groundfish Fishery's Trawl Rationalization Program. This notification corrects language describing where vessels are prohibited from carrying any other type of small footrope trawl gear other than selective flatfish trawl gear (SFFT); restores language which clarifies the trawl gear types vessels are allowed to carry simultaneously on a trip; restores the prohibition on the use of small footrope trawl inside the Columbia and Klamath River Salmon Conservation Zones; and restores vessel declarations for non-trawl and open access groundfish trips, open access trips for other fisheries, and other trip types.

DATES: This correction notice is effective on January 1, 2019.

FOR FURTHER INFORMATION CONTACT: Colin Sayre, NMFS West Coast Regional Office, telephone: 206–526–4656, email: *colin.sayre@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS published a final rule (December 3, 2018; 83 FR 62269) that, in part, allowed vessels to use multiple types of trawl gear on the same trip without returning to port. The final rule provided a description of trawl gear types allowed on board simultaneously on a single trip, described areas where vessels are permitted to use multiple gear types, and described declaration and reporting requirements for vessels participating in the Trawl Rationalization Program.

The final rule requires that vessel operators submit a new declaration to NMFS Office of Law Enforcement before changing gear type. The preamble to the rule described the gear types a vessel may carry and use on the same trip. The final rule allows vessels in the Shorebased IFQ Program to carry on board multiple types of groundfish bottom or midwater trawl gear in all areas except in the area between 42° North (N) latitude and 40°10′ N latitude and shoreward of the trawl Rockfish Conservation Area (RCA). In this area, a vessel is only allowed to have midwater trawl gear, large footrope trawl gear, and selective flatfish trawl (SFFT) gear on board simultaneously. The final rule prohibited vessels from having any other type of small footrope trawl gear on board when fishing in this area. The final rule also requires fishing with small footrope trawl gear, other than SFFT, inside the Columbia and Klamath River Salmon Conservation Zones. The final rule is effective January 1, 2019.

Need for Correction

Two of the corrections are needed so that the implementing regulations are accurate and implement the action as intended by the Pacific Fishery Management Council (Council) and described in the preamble of the final rule. The other two corrections are needed to restore text that was unintentionally removed through the final rule.

The implementing regulations adjusted the sector and gear declarations at § 660.13(d)(4)(iv)(A)(*1*) through (*8*), but inadvertently deleted required declaration types for sectors, gears, and fisheries other than limited entry trawl groundfish gear currently described at § 660.13(d)(5)(iv)(A)(*9*) through (*26*). This correction would include the entire list of required gear and sector declarations for non-trawl and open access groundfish trips, open access trips for other fisheries, and other trip types.

At § 660.130(c)(2)(iii) language describing use of small footrope gear inside the Klamath River Salmon Conservation Zone inadvertently substituted the word ''prohibit'' for ''require'' when describing the use of SFFT, a type of small footrope trawl gear, in the area. The final rule for a separate action, the 2019–2020 Pacific Coast Groundfish Biennial Harvest Specifications (December 12, 2018; 83 FR 63970), closes the Columbia and Klamath River Salmon Conservation Zones to all midwater trawling and to bottom trawling, unless vessels are using SFFT. Vessels are currently prohibited from fishing with midwater trawl gear in both areas. The specifications final action maintains the prohibition on bottom trawling in these areas without SFFT, which was included under the blanket requirement that groundfish trawl vessels use SFFT gear shoreward of the trawl RCA north of 40°10′ N lat. The Columbia and Klamath River Salmon Conservation Zones are located inside this area. NMFS removed this blanket requirement in the December 8, 2018, final rule (83 FR 62269) tied to this correction notice. The final rule for specifications reestablished the SFFT requirement inside the Columbia and Klamath River Salmon Conservation Zones. The SFFT requirement is necessary to limit impacts to Endangered Species Act salmon and green sturgeon in these areas. Requiring the use of small footrope trawl gear, other than SFFT, in these area would remove this protective prohibition. Language describing the use of small footrope trawl gear, inside the Columbia and Klamath River Salmon Conservation Zones would be corrected to state that small footrope trawl gears other than SFFT are ''prohibited,'' consistent with the Council's intent for regulations in this area. The Council discussed maintaining the SFFT requirement in these areas its March 2018, April 2018, and June 2018 meetings. The public also had the opportunity to comment on maintaining this requirement during the comment period for the proposed rule for 2019–2020 Pacific Coast Groundfish Biennial Harvest Specifications (September 19, 2018; 83 FR 47416). Changing this requirement undermine the purposes of this rule, and would be inconsistent with our legal requirements under the Endangered Species Act.

The implementing regulations revising § 660.130(c)(4)(i)(A) did not specify the location, namely the area between 42° N latitude and 40°10′ N latitude and shoreward of the trawl RCA, where vessels may only carry one type of small footrope trawl gear, SFFT gear, along with midwater trawl and large footrope trawl gear. Instead, the implementing regulations omitted language specifying the location where vessels are subject to this restriction, and maintained the prohibition currently in regulation that prohibits a vessel from carrying more than one type of small footrope trawl gear north of 40°10′ N latitude. As described in the preamble to the December 3, 2018, final rule, this prohibition for the area between 42° N latitude and 40°10′ N latitude and shoreward of the trawl RCA is necessary to enforce the requirement to only use SFFT gear in this area. The implementing regulations will allow vessels fishing outside of the area between 42° N latitude and 40°10′ N latitude and shoreward of the trawl RCA area to carry and use any type of small footrope trawl gear. Therefore, maintaining the current prohibition on carrying SFFT gear outside of the area between 42° N latitude and 40°10′ N latitude is unnecessarily restrictive. The correction to § 660.130(c)(4)(ii)(A) will include clarifying language concerning the types of gears (SFFT, midwater trawl, and large footrope trawl gear) allowed to be fished and carried in this area.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries (AA) finds there is good cause to waive prior notice and an opportunity for public comment on this correction, as notice and comment would be unnecessary and contrary to public interest. Notice and comment are unnecessary and contrary to the public interest because this notice corrects inadvertent errors in regulations made in the final rule published on December 3, 2018, and immediate notice of the error and correction is necessary to prevent confusion among participants in the fishery that could result in issues with reporting, recordkeeping, and enforcement. To effectively correct the errors, the changes in this notice must go into effect by January 1, 2019, as the final rule that contains the errors will become effective on that date. Thus, there is not sufficient time for notice and comment due to the imminent effective date of the final rule. In addition, notice and comment is unnecessary because this notice makes only minor changes to correct the final rule. The public, states and Pacific Fishery Management Council are aware of the correct intent of the regulations through the public process used to develop the final rule and had the opportunity to comment on these requirements during the comment period on the proposed rule for this action (September 7, 2018; 83 FR 45396). The preamble to the December 3, 2018, final rule also correctly describes the intent of the regulations. These corrections will not affect the results of analyses conducted to support management decisions in the Pacific Coast Groundfish fishery nor change the total catch in the fishery. No change in operating practices in the fishery is required.

For the same reasons stated above, the AA has determined that good cause exists to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d). This notice makes only minor corrections to the final rule which will be effective January 1, 2018. Delaying effectiveness of these corrections would result in conflicts in the regulations and confusion among fishery participants. Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no Regulatory Flexibility Analysis is required for this rule and none has been prepared.

This final rule is not significant under Executive Order 12866.

Corrections

Effective January 1, 2019, in FR Doc. 2018–26194 at 83 FR 62269 in the issue of December 3, 2018:

■ 1. On page 62275, in amendatory instruction 3, in the third column, paragraphs (d)(4)(iv) introductory text and (d)(4)(iv)(A) are corrected to read as follows:

§ 660.13 [Corrected]

(d) * * *

(4) * * *

(iv) Declaration reports will include: The vessel name and/or identification number, the gear type, and the fishery (as defined in paragraph (d)(4)(iv)(A) of this section). Vessels using limited entry trawl gear may only declare one gear type at a time. Vessels using fixed gear (limited entry and open access) outside the Shorebased IFQ Program may declare more than one type of non-trawl gear at the same time. Vessels using trawl gear may only declare one trawl gear at a time and may not declare fixed gear on the same trip in which trawl gear is declared.

(A) One of the following gear types or sectors must be declared:

(*1*) Limited entry fixed gear, not including Shorebased IFQ Program,

(*2*) Limited entry groundfish non-trawl, Shorebased IFQ Program,
(*3*) Limited entry midwater trawl, non-whiting Shorebased IFQ Program,
(*4*) Limited entry midwater trawl, Pacific whiting Shorebased IFQ Program,
(*5*) Limited entry midwater trawl, Pacific whiting catcher/processor sector,
(*6*) Limited entry midwater trawl, Pacific whiting mothership sector (catcher vessel or mothership),
(*7*) Limited entry bottom trawl, Shorebased IFQ Program, not including demersal trawl,
(*8*) Limited entry demersal trawl, Shorebased IFQ Program,
(*9*) Non-groundfish trawl gear for pink shrimp,
(*10*) Non-groundfish trawl gear for ridgeback prawn,
(*11*) Non-groundfish trawl gear for California halibut,
(*12*) Non-groundfish trawl gear for sea cucumber,
(*13*) Open access longline gear for groundfish,
(*14*) Open access Pacific halibut longline gear,
(*15*) Open access groundfish trap or pot gear,
(*16*) Open access Dungeness crab trap or pot gear,
(*17*) Open access prawn trap or pot gear,
(*18*) Open access sheephead trap or pot gear,
(*19*) Open access line gear for groundfish,
(*20*) Open access HMS line gear,
(*21*) Open access salmon troll gear,
(*22*) Open access California Halibut line gear,
(*23*) Open access Coastal Pelagic Species net gear,
(*24*) Other, or
(*25*) Tribal trawl.
(*26*) Open access California gillnet complex gear.

* * * * *

■ 2. On page 62277, in amendatory instruction 8, in the second column, paragraph (c)(2)(iii) is corrected to read as follows:

§ 660.130 [Corrected]

(c) * * *

(2) * * *

(iii) The use of small footrope trawl, other than selective flatfish trawl gear, is prohibited inside the Klamath River Salmon Conservation Zone (defined at § 660.131(c)(1)) and the Columbia River Salmon Conservation Zone (defined at § 660.131(c)(2)).

* * * * *

■ 3. On page 62277, in amendatory instruction 8, in the second column, paragraph (c)(4)(i)(A) is corrected to read as follows:

§ 660.130 [Corrected]

(c) * * *

(4) * * *

(i) * * *

(A) A vessel may not have both groundfish trawl gear and non-groundfish trawl gear on board simultaneously. A vessel may have more than one type of midwater groundfish trawl gear on board, either simultaneously or successively, during a cumulative limit period. A vessel may have more than one type of limited entry bottom trawl gear on board (large or small footrope, including selective flatfish trawl), either simultaneously or successively, during a cumulative limit period except between 42° N latitude and 40°10′ N latitude and shoreward of the trawl RCA. Between 42° N latitude and 40°10′ N latitude and shoreward of the trawl RCA, vessels are prohibited from having any type of small footrope trawl gear other than selective flatfish trawl gear on board when fishing.

* * * * *

■ 4. On page 62277, in amendatory instruction 8, in the third column, paragraph (c)(4)(ii)(A) is corrected to read as follows:

§ 660.130 [Corrected]

(c) * * *

(4) * * *

(ii) * * *

(A) A vessel may not have both groundfish trawl gear and non-groundfish trawl gear onboard simultaneously. A vessel may have more than one type of midwater groundfish trawl gear on board, either simultaneously or successively, during a cumulative limit period. A vessel may have more than one type of limited entry bottom trawl gear on board (large or small footrope, including selective flatfish trawl), either simultaneously or successively, during a cumulative limit period.

* * * * *

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

Dated: December 19, 2018.

Donna S. Wieting,

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

[FR Doc. 2018–27921 Filed 12–26–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 180625576–8999–03]

RIN 0648–BH93

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2019–2020 Biennial Specifications and Management Measures; Correction

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

ACTION: Final rule; correction.

SUMMARY: NMFS published a final rule on December 12, 2018, to establish the 2019–2020 harvest specifications and management measures for groundfish taken in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California. That rule included modifications to depth contour coordinates used for area management, trip limits for a variety of fleets, and allocations to different fisheries within the Pacific Coast groundfish fisheries. This action corrects the order of two waypoints for the 150 fathom (274 m) depth line, corrects the trip limits for the limited entry fixed gear and open access fleets for Minor Nearshore Rockfish south of 42° North latitude (N), and corrects the Shorebased Individual Fishing Quota (IFQ) allocations for 2019 and 2020 for canary rockfish and shortspine thornyheads north of 34°27′ N latitude. These corrections are necessary so that the implementing regulations are accurate and implement the action as intended by the Pacific Fishery Management Council (Council).

DATES: This correction is effective on January 1, 2019.

FOR FURTHER INFORMATION CONTACT: Keeley Kent, phone: 206–526–4655, fax: 206–526–6736, or email: *Keeley.Kent@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS published a final rule on December 12, 2018 (83 FR 63970), that established the 2019–2020 harvest specifications and management measures for groundfish taken in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California. That final rule is effective January 1, 2019.

Need for Correction

The December 12, 2018, final rule adjusted the waypoints (latitude and longitude coordinates) for the 150

fathom (274 m) depth contour at § 660.73(h). Two of these waypoints were inadvertently swapped. When mapped, this erroneous coordinates create a cross-over in the line. In order to properly approximate the 150 fathom (274 m) contour in this area, paragraphs (282) and (283) will be switched.

Additionally, in the December 12, 2018, final rule, the trip limits for both the limited entry fixed gear (LEFG) fisheries north of 40°10′ N latitude and the open access (OA) fisheries north of 40°10′ N latitude, the sublimit within the Minor Nearshore Rockfish stock complex trip limit was mistakenly modified from those in the proposed rule by adding blue/deacon rockfish to the sublimit south of 42° N latitude (83 FR 47416; September 19, 2018). This mistake was connected to changes to other trip limits due to the new stock complex for Oregon black, blue/deacon rockfish. The preamble to the final rule correctly notes that this stock complex is only off of Oregon, so the correct southern extent is 42° N latitude, not 40°10′ N latitude. This action reverts the sublimits to what was originally proposed, correcting Table 12 (page 63978) and Table 13 (page 63980) in the preamble, and Table 2 North to Part 660, Subpart E and Table 3 North to Part 660, Subpart F in the regulations. For the LEFG fisheries between 42° and 40°10′ N latitude, no more than 1,200 pounds may be species other than black rockfish every two months within the Minor Nearshore Rockfish trip limit. Similarly, for the OA fisheries, between 42° and 40°10′ N latitude, no more than 1,200 pounds may be species other than black rockfish every two months within the Minor Nearshore Rockfish trip limit. There is no additional sublimit for blue/deacon rockfish south of 42° N latitude.

Finally, the December 12, 2018, final rule and the September 19, 2018, proposed rule (47416) included incorrect allocations to the Shorebased IFQ Program at § 660.140(d)(1)(ii)(D). These mistakes were also in Table 9 of the final rule preamble (page 63975). The 2019 and 2020 allocations for canary rockfish and for shortspine thornyhead north of 34°27′ N lat. were incorrect in the table in this paragraph. For canary rockfish, the deductions for exempted fishing permits from the ACL were calculated incorrectly, and when corrected result in slightly larger allocation for the Shorebased IFQ Program. The December 12, 2018, final rule set the allocations for canary rockfish in 2019 at 946.9 mt and in 2020 at 887.8 mt. This action correctly sets these allocations at 953.6 mt for 2019 and 894.3 mt for 2020.

For shortspine thornyhead north of 34°27′ N lat., improper application of the formula for dividing the trawl allocation resulted in an error in the Shorebased IFQ Program allocations. Under Amendment 21 to the Groundfish Fishery Management Plan, once the harvest guideline for this species is determined, a formula is applied to split that catch limit between trawl and non-trawl fisheries. The trawl allocation is then split by deducting the at-sea set asides, and the remainder is allocated to the Shorebased IFQ Program. For 2019–2020, the at-sea set aside amount for shortspine thornyhead north of 34°27′ N lat. was increased from 25 to 30 mt, which should have been deducted from the allocation to the Shorebased IFQ Program. In the December 12, 2018, final rule, the Shorebased IFQ Program allocation did not reflect this 5 mt increase. This action corrects this mistake by reducing the Shorebased IFQ Program allocation by 5 mt (0.3 percent of the total allocation). For 2019, the allocation is now 1,506.8 mt and for 2020, the allocation is now 1,493.5 mt.

All of these corrections are consistent with the Council action for the 2019–2020 groundfish harvest specifications and are minor corrections to correctly implement the Council intent in their final action from June 2018.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries (AA) finds there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be unnecessary and contrary to public interest. Notice and comment are unnecessary and contrary to the public interest because this action corrects inadvertent errors in the December 12, 2018, final rule. Immediate notice of the errors and correction is necessary to prevent confusion among participants in the fishery that could result in issues with enforcement of area management, as well as to allow the correct issuance of quota to the Shorebased IFQ Program for shortspine thornyheads and canary rockfish. To effectively correct the errors, the changes in this action must be effective on January 1, 2019, which is the effective date of the December 12, 2018, final rule. Thus, there is not sufficient time for notice and comment due to the imminent effective date of the December 12, 2018, final rule. In addition, notice and comment is unnecessary because this notice makes only minor changes to correct the final rule. These corrections will not affect the results of analyses conducted to support management decisions in the Pacific coast groundfish fishery.

For the same reasons stated above, the AA has determined that good cause exists to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d). This notice makes only minor corrections to the final rule which will be effective January 1, 2019. Delaying effectiveness of these corrections would result in conflicts in the regulations and confusion among fishery participants. Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no Regulatory Flexibility Analysis is required for this rule and none has been prepared.

This final rule is not significant under Executive Order 12866.

Corrections

Effective January 1, 2019, in FR. Doc. 2018–26602 at 83 FR 63970 in the issue of December 12, 2018:

■ 1. On page 63994, in amendatory instruction 9, in the second column, § 660.73(h)(282) and (283) are corrected to read as follows:

§ 660.73 [Corrected]

* * * * *

(h) * * *

(282) 34°09.00′ N lat., 120°18.40′ W long.;

(283) 34°11.07′ N lat., 120°25.03′ W long.;

* * * * *

■ 2. On page 64002, in amendatory instruction 14, in the third column, § 660.140(d)(1)(ii)(D) is corrected to read as follows:

§ 660.140 [Corrected]

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(D) For the trawl fishery, NMFS will issue QP based on the following shorebased trawl allocations:

IFQ species	Area	2019 Shorebased trawl allocation (mt)	2020 Shorebased trawl allocation (mt)
Arrowtooth flounder	Coastwide	12,735.10	10,052.30
Bocaccio	South of 40°10′ N lat	800.7	767.1
Canary rockfish	Coastwide	953.6	894.3
Chilipepper	South of 40°10′ N lat	1,838.30	1,743.80
COWCOD	South of 40°10′ N lat	2.2	2.2
Darkblotched rockfish	Coastwide	658.4	703.4
Dover sole	Coastwide	45,979.20	45,979.20
English sole	Coastwide	9,375.10	9,417.90
Lingcod	North of 40°10′ N lat	2,051.90	1,903.40
Lingcod	South of 40°10′ N lat	462.5	386
Longspine thornyhead	North of 34°27′ N lat	2,420.00	2,293.60
Minor Shelf Rockfish complex	North of 40°10′ N lat	1,155.20	1,151.60
Minor Shelf Rockfish complex	South of 40°10′ N lat	188.6	188.6
Minor Slope Rockfish complex	North of 40°10′ N lat	1,248.80	1,237.50
Minor Slope Rockfish complex	South of 40°10′ N lat	456.00	455.4
Other Flatfish complex	Coastwide	5,603.70	5,192.40
Pacific cod	Coastwide	1,034.10	1,034.10
Pacific ocean perch	North of 40°10′ N lat	3,697.30	3,602.20
Pacific whiting	Coastwide	TBD	TBD
Petrale sole	Coastwide	2,453.00	2,393.20
Sablefish	North of 36° N; lat	2,581.30	2,636.80
Sablefish	South of 36° N lat	834	851.7
Shortspine thornyhead	North of 34°27′ N lat	1,506.8	1,493.5
Shortspine thornyhead	South of 34°27′ N lat	50	50
Splitnose rockfish	South of 40°10′ N lat	1,646.70	1,628.70
Starry flounder	Coastwide	211.6	211.6
Widow rockfish	Coastwide	9,928.80	9,387.10
YELLOWEYE ROCKFISH	Coastwide	3.4	3.4
Yellowtail rockfish	North of 40°10′ N lat	4,305.80	4,048.00

■ 3. On page 64008, in amendatory instruction 20, Table 2 (North) to Part 660, Subpart E is corrected to read as follows:

Table 2 (North) to Part 660, Subpart E—Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10′ N Lat. [Corrected]

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Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 01012019

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 42°00' N. lat.	30 fm line[1/] - 100 fm line[1/]					
3	42°00' N. lat. - 40°10' N. lat.	30 fm line[1/] - 100 fm line[1/]					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
4	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	4,000 lb/ 2 month					
5	**Pacific ocean perch**	1,800 lb/ 2 months					
6	**Sablefish**	1,300 lb/week, not to exceed 3,900 lb/ 2 months					
7	**Longspine thornyhead**	10,000 lb/ 2 months					
8	**Shortspine thornyhead**	2,000 lb/ 2 months			2,500 lb/ 2 months		
9 10 11 12 13 14	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line, are not subject to the RCAs.					
15	**Whiting**	10,000 lb/ trip					
16	**Minor Shelf Rockfish[2/], Shortbelly, & Widow rockfish**	200 lb/ month					
17	**Yellowtail rockfish**	1,000 lb/ month					
18	**Canary rockfish**	300 lb/ 2 months					
19	**Yelloweye rockfish**	CLOSED					
20	**Minor Nearshore Rockfish, Washington Black rockfish & Oregon Black/blue/deacon rockfish**						
21	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish[4/]					
22	42°00' N. lat. - 40°10' N. lat.	8,500 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish	7,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish				
23	**Lingcod[5/]**						
24	North of 42°00' N. lat.	2,000 lb/ 2 months					
25	42°00' N. lat. - 40°10' N. lat.	1,400 lb/2 months					
26	**Pacific cod**	1,000 lb/ 2 months					
27	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
28	**Longnose skate**	Unlimited					
29	**Other Fish[6/]& Cabezon in California**	Unlimited					
30	**Oregon Cabezon/Kelp Greenling**	Unlimited					
31	**Big skate**	Unlimited					

TABLE 2 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Bocaccio, chilipepper and cowcod are included in the trip limits for Minor Shelf Rockfish and splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 4. On page 64011, in amendatory instruction 23, Table 3 (North) to Part 660, Subpart F is corrected to read as follows:

Table 3 (North) to Part 660, Subpart F—Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10′ N Lat. [Corrected]

Table 3 (North) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table — 01012019

			JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:							
1	North of 46°16' N. lat.		shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 42°00' N. lat.		30 fm line[1/] - 100 fm line[1/]					
3	42°00' N. lat. - 40°10' N. lat.		30 fm line[1/] - 100 fm line[1/]					
	See §§660.60, 660.330 and 660.333 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Bank, and EFHCAs).							
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
4	**Minor Slope Rockfish[2/] & Darkblotched rockfish**		500 pounds/month					
5	**Pacific ocean perch**		100 lb/ month					
6	**Sablefish**		300 lb/ day; or one landing per week up to 1,200 lb, not to exceed 2,400 lb/ 2 months					
7	**Shortpine thornyheads**		50 lb/ month					
8	**Longspine thornyheads**		50 lb/ month					
9	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**		3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs.					
10								
11			South of 42° N. lat., when fishing for "Other Flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
12								
13								
14								
15	**Whiting**		300 lb/ month					
16	**Minor Shelf Rockfish[2/], Shortbelly rockfish, & Widow rockfish**		200 lb/ month					
17	**Yellowtail rockfish**		500 lb/ month					
18	**Canary rockfish**		300 lb/ 2 months					
19	**Yelloweye rockfish**		CLOSED					
20	**Minor Nearshore Rockfish, Washington Black rockfish, & Oregon Black/Blue/Deacon rockfish**							
21		North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish					
22		42°00' N. lat. - 40°10' N. lat.	8,500 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish	7,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish				
23	**Lingcod[5/]**							
24		North of 42°00' N. lat.	900 lb/ month					
25		42°00' N. lat. - 40°10' N. lat.	600 lb/ month					
26	**Pacific cod**		1,000 lb/ 2 months					
27	**Spiny dogfish**		200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
28	**Longnose skate**		Unlimited					
29	**Big skate**		Unlimited					
30	**Other Fish[6/] & Cabezon in California**		Unlimited					
31	**Oregon Cabezon/Kelp Greenling**		Unlimited					

TABLE 3 (North)

Table 3 (North). Continued

TABLE 3 (North) cont'd

32	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish and lingcod, as described below)*	
33	North	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. Salmon trollers may retain and land up to 1 lingcod per 5 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. This limit only applies during times when lingcod retention is allowed, and is not "CLOSED." This limit is within the per month limit for lingcod described in the table above, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.
34	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*	
35	North	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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

Dated: December 19, 2018.

Donna S. Wieting,

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

[FR Doc. 2018–27922 Filed 12–26–18; 8:45 am]

BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 83, No. 247
Thursday, December 27, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2018–0265]

RIN 3150–AK20

List of Approved Spent Fuel Storage Casks: TN Americas LLC Standardized Advanced NUHOMS® System, Certificate of Compliance No. 1029, Amendment No. 4

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage regulations by revising the TN Americas LLC Standardized Advanced NUHOMS® Horizontal Modular Storage System (NUHOMS® System) listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 4 to Certificate of Compliance No. 1029. Amendment No. 4 revises the certificate of compliance's technical specifications to: Clarify the applicability of unloading procedures and training modules relative to spent fuel pool availability; credit the use of the installed temperature monitoring system specified in lieu of performing daily visual vent inspections; establish dose rates on the front inlet bird screen and the door of the concrete storage module for the Advanced Horizontal Storage Module; modify the criteria for performing Advanced Horizontal Storage Module air vent visual inspections; identify the blocked vent time limitations for each of the 24PT1 and 24PT4 dry shielded canisters; and provide a new temperature rise value for the Advanced Horizontal Storage Module with a loaded 24PT4 dry shielded canister.

DATES: Submit comments by January 28, 2019. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0265. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

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: William Allen, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–6877; email: *William.Allen@nrc.gov* or Edward M. Lohr, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–0253; email: *Edward.Lohr@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Obtaining Information and Submitting Comments
II. Rulemaking Procedure
III. Background
IV. Plain Writing
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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0265 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–2018–0265.
- *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 ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's 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–2018–0265 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. Rulemaking Procedure

This proposed rule is limited to the changes contained in Amendment No. 4 to Certificate of Compliance No. 1029 and does not include other aspects of the TN Americas LLC Standardized Advanced NUHOMS® System design. Because the NRC considers this action to be non-controversial, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. The direct final rule will become effective on March 12, 2019. However, if the NRC receives significant adverse comments on this proposed rule by January 28, 2019, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to these proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

For procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, requires that ''the Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the Nuclear Waste Policy Act states, in part, that ''[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on January 6, 2003 (68 FR 463), that approved the TN Americas LLC Standardized Advanced NUHOMS® System design and added it to the list of NRC-approved cask designs provided in § 72.214 as Certificate of Compliance No. 1029.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883). The NRC requests comment on the proposed rule with respect to the clarity and effectiveness of the language used.

V. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No./ weblink/ **Federal Register** citation
TN Americas LLC Request to Add Amendment No. 4 to Certificate of Compliance No. 1029, letter dated November 15, 2017.	ML17326A125 (package).
Revision to TN Americas LLC Request to Add Amendment No. 4 to Certificate of Compliance No. 1029, letter dated February 22, 2018.	ML18065A362.
Revision to TN Americas LLC Request to Add Amendment No. 4 to Certificate of Compliance No. 1029, letter dated May 16, 2018.	ML18138A289.
Revision to TN Americas LLC Request to Add Amendment No. 4 to Certificate of Compliance No. 1029, letter dated June 26, 2018.	ML18179A174.
Revision to TN Americas LLC Request to Add Amendment No. 4 to Certificate of Compliance No. 1029, letter dated July 18, 2018.	ML18201A202.
TN Americas LLC Amendment No. 4 Certificate of Compliance No. 1029	ML18263A046.
Technical Specifications for TN Americas LLC Amendment No. 4 to Certificate of Compliance No. 1029	ML18263A045.
Preliminary Safety Evaluation Report for TN Americas LLC Amendment No. 4 to Certificate of Compliance No. 1029.	ML18263A047.

The NRC may post materials related to this document, including public comments, on the Federal Rulemaking website at *http://www.regulations.gov* under Docket ID NRC–2018–0265. The Federal Rulemaking website allows you

to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2018–0265); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, Certificate of Compliance 1029 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1029.

Initial Certificate Effective Date: February 5, 2003.

Amendment Number 1 Effective Date: May 16, 2005.

Amendment Number 2 Effective Date: Amendment not issued by the NRC.

Amendment Number 3 Effective Date: February 23, 2015.

Amendment Number 4 Effective Date: March 12, 2019.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized Advanced NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1029.

Certificate Expiration Date: February 5, 2023.

Model Number: Standardized Advanced NUHOMS®-24PT1, -24PT4, and -32PTH2.

* * * * *

Dated at Rockville, Maryland, this 19th day of December, 2018.

For the Nuclear Regulatory Commission.

Margaret M. Doane,

Executive Director for Operations.

[FR Doc. 2018–27950 Filed 12–26–18; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Proposed Modification of the Miami, FL, Class B Airspace; and the Fort Lauderdale, FL, Class C Airspace Areas; Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces a fact-finding informal airspace meeting regarding a plan to modify the Miami, FL, Class B Airspace, and the Fort Lauderdale, FL, Class C Airspace areas. The purpose of the meeting is to provide interested parties an opportunity to present views, recommendations, and comments on any proposed change to the airspace. All comments received during the meeting will be considered prior to any revision or issuance of a notice of proposed rulemaking.

DATES: The meeting will be held on Wednesday, February 27, 2019, from 3:00 p.m. to 5:30 p.m. Comments must be received on or before March 29, 2019.

ADDRESSES: The meeting will be held at the following location: Broward College, South Campus Building 69, Room 133, 7200 Pines Blvd., Pembroke Pines, FL 33024.

Comments: Send comments on the proposal, in triplicate, to: Ryan Almasy, Manager, Operations Support Group, Eastern Service Area, Air Traffic Organization, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA, 30320; or via email to: *9-AJV-MIAClassBComments@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Bob Hildebidle, Manager, Miami ATCT/TRACON, 6400 NW 22nd St., Miami, FL 33122. Telephone: (305) 869–5402.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) The meeting will be informal in nature and will be conducted by one or more representatives of the FAA Eastern Service Area. A representative from the FAA will present a briefing on the planned airspace modifications. Each participant will be given and opportunity to deliver comments or make a presentation, although a time limit may be imposed to accommodate closing times. Only comments concerning the plan to modify the Miami, FL, Class B Airspace, and the Fort Lauderdale, FL, Class C Airspace areas will be accepted.

(b) The meeting will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation will be asked to sign in so those time frames can be established. This will permit the panel to allocate an appropriate amount of time for each presenter. This meeting will not be adjourned until everyone on the list has had an opportunity to address the panel. This meeting may be adjourned at any time if all persons present have had an opportunity to speak.

(d) Position papers or other handout material relating to the substance of the meeting will be accepted. Participants submitting handout materials should present an original and two copies to the presiding officer. There should be an adequate number of copies for distribution to all participants.

(e) This meeting will not be formally recorded. However, a summary of the comments made at the meeting will be filed in the docket.

Information gathered through this meeting will assist the FAA in drafting a Notice of proposed rulemaking (NPRM). The public will be afforded the opportunity to comment on any NPRM published on this matter.

Agenda for the Meeting

—Sign-in

—Presentation of Meeting Procedures

—Informal Presentation of the Planned Airspace Modifications

—Public Presentations and Discussions

—Closing Comments

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

Issued in Washington, DC, on December 17, 2018.

Scott M. Rosenbloom,

Acting Manager, Airspace Policy Group.

[FR Doc. 2018–28114 Filed 12–26–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–113604–18]

RIN 1545–BO86

Gain or Loss of Foreign Persons From Sale or Exchange of Certain Partnership Interests

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations implementing section 864(c)(8) of the Internal Revenue Code. The proposed regulations affect certain foreign persons that recognize gain or loss from the sale or exchange of an interest in a partnership that is engaged in a trade or business within the United States. The proposed regulations also affect partnerships that, directly or indirectly, have foreign persons as partners.

DATES: Written or electronic comments and requests for a public hearing must be received by February 25, 2019.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–113604–18), Internal Revenue Service, Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–113604–18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–113604–18).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Ronald M. Gootzeit or Chadwick Rowland, (202) 317–6937; concerning submissions of comments or requests for a public hearing, Regina L. Johnson, (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

A foreign partner in a partnership that is engaged in the conduct of a trade or business within the United States is itself considered to be so engaged. *See* section 875. Under a 1991 revenue ruling, in determining the tax consequences of the sale or exchange of a foreign partner's interest in a partnership engaged in the conduct of a trade or business within the United States, the IRS held that the partnership's property located in the United States that is used or held for use in the partnership's trade or business within the United States is used to determine the extent to which income derived from the sale or exchange of the partnership interest is effectively connected with the conduct of the partner's trade or business within the United States. Rev. Rul. 91–32, 1991–1 C.B. 107. Under the ruling, if there is unrealized gain or loss in partnership assets that would be treated as effectively connected with the conduct of the partnership's trade or business within the United States if those assets were sold by the partnership, some or all of the foreign person's gain or loss from the sale or exchange of a partnership interest may be treated as effectively connected with the partner's conduct of a trade or business within the United States. However, a 2017 Tax Court case held instead that, generally, gain or loss on the sale or exchange by a foreign person of an interest in such a partnership is foreign source gain or loss based on the residence of the selling partner because gain on the sale of the partnership interest is not attributable to the partnership's assets and activities. As a result, such gain or loss generally would not be treated as effectively connected with the conduct of a trade or business. *Grecian Magnesite Mining* v. *Commissioner,* 149 T.C. No. 3 (2017), *appeal argued,* No. 17–1268 (D.C. Cir. Oct. 9, 2018).

Section 864(c)(8), which was added to the Internal Revenue Code (the ''Code'') by section 13501 of the Tax Cuts and Jobs Act, Public Law 115–97 (2017) (the ''Act''), generally overturns the result of *Grecian Magnesite Mining* v. *Commissioner* by providing that gain or loss of a nonresident alien individual or foreign corporation (a ''foreign transferor'') from the sale, exchange, or other disposition (''transfer'') of a partnership interest is treated as effectively connected with the conduct of a trade or business within the United States (''effectively connected gain'' or ''effectively connected loss'') to the extent that the transferor would have had effectively connected gain or loss if the partnership had sold all of its assets at fair market value as of the date of the sale or exchange (''deemed sale'').

Section 864(c)(8)(E) generally provides that the Secretary shall prescribe such regulations or other guidance as the Secretary determines appropriate for the application of section 864(c)(8). Section 864(c)(8) is effective for sales, exchanges, and dispositions on or after November 27, 2017.

New section 1446(f) was also added to the Code by section 13501 of the Act. Section 1446(f)(1) requires that the transferee of a partnership interest withhold 10 percent of the amount realized on the transferor's disposition of the partnership interest (if any portion of the gain would be treated as effectively connected gain) unless the transferor certifies that the transferor is not a foreign person. Section 1446(f) is effective for sales, exchanges, and dispositions after December 31, 2017.

On December 29, 2017, the Department of the Treasury (the ''Treasury Department'') and the IRS released Notice 2018–08, 2018–7 I.R.B. 352 (the ''PTP Notice''). The PTP Notice temporarily suspends the requirement to withhold on amounts realized in connection with the sale, exchange, or disposition of certain interests in publicly traded partnerships (''PTPs'') in response to stakeholder concerns that applying section 1446(f) to dispositions of interests in PTPs without guidance presented significant practical problems. On April 2, 2018, the Treasury Department and the IRS released Notice 2018–29, 2018–16 I.R.B. 495, which announced an intent to issue proposed regulations under section 1446(f) that apply in the case of a disposition of a partnership interest that is not publicly traded and provided temporary guidance.

Explanation of Provisions

I. Gain or Loss on the Transfer of a Partnership Interest

Section 864(c)(8)(A) provides that gain or loss of a foreign transferor from the transfer of an interest, owned directly or indirectly, in a partnership that is engaged in any trade or business within the United States is treated as effectively connected gain or loss to the extent such gain or loss does not exceed the amount determined under section 864(c)(8)(B). In general, section 864(c)(8)(B) limits the amount of effectively connected gain or loss to the portion of the foreign transferor's distributive share of gain or loss that would have been effectively connected gain or loss if the partnership had sold all of its assets at fair market value. The proposed regulations set forth rules for determining gain or loss described in section 864(c)(8)(A) and the limitation described in section 864(c)(8)(B), each

of which is discussed in this section I of this Explanation of Provisions.

A. Determination of Gain or Loss Described in Section 864(c)(8)(A)

To determine the amount of gain or loss described in section 864(c)(8)(A), generally, the proposed regulations require that a foreign transferor first determine its gain or loss on the transfer of a partnership interest (''outside gain'' and ''outside loss''). For this purpose, the proposed regulations provide that outside gain or loss is determined under all relevant provisions of the Code and the regulations thereunder. As described in section I.A.1 of this Explanation of Provisions, a foreign transferor may recognize capital gain or loss (''outside capital gain'' or ''outside capital loss'') and ordinary gain or loss (''outside ordinary gain'' or ''outside ordinary loss'') on the transfer of its partnership interest and must separately apply section 864(c)(8) with respect to its capital gain or loss and its ordinary gain or loss.

1. Interaction With Sections 741 and 751

Section 864(c)(8) provides rules regarding the treatment of gain or loss on the transfer of a partnership interest as effectively connected gain or loss, but it does not address the computation of the amount of gain or loss to a partner upon the transfer. Rather, applicable tax law, including subchapter K, determines the amount and character of outside gain or loss on the transfer of a partnership interest. For example, the reduction in a transferor's share of partnership liabilities is treated as an amount realized on the transfer of the partnership interest under section 1001 and the regulations thereunder. See section 752(d) and § 1.752–1(h).

Section 741 provides that on a sale or exchange of an interest in a partnership, gain or loss is recognized by the transferor, and shall be considered capital gain or loss except as otherwise provided in section 751. Section 751 provides that an amount received by a transferor of a partnership interest that is attributable to unrealized receivables or inventory items of the partnership (''section 751 property'') is considered ordinary income or loss. As a result of sections 741 and 751 and the regulations thereunder, gain or loss on a sale or exchange of a partnership interest can comprise capital gain, capital loss, ordinary income, or ordinary loss (or a combination thereof). See §§ 1.741–1(a) and 1.751–1(a).

In general, the proposed regulations provide that a foreign transferor must determine the portion of its capital gain or loss, and the portion of its ordinary income or loss from section 751 property, that must each be characterized as effectively connected gain or loss under section 864(c)(8). See proposed § 1.864(c)(8)–1(b). As provided in section 864(c)(8)(A) and further described in section I.B of this Explanation of Provisions, the proposed regulations provide that a foreign partner's effectively connected gain or loss will not exceed its outside gain or loss on the sale of the interest as determined under sections 741 and 751 and the regulations thereunder. Thus, the amount of gain or loss determined under section 741 (before application of section 751) is not a limitation on the amount of gain or loss characterized as effectively connected with the conduct of a trade or business within the United States under the proposed regulations.

2. Nonrecognition Transactions

The proposed regulations provide that the gain or loss on the transfer of a partnership interest that is subject to tax as effectively connected gain or loss is limited to gain or loss otherwise recognized under the Code. See proposed § 1.864(c)(8)–1(b)(2)(ii). When a nonrecognition provision results in a foreign transferor recognizing only a portion of its gain or loss on the transfer of an interest in a partnership, section 864(c)(8) may apply with respect to the portion of the gain or loss recognized.

Although section 864(c)(8)(E) authorizes regulations or other guidance with respect to the application of section 864(c)(8) to nonrecognition transactions, the proposed regulations do not contain special rules applicable to nonrecognition transactions. The Treasury Department and the IRS recognize, however, that certain nonrecognition transactions may have the effect of reducing gain or loss that would be taken into account for U.S. federal income tax purposes. For example, if a partnership that conducts a trade or business within the United States owns property not subject to tax under section 871(b) or 882(a) in the hands of a foreign partner, the partnership may distribute that property to the foreign partner rather than a U.S. partner. The Treasury Department and the IRS continue to consider, and comments are requested regarding, whether other Code provisions adequately address transactions that rely on section 731 distributions to reduce the scope of assets subject to U.S. federal income taxation, and may propose rules addressing these types of transactions.

B. Determination of Deemed Sale Gain or Loss

1. In General

After outside gain and loss are determined under proposed § 1.864(c)(8)–1(b), the proposed regulations set forth three amounts that a foreign transferor must determine to derive the limitation in section 864(c)(8)(B) against which the outside gain or loss is compared: (1) With respect to each asset held by the partnership, the amount of gain or loss that the partnership would recognize in connection with a deemed sale to an unrelated party in a fully taxable transaction for cash equal to the asset's fair market value immediately before the partner's transfer of its partnership interest; (2) the amount of that gain or loss that would be treated as effectively connected gain or loss (''deemed sale EC gain'' and ''deemed sale EC loss''); and (3) the foreign transferor's distributive share of the ordinary and capital components of any deemed sale EC gain and deemed sale EC loss. The proposed regulations refer to the separate sums of the foreign transferor's distributive shares of the ordinary and capital components of deemed sale EC gain and deemed sale EC loss items for all assets, determined at the level of the foreign transferor, as ''aggregate deemed sale EC capital gain,'' ''aggregate deemed sale EC capital loss,'' ''aggregate deemed sale EC ordinary gain,'' and ''aggregate deemed sale EC ordinary loss.''

After each of these aggregate amounts is determined, the proposed regulations implement the limitation described in section 864(c)(8)(B), generally, by comparing the foreign transferor's outside gain or loss amounts with the relevant aggregate deemed sale EC gain or loss. This determination is made separately with respect to capital gain or capital loss and gain or loss treated as ordinary income or ordinary loss. Thus, for example, a foreign transferor would compare its outside capital gain to its aggregate deemed sale EC capital gain, treating the former as effectively connected gain only to the extent it does not exceed the latter. See proposed § 1.864(c)(8)–1(b)(3).

2. Treatment of Deemed Sale Gain or Loss as Effectively Connected Gain or Loss

As described in Part I.B.1 of this Explanation of Provisions, the proposed regulations require a foreign transferor to determine the amount of gain or loss that would arise in a deemed asset sale that would be treated as effectively connected gain or loss. In general, gain or loss on the sale of personal property

is effectively connected with the conduct of a trade or business within the United States if the gain is from sources within the United States and it satisfies the requirements of section 864(c) and the regulations thereunder. Accordingly, the proposed regulations provide that section 864 and the regulations thereunder apply for purposes of determining whether gain or loss that would arise in a deemed asset sale would be treated as effectively connected gain or loss. See proposed § 1.864(c)(8)–1(c)(2)(i).

The determination as to whether gain or loss from a deemed asset sale by the partnership would be from sources within or without the United States, and whether that income would be treated as effectively connected gain or loss, is based on certain factual determinations, including whether the gain or loss results from a sale that is attributable to an office or other fixed place of business in the United States. The proposed regulations provide that, for purposes of determining whether gain or loss recognized in connection with a deemed asset sale by the partnership would be from sources within or without the United States, and thus whether that income would be treated as effectively connected gain or loss, the deemed asset sale is treated as attributable to an office or fixed place of business in the United States maintained by the partnership. As a result, deemed sale gain or loss generally would be treated as from sources within the United States. To prevent this rule from potentially converting gain or loss from assets with no connection to the partnership's trade or business within the United States into effectively connected gain or loss, the proposed regulations provide that gain or loss from the deemed sale of a partnership asset is not treated as effectively connected gain or loss if (1) no income or gain previously produced by the asset was taxable as effectively connected with the conduct of a trade or business within the United States by the partnership (or a predecessor of the partnership) during the ten-year period ending on the date of the transfer, and (2) the asset was not used, or held for use, in the conduct of a trade or business within the United States by the partnership (or a predecessor of the partnership) during the ten-year period ending on the date of transfer. See proposed § 1.864(c)(8)–1(c)(2)(ii). Comments are requested as to whether additional guidance is needed regarding the source of gain or loss resulting from a deemed sale by the partnership, including rules coordinating this rule with section 865(e)(2)(B).

3. Determining Distributive Share of Deemed Sale EC Gain and Deemed Sale EC Loss

The flush language of section 864(c)(8)(B) provides that a transferor partner's distributive share of gain or loss on the deemed sale is determined in the same manner as the transferor partner's distributive share of the non-separately stated taxable income or loss of the partnership. The term ''non-separately stated taxable income or loss of the partnership'' is not defined in the Code or regulations. The proposed regulations provide that a partner's distributive share of gain or loss from the deemed sale is determined under all applicable Code sections (including section 704), taking into account allocations of tax items applying the principles of section 704(c), including any remedial allocations under § 1.704–3(d), and any section 743 basis adjustment pursuant to § 1.743–1(j)(3). The Treasury Department and IRS propose this approach because applying section 704 more closely ties the results of the deemed sale with regard to the selling foreign partner to the economic results of an actual sale, as compared (for example) to an approach that did not consider special allocations or considered only a partner's share of ordinary business income, which would distort the economic agreement among the partners. See proposed § 1.864(c)(8)–1(c)(3)(i).

The Treasury Department and the IRS are considering whether section 704 and the regulations thereunder adequately prevent the avoidance of the purposes of section 864(c)(8) through allocations of effectively connected gain or loss to specific partners. For example, immediately before a foreign transferor sells its interest in a partnership, adjustments could be made to partnership allocations that would result in the foreign transferor recognizing less effectively connected gain from the deemed sale by the partnership. While statutory and regulatory provisions, as well as judicial doctrines, may limit the extent to which inappropriate results may be obtained in that transaction or similar transactions, the Treasury Department and the IRS are considering whether additional guidance is necessary to prevent abuse. Comments are requested as to whether there are specific situations in which the purposes of section 864(c)(8) may be avoided and specific suggestions for additional guidance to address those situations.

C. Source

Neither section 864(c)(8) nor the proposed regulations address the source of gain or loss from the transfer of a partnership interest. Section 864(c)(4) provides that, except as enumerated in section 864(c)(4)(B) and (C), no income, gain, or loss from sources without the United States is treated as effectively connected gain or loss. Section 864(c)(8)(A) and the proposed regulations, however, apply ''[n]otwithstanding any other provision of [subtitle A of the Code],'' such that gain or loss recognized on the transfer of an interest in a partnership that is engaged in a trade or business within the United States may be treated as effectively connected gain or loss even if it is from sources without the United States. Comments are requested as to whether, and what, additional guidance is necessary regarding the source of gain or loss subject to section 864(c)(8).

D. Provision Is Non-Exclusive

The proposed regulations clarify that they do not apply to prevent any portion of gain or loss recognized on the transfer of a partnership interest from being treated as effectively connected gain or loss under other provisions of the Code (subject to a special rule coordinating the application of section 864(c)(8) and section 897). Thus, if a foreign transferor maintains an office or fixed place of business in the United States, and sells a partnership interest in a transaction that generates gain or loss attributable to that office, gain or loss recognized in connection with that transfer may be United States source income under section 865(e)(2), and may be treated as effectively connected income under section 864(c)(2). If the amount of gain or loss recognized that would be treated as effectively connected gain or loss under section 864(c)(2) exceeds the amount of gain that would be treated as effectively connected gain under section 864(c)(8), then the larger amount would be treated as effectively connected gain. See proposed § 1.864(c)(8)–1(b)(1).

II. Coordination With Section 897

Section 897(g) generally provides that, under regulations prescribed by the Secretary, the amount realized by a nonresident alien individual or foreign corporation in exchange for all or part of its interest in a partnership is, to the extent attributable to United States real property interests (as defined in section 897(c)), considered as an amount received from the sale or exchange in the United States of such property. Accordingly, section 897(g) generally provides the same result for United

States real property interests as Revenue Ruling 91–32 provides for property used, or held for use, in a trade or business in the United States. In general, section 864(c)(8)(C) provides that if a partnership described in section 864(c)(8)(A) holds any United States real property interest at the time of the transfer of the partnership interest, then the gain or loss treated as effectively connected gain or loss under section 864(c)(8)(A) is reduced by the amount treated as effectively connected gain or loss with respect to that United States real property interest under section 897. The effect of section 864(c)(8)(C) is to prevent gain or loss from a United States real property interest that is taxed under section 897 from being taken into account a second time under section 864(c)(8).

In the proposed regulations, the limitation on effectively connected gain or loss in section 864(c)(8)(B) is based on a deemed sale by the partnership of all of its assets, including all United States real property interests held by the partnership, which are treated as effectively connected assets under section 897. See proposed § 1.864(c)(8)–1(c)(2)(i). To coordinate the taxation of United States real property interests under sections 897(g) and 864(c)(8), the proposed regulations provide that when a partnership holds United States real property interests and is also subject to section 864(c)(8) because it is engaged in the conduct of a trade or business within the United States without regard to section 897, the amount of the foreign transferor's effectively connected gain or loss will be determined under section 864(c)(8) and not under section 897(g). Therefore, the reduction called for by section 864(c)(8)(C) is not necessary. See proposed § 1.864(c)(8)–1(d).

The regulations include a proposed rule in regulations under section 897, which serves as a cross-reference to this coordination rule. See section V of this Explanation of Provisions for a discussion of a proposed anti-stuffing rule that also applies in the context of section 897. Further, comments are requested as to the interaction of this rule with other rules in the regulations under section 897, including the special rule for publicly traded partnerships in § 1.897–1(c)(2)(iv).

III. Tiered Partnerships

Section 864(c)(8) applies to a foreign nonresident alien individual or foreign corporation that owns an interest in a partnership directly or indirectly. Consistent with section 12 of Notice 2018–29, the proposed regulations provide that if a foreign transferor transfers an interest in an upper-tier partnership that owns, directly or indirectly, an interest in one or more lower-tier partnerships that are engaged in the conduct of a trade or business within the United States, then the deemed sale gain or loss must be computed with respect to each lower-tier partnership, the amount of effectively connected gain or loss that would be allocated to the upper-tier partnership must be determined, and the amount of gain or loss recognized by a foreign transferor that is treated as effectively connected gain or loss under proposed § 1.864(c)(8)–1(c) must be determined by reference to the transferor's distributive share of effectively connected gain or loss arising from each lower-tier partnership. See proposed § 1.864(c)(8)–1(e)(1).

The proposed regulations also clarify that when a foreign transferor is a partner in an upper-tier partnership and the upper-tier partnership transfers an interest in a lower-tier partnership that is engaged in the conduct of a trade or business within the United States, the upper-tier partnership must determine its effectively connected gain or loss by applying the principles of the proposed regulations, including the tiered partnership rules described in proposed § 1.864(c)(8)–1(e)(1).

IV. Treaties

The business profits articles of many U.S. income tax treaties limit the taxation of income that is otherwise treated as effectively connected with the conduct of a trade or business within the United States under the Code to income and gain attributable to a permanent establishment in the United States. The applicable gains articles of many U.S. income tax treaties allow the country in which a permanent establishment is located to tax gains from the alienation of movable property forming part of the business property of a permanent establishment, including gains from the alienation of a permanent establishment, alone or with the whole enterprise of which it is a part. In general, the permanent establishment of a partnership in the United States is considered a permanent establishment of the partners of the partnership. See *Donroy, Ltd.* v. *United States,* 196 F.Supp. 54 (N.D. Cal. 1961), *aff'd* 301 F.2d 200 (9th Cir. 1962), and *Unger* v. *Comm'r,* T.C. Memo. 1990–15, 58 TCM 1157, *aff'd* 936 F.2d 1316 (DC Cir. 1991).

The proposed regulations provide that the disposition of a foreign partner's interest in a partnership, in whole or in part, is a disposition of all or part of a partner's permanent establishment. Thus, to the extent the partnership's assets form part of a foreign partner's permanent establishment in the United States, the permanent establishment paragraph of the gains article would generally preserve the United States' taxing jurisdiction over the gain on the transfer of a partnership interest that is subject to tax under section 864(c)(8). In addition, if an income tax treaty has a gains article that permits the United States to apply its domestic laws to tax gains or does not have a gains article, the treaty does not prevent the application of section 864(c)(8).

Gains articles of treaties also frequently have special provisions covering certain assets, regardless of whether the assets form part of a permanent establishment, such as gains from dispositions of United States real property interests and ships and aircraft used in international traffic. If a gains article of an income tax treaty prohibits taxation of the gain from the disposition of any asset, such as ships or aircraft used in international traffic, the gains and losses from those assets will not be considered assets that form part of the permanent establishment, nor will they be taken into account in determining deemed sale EC gain or deemed sale EC loss, for purposes of computing the section 864(c)(8)(B) limitation. If the gains article of an applicable income tax treaty allows the taxation of gain from the disposition of a United States real property interest, the transfer of an interest in a partnership that holds a United States real property interest remains subject to section 897(g) even if the transfer is not subject to section 864(c)(8) (because the partnership's assets are not treated as forming part of a permanent establishment in the United States). See proposed § 1.864(c)(8)–1(d).

V. Anti-Stuffing Rule

The proposed regulations include an anti-stuffing rule applicable to both these regulations and section 897. This rule is included to prevent inappropriate reductions in amounts characterized as effectively connected with the conduct of a trade or business within the United States under section 864(c)(8) or section 897. A cross-reference to this rule is also included in the proposed regulation under section 897.

VI. Section 1446(f) Guidance

The proposed regulations do not provide guidance under section 1446(f). The Treasury Department and the IRS intend to issue guidance under section 1446(f) expeditiously.

Applicability Dates

The proposed regulations apply to transfers occurring on or after November 27, 2017, the effective date of section 864(c)(8). See section 7805(b)(2). If any provision is finalized after June 22, 2019, the Treasury Department and the IRS expect that such provision will apply only to transfers occurring on or after December 26, 2018. *See* section 7805(b)(1)(B).

Special Analyses

Executive Orders 13771, 13563, and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

These proposed regulations have been designated by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations. OIRA has determined that the proposed rulemaking is significant and subject to review under E.O. 12866 and section 1(b) of the Memorandum of Agreement. Accordingly, the proposed regulations have been reviewed by the Office of Management and Budget.

The Treasury Department and the IRS have assessed the benefits and costs of the proposed regulations relative to a no-action baseline reflecting anticipated tax-related behavior and other economic behavior in the absence of these proposed regulations. Because the proposed regulations generally provide taxpayers with additional certainty on the amount and character of gain or loss treated as effectively connected income as a result of section 864(c)(8) and concurrently coordinate section 864(c)(8) with other provisions in the Code, the Treasury Department and the IRS anticipate only minimal economic or revenue effects from the proposed regulations. The Treasury Department and the IRS estimate that between 5,000 and 10,000 taxpayers are potentially affected by section 864(c)(8), with only a fraction of these taxpayers having gain or loss from disposition of a partnership in any one year. The Treasury Department and the IRS estimate that the affected taxpayers would see a minimal difference in treatment between these proposed regulations and Revenue Ruling 91–32. Comments are requested regarding these assessments. The Treasury Department and the IRS have assessed that the proposed regulations do not establish a new collection of information nor modify an existing collection that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). The Treasury Department and the IRS seek comments on this assessment.

Section 864(c)(8) and the proposed regulations generally apply to nonresident alien individuals and foreign corporations on the transfer of an interest in a partnership that is engaged in a trade or business within the United States, and not directly to the trade or business the partnership conducts in the United States. Under section 605 of the Regulatory Flexibility Act (5 U.S.C. chapter 6), the Treasury Department and the IRS certify that the proposed regulations will not have a significant economic impact on a substantial number of small entities. The reason is that the proposed regulations generally apply to nonresident alien individuals and foreign corporations on the transfer of an interest in a partnership and not directly to a domestic small business. Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations, and specifically on the issues identified in sections I.A.2, I.B, and I.C of the Explanations of Provisions. All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, then notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of the proposed regulations are Ronald M. Gootzeit and Chadwick Rowland, Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov.*

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.864(c)(8)–1 also issued under 26 U.S.C. 864(c)(8) and 897(g).

* * * * *

Section 1.897–7 also issued under 26 U.S.C. 897(g).

* * * * *

■ **Par. 2.** Section 1.864(c)(8)–1 is added to read as follows:

§ 1.864(c)(8)–1 Gain or loss by foreign persons on the disposition of certain partnership interests.

(a) *Overview.* This section provides rules and definitions under section 864(c)(8). Paragraph (b) of this section provides the general rule treating gain or loss recognized by a nonresident alien individual or foreign corporation from the sale or exchange of a partnership interest as effectively connected gain or effectively connected loss. Paragraph (c) of this section provides rules for determining the limitation on the amount of effectively connected gain or effectively connected loss under section 864(c)(8) and paragraph (b) of this section. Paragraph (d) of this section provides rules regarding coordination with section 897. Paragraph (e) of this section provides rules regarding certain tiered partnerships. Paragraph (f) of this section provides rules regarding U.S.

income tax treaties. Paragraph (g) of this section provides definitions. Paragraph (h) of this section provides a rule regarding certain contributions of property to a partnership. Paragraph (i) of this section contains examples illustrating the rules set forth in this section. Paragraph (j) of this section provides the applicability date.

(b) *Gain or loss treated as effectively connected gain or loss*—(1) *In general.* Notwithstanding any other provision of subtitle A of the Internal Revenue Code, if a foreign transferor owns, directly or indirectly, an interest in a partnership that is engaged in the conduct of a trade or business within the United States, outside capital gain, outside capital loss, outside ordinary gain, or outside ordinary loss (each as defined in paragraph (b)(2) of this section) recognized by the foreign transferor on the transfer of all (or any portion) of the interest is treated as effectively connected gain or effectively connected loss, subject to the limit described in paragraph (b)(3) of this section. Except as provided in paragraph (d) of this section, this section does not apply to prevent any portion of the gain or loss that is otherwise treated as effectively connected gain or effectively connected loss under provisions of the Internal Revenue Code other than section 864(c)(8) from being so treated.

(2) *Determination of outside gain and loss*—(i) *In general.* The amount of gain or loss recognized by the foreign transferor in connection with the transfer of its partnership interest is determined under all relevant provisions of the Internal Revenue Code and the regulations thereunder. See, *e.g.,* §§ 1.741–1(a) and 1.751–1(a)(2). For purposes of this section, the amount of gain or loss that is treated as capital gain or capital loss under sections 741 and 751 is referred to as *outside capital gain* or *outside capital loss,* respectively. The amount of gain or loss that is treated as ordinary gain or ordinary loss under sections 741 and 751 is referred to as *outside ordinary gain* or *outside ordinary loss,* respectively.

(ii) *Nonrecognition provisions.* A foreign transferor's gain or loss recognized in connection with the transfer of its partnership interest does not include gain or loss to the extent that the gain or loss is not recognized by reason of one or more nonrecognition provisions of the Internal Revenue Code.

(3) *Limitations.* This paragraph (b)(3) limits the amount of gain or loss recognized by a foreign transferor that may be treated as effectively connected gain or effectively connected loss.

(i) *Capital gain limitation.* Outside capital gain recognized by a foreign transferor is treated as effectively connected gain to the extent it does not exceed aggregate deemed sale EC capital gain determined under paragraph (c)(3)(ii)(B) of this section.

(ii) *Capital loss limitation.* Outside capital loss recognized by a foreign transferor is treated as effectively connected loss to the extent it does not exceed aggregate deemed sale EC capital loss determined under paragraph (c)(3)(ii)(B) of this section.

(iii) *Ordinary gain limitation.* Outside ordinary gain recognized by a foreign transferor is treated as effectively connected gain to the extent it does not exceed aggregate deemed sale EC ordinary gain determined under paragraph (c)(3)(ii)(A) of this section.

(iv) *Ordinary loss limitation.* Outside ordinary loss recognized by a foreign transferor is treated as effectively connected loss to the extent it does not exceed aggregate deemed sale EC ordinary loss determined under paragraph (c)(3)(ii)(A) of this section.

(c) *Amount treated as effectively connected with the conduct of a trade or business within the United States.* This paragraph (c) describes the steps to be followed in computing the limitations described in paragraph (b)(3) of this section.

(1) *Step 1: Determine deemed sale gain and loss.* Determine the amount of gain or loss that the partnership would recognize with respect to each of its assets (other than interests in partnerships described in paragraph (e) of this section) upon a deemed sale of all of the partnership's assets on the date of the transfer of the partnership interest described in paragraph (b)(1) of this section (deemed sale). For this purpose, a deemed sale is a hypothetical sale by the partnership to an unrelated person of each of its assets (tangible and intangible) in a fully taxable transaction for cash in an amount equal to the fair market value of each asset (taking into account section 7701(g)) immediately before the partner's transfer of the interest in the partnership. For rules concerning the deemed sale of certain partnership interests, see paragraph (e) of this section.

(2) *Step 2: Determine deemed sale EC gain and loss*—(i) *In general.* With respect to each asset deemed sold in paragraph (c)(1) of this section, determine the amount of gain or loss from the deemed sale that would be treated as effectively connected gain or effectively connected loss (including by reason of section 897, taking into account any exceptions thereto, such as section 897(k) or section 897(l)). Gain described in this paragraph (c)(2) is referred to as *deemed sale EC gain,* and loss described in this paragraph (c)(2) is referred to as *deemed sale EC loss.* Section 864 and the regulations thereunder apply for purposes of determining whether gain or loss that would arise in a deemed asset sale would be treated as effectively connected gain or loss. For purposes of this paragraph (c)(2)(i), gain or loss from the deemed sale of an asset is treated as attributable to an office or other fixed place of business maintained by the partnership in the United States, and is not treated as sold for use, disposition, or consumption outside the United States in a sale in which an office or other fixed place of business maintained by the partnership in a foreign country materially participated in the sale.

(ii) *Exception.* Gain or loss from the deemed sale of an asset described in paragraph (c)(2)(i) of this section (other than a United States real property interest) is not treated as deemed sale EC gain or deemed sale EC loss if—

(A) No income or gain produced by the asset was taxable as income that was effectively connected with the conduct of a trade or business within the United States by the partnership (or a predecessor of the partnership) during the ten-year period ending on the date of the transfer; and

(B) The asset has not been used, or held for use, in the conduct of a trade or business within the United States by the partnership (or a predecessor of the partnership) during the ten-year period ending on the date of the transfer.

(3) *Step 3: Determine the foreign transferor's distributive share of deemed sale EC gain or deemed sale EC loss*—(i) *In general.* Determine the foreign transferor's distributive share of deemed sale EC gain and deemed sale EC loss. A foreign transferor's distributive share of deemed sale EC gain or deemed sale EC loss with respect to each asset is the amount of the deemed sale EC gain and deemed sale EC loss determined under paragraph (c)(2) of this section that would have been allocated to the foreign transferor by the partnership under all applicable Code sections (including section 704) upon the deemed sale described in paragraph (c)(1) of this section, taking into account allocations of tax items applying the principles of section 704(c), including any remedial allocations under § 1.704–3(d), and any section 743 basis adjustment pursuant to § 1.743–1(j)(3)).

(ii) *Aggregate deemed sale EC items*—(A) *Ordinary gain or loss.* A foreign transferor's *aggregate deemed sale EC ordinary gain* (if the aggregate results in a gain) or *aggregate deemed sale EC*

ordinary loss (if the aggregate results in a loss) is the sum of—

(*1*) The portion of the foreign transferor's distributive share of deemed sale EC gain and deemed sale EC loss that is attributable to the deemed sale of the partnership's assets that are section 751(a) property; and

(*2*) Deemed sale EC gain and deemed sale EC loss from the sale of assets that are section 751(a) property that would be allocated to the foreign transferor with respect to interests in partnerships that are engaged in the conduct of a trade or business within the United States under paragraph (e)(1)(ii) of this section upon the deemed asset sales described in paragraph (e)(1)(i) of this section.

(B) *Capital gain or loss.* A foreign transferor's *aggregate deemed sale EC capital gain* (if the aggregate of the foreign transferor's distributive share of the deemed sale EC capital gain and loss results in a gain) or *aggregate deemed sale EC capital loss* (if the aggregate of the foreign transferor's distributive share of the deemed sale EC capital gain and loss results in a loss) is the sum of—

(*1*) The portion of the foreign transferor's distributive share of deemed sale EC gain and deemed sale EC loss that is attributable to the deemed sale of assets that are not section 751(a) property; and

(*2*) Deemed sale EC gain and deemed sale EC loss from the sale of assets that are not section 751(a) property and that would be allocated to the foreign transferor with respect to all interests in partnerships that are engaged in the conduct of a trade or business within the United States under paragraph (e)(1)(ii) of this section upon the deemed asset sales described in paragraph (e)(1)(i) of this section.

(iii) *Partial transfers.* If a foreign transferor transfers less than all of its interest in a partnership, then for purposes of paragraph (c)(3)(i) of this section, the foreign transferor's distributive share of deemed sale EC gain and deemed sale EC loss is determined by reference to the amount of deemed sale EC gain or deemed sale EC loss determined under paragraph (c)(3)(i) of this section that is attributable to the portion of the foreign transferor's partnership interest that was transferred.

(d) *Coordination with section 897.* If a foreign transferor transfers an interest in a partnership in a transfer that is subject to section 864(c)(8), and the partnership owns one or more United States real property interests (as defined in section 897(c)), then the foreign transferor determines its effectively connected gain and effectively connected loss under this section, and not pursuant to section 897(g). Accordingly, with respect to a transfer described in the preceding sentence, section 864(c)(8)(C) does not reduce the amount of gain or loss treated as effectively connected gain or loss under this section. For rules regarding a transfer not subject to section 864(c)(8) of an interest in a partnership that owns one or more United States real property interests, see section 897(g) and the regulations thereunder.

(e) *Tiered partnerships*—(1) *Transfers of upper-tier partnerships.* Assets sold in a deemed sale described in paragraph (c)(1) of this section do not include interests in partnerships that are engaged in the conduct of a trade or business within the United States or interests in partnerships that hold, directly or indirectly, partnerships that are engaged in the conduct of a trade or business within the United States. Rather, if a foreign transferor transfers an interest in a partnership (upper-tier partnership) that owns, directly or indirectly, an interest in one or more partnerships that are engaged in the conduct of a trade or business within the United States, then—

(i) Beginning with the lowest-tier partnership that is engaged in the conduct of a trade or business within the United States in a chain of partnerships and going up the chain, each partnership that is engaged in the conduct of a trade or business within the United States is treated as selling its assets in a deemed sale in accordance with the principles of paragraph (c)(1) of this section; and

(ii) Each partnership must determine its deemed sale EC gain and deemed sale EC loss in accordance with the principles of paragraph (c)(2) of this section, and determine the distributive share of deemed sale EC gain and deemed sale EC loss for each partner that is either a partnership (in which the foreign transferor is a direct or indirect partner) or a foreign transferor, in accordance with the principles of paragraph (c)(3)(i) of this section.

(2) *Transfers by upper-tier partnerships.* If a foreign transferor is a direct or indirect partner in an upper-tier partnership and the upper-tier partnership transfers an interest in a partnership that is engaged in the conduct of a trade or business within the United States (including a partnership held indirectly through one or more partnerships), then the principles of this section (including paragraph (e)(1) of this section) apply with respect to the gain or loss on the transfer that is allocated to the foreign transferor by the upper-tier partnership.

(3) *Coordination with section 897.* For purposes of this paragraph (e), a lower-tier partnership that holds one or more United States real property interests is treated as engaged in the conduct of a trade or business within the United States.

(f) *Income tax treaties*—(1) *In general.* This paragraph (f) describes how the provisions of a U.S. income tax treaty apply to the transfer by a foreign transferor that is eligible for benefits under the treaty of an interest in a partnership that is engaged in the conduct of a trade or business within the United States.

(2) *Application of gains article.* Treaty provisions applicable to gains from the alienation of property forming part of a permanent establishment, including gains from the alienation of a permanent establishment in the United States, apply to the transfer by a foreign transferor of an interest in a partnership with a permanent establishment in the United States.

(3) *Coordination rule.* For purposes of applying paragraph (c) of this section to gains described in paragraph (f)(2) of this section, a foreign transferor's distributive share of deemed sale EC gain and deemed sale EC loss are determined with respect to the assets of the partnership that form part of the partnership's permanent establishment in the United States and that are not otherwise exempt from U.S. taxation under the treaty.

(g) *Definitions.* The following definitions apply for purposes of this section.

(1) *Effectively connected gain.* The term *effectively connected gain* means gain that is treated as effectively connected with the conduct of a trade or business within the United States.

(2) *Effectively connected loss.* The term *effectively connected loss* means loss treated as effectively connected with the conduct of a trade or business within the United States.

(3) *Foreign transferor.* The term *foreign transferor* means a nonresident alien individual or foreign corporation.

(4) *Section 751(a) property.* The term *section 751(a) property* means unrealized receivables described in section 751(c) and inventory items described in section 751(d).

(5) *Transfer.* The term *transfer* means a sale, exchange, or other disposition, and includes a distribution from a partnership to a partner to the extent that gain or loss is recognized on the distribution, as well as a transfer treated as a sale or exchange under section 707(a)(2)(B).

(h) *Anti-stuffing rule.* If a foreign transferor (or a person that is related to

a foreign transferor within the meaning of section 267(b) or 707(b)) transfers property (including another partnership interest) to a partnership in a transaction with a principal purpose of reducing the amount of gain treated as effectively connected gain, or increasing the amount of loss treated as effectively connected loss, under section 864(c)(8) or section 897, the transfer is disregarded for purposes of section 864(c)(8) or section 897, as appropriate, or otherwise recharacterized in accordance with its substance.

(i) *Examples.* This paragraph provides examples that illustrate the rules of this section. For purposes of this paragraph, unless otherwise provided, the following facts are presumed. FP is a foreign corporation. USP is a domestic corporation. PRS is a partnership that was formed on January 1, 2018, when FP and USP each contributed $100x in cash. PRS has made no distributions and received no contributions other than those described in paragraph (i)(1)(iii) of this section. FP's adjusted basis in its interest in PRS is $100x. X is a foreign corporation that is unrelated to FP, USP, or PRS. Upon the formation of PRS, FP and USP entered into an agreement providing that all income, gain, loss, and deduction of PRS will be allocated equally between FP and USP. PRS is engaged in the conduct of a trade or business within the United States (the U.S. Business) and an unrelated business in Country A (the Country A Business). In a deemed sale described in paragraph (c)(1) of this section, gain or loss on assets of the U.S. Business would be treated as effectively connected gain or effectively connected loss, and gain or loss on assets of the Country A Business would not be so treated (including by reason of paragraph (c)(2)(ii) of this section). PRS has no liabilities. FP does not qualify for the benefits of an income tax treaty between the United States and another country.

(1) *Example 1. Deemed sale limitation*—(i) *Facts.* On January 1, 2019, FP sells its entire interest in PRS to X for $105x. Immediately before the sale, PRS's balance sheet appears as follows:

	Adjusted basis	Fair market value
U.S. Business capital asset	$100x	$104x
Country A Business capital asset	100x	106x
Total	200x	210x

(ii) *Analysis*—(A) *Outside gain or loss.* FP is a foreign transferor (within the meaning of paragraph (g)(3) of this section) and transfers (within the meaning of paragraph (g)(5) of this section) its interest in PRS to X. FP recognizes a $5x capital gain under section 741, which is an outside capital gain within the meaning of paragraph (b)(2)(i) of this section. Under paragraph (b)(1) of this section, FP's $5x capital gain is treated as effectively connected gain to the extent that it does not exceed the limitation described in paragraph (b)(3)(i) of this section, which is FP's aggregate deemed sale EC capital gain.

(B) *Deemed sale.* FP's aggregate deemed sale EC capital gain is determined according to the three-step process set forth in paragraph (c) of this section. First, the amount of gain or loss that PRS would recognize with respect to each of its assets upon a deemed sale described in paragraph (c)(1) of this section is a $4x gain with respect to the U.S. Business capital asset and a $6x gain with respect to the Country A Business capital asset. Second, under paragraph (c)(2) of this section, PRS's deemed sale EC gain is $4x. PRS recognizes no deemed sale EC gain or loss with respect to the Country A Business capital asset under section 864 and paragraph (c)(2)(ii) of this section. Third, under paragraph (c)(3)(ii)(B) of this section, FP's aggregate deemed sale EC capital gain is $2x (that is, the aggregate of its distributive share of deemed sale EC gain attributable to the deemed sale of assets that are not section 751(a) property, which is 50% of $4x).

(C) *Limitation.* Under paragraph (b)(3)(i) of this section, the $5x outside capital gain recognized by FP is treated as effectively connected gain to the extent that it does not exceed FP's $2x aggregate deemed sale EC capital gain. Accordingly, FP recognizes $2x of capital gain that is treated as effectively connected gain.

(2) *Example 2. Outside gain limitation*—(i) *Facts.* On January 1, 2019, FP sells its entire interest in PRS to X for $110x. Immediately before the sale, PRS's balance sheet appears as follows:

	Adjusted basis	Fair market value
U.S. Business capital asset	$100x	$150x
Country A Business capital asset	100x	70x
Total	200x	220x

(ii) *Analysis*—(A) *Outside gain or loss.* FP is a foreign transferor (within the meaning of paragraph (g)(3) of this section) and transfers (within the meaning of paragraph (g)(5) of this section) its interest in PRS to X. FP recognizes a $10x capital gain under section 741, which is an outside capital gain within the meaning of paragraph (b)(2)(i) of this section. Under paragraph (b)(1) of this section, FP's $10x capital gain is treated as effectively connected gain to the extent that it does not exceed the limitation described in paragraph (b)(3)(i) of this section, which is FP's aggregate deemed sale EC capital gain.

(B) *Deemed sale.* FP's aggregate deemed sale EC capital gain is determined according to the three-step process set forth in paragraph (c) of this section. First, the amount of gain or loss that PRS would recognize with respect to each of its assets upon a deemed sale described in paragraph (c)(1) of this section is a $50x gain with respect to the U.S. Business capital asset and a $30x loss with respect to the Country A Business capital asset. Second, under paragraph (c)(2) of this section, PRS's deemed sale EC gain is $50x. PRS recognizes no deemed sale EC gain or loss with respect to the Country A Business capital asset under section 864 and paragraph (c)(2)(ii) of this section. Third, under paragraph (c)(3) of this section, FP's aggregate deemed sale EC capital gain is $25x (that is, the aggregate of its distributive share of deemed sale EC gain attributable to the deemed sale of assets that are not section 751(a) property, which is 50% of $50x).

(C) *Limitation.* Under paragraph (b)(3)(i) of this section, the $10x outside capital gain recognized by FP is treated as effectively connected gain to the extent that it does not exceed FP's $25x aggregate deemed sale EC capital gain. Accordingly, FP recognizes $10x of capital gain that is treated as effectively connected gain.

(3) *Example 3. Interaction with section 751(a)*—(i) *Facts.* On January 1, 2019, FP sells its entire interest in PRS to X for $95x. Through both its U.S. Business and its Country A Business, PRS holds inventory items that are section 751 property (as

defined in § 1.751–1(a)). Immediately before the sale, PRS's balance sheet appears as follows:

	Adjusted basis	Fair market value
U.S. Business capital asset	$20x	$50x
U.S. Business inventory	30x	50x
Country A Business capital asset	100x	80x
Country A Business inventory	50x	10x
Total	200x	190x

(ii) *Analysis*—(A) *Outside gain or loss.* FP is a foreign transferor (within the meaning of paragraph (g)(3) of this section) and transfers (within the meaning of paragraph (g)(5) of this section) its interest in PRS to X. Under sections 741 and 751, FP recognizes a $10x ordinary loss and a $5x capital gain. See § 1.751–1(a). Under paragraph (b)(2)(i) of this section, FP has outside ordinary loss equal to $10x and outside capital gain equal to $5x. Under paragraph (b)(1) of this section, FP's outside ordinary loss and outside capital gain are treated as effectively connected loss and effectively connected gain to the extent that each does not exceed the applicable limitation described in paragraph (b)(3) of this section. In the case of FP's outside ordinary loss, the applicable limitation is FP's aggregate deemed sale EC ordinary loss. In the case of FP's outside capital gain, the applicable limitation is FP's aggregate deemed sale EC capital gain.

(B) *Deemed sale.* FP's aggregate deemed sale EC ordinary loss and aggregate deemed sale EC capital gain are determined according to the three-step process set forth in paragraph (c) of this section.

(*1*) *Step 1.* The amount of gain or loss that PRS would recognize with respect to each of its assets upon a deemed sale described in paragraph (c)(1) of this section is as follows:

Asset	Gain/(loss)
U.S. Business capital asset	$30x
U.S. Business inventory	20x
Country A Business capital asset	(20x)
Country A Business inventory	(40x)

(*2*) *Step 2.* Under paragraph (c)(2) of this section, PRS's deemed sale EC gain and deemed sale EC loss must be determined with respect to each asset. The amounts determined under paragraph (c)(2) of this section are as follows:

Asset	Deemed sale EC gain/(loss)
U.S. Business capital asset	$30x
U.S. Business inventory	20x
Country A Business capital asset	0
Country A Business inventory	0

(*3*) *Step 3.* Under paragraph (c)(3) of this section, FP's aggregate deemed sale EC capital gain is $15x (that is, the aggregate of its distributive share of deemed sale EC gain that is attributable to the deemed sale of assets that are not section 751(a) property, which is 50% of $30x) and FP's aggregate deemed sale EC ordinary loss is $0 (that is, the aggregate of its distributive share of deemed sale EC loss that is attributable to the deemed sale of assets that are section 751(a) property).

(C) *Limitation*—(i) *Capital gain.* Under paragraph (b)(3)(i) of this section, the $5x outside capital gain recognized by FP is treated as effectively connected gain to the extent that it does not exceed FP's $15x aggregate deemed sale EC capital gain. Accordingly, the amount of FP's capital gain that is treated as effectively connected gain is $5x.

(ii) *Ordinary loss.* Under paragraph (b)(3)(iv) of this section, the $10x outside ordinary loss recognized by FP is treated as effectively connected loss to the extent that it does not exceed FP's $0 aggregate deemed sale EC ordinary loss. Accordingly, the amount of FP's ordinary loss that is treated as effectively connected loss is $0.

(j) *Applicability date.* This section applies to transfers occurring on or after November 27, 2017.

■ **Par. 3.** Section 1.897–7 is added to read as follows:

§ 1.897–7 Treatment of certain partnership interests, trusts and estates under section 897(g).

(a) through (b) [Reserved]. For further guidance, see § 1.897–7T(a) through (b).

(c) *Coordination with section 864(c)(8).* Except as provided in § 1.864(c)(8)–1, the amount of any money, and the fair market value of any property, received by a nonresident alien individual or foreign corporation in exchange for all or part of its interest in a partnership, trust, or estate shall, to the extent attributable to United States real property interests, be considered as an amount received from the sale or exchange in the United States of such property. See also § 1.864(c)(8)–1(h) for an anti-stuffing rule that may apply to transactions subject to section 897. This paragraph applies to transfers occurring on or after November 27, 2017.

■ **Par. 4.** Section 1.897–7T is amended by adding paragraph (c) to read as follows:

§ 1.897–7T Treatment of certain partnership interests as entirely U.S. real property interests under sections 897(g) and 1445(e) (temporary).

* * * * *

(c) *Coordination with section 864(c)(8).* [Reserved]. For further guidance, see § 1.897–7(c).

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2018–28167 Filed 12–26–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2018–OESE–0122]

Proposed Definitions and Requirements—Alaska Native Education Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Proposed definitions and requirements.

SUMMARY: The Assistant Secretary for the Office of Elementary and Secondary Education proposes definitions and requirements under the Alaska Native Education (ANE) program, Catalog of Federal Domestic Assistance (CFDA) number 84.356A. These definitions and requirements would clarify the eligibility requirements for the program, based upon changes that the Every Student Succeeds Act (ESSA) made to the Elementary and Secondary Education Act of 1965 (ESEA).

DATES: We must receive your comments on or before January 28, 2019.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please

include the Docket ID at the top of your comments.

• *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Help.''

• *Postal Mail, Commercial Delivery, or Hand Delivery:* The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments, address them to Almita Reed, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E222, Washington, DC 20202–6450.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Almita Reed, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E222, Washington, DC 20202–6450. Telephone: (202) 260–1979. Email: *almita.reed@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:

Invitation to Comment: We invite you to submit comments regarding this document. To ensure that your comments have maximum effect in developing the notice of final definitions and requirements, we urge you to identify clearly the specific issues that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirement of reducing regulatory burden that might result from these proposed definitions and requirements. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this document by accessing *Regulations.gov*. You may also inspect the comments in person in room 3E222, 400 Maryland Avenue SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this document. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the ANE program is to support innovative projects that recognize and address the unique education needs of Alaska Natives. These projects must include the activities authorized under section 6304(a)(2) of the ESEA, as amended by the ESSA, and may include one or more of the activities authorized under section 6304(a)(3) of the ESEA.

Program Authority: Title VI, part C of the ESEA (20 U.S.C. 7541–7546).

Proposed Definitions

Background

The ESEA, reauthorized in December 2015,[1] established new requirements governing eligibility for the ANE program. In Fiscal Year (FY) 2017, the Department conducted the first ANE program grant competition under the new ESEA requirements. Through this document the Department is proposing definitions and requirements that will apply to future competitions.

Prior to the FY 2017 competition, and in June 2018, to gather feedback about how the statutory amendments should be implemented, the Department conducted a Tribal consultation and several listening sessions. These events informed the provisions that governed the FY 2017 competition, announced through a notice inviting applications in the **Federal Register** on May 15, 2017 (82 FR 22323), and the proposed definitions and requirements in this document.

Under section 6304(a)(1) of the ESEA, three types of entities are eligible for grants under the ANE program:

(a) Alaska Native organizations (ANOs) with experience operating programs that fulfill the purposes of the ANE program;

(b) ANOs that do not have experience operating programs that fulfill the purposes of the ANE program, but are in partnership with—

(i) A State educational agency (SEA) or local educational agency (LEA); or

(ii) An ANO that operates a program that fulfills the purposes of the ANE program; and

(c) An entity located in Alaska, and predominately governed by Alaska Natives, that does not meet the definition of an ANO but—

(i) Has experience operating programs that fulfill the purposes of the ANE program; and

(ii) Is granted an official charter or sanction from at least one Alaska Native tribe or ANO to carry out programs that meet the purposes of the ANE program.

For the FY 2017 competition, we waived notice-and-comment rulemaking, as permitted under section 437(d)(1) of the General Education Provisions Act, to define several of these statutory terms related to eligible entities.

In this document, the Assistant Secretary proposes three definitions for this program to clarify these eligibility requirements. These proposed definitions are substantially similar to those used for the FY 2017 competition, but we have made minor adjustments to improve their clarity. We may apply one or more of these definitions in any year in which this program is in effect.

Proposed Definitions

Experience operating programs that fulfill the purposes of the ANE program means that the entity has received and satisfactorily administered, in compliance with applicable terms and conditions, a grant under the ANE program or another Department program within the past four years that focused on meeting the unique education needs of Alaska Native children and families in Alaska.

Official charter or sanction means a signed letter or written agreement from an Alaska Native Tribe or ANO that is dated within 120 days of the date of the submission of the application and expressly (1) authorizes the applicant to conduct activities authorized under the ANE program and (2) describes the nature of those activities.

Predominately governed by Alaska Natives means that at least 80 percent of the individuals on the entity's governing board (*i.e.,* the board elected or appointed to direct the policies of the organization) are Alaska Natives.

Proposed Requirements

Background: The proposed requirements would clarify the information needed for entities to establish whether they meet the eligibility requirements, including the proposed definitions, for the program.

[1] Throughout this document, unless otherwise indicated, citations to the ESEA refer to the ESEA, as amended by the ESSA.

These application requirements are substantially similar to those used in the FY 2017 ANE competition, but we have made minor adjustments to improve their clarity.

The Assistant Secretary proposes the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Proposed Requirement 1—Group Application Requirement.

(a) An ANO that applies for a grant in partnership with an SEA or LEA must serve as the fiscal agent for the project.

(b) Group applications under the ANE program must include a partnership agreement that includes a Memorandum of Understanding or a Memorandum of Agreement (MOU/MOA) between the members of the partnership identified and discussed in the grant application. Each MOU/MOA must—

(1) Be signed by all partners, and dated within 120 days of the date of the submission of the application;

(2) Clearly outline the work to be completed by each partner that will participate in the grant in order to accomplish the goals and objectives of the project; and

(3) Demonstrate an alignment between the activities, roles, and responsibilities described in the grant application for each of the partners in the partnership agreement.

Proposed Requirement 2—Applicants Establishing Eligibility through a Charter or Sanction from an Alaska Native Tribe or ANO.

For an entity that does not meet the eligibility requirements for an ANO, established in sections 6304(a)(1) and 6306(2) of the ESEA and the proposed definitions in this notice, and that seeks to establish eligibility through a charter or sanction provided by an Alaska Native Tribe or ANO as required under section 6304(a)(1)(C)(ii) of the ESEA, the following documentation is required:

(1) Written documentation demonstrating that the entity is physically located in the State of Alaska.

(2) Written documentation demonstrating that the entity has experience operating programs that fulfill the purposes of the ANE program.

(3) Written documentation demonstrating that the entity is predominately governed by Alaska Natives, including the total number, names, and Tribal affiliations of members of the governing board.

(4) A copy of the official charter or sanction provided to the entity by an Alaska Native Tribe or ANO.

Final Definitions and Requirements

We will announce the final definitions and requirements in a document published in the **Federal Register**. We will determine the final definitions and requirements after considering comments on the proposed definitions and requirements and other information available to the Department. This document does not preclude us from proposing additional definitions or requirements, or proposing priorities or selection criteria for the ANE program, subject to meeting applicable rulemaking requirements.

Note: This document does not solicit applications. In any year in which we choose to use one or more of these definitions and requirements, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment, or otherwise promulgates, that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2019, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. Because the proposed regulatory action is not significant, the requirements of Executive Order 13771 do not apply.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed definitions and requirements only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this proposed regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Discussion of Costs and Benefits

We have determined that these proposed definitions and requirements would impose minimal costs on eligible applicants. Program participation is voluntary, and the costs imposed on applicants by these definitions and requirements would be limited to paperwork burden related to preparing an application. The potential benefits of implementing the programs would outweigh any costs incurred by applicants, and the costs of actually carrying out activities associated with the application would be paid for with program funds. For these reasons, we have determined that the costs of implementation would not be excessively burdensome for eligible applicants, including small entities.

Paperwork Reduction Act of 1995

These proposed definitions and requirements do not contain any information collection requirements.

Regulatory Flexibility Act

The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

Although some of the ANOs, LEAs, and other entities that receive ANE program funds qualify as small entities under this definition, the proposed definitions and requirements would not have a significant economic impact on these small entities. The Department believes that the costs imposed on an applicant by the proposed definitions and requirements would be limited to the costs related to providing the documentation outlined in the proposed definitions and requirements when preparing an application and that those costs would not be significant. Participation in the ANE program is voluntary. We invite comments from small entities as to whether they believe the proposed definitions and requirements would have a significant economic impact on them and, if so, we request evidence to support that belief.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document 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 Adobe 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: December 20, 2018.

Frank Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2018–28130 Filed 12–26–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2018–0512; FRL–9988–53–Region 9]

Air Plan Approval; California; Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Mojave Desert Air Quality Management District (MDAQMD or ''District'') portion of the California State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOCs) from wood products coating operations and organic solvent degreasing operations. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act (CAA or the Act). We are also proposing to approve revisions to a definitions rule. Finally, we are proposing to convert the partial conditional approval of the District's reasonably available control technology (RACT) SIPs for the 1997 and 2008 ozone standards, as it applies to VOC emissions from wood products coating operations and organic solvent degreasing operations, to a full approval. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by January 28, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2018–0512 at *http://www.regulations.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Nancy Levin, EPA Region IX, (415) 972–3848, *levin.nancy@epa.gov*.

SUPPLEMENTARY INFORMATION:

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule #	Rule title	Amended	Submitted
MDAQMD	1114	Wood Products Coating Operations	1/22/2018	5/23/2018
MDAQMD	1104	Organic Solvent Degreasing Operations	4/23/2018	7/16/2018
MDAQMD	102	Definition of Terms	4/23/2018	8/22/2018

On September 19, 2018, the EPA determined that the submittals for MDAQMD Rules 1114 and 1104 met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review. On September 24, 2018, the EPA determined that the submittal for MDAQMD Rule 102 met the completeness criteria in 40 CFR part 51 Appendix V.

B. Are there other versions of these rules?

We approved an earlier version of Rule 1114 into the SIP on August 18, 1998 (63 FR 44132).[1] We approved an earlier version of Rule 1104 into the SIP on April 30, 1996 (61 FR 18962).[2] We approved an earlier version of Rule 102 into the SIP on November 27, 1990 (55 FR 49281) for the San Bernardino portion of the MDAQMD. We approved amendments to South Coast Air Quality Management District (SCAQMD) Rule 102 into the SIP on March 28, 1979 (44 FR 18491). On June 9, 1982 (47 FR 25013), we approved a revision to the SIP, making the SCAQMD rules applicable in Riverside County. Accordingly, SCAQMD Rule 102, as modified November 4, 1977, and approved on March 28, 1979, is the current definitions rule for the Riverside portion of the MDAQMD.

C. What is the purpose of the submitted rule revisions?

Volatile organic compounds help produce ground-level ozone, smog, and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Rule 1114 establishes VOC content limits for coatings and adhesives used on new wood products and used for refinishing, repairing, preserving, or restoring wood products. It establishes requirements for application methods, surface preparation and cleanup, add-on control systems, and work practices. The rule includes test methods, and recordkeeping and monitoring requirements. The rule revisions include lower VOC limits for several coatings and cleaning solvents, and a higher minimum control efficiency for add-on controls. Rule 1104 establishes VOC emission limits for wipe cleaning and degreasing operations using organic solvents. It establishes requirements for VOC content in cleaning solvents, control equipment, cleaning equipment and methods, and operations. The rule includes test methods, and administrative and recordkeeping requirements. The rule revisions include a lower VOC limit for solvent cleaning, a higher minimum control efficiency for add-on controls, and updates to applicability, control equipment requirements, work practice standards, exemptions, monitoring, recordkeeping, and test methods.

Rules 1114 and 1104 are two of 10 rules addressed in the partial approval and partial conditional approval of the MDAQMD's 2006 and 2015 reasonably available control technology (RACT) SIPs (83 FR 5921, February 12, 2018). Our partial conditional approval of the RACT SIPs was based on a commitment by the State to remedy identified deficiencies in each of the 10 rules. The District submitted revised Rules 1114 and 1104 to address and correct the deficiencies identified in that RACT SIP action for wood products coatings operations and for organic solvent degreasing operations.

Rule 102 was updated to shift common definitions used throughout the District rulebook to Rule 102, and to update definitions for consistency and clarity.

The EPA's technical support documents (TSDs) have more information about these rules.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rules?

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require RACT for each category of sources covered by a Control Techniques Guidelines (CTG) document, and each major source of VOC emissions in ozone nonattainment areas classified as Moderate or above (see CAA section 182(b)(2)). The MDAQMD regulates an ozone nonattainment area classified as Severe for the 2008 ozone standard (40 CFR 81.305) and both Rule 1114 and Rule 1104 regulate sources covered by the CTG documents listed below. Therefore, these two rules must implement RACT for those sources, or the MDAQMD must submit a negative declaration that there are no sources in the relevant CTG category that exceed

[1] On July 1, 1994 the Palo Verde Valley area left the South Coast Air Quality Management District (SCAQMD) and became part of the MDAQMD. The EPA's April 30, 1996 (61 FR 18962) approval of Rule 1114, amended February 22, 1995, constituted a new SIP rule for the San Bernardino portion of MDAQMD, and replaced SCAQMD Rule 1136—*Wood Products Coatings,* amended August 2, 1991 (59 FR 17697, April 14, 1994), for the Palo Verde Valley portion of the District. EPA's August 18, 1998 approval of MDAQMD Rule 1114, amended November 25, 1996, replaced the February 22, 1995 version for the entire District.

[2] The District's submittal requests that the amended version of Rule 1104 supersede both the existing version of Rule 1104, and the December 20, 1993 (58 FR 66285) version of SCAQMD Rule 1171 (August 2, 1991), which is applicable in the Riverside portion of the MDACMD. Rule 1104 Staff Report at 9–10.

the CTG threshold.[3] The District has not submitted negative declarations for these CTG categories; therefore, we have evaluated Rule 1114 and Rule 1104 to ensure that they implement RACT for these CTG categories.

In addition, the EPA is evaluating Rules 1104 and 1114 to determine whether the updated rules meet the District's commitment to cure the deficiencies identified in partial conditional approval of the District's RACT SIPs with respect to wood products coatings operations and organic solvent degreasing operations.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation, and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the ''Bluebook,'' revised January 11, 1990).

2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the ''Little Bluebook'').

3. ''Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations'' (EPA–453/R–96–007, April 1996).

4. ''Control of Volatile Organic Emissions from Solvent Metal Cleaning'' (EPA–450/2–77–022, November 1977).

5. ''Control Techniques Guidelines for Industrial Cleaning Solvents'' (EPA–453/R–06–001, September 2006).

6. CARB's RACT/Best Available Retrofit Control Technology (BARCT) guidance titled, ''Organic Solvent Cleaning and Degreasing Operations'' (July 18, 1991).

B. Do the rules meet the evaluation criteria?

These rules are consistent with CAA requirements and relevant guidance regarding enforceability, RACT, and SIP revisions. In addition, Rules 1104 and 1114 cure the deficiencies identified in the partial conditional approval of the District's RACT SIPs with respect to wood products coatings operations and organic solvent degreasing operations. The TSDs have more information on our evaluation.

[3] RACT Qs & As—Reasonably Available Control Technology (RACT): Questions and Answers, From: William T. Harnett, Director, Air Quality Policy Division (C539–01) To: Regional Air Division Directors, US EPA, May 18, 2006.

C. EPA Recommendations To Further Improve the Rules

The TSDs include recommendations for the next time the local agency modifies the rules.

D. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rules because they fulfill all relevant requirements. In addition, we propose to convert the partial conditional approval of the District's RACT SIPs with respect to Rules 1104 and 1114, as found in 40 CFR 52.248(d), to a full approval. We will accept comments from the public on this proposal until January 28, 2019. If we take final action to approve the submitted rules, our final action will incorporate these rules into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the MDAQMD rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 disproportionate human health or environmental effects with practical, appropriate, 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 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).

List of Subjects in 40 CFR Part 52

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

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

Dated: December 14, 2018.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 2018–28117 Filed 12–26–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 422

[CMS–4185–N]

RIN 0938–AT59

Medicare and Medicaid Programs; Risk Adjustment Data Validation

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document only extends the comment period for the Risk Adjustment Data Validation (RADV) provisions of the proposed rule titled ''Medicare and Medicaid Programs; Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Program of All-inclusive Care for the Elderly (PACE), Medicaid Fee-For-Service, and Medicaid Managed Care Programs for Years 2020 and 2021'' that was published in the November 1, 2018 **Federal Register**. The comment period for the RADV provision of this proposed rule, which would end on December 31, 2018, is extended by 120 days until April 30, 2019.

The comment period for all other provisions of the November 1, 2018 proposed rule ends on December 31, 2018.

DATES: In the proposed rule published November 1, 2018 (83 FR 54982), the comment period for RADV provisions (that is, section II.C.2. of the proposed rule and proposed § 422.300, 422.310(e) and 422.311(a) of the regulations text) is extended to 5 p.m. on April 30, 2019.

ADDRESSES: In commenting, please refer to file code CMS–4185–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4185–P, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4185–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Jonathan Smith (410) 786–4671 or Joanne Davis (410) 786–5127.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

Extension of the Public Comment Period

In the November 1, 2018 proposed rule (83 FR 54982) titled, ''Medicare and Medicaid Programs; Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Program of All-inclusive Care for the Elderly (PACE), Medicaid Fee-For-Service, and Medicaid Managed Care Programs for Years 2020 and 2021,'' we included preamble language and regulatory provisions regarding the proposed Risk Adjustment Data Validation audit methodology and the proposal not to apply a Fee-For-Service (FFS) Adjuster. We posted a FFS Adjuster Study on October 26, 2018. We plan to release data underlying this study.

In order to maximize the opportunity for the public to provide meaningful input to CMS, we believe it is important to allow additional time for the public to prepare comments on the RADV provisions of the proposed rule. In addition, we believe granting a 120-day extension to the public comment period in this instance would further our overall objective to obtain public input and to generate information that will be useful to our agency's decision makers. Therefore, this document announces the extension of the public comment period until April 30, 2019 for the RADV provisions included in the November 1, 2018 proposed rule (83 FR 55037 through 55041 and 55077).

Dated: December 19, 2018.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2018–28070 Filed 12–20–18; 4:15 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 73

[MB Docket No. 17–289; Report No. 3110]

Petition for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for Reconsideration.

SUMMARY: A Petition for Reconsideration (Petition) has been filed in the Commission's rulemaking proceeding by Donald J. Evans, on behalf of Red Brennan Group.

DATES: Oppositions to the Petition must be filed on or before January 11, 2019. Replies to an opposition must be filed on or before January 22, 2019.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Christopher Clark, email: *Christopher.Clark@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3110, released December 18, 2018. The full text of the Petition is available for viewing and copying at the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554. It also may be accessed online via the Commission's Electronic Comment Filing System at: *http://apps.fcc.gov/ecfs/.* The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. because no rules are being adopted by the Commission.

Subject: Rules and Policies to Promote New Entry and Ownership Diversity in the Broadcasting Services, MB Docket No. 17–289, FCC 18–114, published at 83 FR 43773, August 28, 2018. This document is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 1.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–28124 Filed 12–26–18; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 817 and 852

RIN 2900–AQ19

VA Acquisition Regulation: Special Contracting Methods

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend and update its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove any procedural guidance that is internal to VA into the VA Acquisition Manual (VAAM), and to incorporate new regulations or policies. These changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors. The VAAM incorporates portions of the removed VAAR as well as other internal agency acquisition policy. VA will rewrite certain parts of the VAAR and VAAM, and as VAAR parts are rewritten, VA will publish them in the **Federal Register**. VA will combine related topics, as appropriate. In particular, this rulemaking revises VAAR concerning Special Contracting Methods and Solicitation Provisions and Contract Clauses.

DATES: Comments must be received on or before February 25, 2019 to be considered in the formulation of the final rule.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov*; by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1063B, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AQ19—VA Acquisition Regulation: Special Contracting Methods.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Rafael N. Taylor, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street NW, Washington, DC 20001, (202) 382–2787. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

This rulemaking is issued under the authority of the Office of Federal Procurement Policy (OFPP) Act, which provides the authority for an agency head to issue agency acquisition regulations that implement or supplement the FAR.

VA is proposing to revise the VAAR to add new policy or regulatory requirements and to remove any redundant guidance and guidance that is applicable only to VA's internal operating processes or procedures. Codified acquisition regulations may be amended and revised only through rulemaking. All amendments, revisions, and removals have been reviewed and concurred with by VA's Integrated Product Team of agency stakeholders.

The VAAR uses the regulatory structure and arrangement of the FAR and headings and subject areas are consistent with FAR content. The VAAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, and sections.

The Office of Federal Procurement Policy Act, as codified in 41 U.S.C. 1707, provides the authority for the Federal Acquisition Regulation and for the issuance of agency acquisition regulations consistent with the FAR.

When Federal agencies acquire supplies and services using appropriated funds, the purchase is governed by the FAR, set forth at Title 48 Code of Federal Regulations (CFR), chapter 1, parts 1 through 53, and the agency regulations that implement and supplement the FAR. The VAAR is set forth at Title 48 CFR, chapter 8, parts 801 to 873.

Discussion and Analysis

The VA proposes to make the following changes to the VAAR in this phase of its revision and streamlining initiative. For procedural guidance cited below that is proposed to be deleted from the VAAR, each section cited for removal is being considered for inclusion in VA's internal agency operating procedures in accordance with FAR 1.301(a)(2). Similarly, delegations of authorities that are removed from the VAAR will be included in the VAAM as internal agency guidance. The VAAM is being created in parallel with these revisions to the VAAR and is not subject to the rulemaking process as they are internal VA procedures and guidance. Therefore, the VAAM will not be finalized until corresponding VAAR parts are finalized, and it is not yet available on line.

VAAR Part 817—Special Contracting Methods

Under part 817, we propose to add 41 U.S.C. 1702 which addresses the acquisition planning and management responsibilities of Chief Acquisition Officers and Senior Procurement Executives, to include implementation of unique procurement policies, regulations and standards of the executive agency, as an authority to the publishing of this part. We also propose to add 38 U.S.C. 8128 as the authority for the Veterans First Contracting Program which applies to this part. We also propose to add 41 U.S.C. 1303 which provides that executive agencies may issue regulations essential to implement Government-wide policies and procedures within the agency and additional policies and procedures required to satisfy the specific and unique needs of the agency. We also propose to add 48 CFR 1.301–1.304 as the basic authority for agencies to issue supplemental regulations and procedures to the FAR. The authorities cited for this part are 38 U.S.C. 8127–8128; 41 U.S.C. 1303; 41 U.S.C. 1702 and 48 CFR 1.301–1.304.

We propose to remove subpart 817.1, Multi-year Contracting, in its entirety since it deals with internal procedures about the uses of multi-year contracting and internal approvals to be obtained.

We propose to remove subpart 817.2 in its entirety by removing 817.202, Use of options, and 817.204, Contracts. 817.202 consists of internal procedures to develop solicitations and cost comparisons under Office of Management and Budget Circular A–76. Since there is currently a moratorium on A–76 contracts this will not be moved to the VAAM. 817.204, Contracts, contains internal procedures and approvals to be obtained for contracts with option periods greater than five years, and this coverage will be moved to the VAAM.

We propose removing subpart 817.4, Leader Company Contracting, and 817.402, Limitations, since they include internal procedures and approval requirements for leader company

contracts. The coverage will be moved to the VAAM.

We propose to revise the title of subpart 817.5 to read ''Interagency Acquisitions.'' In the newly added 817.501, General, we propose to require any governmental entity that acquires goods and services on behalf of the Department of Veterans Affairs shall comply, to the maximum extent feasible, with the provisions of 38 U.S.C. 8127 and 8128, and the Veterans First Contracting Program as implemented at subpart 819.70.

We propose to remove 817.502, General, which is replaced with updated policy in 817.501. The coverage was moved to comport with the numbering in the FAR.

We propose to add subpart 817.70, Undefinitized Contract Actions, to provide policy and procedures for use of this type of action. Coverage is proposed as undefinitized contract actions (UCAs) are a high-risk method of procurement; accordingly, we propose to add guidance to mitigate the risks associated with UCAs.

We proposed to add 817.7000, Scope, which describes the material being introduced in this subpart.

We propose to add 817.7001, Definitions, to provide definitions of four terms used in the subpart: contract action, definitization, definitization proposal, and undefinitized contract action.

We propose to add 817.7002, Exceptions, to exempt simplified acquisitions and congressionally mandated long-lead procurement contracts from this policy, but to require the contracting officer to apply the policy and procedures to the maximum extent practicable.

We propose to add 817.7003, Policy, which limits undefinitized contract actions to situations where it is not possible to negotiate a definitive contract action in time to meet the government's requirements, and where the interests of the government demand that the contractor be given a commitment so that contract performance can begin immediately.

We propose to add 817.7004, Limitations, with no text, and the following sections: 817.7004–1, Authorization, which provides guidance as to when the contracting officer must obtain approval to use an undefinitized contract action; and 817.7004–2, Price ceiling, which requires all undefinitized contract actions to include not-to-exceed price ceilings.

We propose to add 817.7004–3, Definitization schedule, which sets parameters for establishing definitization schedules and requires submission of a definitization proposal in accordance with the definitization schedule as a material element of the contract, where non-compliance may result in suspension or reduction of progress payments under FAR 32.503–6 or other appropriate action.

We propose to add 817.7004–4, Limitations on obligations, which provides guidance on setting limits on the obligations on undefinitized contract actions.

We propose to add 817.7004–5, Final price negotiation—profit, which provides guidance on negotiating profit that reflects the contractor's reduced cost risk prior to definitization.

We propose to add 817.7005, Contract clause, which prescribes new clause 852.217–70, Contract Action Definitization, for all UCAs, solicitations associated with UCAs, BOAs, IDIQ contracts, or any other type of contract providing for the use of UCAs.

VAAR Part 852—Solicitation Provisions and Contract Clauses

In subpart 852.2, Text of Provisions and Clauses, we propose to add clause 852.217–70, Contract Action Definitization, to provide specific procedures required to definitize UCAs.

Effect of Rulemaking

Title 48, Federal Acquisition Regulations System, Chapter 8, Department of Veterans Affairs, of the Code of Federal Regulations, as proposed to be revised by this rulemaking, would represent VA's implementation of its legal authority and publication of the VAAR for the cited applicable parts. Other than future amendments to this rule or governing statutes for the cited applicable parts, or as otherwise authorized by approved deviations or waivers in accordance with FAR subpart 1.4, Deviations from the FAR, and as implemented by VAAR subpart 801.4, Deviations from the FAR or VAAR, no contrary guidance or procedures would be authorized. All existing or subsequent VA guidance would be read to conform with the rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking as pertains to the cited applicable VAAR parts.

Executive Orders 12866, 13563 and 13771

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 regulatory 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. E.O. 12866, Regulatory Planning and Review, defines ''significant regulatory action'' to mean any regulatory action that is likely to result in a rule that may: ''(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal Governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action, and it has been determined not to be a significant regulatory action under E.O. 12866.

VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm* by following the link for VA Regulations Published from FY 2004 Through Fiscal Year to Date. This proposed rule is not expected to be an E.O. 13771 regulatory action because this proposed rule is not significant under E.O. 12866.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

This proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The overall impact of the proposed rule would be of benefit to small businesses as the VAAR is being updated to remove extraneous procedural information that applies only to VA's internal operating

procedures. VA estimates no cost impact to individual business would result from these rule updates. This rulemaking does not have an economic impact to individual businesses, and there are no increased or decreased costs to small business entities. On this basis, the proposed rule would not have an economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, under 5 U.S.C. 605(b), this regulatory action is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal Governments or on the private sector.

List of Subjects

48 CFR Part 817

Government procurement.

48 CFR Part 852

Government procurement, Reporting and recordkeeping requirements.

Signing Authority

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on December 17, 2018, for publication.

Dated: December 17, 2018.

Consuela Benjamin,

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

For the reasons set out in the preamble, VA is proposing to amend 48 CFR parts 817 and 852 as follows:

PART 817—SPECIAL CONTRACTING METHODS

■ 1. The authority citation for part 817 is revised to read as follows:

Authority: 38 U.S.C. 8127–8128; 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

■ 2. The Table of Contents is revised to read as follows:

PART 817—SPECIAL CONTRACTING METHODS

Sec.
Subpart 817.1 [RESERVED]
Subpart 817.2 [RESERVED]
Subpart 817.4 [RESERVED]
Subpart 817.5 Interagency Acquisitions
817.501 General.
Subpart 817.70 Undefinitized Contract Actions
817.7000 Scope.
817.7001 Definitions.
817.7002 Exceptions.
817.7003 Policy.
817.7004 Limitations.
817.7004–1 Authorization.
817.7004–2 Price ceiling.
817.7004–3 Definitization schedule.
817.7004–4 Limitations on obligations.
817.7004–5 Final price negotiation—profit.
817.7005 Contract clause.

Subpart 817.1 [Removed and Reserved]

■ 3. Subpart 817.1 is removed and reserved.

Subpart 817.2 [Removed and Reserved]

■ 4. Subpart 817.2 is removed and reserved.

Subpart 817.4 [Removed and Reserved]

■ 5. Subpart 817.4 is removed and reserved.

■ 6. Subpart 817.5 is revised to read as follows:

817.5—Interagency Acquisitions

817.501 General.

(d) Any contract, agreement, or other arrangement with any governmental entity to acquire goods and services, including construction, that permits the governmental entity to acquire goods and services on behalf of the Department of Veterans Affairs shall include a requirement that the entity will comply, to the maximum extent feasible, with the provisions of 38 U.S.C. 8127 and 8128, and the Veterans First Contracting Program as implemented at subpart 819.70. Accordingly, the governmental entity shall award contracts (see FAR 2.101 for the definition of contracts) to eligible service-disabled veteran-owned small businesses (SDVOSBs) and veteran-owned small businesses (VOSBs) listed in the VA Vendor Information Pages (VIP) database to the maximum extent feasible.

817.502 [Removed]

■ 7. Section 817.502 is removed.

■ 8. Subpart 817.70 is added to read as follows:

Subpart 817.70—Undefinitized Contract Actions

817.7000 Scope.

This subpart prescribes policies and procedures for use of undefinitized contract actions.

817.7001 Definitions.

As used in this subpart—

(a) *Contract action* includes:

(1) Contracts and contract modifications for supplies or services.

(2) Task orders and delivery orders.

(3) It does not include change orders, administrative changes, funding modifications, or any other contract modifications that are within the scope and under the terms of the contract, *e.g.,* engineering change proposals and value engineering change proposals.

(b) *Definitization* means the agreement on, or determination of, contract terms, specifications, and price, which converts the undefinitized contract action to a definitive contract.

(c) *Definitization proposal* means a proposal containing sufficient data for the VA to do complete and meaningful analyses and audits of the—

(1) Data in the proposal; and

(2) Any other data that the contracting officer has determined VA needs to review in connection with the contract.

(d) *Undefinitized contract action* means any contract action for which the contract terms, specifications, or price are not agreed upon before performance is begun under the action. Examples are letter contracts and orders under basic ordering agreements for which the final price has not been agreed upon before performance has begun.

817.7002 Exceptions.

(a) The following undefinitized contract actions (UCAs) are not subject to this subpart:

(1) Purchases at or below the simplified acquisition threshold.

(2) Congressionally mandated long-lead procurement contracts.

(b) However, the contracting officer shall apply the policy and procedures to the contract actions in paragraph (a) to the maximum extent practicable.

817.7003 Policy.

Undefinitized contract actions shall—

(a) Be used only when—

(1) The negotiation of a definitive contract action is not possible in sufficient time to meet the Government's requirements; and

(2) The Government's interest demands that the contractor be given a

binding commitment so that contract performance can begin immediately.

(b) Be as complete and definite as practicable.

817.7004 Limitations.

817.7004–1 Authorization.

The contracting officer shall obtain approval one level above the contracting officer before—

(a) Entering into a UCA. The request for approval must fully explain the need to begin performance before definitization, including the adverse impact on the VA resulting from delays in beginning performance.

(b) Including requirements for non-urgent items and equipment in a UCA. The request should show that inclusion of the non-urgent items is consistent with good business practices and in the best interest of the Government.

(c) Modifying the scope of a UCA when performance has already begun. The request should show that the modification is consistent with good business practices and in the best interests of the Government.

817.7004–2 Price ceiling.

UCAs shall include a not-to-exceed price.

817.7004–3 Definitization schedule.

(a) UCAs shall contain definitization schedules that provide for definitization by the earlier of—

(1) The date that is 180 days after issuance of the action (this date may be extended but may not exceed the date that is 180 days after the contractor submits a definitization proposal); or

(2) The date on which the amount of funds paid to the contractor under the contract action is equal to more than 50 percent of the not-to-exceed price.

(b) Submission of a definitization proposal in accordance with the definitization schedule is a material element of the contract. If the contractor does not submit a timely definitization proposal, the contacting officer may suspend or reduce progress payments under FAR 32.503–6, or take other appropriate action.

817.7004–4 Limitations on obligations.

The Government shall not obligate more than 50 percent of the not-to-exceed price before definitization.

817.7004–5 Final price negotiation—profit.

Before the final price of a UCA is negotiated, contracting officers shall ensure the profit agreed to and documented in the contract negotiation memorandum reflects consideration of any risks incurred in performance of the work under the UCA.

817.7005 Contract clause.

(a) Use the clause at 852.217–70, Contract Action Definitization, in—

(1) All UCAs;

(2) Solicitations associated with UCAs;

(3) Orders against basic ordering agreements;

(4) Indefinite delivery task orders; and

(5) Any other type of contract providing for the use of UCAs.

(b) Insert the applicable information in paragraphs (a), (b), and (d) of the clause.

(c) If, at the time of entering into the UCA, the contracting officer knows that the definitive contract action will meet the criteria of FAR 15.403–1, 15.403–2, or 15.403–3 for not requiring submission of certified cost or pricing data, the words ''and certified cost or pricing data'' may be deleted from paragraph (a) of the clause.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 9. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 8127–8128, and 8151–8153; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

■ 10. Section 852.217–70 is added to read as follows:

852.217–70 Contract Action Definitization.

As prescribed in 817.7005(a), insert the following clause:

Contract Action Definitization (Date)

(a) A____[*Insert specific type of contract action*] is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract action that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the undefinitized contract action, (2) all clauses required by law on the date of execution of the definitive contract action, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a____[*Insert type of proposal, e.g., fixed-price, or cost-and-fee*] proposal with cost or pricing data, as appropriate, supporting it.

(b) The schedule for definitizing this contract action is as follows [*Insert target date for definitization of the contract action and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of the make-or-buy plans, subcontracting plans, and cost or pricing data*].

(c) If agreement on a definitive contract action to supersede this undefinitized contract action is not reached by the target date in paragraph (b) of this clause, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of a Contracting Officer one level above, determine a reasonable price or fee in accordance with FAR subpart 15.4 and FAR part 31, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to FAR 52.216–24, Limitation of Government Liability.

(1) After the Contracting Officer's determination of price or fee, the contract shall be governed by—

(i) All clauses required by the FAR on the date of execution of this undefinitized contract action for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);

(ii) All clauses required by law as of the date of the Contracting Officer's determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with paragraph (c)(1) of this clause, all clauses, terms, and conditions included in this undefinitized contract action shall continue in effect, except those that by their nature apply only to an undefinitized contract action.

(d) The definitive contract action resulting from this undefinitized contract action will include a negotiated____[*Insert ''cost/price ceiling'' or ''firm-fixed-price''*] in no event to exceed____[*Insert the not-to-exceed amount*].

(End of clause)

[FR Doc. 2018–27591 Filed 12–26–18; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 180716667–8667–01]

RIN 0648–BI36

International Fisheries; Pacific Tuna Fisheries; 2019 and 2020 Commercial Fishing Restrictions for Pacific Bluefin Tuna in the Eastern Pacific Ocean

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

ACTION: Proposed rule; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) is proposing regulations under the Tuna Conventions Act of 1950 (TCA) to implement Inter-American Tropical Tuna Commission (IATTC) Resolution C–18–01 (*Measures for the Conservation and Management of Bluefin Tuna in the Eastern Pacific*

Ocean, 2019–2020) and Resolution C–18–02 (*Amendment to Resolution C–16–08 on a Long-term Management Framework for the Conservation and Management of Pacific Bluefin Tuna in the Eastern Pacific Ocean*). This proposed rule would implement annual limits on commercial catch of Pacific bluefin tuna (*Thunnus orientalis*) in the eastern Pacific Ocean (EPO) for 2019 and 2020. This action is necessary to conserve Pacific bluefin tuna and for the United States to satisfy its obligations as a member of the IATTC.

DATES: Comments on the proposed rule and supporting documents must be submitted in writing by January 16, 2019.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2018–0126, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0126,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Celia Barroso, NMFS West Coast Region Long Beach Office, 501 W Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier ''NOAA–NMFS–2018–0126'' in the comments.

Instructions: Comments must be submitted by one of the above methods to ensure they are received, documented, and considered by NMFS. 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. 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.) submitted voluntarily by the sender will 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).

Please submit written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule and subject to the Paperwork Reduction Act to Celia Barroso, NMFS West Coast Region Long Beach Office (see address above) and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

Copies of the draft Regulatory Impact Review (RIR) and other supporting documents are available via the Federal eRulemaking Portal: *http://www.regulations.gov,* docket NOAA–NMFS–2018–0126, or contact the Highly Migratory Species Branch Chief, Heidi Taylor, 501 W Ocean Blvd., Suite 4200, Long Beach, CA 90208, or *WCR.HMS@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Celia Barroso, NMFS, 562–432–1850, *Celia.Barroso@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background on the IATTC

The United States is a member of the IATTC, which was established in 1949 and operates under the Convention for the Strengthening of the IATTC, established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention). See: *https://www.iattc.org/PDFFiles2/Antigua_Convention_Jun_2003.pdf.*

The IATTC consists of 21 member nations and five cooperating non-member nations. The IATTC facilitates scientific research into, as well as the conservation and management of, tuna and tuna-like species in the IATTC Convention Area (Convention Area). The Convention Area is defined as waters of the EPO within the area bounded by the west coast of the Americas and by 50° N latitude, 150° W longitude, and 50° S latitude. The IATTC maintains a scientific research and fishery monitoring program, and regularly assesses the status of tuna, shark, and billfish stocks in the EPO to determine appropriate catch limits and other measures to promote sustainable fisheries and prevent overexploitation.

International Obligations of the United States Under the Convention

As a Party to the Antigua Convention and a member of the IATTC, the United States is legally bound to implement decisions of the IATTC. The Tuna Conventions Act (16 U.S.C. 951 *et seq.*) directs the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the U.S. Coast Guard, to promulgate such regulations as may be necessary to carry out the United States' obligations under the Antigua Convention, including recommendations and decisions adopted by the IATTC. The authority of the Secretary of Commerce to promulgate such regulations has been delegated to NMFS.

Pacific Bluefin Tuna Stock Status

In 2011, NMFS determined overfishing was occurring on Pacific bluefin tuna (76 FR 28422, May 17, 2011), which is considered a single Pacific-wide stock. Based on the results of a 2012 stock assessment conducted by the International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean (ISC), NMFS determined that Pacific bluefin tuna was not only subject to overfishing, but was also overfished (78 FR 41033, July 9, 2013). Subsequently, based on the results of the 2014 and 2016 ISC stock assessments, NMFS determined that Pacific bluefin tuna continued to be overfished and subject to overfishing (80 FR 12621, March 10, 2015; 82 FR 18434, April 19, 2017).

Pacific Bluefin Tuna Resolutions

Recognizing the need to reduce fishing mortality of Pacific bluefin tuna, the IATTC has adopted catch limits in the Convention Area since 2012 (see the final rules implementing Resolution C–14–06 and Resolution C–16–08 for more information on previous management measures (80 FR 38986, July 8, 2015; 82 FR 18704, April 21, 2017)). At its 93rd Meeting in August 2018, the IATTC adopted Resolutions C–18–01 and C–18–02. Resolution C–18–01 reaffirms ''that in 2018 the IATTC Scientific Staff did not recommend additional measures because the measures established in Resolution C–16–08 are adequate to meet the rebuilding targets. . .'' Resolution C–18–01 amends the IATTC's long-term management framework for Pacific bluefin tuna and Resolution C–18–02 establishes catch limits and reporting requirements for 2019–2020. These resolutions and the subject of this rulemaking were approved by the Secretary of State, thereby prompting implementation by NMFS.

Since 2016, the IATTC and the Northern Committee (NC) to the Western and Central Pacific Fisheries Commission (WCPFC) have held annual joint working group meetings intended to develop a Pacific-wide approach to management of Pacific bluefin tuna. Conservation measures adopted by the IATTC and WCPFC have considered the recommendations of the Joint IATTC—WCPFC NC Working Group (Joint WG). The Joint WG recommendations have included rebuilding targets and criteria that must be met to consider future increases in catch limits. Future conservation measures adopted by the IATTC and WCPFC for Pacific bluefin tuna are also expected to be based, in part, on information and advice from

the ISC, which recently completed a stock assessment in 2018.

In 2017, WCPFC, which has purview over the management of highly migratory species stocks in the western and central Pacific Ocean, revised a conservation and management measure for Pacific bluefin tuna intended to decrease the level of fishing mortality (CMM 2017–08). This revision incorporated the recommendations of the Joint WG, and continues effort and catch limits.

Similar to previous IATTC resolutions on Pacific bluefin tuna, the main objective of Resolution C–18–01 is to reduce overfishing and to rebuild the stock by setting limits on commercial catch in the IATTC Convention Area during 2019 and 2020. C–18–01 establishes a combined catch limit of 600 metric tons (mt) for 2019 and 2020, with some potential modification, applicable to commercial vessels of each member or cooperating non-member, except Mexico, with a historical record of Pacific bluefin tuna catch from the EPO (*i.e.,* including the United States). Total catch is not to exceed 425 mt in a single year. The potential modifications to the biennial catch limit in Resolution C–18–01 may result from the following: (a) The deduction of any amount harvested in 2017 and 2018 that exceeds the biennial limit established in Resolution C–16–08 (*i.e.,* any amount above 600 mt) in accordance with Paragraph 5 of Resolution C–18–01 and Paragraph 3 of Resolution C–18–02; (b) the addition of an amount of the biennial limit established in Resolution C–16–08 that was not harvested by the end of the 2018 calendar year in accordance with Paragraph 6 of Resolution C–18–01 and Paragraph 4 of Resolution C–18–02, which limits the amount of under-harvest that may be carried over to 5 percent of the original limit (*i.e.,* not to exceed 30 mt); and (c) if the IATTC revises catch limits for 2020 in accordance with Paragraph 12 of Resolution C–18–01.

Pacific Fishery Management Council (PFMC) Recommendations for the Implementation of C–18–01

In accordance with a PFMC recommendation, NMFS implemented the catch limits in Resolution C–16–08 with a 25-mt trip limit until catch is within 50 mt of the annual limit (*i.e.,* annual limit is 425 mt in 2017) and a 2-mt trip limit when catch is within 50 mt of the annual limit (82 FR 18704, April 21, 2017). However, the annual limit was exceeded in 2017. The catch rate was more rapid than anticipated, which caused the annual limit to be exceeded before the fishery was closed on August 28, 2017 (82 FR 40720). This series of events prompted NMFS and the PFMC to reconsider management measures for 2018 to avoid exceeding the biennial limit. Consequently, NMFS implemented a 1-mt Pacific bluefin tuna trip limit applicable to commercial U.S. vessels—except large-mesh drift gillnet vessels, which are subject to a 2-mt trip limit—in 2018 (83 FR 13203), March 28, 2018).

At its September 2018 meeting, the PFMC made the following recommendations for implementing catch limits established in Resolution C–18–01 for 2019 and 2020: (a) For 2019, an annual limit of 300 mt; and a 15-mt trip limit until landings reach 200 mt, at which time the trip limit is reduced to 2 mt; (b) for 2020, the annual limit is calculated using the amount caught in 2019 and any over-harvest or under-harvest consistent with Resolutions C–18–01 and C–18–02; and a 15-mt trip limit until the cumulative 2019–2020 landings reach 475 mt, at which time the trip limit is reduced to 2 mt; (c) Pacific bluefin tuna landings must be reported within 24 hours of landing using the California electronic landing receipt (e-ticket) reporting system; and (d) that NMFS develop a method to close the fishery or reduce the trip limit via United States Coast Guard radio broadcast, or other means that will halt additional fishing in the timeliest possible manner.

Under the California Code of Regulations, as of July 1, 2019, California e-tickets will be mandatory (Title 14 § 197) and must be submitted within three business days. To assist with catch limit monitoring, the PFMC recommended NMFS require that dealers, or buyers, submit the e-tickets to E-Tix—the electronic reporting system for commercial fishery landings in California—or submittal to the California Department of Fish and Wildlife within 24 hours.

Pacific Bluefin Tuna Catch History

While Pacific bluefin tuna catch by U.S. commercial vessels fishing in the Convention Area exceeded 1,000 mt per year in the early 1990s, annual catches have remained below 500 mt for more than a decade. The U.S. commercial catch of Pacific bluefin tuna in the Convention Area for the years 2002 to 2018 can be found in Table 1 below. Average annual Pacific bluefin tuna landings by U.S. commercial vessels fishing in the Convention Area from 2011 to 2015 represent only one percent of the average annual landings of Pacific bluefin tuna for all fleets fishing in the Convention Area. For information on Pacific bluefin tuna harvests in the Convention Area through 2017, see *http://isc.fra.go.jp/fisheries_statistics/index.html;* for preliminary information for 2018, see *http://www.iattc.org/CatchReportsDataENG.htm.*

TABLE 1—ANNUAL U.S. COMMERCIAL CATCH, IN METRIC TONS (mt), OF PACIFIC BLUEFIN TUNA IN THE EASTERN PACIFIC OCEAN FROM 2002 TO 2018

Year	Catch (mt)
2002	62
2003	40
2004	11
2005	208
2006	2
2007	44
2008	1
2009	416
2010	1
2011	118
2012	42
2013	11
2014	408
2015	96
2016	343
2017	484
2018	* 55.9

Source: Highly Migratory Species Stock Assessment and Fishery Evaluation: *http://www.pcouncil.org/highly-migratory-species/stock-assessment-and-fishery-evaluation-safe-documents/current-hms-safe-document/.*

* Preliminary estimate of 2018 Pacific bluefin tuna landed catch by United States based on communications with California Department of Fish and Wildlife on December 4, 2018.

Proposed Regulations for Pacific Bluefin Tuna for 2019–2020

This proposed rule would establish catch and trip limits for U.S. commercial vessels that catch Pacific bluefin tuna in the Convention Area, pre-trip notification requirements, and accelerated landing receipt submission deadlines for 2019 and 2020. In 2019, the catch limit for the entire U.S. fleet would be 300 mt. In 2020, NMFS would announce the catch limit in a **Federal Register** notice, which would be calculated as the amount caught in 2019 subtracted from the biennial limit, but not to exceed 425 mt. The U.S. biennial limit is 600 mt, before any additions or deductions based on the over-harvest and under-harvest provisions of Resolutions C–18–01 and C–18–02.

In 2019 and 2020, NMFS would impose a 15-mt trip limit until catch is within 50 mt of the annual limit, at which time NMFS would impose a 2-mt trip limit through the end of the year, or until the fishery is closed. However, if the annual limit in 2020 is 125 mt or less, the trip limit will be 2 mt for the entire calendar year or until the fishery is closed.

As of July 1, 2019, E-tickets, which as of that date will be required under California Code of Regulations (Title 14, § 197) and must be submitted within three business days, would be required to be submitted within 24 hours if any Pacific bluefin tuna is included in a landing into California. This accelerated submission deadline is required in order to better monitor catch limits. During periods in which the trip limit is 15 metric tons, purse seine vessels would not be allowed to retain or land Pacific bluefin tuna unless NMFS received a pre-trip notification. Vessel operators would be required to provide this pre-trip notification at least 48 hours in advance of the fishing trip. The pre-trip notification must include the vessel owner's or operator's name, contact information, vessel name, port of departure, and the intended date of departure for this trip. NMFS would use the contact information provided in the pre-trip notification to notify purse seine vessel owners or operators if an inseason action (*i.e.,* reduction in trip limit or fishery closure) is expected or imposed. The pre-trip notification would be completed by sending an email to *pbf.notifications@noaa.gov.* A reply will be sent automatically to the vessel operator to confirm receipt of the pre-trip notification.

The pre-trip notification would assist NMFS in closely tracking catch to manage the trip limits and fishery closure requirements. For the purposes of tracking catch of Pacific bluefin tuna, NMFS would assume that 15 metric tons of Pacific bluefin tuna will be caught on every trip for which a pre-trip notification was provided. Along with other available fishery information, such as landing receipts, NMFS would estimate when the overall catch is expected to reach either the threshold to reduce the trip limit (*i.e.,* within 50 mt of the annual limit) or the annual limit. NMFS would then make decisions on inseason actions based on those estimates. NMFS would encourage owners or operators of purse seine vessels to call NMFS at 562–432–1850 in advance of landing with an estimate of how much Pacific bluefin tuna was caught on the trip.

Inseason Action Announcements

When NMFS determines that catch is expected to be within 50 mt of the annual limit (based on pre-trip notifications, landing receipts, or other available information), a 2-mt trip limit would be imposed by NMFS, effective upon the time and date that would appear in a notice on the NMFS WCR website (*https://www.westcoast.fisheries.noaa.gov/fisheries/migratory_species/bluefin_tuna_harvest_status.html*) and announced over a United States Coast Guard (USCG) Notice to Mariners that will be broadcast three times per day for four days on USCG channel 16 VHF. NMFS would then publish a notice of the reduced trip limit in the **Federal Register** as soon as practicable. If the annual limit in 2020 is 125 mt or less, NMFS would not need to provide a notice that the trip limit has been reduced because the trip limit would be 2 mt for the entire calendar year.

When NMFS determines that the annual catch limit is expected to be reached in 2019 or 2020 (based on pre-trip notifications, landings receipts, or other available fishery information), NMFS would prohibit commercial fishing for, or retention of, Pacific bluefin tuna for the remainder of the calendar year (*i.e.,* fishery closure). NMFS would provide a notice on the NMFS WCR website and the USCG would provide a Notice to Mariners three times per day for four days on USCG channel 16 VHF announcing that the targeting, retaining, transshipping or landing of Pacific bluefin tuna will be prohibited on a specified effective time and date through the end of that calendar year. Upon that effective date, a commercial fishing vessel of the United States may not be used to target, retain on board, transship, or land Pacific bluefin tuna captured in the Convention Area. However, any Pacific bluefin tuna already on board a fishing vessel on the effective date could be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days of the effective date. NMFS would then publish a notice of the fishery closure in the **Federal Register** as soon as practicable.

In 2020, NMFS would publish a notice in the **Federal Register** announcing the 2020 catch limit.

In the event the trip limit was reduced early or the fishery was closed due to an overestimation of catch, NMFS could increase the trip limit to 15 metric tons or re-open the fishery after landing receipts have been received and the landed catch quantity confirmed. NMFS would announce these actions on the NMFS WCR website and by USCG Notice to Mariners on USCG channel 16 VHF.

Although the PFMC recommended a more conservative threshold to reduce the trip limit, NMFS' proposal to make the pre-trip notification and inseason actions effective upon website posting and via USCG radio broadcast (rather than waiting for filing of a notice with the Office of the Federal Register) is expected to enable NMFS to adequately manage the fishery by reducing the trip limit and/or closing the fishery in a timely manner, if needed.

The PFMC, at its November 2018 meeting, recommended an alternative to the pre-trip notification in the proposed regulations. Instead of requiring the pre-trip notification by purse seine vessels be received by NMFS 48 hours in advance of a trip, the PFMC recommended it be required 24 hours in advance of a trip. Additionally, instead of prohibiting retention or landing of any Pacific bluefin tuna if the pre-trip notification was not received by NMFS, the PFMC recommended allowing up to two metric tons of Pacific bluefin tuna to be retained or landed without providing a pre-trip notification. (*i.e.,* prohibiting the retention or landing of Pacific bluefin tuna in excess of 2 metric tons). NMFS is seeking public comment on this November 2018 recommendation of the PFMC in addition to the proposal set forth in the regulatory text below.

Proposed Catch Reporting

NMFS would provide updates on Pacific bluefin tuna catches in the Convention Area to the public via the IATTC listserv and the NMFS West Coast Region website: *http://www.westcoast.fisheries.noaa.gov/fisheries/migratory_species/bluefin_tuna_harvest_status.html.* Specifically, beginning April 1 of each year, NMFS would update the NMFS West Coast Region website weekly, at a minimum, provided the updates do not disclose confidential information (in accordance with Magnuson-Stevens Fishery Conservation and Management Act section 402 (b), 16 U.S.C. 1881a). These updates are intended to help participants in the U.S. commercial fishery plan for reduced trip limits and attainment of the annual limits.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Under the Regulatory Flexibility Act (RFA), the U.S. Small Business Administration (SBA) defines a ''small business'' (or ''small entity'') as one with annual revenue that meets or is below an established size standard. On December 29, 2015, NMFS issued a final rule establishing a small business size standard of $11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for RFA compliance purposes only (80 FR 81194). The $11 million standard

became effective on July 1, 2016, and is to be used in place of the U.S. SBA current standards of $20.5 million, $5.5 million, and $7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. Id. at 81194.

The small entities the proposed action would directly affect are all U.S. commercial fishing vessels that may target (*e.g.,* coastal pelagic purse seine vessels) or incidentally catch (*e.g.,* drift gillnet) Pacific bluefin tuna in the Convention Area; however, not all vessels that have participated in this fishery decide to do so every year. U.S. commercial catch of Pacific bluefin tuna from the IATTC Convention Area is primarily made in waters off of California by the coastal pelagic small purse seine fleet, which targets Pacific bluefin tuna opportunistically, and other fleets (*e.g.,* California large-mesh drift gillnet, surface hook-and-line, west coast longline, and Hawaii's pelagic fisheries) that catch Pacific bluefin tuna in small quantities, such as incidentally.

Revenues of coastal purse seine vessels are not expected to be significantly altered as a result of this rule, which is applicable to 2019–2020 only. Since 2006, the average annual revenue per vessel from all finfish fishing activities for the U.S. purse seine fleet that have landed Pacific bluefin tuna has been less than $11 million, whether considering an individual vessel or per vessel average. Since 2008, in years Pacific bluefin tuna was landed, purse seine vessels that caught Pacific bluefin tuna had an average ex-vessel revenue of about $2.4 million per vessel (based on all species landed). Annually, from 2013 to 2017, the number of small coastal pelagic purse seine vessels that landed Pacific bluefin tuna in the Convention Area ranged from zero to eight. In 2013, the coastal purse seine fishery did not land Pacific bluefin tuna. In 2014 and 2015, four and five vessels landed Pacific bluefin tuna, respectively. In 2014, eight purse seine vessels fishing in the Convention Area landed highly migratory species (HMS) in California, but only four of them were involved in landing roughly 401 mt of Pacific bluefin tuna, worth about $588,000, in west coast ports. Similarly, in 2015, 11 vessels fishing in the Convention Area landed HMS in California, but only 5 vessels landed approximately 86 mt of Pacific bluefin tuna, worth about $75,000. In 2016, 9 vessels landed HMS, but only 5 landed approximately 316 mt of Pacific bluefin tuna worth about $352,000. In 2017, 9 vessels landed HMS and 8 landed Pacific bluefin tuna; these vessels landed approximately 466 mt of Pacific bluefin tuna worth about $516,000. The revenue derived from Pacific bluefin tuna is a fraction of the overall revenue for coastal pelagic purse seine vessels (1.4 percent annually from 2008–2017) as they typically harvest other species, including Pacific sardine, Pacific mackerel, squid, and anchovy. The value of Pacific bluefin tuna in coastal pelagic purse seine fishery from 2008–2017 was $1.17/kilogram. This amount is negligible relative to the fleet's annual revenue resulting from other species. Since implementing a 25-mt trip limit (2015–2017), average catch was 14.8 mt per trip. Thirty-four of 61 trips, conducted by 3 to 8 vessels, that landed Pacific bluefin tuna from 2015–2017 exceeded 15 mt; however, vessels are expected to shift their focus and target other species, such as yellowfin tuna, if available, or coastal pelagic species.

Since 2006, the average annual revenue per vessel from all finfish fishing activities for the U.S. fleet with landings of Pacific bluefin tuna in small quantities, such as from incidental catch, has been less than $11 million. These vessels include drift gillnet, surface hook-and-line, and longline gear-types. The revenues of these vessels are also not expected to be significantly altered by the rule. From 2013 to 2017, the number of drift gillnet, surface hook-and-line, and longline vessels that participated in this fishery range from 7 to 13, 1 to 61, and 1 to 3, respectively. During these years, vessels with gears other than purse seine landed an annual average of 17.4 mt of Pacific bluefin tuna, worth approximately $135,100. Of these landings, only one trip exceeded 2 mt. As a result, it is anticipated that proposed reduced trip limits will not have a significant impact on these vessels. If the fishery is closed before the calendar year, regulatory discards by these fleets are likely. Such a scenario would result in a greater impact to the fleet that catches Pacific bluefin tuna in small quantities, as opposed to the coastal purse seine fleet, which would simply cease targeting of Pacific bluefin tuna. This could result in a greater conservation benefit for the overfished Pacific bluefin stock.

Although there are no disproportionate impacts between small and large business entities because all affected business entities are small, the impacts among the business entities will be different. Implementation of the reduced trip limit for an entire calendar year (*i.e.,* in the event the catch limit in 2020 is 125 mt or less) in this proposed action would impose a greater economic impact on the U.S. coastal purse seine fleet. Prior to the implementation of a 25-mt trip limit in 2015, these vessels landed an average of 41 mt per trip, and are capable of landing over 70 mt in a single trip (based on landings from purse seine vessels landing Pacific bluefin tuna in the EPO from 2011–2014). The purse seine fleet might not target Pacific bluefin tuna if the trip limit were 2 mt or less; however, as observed in 2018 while the trip limit is restricted to 1 mt for purse seine vessels, some purse seine vessels did land Pacific bluefin tuna in small quantities. Under the current regulations at 50 CFR 300.25(g)(2) and taking into account the 2017 catch, which exceeded the 2017 annual limit by at least 50 mt, a total of about 114 mt is available to U.S. commercial vessels in 2018.

NMFS considers all entities subject to this action, which based on recent participation ranges from eight to 85 because participation fluctuates substantially from year-to-year, to be small entities as defined by both the former, lower size standards and the revised size standards. Because each affected vessel is a small business, there are no disproportional affects to small versus large entities. Based on profitability analysis above, the proposed action, if adopted, will not have significant adverse economic impacts on these small business entities. As a result, an Initial Regulatory Flexibility Analysis is not required and was not prepared for this proposed rule.

This proposed rule contains a new collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. The proposed new requirements are listed below. The estimates for the public reporting burden of all responses combined for each proposed requirement are as follows: E-ticket submission: 0 hours because submission will already be required by California Code of Regulations; Pre-trip notification: 4.25 hours; Voluntary pre-landing notification: 2.55 hours.

Public comment is sought regarding: Whether this 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 burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments

on these or any other aspects of the collection of information to Celia Barroso, NMFS West Coast Region Long Beach Office at the **ADDRESSES** above, and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: December 20, 2018.

Donna S. Wieting,

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

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for part 300, subpart C, continues to read as follows:

Authority: 16 U.S.C. 951 *et seq.*

■ 2. In § 300.24, revise paragraph (u) to read as follows:

§ 300.24 Prohibitions.

* * * * *

(u) Use a United States commercial fishing vessel in the Convention Area to target, retain on board, transship, or land Pacific bluefin tuna in contravention of § 300.25(g)(4) through (7) and (g)(9) through (10).

* * * * *

■ 3. In § 300.25, revise paragraph (g) to read as follows:

§ 300.25 Fisheries management.

* * * * *

(g) *Pacific bluefin tuna (Thunnus orientalis) commercial catch limits in the eastern Pacific Ocean for 2019–2020.* The following is applicable to the U.S. commercial fishery for Pacific bluefin tuna in the Convention Area in the years 2019 and 2020.

(1) The 2019–2020 biennial limit is either:

(i) 600 metric tons increased by the amount, not to exceed 30 metric tons, of Pacific bluefin tuna catch remaining from the 2018 U.S. commercial catch limit; or,

(ii) 600 metric tons reduced by the amount of Pacific bluefin tuna caught in 2018 in excess of the 2018 U.S. commercial catch limit.

(2) For the calendar year 2019, all commercial fishing vessels of the United States combined may capture, retain, transship, or land no more than 300 metric tons.

(3) In 2020, NMFS will publish a notice in the **Federal Register** announcing the 2020 catch limit. For the calendar year 2020, all commercial fishing vessels of the United States combined may capture, retain on board, transship, or land no more than the 2020 annual catch limit. The 2020 catch limit is the lesser of: The 2019–2020 biennial limit reduced by the amount caught by U.S. commercial vessels in 2019; or 425 metric tons.

(4) In 2019 and 2020, a 15-metric ton trip limit will be in effect until NMFS anticipates that catch will be within 50 metric tons of the catch limit, after which a 2-metric ton trip limit will be in effect upon the effective date provided in actual notice, in accordance with paragraph (g)(8) of this section.

(5) After NMFS determines that the catch limits under paragraphs (g)(2) and (3) of this section are expected to be reached by a future date, NMFS will close the fishery effective upon the date provided the actual notice, in accordance with paragraph (g)(8) of this section. Upon the effective date in the actual notice, targeting, retaining on board, transshipping, or landing Pacific bluefin tuna in the Convention Area shall be prohibited, as described in paragraph (g)(6) of this section.

(6) Beginning on the date provided in the actual notice of the fishing closure notice announced under paragraph (g)(5) of this section, a commercial fishing vessel of the United States may not be used to target, retain on board, transship, or land Pacific bluefin tuna captured in the Convention Area through the end of the calendar year, with the exception that any Pacific bluefin tuna already on board a fishing vessel on the effective date of the notice may be retained on board, transshipped, and/or landed within 14 days after the effective date published in the fishing closure notice, to the extent authorized by applicable laws and regulations.

(7) If an inseason action taken under paragraphs (g)(4), (5), or (6) of this section is based on overestimate of actual catch, NMFS will reverse that action in the timeliest possible manner, provided NMFS finds that reversing that action is consistent with the management objectives for the affected species. The fishery will reopen effective on the date provided in the actual notice in accordance with paragraph (g)(8) of this section.

(8) Inseason actions taken under paragraphs (g)(4), (5), (6), and (7) of this section will be by actual notice from posting on the National Marine Fisheries West Coast Region website (*https://www.westcoast.fisheries.noaa.gov/fisheries/migratory_species/bluefin_tuna_harvest_status.html*) and a United States Coast Guard Notice to Mariners. The Notice to Mariners will be broadcast three times daily for four days. This action will also be published in the **Federal Register** as soon as practicable. Inseason actions will be effective from the time specified in the actual notice of the action (*i.e.,* website posting and United States Coast Guard Notice to Mariners), or at the time the inseason action published in the **Federal Register** is effective, whichever comes first.

(9) While the 15-metric ton trip limit is in effect, Pacific bluefin tuna may be retained or landed from a purse seine vessel only if the owner or operator provided a pre-trip notification to NMFS 48 hours in advance of departing on the fishing trip. The notification shall be made to NMFS at *pbf.notifications@noaa.gov,* and must include the owner or operator's name, contact information, vessel name, port of departure, and intended date and time of departure.

(10) As of July 2, 2019, if landing Pacific bluefin tuna into the State of California, fish landing receipts must be submitted within 24 hours to the California Department of Fish and Wildlife in accordance with the requirements of applicable State regulations.

* * * * *

[FR Doc. 2018–28161 Filed 12–26–18; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 83, No. 247

Thursday, December 27, 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

December 19, 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 January 28, 2019 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 Business Cooperative Service

Title: Strategic Economic and Community Development.

OMB Control Number: 0570–0068.

Summary of Collection: As authorized under the Agricultural Act of 2014 (2014 Farm Bill), Section 6025, Strategic Economic and Community Development enables the Secretary of Agriculture to provide priority to projects that support Strategic Economic and Community Development plans. The Agency will reserve up to 10 percent of the funds appropriated to the following seven Rural Development programs (which are referred to as the ''underlying programs''): Community Facility Grants; Community Facility Guaranteed Loans; Community Facility Direct Loans; Water and Waste Disposal Loans and Grants; Water and Waste Disposal Guaranteed Loans; Business and Industry Guaranteed Loans and Rural Business Development Grants each fiscal year.

Need and Use of the Information: To be eligible for the reserved funds a project must meet three criteria: Projects must first be eligible for funding under the underlying program from which funds are reserved; carried out solely in rural areas and that the project support the implementation of a strategic economic development or community development plan on a multi-jurisdictional basis as defined in 7 CFR 1980.1005. Applicants will submit information on the Application Form 1980–88, the Plan that the project supports, and the project's measures, metrics and outcome. The collection of information is necessary for the Agency to identify projects eligible for the reserved funding under the Section 6025 program and to prioritize eligible applications.

Description of Respondents: Business or other for-profit.

Number of Respondents: 339.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 3,040.

Kimble Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–27973 Filed 12–26–18; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (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 January 28, 2019 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.

Animal and Plant Health Inspection Service

Title: Citrus Greening and Asian Citrus Psyllid; Quarantine and Interstate Movement Regulations.

OMB Control Number: 0579–0363.

Summary of Collection: The Plant Protection Act (7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture either independently or in cooperation with the States, to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests (such as citrus canker) new or widely distributed throughout the United States. The Animal and Plant Health Inspection Service (APHIS) amended the ''Domestic Quarantine Notices'' in 7 CFR part 301 by adding a new subpart, ''Citrus Greening and Asian Citrus Psyllid (ACP)'' (§§ 301.76 through 301.76–11). Citrus greening, also known as Huanglonghing disease of citrus, is considered to be one of the most serious citrus diseases in the world.

Need and Use of the Information: APHIS will collect information using the following activity to address the risk associated with the interstate movement of citrus nursery stock and other regulated articles from areas quarantined for citrus greening: Limit Permit (PPO Form 530), Federal Certificate (PPO Form 540), Compliance Agreement (PPO Form 519), Label Statement, Recordkeeping, Attaching Tag to Bill of Lading, Cancellation of Certificates, Permits, and Compliance Agreements, 72 Hour Notification of Inspection, and Emergency Action Notification. Failing to collect this information could cause a severe economic loss to the citrus industry.

Description of Respondents: Business or other for-profit.

Number of Respondents: 639.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 2,021.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–28024 Filed 12–26–18; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2018–0081]

Notice of Request for Reinstatement of an Information Collection; Prohibited, Restricted, and Controlled Importation of Animal and Poultry Products and By-Products Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reinstatement of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request the reinstatement of an information collection associated with the prohibited, restricted, and controlled importation of animal and poultry products and by-products into the United States.

DATES: We will consider all comments that we receive on or before February 25, 2019.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0081.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2018–0081, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0081* 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.

FOR FURTHER INFORMATION CONTACT: For information on prohibited, restricted, and controlled importation of animal and poultry products and by-products into the United States, contact Dr. Magde S. Elshafie, Senior Staff Veterinarian, Strategy and Policy, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737; (301) 851–3332. For more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: Prohibited, Restricted, and Controlled Importation of Animal and Poultry Products and By-Products into the United States.

OMB Control Number: 0579–0015.

Type of Request: Reinstatement of an information collection.

Abstract: The Animal Health Protection Act (7 U.S.C. 8301 *et seq.*) is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The Secretary may also prohibit or restrict import or export of any animal or related material if necessary to prevent the spread of any livestock or poultry pest or disease.

Disease prevention is the most effective method for maintaining a healthy animal population and for enhancing the Animal and Plant Health Inspection Service's (APHIS) ability to compete globally in animal and animal product and by-product trade. In connection with this mission, APHIS enforces regulations regarding the importation of controlled materials and the prevention of foreign animal disease incursions into the United States. These regulations can be found in 9 CFR parts 94, 95, and 122. APHIS engages in a number of information collection activities to prevent or control the spread of livestock diseases via the prohibited, restricted, and controlled importation of animal and poultry products and by-products into the United States, including, but not limited to, certificates, applications, agreements, appeals and cancellations of agreements, placards and statements, permissions to import, reports, notifications, government seals, and marking requirements.

In addition, to align with terminology used in the regulations, APHIS has revised the name of this information collection from ''Restricted and Controlled Importation of Animal and Poultry Products and By-Products into the United States'' to ''Prohibited, Restricted, and Controlled Importation of Animal and Poultry Products and By-Products into the United States.''

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of Burden: The public burden for this collection of information is estimated to average 1.97 hours per response.

Respondents: Importers, exporters, processing operators, foreign federal governments, foreign veterinarians, port personnel, museums, educational institutions, transportation operators, and carrier personnel.

Estimated Annual Number of Respondents: 3,437.

Estimated Annual Number of Responses per Respondent: 63.

Estimated Annual Number of Responses: 216,399.

Estimated Total Annual Burden on Respondents: 427,877 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 19th day of December 2018.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2018–28046 Filed 12–26–18; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Foreign Agricultural Service

Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Foreign Agricultural Service and Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request an extension from the Office of Management and Budget (OMB) for a currently approved information collection process in support of the Technical Assistance for Specialty Crops (TASC) program.

DATES: Comments on this notice must be received by February 25, 2019 to be assured of consideration.

ADDRESSES: You may send comments, identified by Document Number, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for sending comments.
- *Email: Podadmin@fas.usda.gov.* Include document number in the subject line of the message.
- *Fax:* 202–720–9361.
- *Mail:* 1400 Independence Avenue SW, Room 6512, Washington, DC 20250.

Instructions: All submissions received must include the agency names and document number for this notice. All comments received will be posted without change to regulations.gov, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Curt Alt, 202 720–4327, *Podadmin@fas.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Technical Assistance for Specialty Crops.

OMB Number: 0551–0038.

Expiration Date of Approval: February 28, 2019.

Type of Request: Extension of a currently approved information collection.

Abstract: This information is needed to administer CCC's Technical Assistance for Specialty Crops program. The information will be gathered from applicants desiring to receive grants under the program to determine the viability of the request for funds. Regulations governing the program appear at 7 CFR part 1487 and are available on the Foreign Agricultural Service's website.

Estimate of Burden: This program is currently suspended pending the passage of a new Farm Bill. However, in case the program is re-authorized by Congress in the future, the agency intends to keep the OMB control number for this program active. Assuming the program is re-authorized in substantially its current form, the agency estimates that the public reporting burden for the associated collection of information would average 32 hours per respondent.

Respondents: U.S. government agencies, State government agencies, non-profit trade associations, universities, agricultural cooperatives, and private companies.

Estimated Number of Respondents: 50.

Estimated Time per Respondent: 32.

Estimated Total Annual Burden on Respondents: 1,600 hours.

Copies of this information collection can be obtained from Connie Ehrhart, the Agency Information Collection Coordinator, at (202) 690–1578.

Request for Comments: Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to: Director, Program Operations Division, Foreign Agricultural Service, Room 6512, 1400 Independence Avenue SW, Washington, DC 20250. Facsimile submissions may be sent to (202) 720–9361 and electronic mail submissions should be addressed to: *podadmin@fas.usda.gov.*

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

Dated: December 18, 2018.

Robert Stephenson,

Executive Vice President, Commodity Credit Corporation.

Dated: December 17, 2018.

Kenneth Isley,

Administrator, Foreign Agricultural Service.

[FR Doc. 2018–28048 Filed 12–26–18; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Final Record of Decisions for the Flathead National Forest Land Management Plan and Forest Plan Amendments for the Kootenai, Helena-Lewis and Clark, and Lolo National Forests

AGENCY: Forest Service, USDA.

ACTION: Notice of plan approval for the Flathead National Forest and plan amendments approval for the Kootenai, Helena-Lewis and Clark, and Lolo National Forests.

SUMMARY: Chip Weber, the Forest Supervisor for the Flathead National Forest, Northern Region, signed the record of decision (ROD) for the Flathead National Forest Land Management Plan (Forest Plan). The responsible officials, William Avey, Forest Supervisor for the Helena-Lewis and Clark National Forest; Chad Benson,

Acting Forest Supervisor for the Kootenai National Forest; and Joe Alexander, Acting Forest Supervisor for the Lolo National Forest, signed the ROD for the Northern Continental Divide Ecosystem grizzly bear amendments (Amendments). The final RODs document the rationale for approving the Forest Plan and Amendments and are consistent with the reviewing officers' responses to objections and instructions.

DATES: The revised Forest Plan for the Flathead National Forest will become effective 30 days after the publication of this notice of approval in the **Federal Register**. The Amendments will become effective with this publication in the **Federal Register**. To view the final RODs, final environmental impact statement (FEIS), the Forest Plan, Amendments, and other related documents, please visit the Flathead National Forest Plan Revision website at: *https://www.fs.usda.gov/goto/flathead/fpr* or the Amendments website at: *https://www.fs.usda.gov/goto/flathead/gbamend.*

FOR FURTHER INFORMATION CONTACT: Information about the Forest Plan for the Flathead National Forest can be obtained from Anastasia Allen, weekdays, 8:30 a.m. to 3:00 p.m. Mountain Time at the Flathead National Forest Supervisor's Office (phone: 406–758–5320). Information about the Amendments can be obtained by contacting Timory Peel, weekdays, 8:30 to 5:00 p.m. Mountain Time at the Northern Region Office (phone: 406–329–3678). Written requests for information may be sent to Flathead National Forests, Attn: Plan Revision, 650 Wolfpack Way, Kalispell, Montana 59901.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Forest Plan describes the Flathead National Forest's distinctive roles and contributions within the broader landscape and details forest-wide management area and geographic area desired conditions, objectives, standards, and guidelines. The Forest Plan identifies suitable uses of National Forest System lands and provides estimates of the planned timber sale quantity. The Forest Plan identifies priority watersheds for restoration, and includes recommended wilderness areas and eligible wild and scenic rivers. This Forest Plan provides for efficient and effective management of the Flathead National Forest with desired conditions for coordination, partnerships, and shared stewardship with State, local, and Tribal governements, other federal agencies, adjacent landowners, and stakeholders.

The Forest Service is concurrently amending the Forest Plans of the Helena-Lewis and Clark, Kootenai, and Lolo National Forests to incorporate habitat management direction for the Northern Continental Divide Ecosystem grizzly bear population. The Flathead National Forest has incorporated the grizzly bear habitat management direction as part of its Forest Plan. Plan components (desired conditions, standards, and guidelines) that conserve grizzly bear habitat will be added to the Helena-Lewis and Clark, Kootenai, and Lolo Forest Plans. These plan components will guide future land management actions related to motorized access and secure core developed recreation sites, vegetation management, livestock grazing, and energy and mineral development. In general, habitat conditions in the primary conservation area will be maintained at levels that occurred during the time period when the grizzly bear population was known to be growing and increasing in distribution and will contribute to sustaining the recovery of the grizzly bear population.

The Flathead National Forest initiated plan revision in fall 2013 with field trips and stakeholder meetings. The Forest invited State, local and Tribal governments, and other federal agencies from around the region to participate in the process to revise the Forest Plan. An interagency working group met regularly throughout the plan revision effort. The Forest received almost 54,000 public comments on the Forest Plan and Amendments. Public involvement for the Amendments was initiated with the publication of a Notice of Intent in the **Federal Register** on March 6, 2015. Open houses were held in seven communities throughout the Northern Continental Divide Ecosystem during the scoping period to provide information about the proposed action and accept public comments.

The development of the Forest Plan and Amendments was shaped by the best available science, current laws, and public input. The 60-day timeframe for the opportunity to object ended on February 12, 2018. The Forest Service received 69 eligible objections. The reviewing officers issued their written responses to the objection issues on August 16, 2018. The Regional Forester, Reviewing Official, provided the Forest Supervisors with minor clarification instructions for most of the objection issues. The final RODs document the rationale for approving the Forest Plan and Amendments and are consistent with the reviewing officers' responses to objections and instructions.

Responsible Officials

The Responsible Officials for approving the Forest Plan and Amendments are as follows: Chip Weber, Forest Supervisor, Flathead National Forest; William Avey, Forest Supervisor, Helena-Lewis and Clark National Forest; Chad Benson, Acting Forest Supervisor, Kootenai National Forest; and Joe Alexander, Acting Forest Supervisor, Lolo National Forest.

Dated: December 17, 2018.

Allen Rowley,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2018–27969 Filed 12–26–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath National Forest; California; Crawford Vegetation Management Project

AGENCY: Forest Service, USDA.

ACTION: Withdrawal of notice of intent to prepare an environmental impact statement.

SUMMARY: The Klamath National Forest is withdrawing the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for the Crawford Vegetation Management Project. The original NOI was published in the **Federal Register** on January 27, 2014 (79 FR 4323). Upon further evaluation, there are no expected significant impacts to the human environment associated with the project. As a result, the Klamath National Forest is now preparing an environmental assessment (EA). All comments previously received regarding this project will be retained and considered in the development of the EA. If it is determined that the project may have significant impacts, the EIS process will be reinitiated and a NOI will be published.

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice and requests to be added to the project mailing list should be directed to Lisa Bousfield, Happy Camp/Oak Knoll Ranger District, 63822 State Highway 96, P.O. Box 377, Happy Camp, CA 96039; by telephone at (530) 493–1766; or via email at *lbousfield@fs.fed.us.*

Individuals who have previously submitted comments on this project will

remain on the project mailing list and do not need to contact the Forest.

Dated: December 4, 2018.

Jennifer Eberlien,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2018–27970 Filed 12–26–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–79–2018]

Foreign-Trade Zone 263—Lewiston-Auburn, Maine; Application for Reorganization (Expansion of Service Area); Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Lewiston-Auburn Economic Growth Council, grantee of Foreign-Trade Zone 263, requesting authority to reorganize the zone to expand its service area under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on December 19, 2018.

FTZ 263 was approved by the FTZ Board on October 1, 2004 (Board Order 1354, 69 FR 60840, October 13, 2004) and reorganized under the ASF on April 9, 2015 (Board Order 1973, 80 FR 20469, April 16, 2015). The zone currently has a service area that includes the Counties of Androscoggin, Cumberland and Sagadahoc, Maine.

The applicant is now requesting authority to expand the service area of the zone to include York County, Maine, as described in the application. If approved, the grantee would be able to serve sites throughout the expanded service area based on companies' needs for FTZ designation. The application indicates that the proposed expanded service area is adjacent to the Portland Customs and Border Protection Port of Entry.

In accordance with the FTZ Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is February 25, 2019. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period March 12, 2019.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.* For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: December 19, 2018.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2018–28064 Filed 12–26–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–086]

Steel Propane Cylinders From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination Measures

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that steel propane cylinders from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV). Interested parties are invited to comment on this preliminary determination.

DATES: Applicable December 27, 2018.

FOR FURTHER INFORMATION CONTACT: Jonathan Cornfield or Laura Griffith, 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) 482–3855 or (202) 482–6430, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on June 18, 2018.[1] On October 15, 2018, Commerce postponed the preliminary determination of this investigation and the revised deadline is now December 18, 2018.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are steel propane cylinders from China. For a complete discussion of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the

[1] *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) (*Initiation Notice*) and accompanying Initiation Checklist.

[2] *See Steel Propane Cylinders from the People's Republic of China and Thailand: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 83 FR 51927 (October 15, 2018) (*Preliminary Postponement Notice*).

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

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

[5] *See Initiation Notice,* 83 FR at 28196.

Initiation Notice. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Export prices were calculated in accordance with section 772(a) of the Act. Because China is a non-market economy within the meaning of section 771(18) of the Act, normal value (NV) was calculated in accordance with section 773(c) of the Act. In addition, pursuant to section 776(a) and (b) of the Act, Commerce preliminarily has relied upon facts otherwise available, with adverse inferences, for the China-wide entity. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

Combination Rates

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

Preliminary Determination

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

Producer	Exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
GSBF Tank Inc	Hong Kong GSBF Company Limited	41.08	15.98
Shandong Huanri Group Co. Ltd	Shandong Huanri Group Co. Ltd	33.37	8.27
Jiaxing Pressure Vessel Factory	Jiaxing Pressure Vessel Factory	33.86	8.76
China-Wide Entity[9]		108.60	83.50

Suspension of Liquidation

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

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

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

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

Disclosure

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

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[10]

[6] *See* memorandum, ''Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Scope Decision Memorandum).

[7] *See Initiation Notice,* 83 FR at 28201.

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

[9] The China-wide entity includes: Hubei Daly LPG Cylinder Manufacturer Co. Ltd., Taishan Machinery Factory Ltd., TPA Metals and Machinery (DG) Co. Ltd., Wuyi Xilinde Machinery Manufacture Co., Ltd., and Zhejiang Jucheng Steel Cylinder Co., Ltd.

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

Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

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

On December 7, 2018, pursuant to 19 CFR 351.210(e), the respondents requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[11] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because (1) the preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

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

Notification to Interested Parties

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

Dated: December 18, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is steel cylinders for compressed or liquefied propane or other gases (steel propane cylinders) meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation (USDOT) Specifications 4B, 4BA, or 4BW, or TransportCanada Specification 4BM, 4BAM, or 4BWM, or United Nations pressure receptacle standard ISO 4706 and otherwise meeting the description provided below. The scope includes steel propane cylinders regardless of whether they have been certified to these specifications before importation. Steel propane cylinders range from 2.5 pound nominal gas capacity (approximate 6 pound water capacity and approximate 4–6 pound tare weight) to 42 pound nominal gas capacity (approximate 100 pound water capacity and approximate 28–32 pound tare weight). Steel propane cylinders have two or fewer ports and may be imported assembled or unassembled (*i.e.,* welded or brazed before or after importation), with or without all components (including collars, valves, gauges, tanks, foot rings, and overfill prevention devices), and coated or uncoated. Also included within the scope are drawn cylinder halves, unfinished propane cylinders, collars, and foot rings for steel propane cylinders.

An ''unfinished'' or ''unassembled'' propane cylinder includes drawn cylinder halves that have not been welded into a cylinder, cylinders that have not had flanges welded into the port hole(s), cylinders that are otherwise complete but have not had collars or foot rings welded to them, otherwise complete cylinders without a valve assembly attached, and cylinders that are otherwise complete except for testing, certification, and/or marking.

This investigation also covers steel propane cylinders that meet, are produced to meet, or are certified as meeting, other U.S. or Canadian government, international, or industry standards (including, for example, American Society of Mechanical Engineers (ASME), or American National Standard Institute (ANSI)), if they also meet, are produced to meet, or are certified as meeting USDOT Specification 4B, 4BA, or 4BW, or Transport Canada Specification 4BM, 4BAM, or 4BWM, or a United Nations pressure receptacle standard ISO 4706.

Subject merchandise also includes steel propane cylinders that have been further processed in a third country, including but not limited to, attachment of collars, foot rings, or handles by welding or brazing, heat treatment, painting, testing, certification, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope steel propane cylinders.

Specifically excluded are seamless steel propane cylinders and propane cylinders made from stainless steel (*i.e.,* steel containing at least 10.5 percent chromium by weight and less than 1.2 percent carbon by weight), aluminum, or composite fiber material. Composite fiber material is material consisting of the mechanical combination of two components: Fiber (typically glass, carbon, or aramid (synthetic polymer)) and a matrix material (typically polymer resin, ceramic, or metallic).

The merchandise subject to this investigation is properly classified under statistical reporting numbers 7311.00.0060 and 7311.00.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Postponement of Final Determination and Extension of Provisional Measures
V. Scope Comments
VI. Discussion of the Methodology
A. Non-Market Economy (NME) Country
B. Surrogate Country
C. Separate Rates
D. Combination Rates

[11] *See* respondents' letter ''Steel Propane Cylinders from the People's Republic of China: Request for Extension of Final Determination,'' dated December 7, 2018.

E. The China-Wide Entity
F. Application of Facts Available and Adverse Inferences
G. Date of Sale
H. Comparisons to Fair Value
I. Export Price
J. Value-Added Tax
K. Normal Value
L. Factor Valuation Methodology
VII. Currency Conversion
VIII. Adjustment for Countervailable Export Subsidies
IX. Adjustment Under Section 777A(f) of the Act
X. Verification
XI. U.S. International Trade Commission Notification
XII. Recommendation

[FR Doc. 2018–28065 Filed 12–26–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–839]

Steel Propane Cylinders From Thailand: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that steel propane cylinders from Thailand are being, or are likely to be, sold in the United States at less than fair value (LTFV). Interested parties are invited to comment on this preliminary determination.

DATES: Applicable December 27, 2018.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson or Stephanie Moore, 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) 482–3797 or (202) 482–3692, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on June 18, 2018.[1] On October 15, 2018, Commerce postponed the preliminary determination of this investigation and the revised deadline is now December 18, 2018.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are steel propane cylinders from Thailand. For a complete discussion of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Export prices were calculated in accordance with section 772(a) of the Act. Normal value (NV) was calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Commerce calculated an individual estimated weighted-average dumping margin for Sahamitr Pressure Container Public Company Limited (SMPC), the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for SMPC is the margin assigned to all-other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Preliminary Determination

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

Exporter/producer	Estimated weighted-average dumping margin (percent)
Sahamitr Pressure Container Plc	9.85
All-Others	9.85

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in

[1] *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) (*Initiation Notice*) and accompanying Initiation Checklist.

[2] *See Steel Propane Cylinders from the People's Republic of China and Thailand: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 83 FR 51927 (October 15, 2018) (*Preliminary Postponement Notice*).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Steel Propane Cylinders from Thailand'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

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

[5] *See Initiation Notice,* 83 FR at 28196.

[6] *See* Memorandum, ''Scope Comments Decision Memorandum for the Preliminary Determinations'' (Preliminary Scope Decision Memorandum), dated concurrently with this preliminary determination.

the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Disclosure

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

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[7] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

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

On December 10, 2018, in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), SMPC requested that Commerce postpone the final determination and that provisional measures by extended to a period not to exceed six months.[8] On December 12, 2018, the petitioners provided their support for SMPC's request to extend the final determination of this investigation.[9]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) the preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its affirmative preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.[10]

Notification to Interested Parties

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

Dated: December 18, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is steel cylinders for compressed or liquefied propane or other gases (steel propane cylinders) meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation (USDOT) Specifications 4B, 4BA, or 4BW, or Transport Canada Specification 4BM, 4BAM, or 4BWM, or United Nations pressure receptacle standard ISO 4706 and otherwise meeting the description provided below. The scope includes steel propane cylinders regardless of whether they have been certified to these specifications before importation. Steel propane cylinders range from 2.5 pound nominal gas capacity (approximate 6 pound water capacity and approximate 4–6 pound tare weight) to 42 pound nominal gas capacity (approximate 100 pound water capacity and approximate 28–32 pound tare weight). Steel propane cylinders have two or fewer ports and may be imported assembled or unassembled (*i.e.,* welded or brazed before or after importation), with or without all components (including collars, valves, gauges, tanks, foot rings, and overfill prevention devices), and coated or uncoated. Also included within the scope are drawn cylinder halves, unfinished propane cylinders, collars, and foot rings for steel propane cylinders.

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

[8] *See* SMPC's letter, ''Steel Propane Cylinders from Thailand: Request to Postpone Deadline for Issuing the Final Determination,'' dated December 10, 2018.

[9] *See* the petitioners' letter, ''Steel Propane Cylinders from Thailand—Petitioners' Concur In the Request of SMPC to Extend the Antidumping Duty Final Determination,'' dated December 12, 2018.

[10] *See* section 735(b)(2) of the Act.

An ''unfinished'' or ''unassembled'' propane cylinder includes drawn cylinder halves that have not been welded into a cylinder, cylinders that have not had flanges welded into the port hole(s), cylinders that are otherwise complete but have not had collars or foot rings welded to them, otherwise complete cylinders without a valve assembly attached, and cylinders that are otherwise complete except for testing, certification, and/or marking.

This investigation also covers steel propane cylinders that meet, are produced to meet, or are certified as meeting, other U.S. or Canadian government, international, or industry standards (including, for example, American Society of Mechanical Engineers (ASME), or American National Standard Institute (ANSI)), if they also meet, are produced to meet, or are certified as meeting USDOT Specification 4B, 4BA, or 4BW, or Transport Canada Specification 4BM, 4BAM, or 4BWM, or a United Nations pressure receptacle standard ISO 4706.

Subject merchandise also includes steel propane cylinders that have been further processed in a third country, including but not limited to, attachment of collars, foot rings, or handles by welding or brazing, heat treatment, painting, testing, certification, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope steel propane cylinders.

Specifically excluded are seamless steel propane cylinders and propane cylinders made from stainless steel (*i.e.,* steel containing at least 10.5 percent chromium by weight and less than 1.2 percent carbon by weight), aluminum, or composite fiber material. Composite fiber material is material consisting of the mechanical combination of two components: Fiber (typically glass, carbon, or aramid (synthetic polymer)) and a matrix material (typically polymer resin, ceramic, or metallic).

The merchandise subject to this investigation is properly classified under statistical reporting numbers 7311.00.0060 and 7311.00.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Postponement of Final Determination and Extension of Provisional Measures
V. Scope Comments
VI. Discussion of the Methodology
A. Determination of the Comparison Method
B. Results of the Differential Pricing Analysis
VII. Date of Sale
VIII. Product Comparisons
IX. Export Price
X. Normal Value
A. Comparison Market Viability
B. Level of Trade
C. Cost of Production (COP) Analysis
1. Calculation of COP
2. Test of Comparison Market Sales Prices
3. Results of the COP Test
D. Calculation of NV Based on Comparison Market Prices
XI. Currency Conversion
XII. Verification
XIII. Recommendation

[FR Doc. 2018–28066 Filed 12–26–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–820]

Fresh Tomatoes From Mexico: Final Results of the Full Sunset Review of the Suspended Antidumping Duty Investigation

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

SUMMARY: On February 1, 2018, the Department of Commerce (Commerce) initiated the fourth sunset review of the suspended antidumping duty investigation on fresh tomatoes from Mexico. Commerce finds that termination of the suspended antidumping duty investigation on fresh tomatoes from Mexico would be likely to lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: Applicable December 27, 2018.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or David Cordell, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0162 or (202) 482–0408, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 27, 2018, Commerce preliminarily determined that termination of the suspended antidumping duty investigation on fresh tomatoes from Mexico would likely lead to continuation or recurrence of dumping.[1] On September 26, 2018, the Confederación de Asociaciones Agrícolas del Estado de Sinaloa, A.C., Consejo Agrícola de Baja California, A.C., Asociación Mexicana de Horticultura Protegida, A.C., Asociación de Productores de Hortalizas del Yaqui y Mayo and Sistema Producto Tomate (collectively, the Mexican growers) filed their case brief, and requested a hearing on the matter;[2] NS Brands, Ltd., and its affiliates (collectively, NatureSweet) also filed their case brief on September 26, 2018.[3] On September 27, 2018, the Florida Tomato Exchange (the FTE) requested a one-week extension of the October 1, 2018 deadline to file its rebuttal brief;[4] on September 28, 2018, Commerce granted the extension and set the deadline for submission of rebuttal briefs as October 9, 2018, to account for the federal holiday on October 8, 2018.[5] The FTE timely submitted its rebuttal brief on October 9, 2018.[6] Commerce scheduled the public hearing on the matter for, and the public hearing was held on, October 16, 2018. On November 14, 2018, Commerce requested additional information from the FTE regarding information that was not provided in its intent to participate submittal.[7] The FTE provided its timely response to the request for further information on November 21, 2018.[8] The Mexican growers timely provided rebuttal comments on November 26, 2018.[9] The FTE submitted a timely sur-rebuttal on November 29, 2018.[10]

Scope of the Suspension Agreement

For a full description of the scope of the Agreement, please refer to the accompanying Issues and Decision Memorandum.

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[1] *See Fresh Tomatoes from Mexico: Preliminary Results of the Five-Year Sunset Review of the 2013 Suspension Agreement on Fresh Tomatoes,* 83 FR 43642 (August 27, 2018).

[2] *See* Mexican Growers' Case Brief, ''Sunset Review of the 2013 Suspension Agreement on Fresh Tomatoes from Mexico,'' (September 26, 2018) at 1.

[3] *See* NatureSweet's Case Brief, ''Case Brief of NS Brands, LTD.'' (September 26, 2018).

[4] *See* Letter to Wilbur Ross, Secretary of Commerce, from the Florida Tomato Exchange, ''Fresh Tomatoes from Mexico: Rebuttal Brief Extension Request'' (September 27, 2018).

[5] *See* Memorandum, ''2018 Sunset Review of the 2013 Suspension Agreement on Fresh Tomatoes from Mexico; Extension for Rebuttal Briefs: Correction of Rebuttal Deadline'' (September 28, 2018).

[6] *See* FTE's Rebuttal Brief, ''Rebuttal Brief of the Florida Tomato Exchange'' (October 9, 2018).

[7] *See* Letter to Wilbur Ross, Secretary of Commerce, from the Florida Tomato Exchange, ''Fresh Tomatoes from Mexico: Notice of Intent to Participate'' (February 15, 2018).

[8] *See* Letter to Wilbur Ross, Secretary of Commerce, from the Florida Tomato Exchange, ''Fresh Tomatoes from Mexico: Response to Request for Additional Information'' (November 21, 2018).

[9] *See* Letter to Wilbur Ross, Secretary of Commerce, from the Confederación de Asociaciones Agrícolas del Estado de Sinaloa, A.C., *et al.,* ''Sunset Review of the 2013 Suspension Agreement on Fresh Tomatoes from Mexico'' (November 26, 2018).

[10] *See* Letter to Wilbur Ross, Secretary of Commerce, from the Florida Tomato Exchange, ''Fresh Tomatoes from Mexico: Reply to CAADES' November 26, 2018 Comments'' (November 29, 2018).

Analysis of Comments Received

All issues raised for the final results of this sunset review are addressed in the Issues and Decision Memorandum.[11] The Issues and Decision Memorandum is hereby adopted by this notice. The issues discussed in the Issues and Decision Memorandum include: The adequacy of the FTE's substantive response, the likelihood of recurrence of dumping, and the margin to be reported to the International Trade Commission. Parties can find a complete discussion of all the issues raised in this sunset review and the corresponding recommendations in this public memorandum, which is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered uses at *http://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/*. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Review

Pursuant to section 752(c) of the Act, we determine that the termination of the suspended investigation on fresh tomatoes from Mexico would likely lead to continuation or recurrence of dumping at weighted-average margins up to 188.14 percent.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Commerce is issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218(f)(1).

Dated: December 18, 2018.

P. Lee Smith,

Deputy Assistant Secretary for Policy and Negotiations, Enforcement and Compliance.

[FR Doc. 2018–28063 Filed 12–26–18; 8:45 am]

BILLING CODE 3510–DS–P

[11] *See* Memorandum to P. Lee Smith, Deputy Assistant Secretary for Policy and Negotiations, re ''Issues and Decision Memorandum for the Final Results of the Full Sunset Review of the Suspended Investigation of Tomatoes from Mexico,'' dated concurrently with and adopted by this notice.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Certification of Admissibility for Fish Products

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 25, 2019.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *pracomments@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Christopher Rogers at (301) 427–8375 or *christopher.rogers@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a revision to the information collection previously approved as an emergency request. The title of the information collection is ''Fishery Products Subject to Trade Restrictions Pursuant to Certification under the High Seas Driftnet Fishing Moratorium Protection Act and the Marine Mammal Protection Act''. The information collection involves certification of admissibility for importation of certain fish and fish products that are subject to requirements of the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act) or the Marine Mammal Protection Act (MMPA).

Pursuant to a final rule implementing certain provisions of the Moratorium Protection Act (RIN 0648–BA89), certain fish or fish products of a nation may be subject to import prohibitions. To facilitate enforcement, the National Marine Fisheries Service (NMFS) requires that other fish or fish products from that nation that are not subject to the import prohibitions must be accompanied by documentation of admissibility. A duly authorized official/agent of the applicant's Government must certify that the fish in the shipments being imported into the United States (U.S.) are of a species, or from fisheries, that are not subject to an import restriction. If a nation is identified under the Moratorium Protection Act and fails to receive a positive certification decision from the Secretary of Commerce, products from that nation that are not subject to the import prohibitions must be accompanied by the documentation of admissibility.

Under the Marine Mammal Protection Act, import certification requirements apply in cases where foreign fisheries do not meet U.S. standards for marine mammal bycatch mitigation. A final rule (RIN 0648–AY15) implemented a procedure for making comparability findings for nations that are eligible for exporting fish and fish products to the United States. The nations may receive a comparability finding to export fish and fish products by providing documentation that a nation's bycatch reduction regulatory program is comparable in effectiveness to that of the United States. Fish and fish products from a foreign fishery without a comparability finding are prohibited from entry into U.S. commerce. To facilitate enforcement, NMFS requires that other fish or fish products from that nation that are not subject to the import prohibitions must be accompanied by documentation of admissibility.

II. Method of Collection

The information is collected electronically at the time of entry filing in the Automated Commercial Environment (ACE) of U.S. Customs and Border Protection. The exporter completes information on the contents/origin of the fish products contained in the export shipment and obtains export government certification that the fish meet the U.S. admissibility criteria. Entry filers (importers or customs brokers) obtain the completed Certification of Admissibility from the exporter (attached to the shipment

packaging or via email or fax) and upload the image file of the document to ACE via the Document Image System.

III. Data

OMB Control Number: 0648–0651.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations; Federal government.

Estimated Number of Respondents: 90 respondents annually filing 10 responses each.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 150 hours.

Estimated Total Annual Cost to Public: $9000.00, given an estimated $10.00 in reporting/recordkeeping costs per response.

IV. Request for Comments

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

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 19, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–27961 Filed 12–26–18; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2018–0045]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is proposing to renew the Office of Management and Budget (OMB) approval for an existing information collection, titled, ''Regulation F: Fair Debt Collection Practices Act—State Application For Exemption (12 CFR 1006.2).''

DATES: Written comments are encouraged and must be received on or before January 28, 2019 to be assured of consideration.

ADDRESSES: Comments in response to this notice are to be directed towards OMB and to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection. You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: OIRA_submission@omb.eop.gov.*
- *Fax:* (202) 395–5806.
- *Mail:* Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov* (this link becomes active on the day following publication of this notice). Select ''Information Collection Review,'' under ''Currently under review, use the dropdown menu ''Select Agency'' and select ''Consumer Financial Protection Bureau'' (recent submissions to OMB will be at the top of the list). The same documentation is also available at *http://www.regulations.gov.* Requests for additional information should be directed to Darrin King, PRA Officer, at (202) 435–9575, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION: *Title of Collection:* Regulation F: Fair Debt Collection Practices Act—State Application for Exemption (12 CFR 1006.2).

OMB Control Number: 3170–0056.

Type of Review: Renewal without change of an existing information collection.

Affected Public: State Governments.

Estimated Number of Respondents: 1.

Estimated Total Annual Burden Hours: 2.

Abstract: This Rule establishes procedures and criteria whereby states may apply to the Bureau of Consumer Financial Protection (Bureau) for an exemption of a class of debt collection practices within the applying state from the provisions of the Fair Debt Collection Practices Act (FDCPA) as provided in section 817 of the Act, 15 U.S.C. 1692. The information collection request seeks OMB approval for the state application requirements as contained in 12 CFR 1006.2. This is a routine request for OMB to renew its approval of the collections of information currently approved under this OMB control number. The Bureau is not proposing any new or revised collections of information pursuant to this request.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on October 1, 2018, 83 FR 49369, Docket Number: CFPB–2018–0033. Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Dated: December 18, 2018.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2018–28112 Filed 12–26–18; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2018–HQ–0021]

Submission for OMB Review; Comment Request

AGENCY: Department of the Army, 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 January 28, 2019.

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: Exchange Retail Sales Transaction Customer Satisfaction Survey; OMB Control Number 0702–0130.

Type of Request: Extension.

Number of Respondents: 40,000.

Responses per Respondent: 1.

Annual Responses: 40,000.

Average Burden per Response: 3 minutes.

Annual Burden Hours: 2,000.

Needs and Uses: The information collection requirement is necessary to provide the exchange with holistic views of customers' shopping experiences. The survey aids the Exchange's marketing directorate to address the effectiveness of providing goods and services in applicable service availability meeting the patron's wants and desires.

Affected Public: Federal government; individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: 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: December 20, 2018.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–28037 Filed 12–26–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2018–HA–0082]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, 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 January 28, 2019.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Cortney Higgins, 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: Assistance Reporting Tool; OMB Control Number 0720–0060.

Type of Request: Revision.

Number of Respondents: 174,385.

Responses per Respondent: 1.

Annual Responses: 174,385.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 43,596.25.

Needs and Uses: The ART is a secure web-based system that captures feedback on and authorization related to TRICARE benefits. Users are comprised of Military Health System (MHS) customer service personnel, to include Beneficiary Counseling and Assistance Coordinators, Debt Collection Assistance Officers, personnel, family support, recruiting command, case managers, and others who serve in a customer service support role. The ART is also the primary means by which DHA-Great Lakes staff capture medical authorization determinations and claims assistance information for remotely located service members, line of duty care, and for care under the Transitional Care for Service-related Conditions benefit. ART data reflects the customer service mission within the MHS: It helps customer service staff users prioritize and manage their case workload; it allows users to track beneficiary inquiry workload and resolution, of which a major component is educating beneficiaries on their TRICARE benefits. Personal health information (PHI) and personally identifiable information (PII) entered into the system is received from individuals via a verbal or written exchange and is only collected to facilitate beneficiary case resolution. Authorized users may use the PII/PHI to obtain and verify TRICARE eligibility, treatment, payment, and other healthcare operations information for a specific individual. All data collected is voluntarily given by the individual. At any time during the case resolution process, individuals may object to the collection of PHI and PII via verbal or written notice. Individuals are informed that without PII/PHI the authorized user of the system may not be able to assist in case resolution, and that answers to questions/concerns would be generalities regarding the topic at hand.

Affected Public: Individuals or households, business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Cortney Higgins.

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: December 20, 2018.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–28036 Filed 12–26–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2018–HA–0080]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, 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 January 28, 2019.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Cortney Higgins, 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: Diagnosis Related Groups (DRG) Reimbursement Two Parts; OMB Control Number 0720–0017.

Type of Request: Revision.

Number of Respondents: 5,600.

Responses per Respondent: 1.

Annual Responses: 5,600.

Average Burden per Response: 1 hour.

Annual Burden Hours: 5,600.

Needs and Uses: This information collection is in conjunction with a notice of proposed collection. The Department of Defense Authorization Act, 1984, P.L. 98–94 amended Title 10, section 1079(j)(2)(A) of the U.S.C. and provided the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) with the statutory authority to reimburse institutional providers based on diagnosis-related groups (DRGs). The TRICARE/CHAMPUS DRG-based payment system is modeled on the Medicare Prospective Payment System (PPS) and was implemented on October 1, 1987. The TRICARE/CHAMPUS DRG-based payments apply only to hospital's operating costs and do not include any amounts for hospitals' capital or direct medical education costs. Any hospital subject to the DRG-based payment system, except for children's hospitals (whose capital and direct medical education costs are incorporated in the children's hospital differential), who want to be reimbursed for allowed capital and direct medical education costs must submit a request for payment to the TRICARE/CHAMPUS contractor. The request allows TRICARE to collect the information necessary to properly reimburse hospitals for its share of these costs.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Cortney Higgins.

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: December 20, 2018.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–28034 Filed 12–26–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2018–HA–0081]

Submission for OMB Review; Comment Request

AGENCY: The Office of the Assistant Secretary of Defense for Health Affairs, 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 January 28, 2019.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Cortney Higgins, 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: Defense Medical Human Resources System internet; OMB Control Number 0720–0041.

Type of Request: Revision.

Number of Respondents: 89,250.

Responses per Respondent: 1.

Annual Responses: 89,250.

Average Burden per Response: 7.5 minutes.

Annual Burden Hours: 11,156.25.

Needs and Uses: The DoD is required to provide and account for personnel, medical training and readiness and to establish a Joint strategy to justify Medical Resources for Readiness and Peacetime Care. In response, the Assistant Secretary of Defense, HA/TMA and the Service Surgeon Generals of the Army, Navy and Air Force approved development of a single Joint electronic database to provide visibility of and to support the preparedness of all Military Healthcare System (MHS) medical personnel (to meet national

security emergencies). The Defense Medical Human Resources System—internet—DMHRSi) is a DoD application that provides the MHS with a joint comprehensive enterprise human resource system with capabilities to manage human capital across the entire spectrum of medical facilities and personnel types.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Cortney Higgins.

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: December 20, 2018.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–28035 Filed 12–26–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2018–OS–0104]

Proposed Collection; Comment Request

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Secretary 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 February 25, 2019.

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 United States of America Vietnam War Commemoration, ATTN: Yvonne Schilz, 1101 Wilson Blvd., Suite 810, Arlington, VA 22209–2203 or call 1–877–387–9951.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Vietnam War Commemoration Program Partner Events; DD Form 2953; DD Form 2954; DD Form 3027; DD Form 3028; DD Form 3029; OMB Control Number 0704–0500.

Needs and Uses: This information collection requirement is necessary to notify the United States of America Vietnam War Commemoration Program of Commemorative Partner's planned events. Information is submitted for inclusion on the program's events calendar and to request event support in the form of materials and/or speakers from the program. The information collection is necessary to obtain, vet, record, process and provide Certificates of Honor to be presented on behalf of a grateful nation by partner organizations. Additionally, this collection is necessary for the partner organizations to communicate to the Commemoration program the results of their events and lessons learned.

Affected Public: Businesses or other for-profits; Not-for-profit institutions; Federal Government; State, local or tribal government, or, by exception, eligible individuals or households.

Annual Burden Hours: 7,505.

Number of Respondents: 16,020.

Responses per Respondent: 1.8739.

Annual Responses: 30,020

Average Burden Per Response: 15 Minutes.

Frequency: On Occasion.

Respondents are representatives of commemorative partner organizations or immediate family members of veterans listed on the Vietnam Veterans Memorial in Washington, DC or, by exception, individuals, acting on behalf of eligible family members of American military personnel who are listed as missing and unaccounted for from the Vietnam War by the Department of Defense. Burden is reported as an annual average; not every respondent will complete all five (5) forms.

Dated: December 20, 2018.

Shelly E. Finke,

Alternate OSD **Federal Register** *Liaison Officer, Department of Defense.*

[FR Doc. 2018–28033 Filed 12–26–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Extension of Public Comment Period for the Draft Fallon Range Training Complex Modernization Environmental Impact Statement, Naval Air Station Fallon, Nevada

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: A notice of availability was published in the **Federal Register** by the U.S. Environmental Protection Agency on November 16, 2018 (83 FR 57726) for the Department of the Navy's (Navy) Draft Fallon Range Complex Modernization Environmental Impact Statement (EIS) at Naval Air Station Fallon, NV. The public review period ends January 15, 2019. This notice announces a thirty-day extension of the public comment period until February 14, 2019.

SUPPLEMENTARY INFORMATION: This notice announces a thirty-day extension

of the public comment period until February 14, 2019. Comments may be submitted in writing to Naval Facilities Engineering Command Southwest, Code EV21.SG, 1220 Pacific Highway; Building 1, 5th floor, San Diego, CA 92132–5190, Attn: Ms. Sara Goodwin, EIS Project Manager. In addition, comments may be submitted online at *http://frtcmodernization.com/* during the comment period. All written comments must be postmarked by February 14, 2019, to ensure they become part of the official record. All comments will be addressed in the Final EIS.

The Draft EIS is available electronically for public viewing at *http://frtcmodernization.com/* and hard copies are available for public review at the following libraries: Austin Branch Library, 88 Main Street, Austin, NV 89310–0121, Carson City Library, 900 North Roop Street, Carson City, NV 89701–3101, Churchill County Library, 553 S. Maine Street, Fallon, NV 89406–3306, Crescent Valley Branch Library, Crescent Valley Town Center, 5045 Tenabo Avenue, Suite 103, Crescent Valley, NV 89821–8051, Downtown Reno Library, 301 S. Center Street, Reno, NV 89501–2102, Eureka Branch Library, 80 South Monroe Street, Eureka, NV 89316–0293, Fernley Branch Library, 575 Silver Lace Blvd., Fernley, NV 89408–1591, Gabbs Community Library, 602 3rd Street, Gabbs, NV 89409–0206, Mineral County Library,110 First Street, Hawthorne, NV 89415–1390, Pershing County Library, 1125 Central Avenue, Lovelock, NV 89419–0781, and Yerington Branch Library, 20 Nevin Way, Yerington, NV 89447–2399.

Dated: December 19, 2018.

M.S. Werner,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2018–28012 Filed 12–26–18; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2018–ICCD–0107]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; The Department of Education Accrediting Agency, Foreign Medical and Foreign Veterinarian Program Comparability Database Approval

AGENCY: Office of Postsecondary Education (OPE), 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 January 28, 2019.

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–0107. 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, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Herman Bounds, 202–453–6128.

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: The Department of Education Accrediting Agency, Foreign Medical and Foreign Veterinarian Program Comparability Database Approval.

OMB Control Number: 1840–0788.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 94.

Total Estimated Number of Annual Burden Hours: 3,988.

Abstract: The United States Secretary of Education (Secretary) is required by law to publish a list of nationally-recognized accrediting agencies that have been determined to be reliable authorities regarding the quality of education or training offered by the institutions or programs they accredit. In determining whether a specific agency should be recognized, the Secretary evaluates the submission for compliance with the Criteria for Recognition contained in regulations. The collection of information is necessary for the Secretary to evaluate and monitor the continued compliance with the criteria during any period of recognition granted. This collection is submitted due to the approaching end of the 3 year approval period. There is a change in burden hours for the following reasons. The number of accrediting agencies/organizations submitting documentation increased. Two additional accrediting agencies submitted initial petitions for recognition and supporting documentation, one additional foreign veterinary accrediting agency and two additional accrediting organizations communicated their intent to submit an initial application. Department staff consulted with seven accrediting agencies and organizations and determined that a new evaluation of burden hours was necessary.

Dated: December 20, 2018.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–28028 Filed 12–26–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID Number ED–2018–IES–0126]

Proposed 2020 Update to the Classification of Instructional Programs (CIP) and Request for Comment

AGENCY: National Center for Education Statistics (NCES), Institute of Education Sciences, U.S. Department of Education.

ACTION: Notice.

SUMMARY: The Secretary of Education announces proposed updates to the CIP for 2020 and provides a 60-day period for members of the public to review and comment on the changes.

DATES: We must receive your comments on or before February 25, 2019.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

If you are submitting comments electronically, we strongly encourage you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), we strongly encourage you to convert the PDF to print-to-PDF format or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using a print-to-PDF format allows the Department of Education (Department) to electronically search and copy certain portions of your submissions.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Help.''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments about the proposed regulations, address them to Commissioner, National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education, Potomac Center Plaza, 550 12th Street SW, 4th Floor, Washington, DC 20202–4160.

Privacy Note: The Department's policy is to make comments received from members of the public available for public viewing on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals with Disabilities in Reviewing the Comments: On request, we will supply an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents related to this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Michelle Coon, U.S. Department of Education, Potomac Center Plaza, 550 12th Street SW, 4th floor, Washington, DC 20202–4160. Telephone: (202) 245–6689. Email: *michelle.coon@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: The CIP is a taxonomic coding scheme of instructional programs. Its purpose is to facilitate the organization, collection, and reporting of fields of study and program completions. The CIP is the accepted Federal government statistical standard on instructional program classifications and is used in a variety of education information surveys and databases by Federal and State agencies, national associations, academic institutions, and employment counseling services for collecting, reporting, and analyzing instructional program data.

The vast majority of CIP titles correspond to academic and occupational instructional programs offered for credit at the postsecondary level. These programs result in recognized completion points and awards, including degrees, certificates, and other formal awards. The CIP also includes other types of instructional programs, such as residency programs in various dental, medical, podiatric, nursing, physician assistant, pharmacy, and veterinary specialties that may lead to advanced professional certification; personal improvement and leisure programs; and instructional programs that lead to diplomas and certificates at the secondary level only.

The CIP was originally developed in 1980 by the NCES within the Department, with revisions occurring in 1985, 1990, 2000, and 2010. The 2020 edition of the CIP (CIP–2020) is the fifth revision of the CIP and presents an updated taxonomy of instructional program classifications and descriptions. In order to develop the CIP–2020, NCES completed a comprehensive, multi-stage process over a two-year period, including extensive background research and analysis; solicitation of suggestions from Integrated Postsecondary Education Data System (IPEDS) keyholders; and guidance, input, and review from a Technical Review Panel. The main focus of the CIP–2020 update has been adding new and emerging programs of study. In the CIP–2020 update, we avoided movement of existing programs to minimize burden on IPEDS-reporting institutions and to maintain consistency with prior versions of the CIP, and existing CIP codes were only deleted if absolutely necessary.

This notice announces a 60-day public comment period to review and comment on the proposed 2020 update to the CIP. The proposed updates are posted on the NCES website at *https://nces.ed.gov/ipeds/cipcode/files/CIP_Revision_2020.docx.* We are seeking public comment in part because we recognize that CIP codes are increasingly used not only by institutions of higher education but also by many other public and private entities, and that changes to the CIP may have ramifications for those entities' work. In addition, to ensure that new codes are warranted, NCES is only establishing new codes for CIP–2020 where we identified at least five and preferably ten postsecondary institutions offering the program. If you are suggesting an addition to the CIP, please provide a description of the program of study and list at least five—but preferably ten—postsecondary institutions offering it.

We will consider comments received in response to this notice in making final decisions for the CIP–2020. NCES expects to approve and publish the CIP–2020 by the end of summer 2019.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the 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 at *www.govinfo.gov.* 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 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: December 19, 2018.

Mark Schneider,

Director, Institute of Education Sciences.

[FR Doc. 2018–27933 Filed 12–26–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

U.S. Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Notice and request for comments.

SUMMARY: EIA requests a three-year extension with changes for the Petroleum Supply Reporting System (PSRS). The PSRS consists of six weekly surveys that make up the Weekly Petroleum Supply Reporting System (WPSRS), eight monthly surveys, and one annual survey. The weekly petroleum and biofuels supply surveys collect data on petroleum refinery operations, blending, biofuels production, inventory levels, imports of crude oil, petroleum products, and biofuels from samples of operating companies. The monthly and annual petroleum and biofuels supply surveys collect data on petroleum refinery operations, blending, biofuels production, natural gas plant liquids production, inventory levels, imports, inter-regional movements, and storage capacity for crude oil, petroleum products, and biofuels.

DATES: EIA must receive all comments on this proposed information collection no later than February 25, 2019. If you anticipate any difficulties in submitting your comments by the deadline, contact the person listed in the **ADDRESSES** section of this notice as soon as possible.

ADDRESSES: Send written comments to Michael Conner, Petroleum, Natural Gas, and Biofuels Statistics, U.S. Energy Information Administration, Forrestal Building, U.S. Department of Energy, 1000 Independence Ave. SW, EI–25 Washington, DC 20585. Submission via email to *michael.conner@eia.gov* is recommended.

FOR FURTHER INFORMATION CONTACT: Michael Conner, (202) 586–1795 email *Michael.conner@eia.gov.* The proposed forms and instructions are available on EIA's website at: *https://www.eia.gov/survey/.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.* 1905–0165;

(2) *Information Collection Request Title:* Petroleum Supply Reporting System;

(3) *Type of Request:* Renewal with changes;

(4) *Purpose:* EIA's PSRS is made up of Forms EIA–800 *Weekly Refinery Report* (previously the *Weekly Refinery and Fractionator Report*), EIA–802 *Weekly Product Pipeline Report,* EIA–803 *Weekly Crude Oil Stocks Report,* EIA–804 *Weekly Imports Report,* EIA–805 *Weekly Bulk Terminal Report* (previously the *Weekly Bulk Terminal and Blender Report*), EIA–809 *Weekly Oxygenate Report,* EIA–810 *Monthly Refinery Report,* EIA–812 *Monthly Product Pipeline Report,* EIA–813 *Monthly Crude Oil Report,* EIA–814 *Monthly Imports Report,* EIA–815 *Monthly Bulk Terminal Report* (previously the *Monthly Bulk Terminal and Blender Report*), EIA–816 *Monthly Natural Gas Plant Liquids Report,* EIA–817 *Monthly Tanker and Barge Movement Report,* EIA–819 *Monthly Biofuel and Fuel Oxygenate Report* (previously the EIA–819 *Monthly Oxygenate Report* and EIA–22M *Monthly Biodiesel Production Report*), and EIA–820 *Annual Refinery Report.* The purpose of the PSRS is to collect detailed petroleum industry data to meet EIA's mandates and energy data users' needs for credible, reliable, and timely energy information on production, receipts, inputs, movements, and stocks of crude oil, petroleum products, natural gas plant liquids, and related biofuels in the United States. This information is used to evaluate supply conditions for crude oil and refined petroleum markets. Forms EIA–800, EIA–802, EIA–803, EIA–804, EIA–805 and EIA–809 are designed to provide an early, initial estimate of weekly petroleum refinery operations, inventory levels, and imports of selected petroleum products. The WPSRS is the only comprehensive weekly government source of data about the current status of petroleum supply and disposition in the upstream petroleum markets for the United States. Forms EIA–810, EIA–812, EIA–813, EIA–814, EIA–815, EIA–816, EIA–817, and EIA–819 are designed to provide statistically reliable and comprehensive monthly information on petroleum refining operations to EIA, federal agencies, and the private sector for use in forecasting, policy making, planning, and analysis. Form EIA–820 is an annual survey that provides data on refinery capacities, fuels consumed, natural gas consumed as hydrogen feedstock, and crude oil receipts by method of transportation for operating and idle petroleum refineries (including new refineries under construction), and refineries that shutdown during the previous year.

(4a) *Proposed Changes to Information Collection:* The following changes are proposed to the data elements collected on surveys in the Petroleum Supply Reporting System (PSRS).

Forms EIA–800, EIA–802, EIA–803, EIA–804, EIA–805, EIA–810, EIA–812, EIA–813, EIA–814, EIA–815, EIA–816, EIA–817, EIA–819, EIA–820 (Except Form EIA–809)

EIA proposes to change the unit of measurement from thousand barrels to barrels. Petroleum and biofuel supply surveys are increasingly being used to track relatively small-volume products, such as E85 motor fuel and biofuels. In these cases, rounding to the nearest thousand barrels fails to capture reportable activity because the quantities are too small to round up to 1,000 barrels (*i.e.* fewer than 500 barrels) for a given period. EIA proposes to apply this change to all surveys within the PSRS, except Form EIA–809 where volumetric data on fuel ethanol will continue to be collected in gallons.

Forms EIA–800, EIA–802, EIA–804, EIA–805, EIA–810, EIA–812, EIA–814, EIA–815, EIA–817

EIA proposes to reduce the number of separate finished motor gasoline products from nine to six and reorganize motor fuel categories to track ethanol blending. The proposed six categories are:

- *Gasoline Not Blended with Ethanol (E0)*
- *Gasoline Blended with Ethanol up to E10*
- *Midblend Gasoline with Ethanol > (E10–E50)*
- *Flex Fuel (E85) Blended with 51% to 83% Ethanol*
- *Reformulated Blendstock for Oxygenate Blending (RBOB)*
- *Motor Gasoline Blending Components*

Finished motor gasoline is currently distinguished by the categories of reformulated and conventional gasoline. These categories were developed in 1995 to track production of finished motor gasoline in a framework consistent with EPA's Clean Fuel programs. EIA is proposing changes to finished motor gasoline product categories to emphasize the ethanol content of motor fuel and to provide more relevant data for current energy policy decisions. Reducing the number of finished motor gasoline categories from nine to six simplifies reporting requirements while maintaining essential information for policy analysis and market assessments of gasoline and other motor fuels.

The following additional changes are specific to each survey in the PSRS.

Form EIA–800

• Discontinue separate reporting of commercial and military grade kerosene-type jet fuel. EIA will continue to collect total kerosene-type jet fuel which includes both commercial and military fuel grades. EIA determined that the separate reporting of military and commercial grades of kerosene-type jet fuel has limited utility.

• Discontinue reporting total refinery input. The current requirement to report *total refinery input* is ambiguous and produces data of questionable accuracy. Add new rows, under the column headings for *Input; Production;* and *Ending Stocks,* to separately report unfinished oils, other biofuel and renewable fuel (excluding ethanol), hydrocarbon gas liquids (excluding propane), and total refinery olefins. Ethane, normal butane, isobutane, and natural gasoline will be reported as a single category under hydrocarbon gas liquids. This proposed change takes components of the current total input and separates them to clarify the data to be reported and improves data accuracy.

Form EIA–802

• Discontinue collection of stocks of refinery olefins. EIA determined that the collection of weekly data on stocks of refinery olefins is no longer needed.

• Add collection of total biofuels and renewable fuels excluding ethanol. Biofuels are increasingly important sources of U.S. fuel supplies. EIA has extensive weekly data for ethanol and needs additional weekly biofuel data to ensure that weekly fuel supply data are complete.

Form EIA–803

• Discontinue collection of combined crude oil stocks held in pipelines and tank farms and replace it with separate reporting of crude oil stocks held in tank farms and pipelines. Separate reporting of crude oil stocks held in pipelines and tank farms allows for a more accurate assessment of available crude oil supplies. Crude oil stocks held in pipelines are essentially unavailable because pipelines must remain full to operate.

• In Part 3, add separate reporting of crude oil stocks held in tank farms at Cushing, Oklahoma as either deliverable under NYMEX contract or not deliverable under NYMEX contract. Separate reporting of crude oil stocks at Cushing, Oklahoma that are deliverable under NYMEX contract provides improved market transparency.

• In Part 5, add separate reporting of crude oil receipts as foreign or domestic and report shipments by mode of transportation and whether those crude oil shipments were to U.S. locations or exported for the Strategic Petroleum Reserve (SPR).

• For waterborne shipments to U.S. locations, EIA proposes to add questions to identify the vessel and purchasing company of the crude oil. Shipments of crude oil from SPR are anticipated to continue for the next several years. EIA needs information on the shipments of crude oil to ensure that all barrels are accounted for in U.S. and regional statistics.

Form EIA–804

• Add collection of total biofuels and renewable fuels excluding ethanol. Biofuels are increasingly important sources of U.S. fuel supplies. EIA has extensive weekly data for ethanol and needs additional weekly biofuel data to ensure that weekly fuel supply data are complete.

Form EIA–805

• Discontinue collection of stocks of refinery olefins. EIA determined that the collection of weekly data on stocks of refinery olefins is no longer needed.

• Add a question in Part 3 *Terminal Activity* to report ending stocks of consumer and export grade propane separately from propane stored as part of a mix of natural gas liquids and propane that does not meet specifications for either consumer or export grade propane. This change allows EIA to accurately determine the availability of propane that is ready for distribution and delivery to the market and compare it to propane that requires fractionation or other processing before it can be delivered.

• Discontinue collection of data for Methyl Tertiary Butyl Ether (MTBE), Ethyl Tertiary Butyl Ether (ETBE), and other oxygenates. Stocks and other data for MTBE, ETBE, and other fuel oxygenates at refineries and terminals are no longer needed for EIA to assess U.S. and regional volumetric petroleum supply balances.

• Combine finished aviation gasoline and aviation gasoline blending components into a single product category. Production of aviation gasoline has declined over the years. Separate reporting of finished aviation gasoline and aviation gasoline blending components has limited utility. Combined reporting of aviation gasoline and aviation gasoline blending components is adequate to meet EIA data requirements.

• Discontinue collection of total input for blending operations. In Part 3, EIA proposes to add the reporting of *biofuel and renewable fuel* under the column headings Input, Production, and Ending Stocks. Add the collection of *ethane, normal butane, isobutane, and natural gasoline* as a single category under the column headings Input and Ending stocks. The current requirement for operators of product storage and blending terminals to report total input for blending operations has been a persistent source of confusion for survey respondents and has produced data of questionable accuracy and limited utility. This proposed change takes components of the current total input and separates them to clarify the data to be reported and improves accuracy of the data for analysis.

• Discontinue the separate reporting of propylene stocks. The collection of propylene stocks is no longer necessary to determine the propane component of combined propane and propylene stocks.

Form EIA–809

• Discontinue separate reporting of denatured and undenatured fuel ethanol. Report production and week-ending stocks of total fuel ethanol including denatured and undenatured fuel ethanol as a single category. The separate reporting of denatured and undenatured ethanol caused confusion among survey respondents and data quality issues. EIA can assess ethanol supply conditions by collecting total ethanol (combined denatured and undenatured) production.

Form EIA–810

• EIA proposes to replace the three residual fuel oil sulfur categories from: *Less than 0.31% by weight; 0.31% by weight to 1% percent by weight;* and *greater than 1% by weight* to four sulfur categories of:

1. Less *than or equal to 1,000 ppm,*

2. Greater than 1,000 ppm and less than or equal to 5,000 ppm,

3. Greater than 5,000 ppm and less than or equal to 10,000 ppm, and

4. Greater than 10,000 ppm.

The four proposed sulfur categories for residual fuel oil are required for consistency with current marine fuel specifications and trade statistics from the U.S. Census Bureau.

• In Part 6, replace the three current biofuel reporting categories of *biomass-based diesel fuel, other renewable diesel fuel,* and *other renewable fuels* to the categories *biodiesel, renewable diesel fuel, renewable heating oil, renewable jet fuel, renewable naphtha and gasoline,* and *other renewable fuels and intermediate products.* These changes clarify the products and improve the utility of U.S. and regional data by collecting data on the specific types of renewable fuels that are increasingly more important in petroleum refinery operations.

• Discontinue separate reporting of commercial and military grade kerosene-type jet fuel. EIA will only collect total kerosene-type jet fuel which includes both commercial and military fuel grades. EIA determined that the separate reporting of military and commercial grades of kerosene-type jet fuel has limited utility.

• In Part 6, discontinue collection of storage capacity for September 30th, but will continue to collect storage capacity once each year as of March 31st. EIA determined that storage capacity data collected once each year (as of March 31st) are adequate for policy analysis and assessing market supply conditions.

• In Part 6, rename the column heading *idle* storage capacity to *temporarily out of service.* EIA has found the phrase *temporarily out of service* to be more consistent than the term *idle* when describing storage capacity that is not in use at the time of reporting.

• In Part 5, discontinue collection of ending stocks including stocks held on site and stocks in transit by water and rail under the column heading *Stocks End of Month.* Add two columns for separately reporting *Stocks on site end of month* and *Stocks in transit to the refinery by water or rail end of month.* Current EIA reporting instructions provide for stocks in transit by water and rail to be included in ending stocks reported on EIA surveys. Examination of stocks data shows that stocks in transit by water and rail may be undercounted and vary between reporting periods. The combined reporting of stocks in transit with ending stocks also complicates the data validation process for surveys that require volumetric balances. Separate reporting of stocks in transit simplifies the data processing and validation for surveys that require volumetric balances such as Form EIA–810 and Form EIA–815.

• In Part 5, add collection of stocks, receipts, shipments, and fuel uses and losses separately for all individual hydrocarbon gas liquids (HGL) components. This change allows EIA to fully report hydrocarbon gas liquids. EIA currently estimates certain HGL data based on a model because separate data are unavailable. This change will replace the use of model-based estimates with actual data and allow EIA to generate more accurate supply estimates.

• In Part 5, provide space on the form for refinery operators to reclassify unfinished oils and other products as crude oil by reporting these products as production of crude oil. Refiners sometimes add unfinished oils and other non-crude oil barrels to crude oil inventory. This change will allow refiners to report this practice as additional production of crude oil so the volumes can be included in the overall refinery balance and not ignored.

• Add a new section, Part 6A *Production of Renewable Fuels Co-Processed in the Refinery,* to collect renewable fuels production co-processed with petroleum in refineries. EIA is collecting more detailed information in this section because the number of U.S. refiners processing renewable feedstocks with petroleum is increasing. Adding this section to Form EIA–810 allows EIA to assess supply and track production from this emerging energy production activity.

• Add a new section, Part 6B *Consumption of Feedstocks for Renewable Fuels Production,* to collect data on consumption of renewable feedstocks co-processed with petroleum in refineries. These data are required in order for EIA to provide a comprehensive accounting of renewable feedstocks for biofuel production.

Form EIA–812

• In Part 3, replace the three current biofuel reporting categories of *biomass-based diesel fuel, other renewable diesel fuel,* and *other renewable fuels* to the categories *biodiesel, renewable diesel fuel, renewable heating oil, renewable jet fuel, renewable naphtha and gasoline,* and *other renewable fuels and intermediate products.* These changes clarify the products and will improve the utility of U.S. and regional data by collecting data on the specific types of renewable fuels that are growing increasingly more important in petroleum operations.

• Discontinue collection of stocks of refinery olefins. EIA determined that the collection of data on stocks of refinery olefins is no longer needed.

• In Part 3, discontinue collection of residual fuel stocks and delete the row for residual fuel (product code 511). The data has shown that residual fuel oil is a product not typically moved by pipeline.

• In Part 4, discontinue collection of renewable fuel movements and delete the rows for fuel ethanol (product code 141), biomass-based diesel fuel (product code 203), other renewable diesel fuel (product code 205), and other renewable fuels (product code 207). EIA has found that inter-regional pipeline movements of these renewable fuels seldom occur and these data have limited utility for assessing fuel supply conditions.

Form EIA–813

• Discontinue collecting storage capacity information as of September 30th, but continue to collect storage capacity once each year as of March 31st. EIA determined that storage capacity data collected once each year (as of March 31st) are adequate for policy analysis and assessing market supply conditions.

• Parts 6 and 7 relating to storage capacity are re-numbered as Parts 8 and 9 in the new form.

• Rename the column heading *Idle* in the storage capacity sections in Parts 6 and 7 of the current form, to *temporarily out of service* in Parts 8 and 9 of the new form. EIA has found the phrase *temporarily out of service* to be more consistent than the term *idle* when describing storage capacity that is not in use at the time of reporting.

• Discontinue collection of ending stocks including stocks held on-site and stocks in transit by water and rail. Add reporting of *stocks held on-site* and *stocks in transit by water and rail* as separate reporting requirements in the facility activity section on Form EIA–813 Part 5. Current EIA reporting instructions provide for stocks in transit by water and rail to be included in ending stocks reported on EIA surveys. Examination of stocks data suggests that stocks in transit by water and rail are undercounted and can vary between reporting periods. The combined reporting stocks in transit with ending stocks also complicates the data validation process for surveys that require volumetric balances. Separate reporting of *Stocks in Transit* in Part 5 and *Ending Stocks* in Part 3 simplifies the data processing and validation for surveys that require volumetric balances such as Form EIA–810 and Form EIA–815.

• Discontinue collection of combined crude oil stocks held in pipelines and tank farms and replace with separate reporting of crude oil stocks held in tank farms and pipelines. In Part 4, separately reporting crude oil stocks held in pipelines and tank farms allows for a more accurate assessment of available crude oil supplies. Crude oil stocks held in pipelines are essentially unavailable because pipelines must remain full in order to operate.

• In Part 4, add collection of crude oil stocks held in tank farms at Cushing, Oklahoma as either deliverable under NYMEX contract or not deliverable under NYMEX contract. Separate reporting of crude oil stocks at Cushing, Oklahoma that are deliverable under NYMEX contract provides improved market transparency.

• In Part 6, add collection of crude oil receipts as foreign or domestic and collection of shipments by mode of transportation and whether those shipments were to U.S. locations or exported for waterborne shipments to U.S. locations. EIA proposes adding questions to identify the purchaser of the crude oil on Form EIA–813 Part 6. Shipments of crude oil from SPR are anticipated to continue for the next several years. EIA needs information on the shipments of crude oil to ensure that all of the barrels are accounted for in U.S. and regional statistics.

• Add collection of stocks on site, stocks in transit by water and rail, and storage capacity in PADD 6 including Puerto Rico and U.S. Virgin Islands in EIA–813 Parts 3, 5, and 8 respectively. EIA is required to account for non-refinery crude oil stocks held in U.S. territories.

• Discontinue the separate collection in Parts 6 and 7 of *In operation storage capacity for exclusive use* and *leased to others.* These two data elements will be collected together as a single data element under the row label *In Operation Storage Capacity* in Parts 8 and 9. EIA found that storage capacity data reported separately by capacity for *exclusive use* and capacity *leased to others* has limited utility and should be discontinued.

Form EIA–815

• In Part 3, replace the three residual fuel oil sulfur categories from:

○ *Less than 0.31% by weight,*

○ *0.31% by weight to 1% percent by weight,*

○ *greater than 1% by weight*

to four proposed sulfur categories of:

1. less than or equal to 1,000 ppm,

2. greater than 1,000 ppm and less than or equal to 5,000 ppm,

3. greater than 5,000 ppm and less than or equal to 10,000 ppm, and

4. Greater than 10,000 ppm.

The four proposed sulfur categories for residual fuel oil are required for consistency with current marine fuel specifications and trade statistics from the U.S. Census Bureau.

• In Part 3, replace biofuel reporting categories identified on current surveys as *biomass-based diesel fuel, other renewable diesel fuel,* and *other renewable fuels* with the new categories *biodiesel, renewable diesel fuel, renewable heating oil, renewable jet fuel, renewable naphtha and gasoline,* and *other renewable fuels and intermediate products.* These changes clarify the products and improve the utility of U.S. and regional data.

• In Part 3 Terminal Activity, discontinue collection of stocks of refinery olefins. EIA determined that the collection of data on stocks of refinery olefins is no longer needed.

• In Part 3 Terminal Activity, discontinue the separate reporting of propylene stocks. Add a question in Part 3 to report ending stocks of consumer and export grade propane separately from propane stored as part of a mix of natural gas liquids and propane that does not meet specifications for either consumer or export grade propane. This change will help to clarify availability of propane that is ready for distribution and delivery to the market and propane that requires fractionation or other processing before it can be delivered.

• In Part 3, Terminal Activity, discontinue collection of data for MTBE, ETBE, and other oxygenates. Stocks and other data for MTBE, ETBE, and other fuel oxygenates at refineries and terminals are no longer needed for EIA to assess U.S. and regional volumetric petroleum supply balances. Production of MTBE, ETBE, and other fuel oxygenates will continue to be collected on Form EIA–819.

• In Part 3, Terminal Activity, discontinue the separate reporting of finished aviation gasoline and aviation gasoline blending components. These two categories will be combined. Report finished aviation gasoline and aviation gasoline blending components under a single product category. Production of aviation gasoline has declined over the years. Separate reporting of finished aviation gasoline and aviation gasoline blending components has limited utility. Combined reporting of aviation gasoline and aviation gasoline blending components is adequate to meet EIA data requirements.

• In Part 3 Terminal Activity, reconfigure the collection of normal butane and isobutane stocks to allow for the reporting of stocks of refinery-grade butane as either normal butane or isobutane. Refinery-grade butane can either be normal butane or isobutane. The reconfigured product list is intended to capture this distinction and eliminate confusion that may be caused by the current product list.

• In Part 3 Terminal Activity, discontinue collection of the subcategories of unfinished oils. The reporting of individual unfinished oils products at terminals has limited utility and is often difficult for terminal operators to accurately determine.

• In Part 3, discontinue collection of ending stocks including stocks held on site and stocks in transit by water and rail. Add reporting of *stocks held on site* and *stocks in transit by water and rail* as separate reporting requirements in the facility activity section. Current EIA reporting instructions provide for stocks in transit by water and rail to be included in ending stocks reported on EIA surveys. Examination of stocks data suggests that stocks in transit by water and rail are undercounted and can vary between reporting periods. The combined reporting of stocks in transit with ending stocks also complicates the data validation process for surveys that require volumetric balances. Separate reporting of stocks in transit simplifies the data processing and validation for surveys that require volumetric balances.

• EIA proposes to add a new section, Part 4 Petrochemical Plant Stocks of Natural Gas Liquids, to collect reporting of the stocks of ethane, propane, normal butane, isobutene, and natural gasoline natural gas liquids (NGL) held at petrochemical plants, EIA–815. Petrochemical plant operators are a special class of end user storage because they are able to function in ways that are similar to the commercial terminals surveyed by EIA. Including petrochemical plant storage improves data accuracy and improves market assessments of NGL supply availability.

• Storage capacity data collected in Part 4 of the current form will be collected in a new Part 5 section of the form. Discontinue collection of storage capacity twice a year and only collect it once. Reporting storage capacity as of September 30th will be discontinued. Storage capacity will only be collected once each year as of March 31st. EIA determined that storage capacity data collected once each year (as of March 31st) are adequate for policy analysis and assessing market supply conditions.

• In Part 5, the column label *idle* storage capacity is changed to *temporarily out of service.* EIA has found the phrase *temporarily out of*

service to be more consistent than the term *idle* when describing storage capacity that is not in use at the time of reporting.

Form EIA–816

• Add reporting of *stocks in transit by water and rail* as separate reporting requirements in the facility activity section in addition to continuing to report *Stocks End of Month.* Current EIA reporting instructions provide for stocks in transit by water and rail to be included in ending stocks reported on EIA surveys. Examination of stocks data suggests that stocks in transit by water and rail are undercounted and can vary between reporting periods. The combined reporting of stocks in transit with ending stocks also complicates the data validation process for surveys that require volumetric balances. Separate reporting of stocks in transit simplifies the data processing and validation for surveys that require volumetric balances.

• In Part 3 Natural Gas Liquids Activity, add a separate row to collect data for condensate. Separate reporting of condensate allows EIA to better identify barrels that enter the NGL supply chain and the condensate barrels that are more likely to enter the crude oil supply chain.

• Add a new Part 4 to collect monthly volumes of inlet natural gas processed at the plant.

• Add a new Part 5 to collect monthly volumes of outlet residue gas separated out by methane, ethane, propane, nitrogen, and NGLs. The addition of data on inlet and residue natural gas improves EIA estimates of the reduction of natural gas supply due to NGL extraction. This data also improves market assessments by providing a measure of ethane and other NGL quantities that remain in natural gas after processing as well as providing an indicator of the heat content of marketed natural gas.

• Add a new Part 6 *Isomerization Activity* to collect volumes on the input of normal butane used for production of isobutane in Section 6.1. Section 6.1a will separately collect the volumes of normal butane sourced from natural gas processing plants and refineries. Form EIA–816 currently collects data on isomerization of normal butane to isobutane. Separating the normal butane sourced from gas plants and refineries will allow EIA to more accurately measure butane supply availability.

Form EIA–817

• In Part 3, replace the three residual fuel oil sulfur categories from:

○ *Less than 0.31% by weight,*

○ *0.31% by weight to 1% percent by weight,*

○ *greater than 1% by weight*

to four proposed sulfur categories of:

1. 1,000 ppm sulfur or under,

2. 1,001 ppm–5,000 ppm sulfur,

3. 5,001 ppm–10,000 ppm sulfur, and

4. greater than 10,000 ppm sulfur.

The four proposed sulfur categories for residual fuel oil are required for consistency with current marine fuel specifications and trade statistics from the U.S. Census Bureau.

• In Part 3, replace biofuel reporting categories identified on current surveys as *biomass-based diesel fuel, other renewable diesel fuels,* and *other renewable fuels* to the proposed categories *biodiesel, renewable diesel fuel, renewable heating oil, renewable jet fuel, renewable naphtha and gasoline,* and *other renewable fuels and intermediate products.* These changes clarify the biofuel product categories and improve the utility of U.S. and regional data.

Form EIA–819

• In Parts 4, 6, 8, and 10, add reporting of *stocks held on site* and *stocks in transit by water and rail* as separate reporting requirement. In addition to continuing to report *Stocks End of Month.* Current EIA reporting instructions provide for stocks in transit by water and rail to be included in ending stocks reported on EIA surveys. Examination of stocks data suggests that stocks in transit by water and rail are undercounted and can vary between reporting periods. The combined reporting of stocks in transit with ending stocks also complicates the data validation process for surveys that require volumetric balances. Separate reporting of stocks in transit simplifies the data processing and validation for surveys that require volumetric balances.

• EIA proposes combining Forms EIA–22M and EIA–819 into a single survey under Form EIA–819 to cover all biofuels (including renewable fuels not currently tracked on any EIA survey), fuel oxygenates (ETBE, MTBE), and non-refinery producers of isooctane. The new survey will collect consistent volumetric balance data on petroleum and biofuel blending at biofuel production plants and feedstock inputs for all biofuels. The proposed new Form EIA–819 will also expand the scope of EIA biofuel data collection to include producers of renewable diesel fuel and other renewable fuels that are currently out of scope. All facilities will report production capacity as well as receipts, production, input, shipments, beginning and ending stocks, as well as stocks in transit to the facility at the end of the report month. Part 9 will collect consumption of feedstocks for production of biofuel and renewable fuels and annual fuels consumed at the facility. The proposed Form EIA–819 is intended to improve accuracy and consistency of biofuel and oxygenate production and blending including blending with petroleum fuels. EIA will discontinue Form EIA–22M since the same information that is currently reported on Form EIA–22M will be collected on the new Form EIA–819.

(5) *Annual Estimated Number of Respondents:* 4,640 total respondents:

EIA–800 consists of 125 respondents
EIA–802 consists of 46 respondents
EIA–803 consists of 80 respondents
EIA–804 consists of 100 respondents
EIA–805 consists of 745 respondents
EIA- 809 consists of 156 respondents
EIA–810 consists of 139 respondents
EIA–812 consists of 100 respondents
EIA–813 consists of 205 respondents
EIA–814 consists of 360 respondents
EIA–815 consists of 1,485 respondents
EIA–816 consists of 600 respondents
EIA–817 consists of 40 respondents
EIA–819 consists of 320 respondents
EIA–820 consists of 139 respondents

(6) *Annual Estimated Number of Total Responses:* 104,231 total responses.

(7) *Annual Estimated Number of Burden Hours:* 208,430 total hours.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* EIA estimates that there are no additional costs to respondents associated with the surveys other than the costs associated with the burden hours. The information collected on the forms is maintained by companies in their data systems during their normal course of business. The cost of burden hours to the respondents is estimated to $15,427,988 (208,430 burden hours times $74.02 per hour).

Comments are invited on whether or not: (a) The proposed collection of information is necessary for the proper performance of agency functions, including whether the information will have a practical utility; (b) EIA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, is accurate; (c) EIA can improve the quality, utility, and clarity of the information it will collect; and (d) EIA can minimize the burden of the collection of information on respondents, such as automated collection techniques or other forms of information technology.

Statutory Authority: 15 U.S.C. 772(b) and 42 U.S.C. 7101 *et seq.*

Signed in Washington, DC, on December 6, 2018.

Nanda Srinivasan,

Director, Office of Survey Development and Statistical Integration, U. S. Energy Information Administration.

[FR Doc. 2018–28062 Filed 12–26–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket Nos. CP18–102–000;CP18–103–000]

Notice of Availability of the Environmental Assessment for the Proposed Cheyenne Connector, LLC Cheyenne Connector Pipeline and Rockies Express Pipeline LLC Cheyenne Hub Enhancement Projects

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Cheyenne Connector Pipeline Project and the Cheyenne Hub Enhancement Project, proposed respectively by Cheyenne Connector, LLC and Rockies Express Pipeline LLC (Rockies Express) in the above-referenced docket. The applicants request authorization to construct approximately 71 miles of new 36-inch-diameter pipeline, five new meter and regulating stations, and one new compressor station, as described further below. All proposed facilities would be in Weld County, Colorado.

The EA assesses the potential environmental effects of the construction and operation of the Cheyenne Connector Pipeline and Cheyenne Hub Enhancement Projects in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed projects, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The Cheyenne Connector Pipeline Project includes the following facilities:

- Approximately 71 miles of 36-inch-diameter pipeline with ancillary facilities including three mainline valves; and
- five associated meter and regulating stations.

The Cheyenne Hub Enhancement Project includes the following facilities:

- One new approximately 32,100 horsepower compressor station;
- enhancements to modify Rockies Express' existing Cheyenne Hub interconnect facilities, including installation of pipe, valves, fittings, filters, and ancillary equipment; and
- ancillary facilities constructed at Rockies Express' existing Cheyenne Hub pursuant to 18 CFR 2.55(a), consisting of station piping, vibration reducing equipment, compressor and electrical buildings, valves, and gas cooling equipment.

The Commission mailed a copy of the *Notice of Availability* for the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the projects' areas. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the Environmental Documents page (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://www.ferc.gov/docs-filing/elibrary.asp*), click on General Search, and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP18–102 or CP18–103). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on these projects, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on January 17, 2019.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the *eFiling* feature on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP18–102–000 and/or CP18–103–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.* Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. The Commission may grant affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the *eLibrary* link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: December 18, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27958 Filed 12–26–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–1589–002.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.19a(b): Refund Report_RockGen Energy to be effective N/A.
Filed Date: 12/18/18.
Accession Number: 20181218–5299.
Comments Due: 5 p.m. ET 1/8/19.

Docket Numbers: ER18–642–002.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.19a(b): Refund Report_Settlers Trail Wind Farm to be effective N/A.
Filed Date: 12/18/18.
Accession Number: 20181218–5298.
Comments Due: 5 p.m. ET 1/8/19.

Docket Numbers: ER18–2477–000.
Applicants: DXT Commodities North America LLC.
Description: Response of DXT Commodities North America LLC to November 2, 2018 Deficiency Letter.
Filed Date: 12/17/18.
Accession Number: 20181217–5398.
Comments Due: 5 p.m. ET 1/7/19.

Docket Numbers: ER18–2520–002.
Applicants: California Independent System Operator Corporation.
Description: Compliance filing: 2018–12–18 Aliso Canyon Phase 4 Compliance to be effective 11/30/2018.
Filed Date: 12/18/18.
Accession Number: 20181218–5284.
Comments Due: 5 p.m. ET 1/8/19.

Docket Numbers: ER19–328–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2018–12–18_Amendment to Schedule 28 revisions related to Order 831 to be effective 12/31/9998.
Filed Date: 12/18/18.
Accession Number: 20181218–5281.
Comments Due: 5 p.m. ET 1/8/19.

Docket Numbers: ER19–587–000.
Applicants: ALLETE, Inc., Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2018–12–18_SA 3210 MP–SWLP TALA to be effective 8/25/2010.
Filed Date: 12/18/18.
Accession Number: 20181218–5110.
Comments Due: 5 p.m. ET 1/8/19.

Docket Numbers: ER19–588–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revised SA No. 1313 NITSA Among PJM and Central Virginia Electric Cooperative to be effective 12/1/2018.
Filed Date: 12/18/18.
Accession Number: 20181218–5122.
Comments Due: 5 p.m. ET 1/8/19.

Docket Numbers: ER19–589–000.
Applicants: New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 205 filing of SGIA among NYISO, LIPA and Riverhead SA No. 2436 to be effective 11/29/2018.
Filed Date: 12/18/18.
Accession Number: 20181218–5175.
Comments Due: 5 p.m. ET 1/8/19.

Docket Numbers: ER19–590–000.
Applicants: The Connecticut Light and Power Company.
Description: § 205(d) Rate Filing: Cricket Valley Energy Center Related Facilities Agreement to be effective 2/17/2019.
Filed Date: 12/18/18.
Accession Number: 20181218–5296.
Comments Due: 5 p.m. ET 1/8/19.

Docket Numbers: ER19–591–000.
Applicants: Cedars Rapids Transmission Company Limit.
Description: Tariff Cancellation: Notice of Cancellation of Market-Based Rate Tariff to be effective 2/17/2019.
Filed Date: 12/18/18.
Accession Number: 20181218–5330.
Comments Due: 5 p.m. ET 1/8/19.

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: December 18, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–27967 Filed 12–26–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2512–078]

Hawks Nest Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Recreation Flow Release Plan.
b. *Project No:* 2512–078.
c. *Date Filed:* November 1, 2018.
d. *Applicant:* Hawks Nest Hydro, LLC.
e. *Name of Project:* Hawks Nest Hydroelectric Project.
f. *Location:* The project is located on the New River, just upstream of the confluence of the New and Gauley Rivers, near the Town of Ansted in Fayette County, West Virginia.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.
h. *Applicant Contact:* Marshall Olson, Compliance Manager, 40325 Hoops Court, Albemarle, NC 28001, (865) 255–4240.
i. *FERC Contact:* Shawn Halerz, (202) 502–6360, *Shawn.Halerz@ferc.gov.*
j. *Deadline for filing comments, motions to intervene, and protests:* January 21, 2019.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, 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–2512–078. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* As required by Article 407 of the December 22, 2017 license, Hawks Nest Hydro, LLC (licensee) requests Commission approval of a proposed Recreation Flow Release Plan (plan) for the project. The plan incorporates the provisions and guidelines required by Article 407 and conditions of the West Virginia Department of Environmental Protection water quality certificate. The licensee proposes procedures for recreation flow releases, default schedules for recreation flow releases, procedures for annual meetings regarding recreation flow releases and post-release evaluation meetings, guidelines for participant safety, and a flow notification website.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: December 19, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–28055 Filed 12–26–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2153–041]

United Water Conservation District; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Application Type:* Recreation Trail Plan Amendment.

b. *Project No:* 2153–041.

c. *Date Filed:* August 15, 2018.

d. *Applicant:* United Water Conservation District.

e. *Name of Project:* Santa Felicia Hydroelectric Project.

f. *Location:* The project is located on Piru Creek, a tributary of the Santa Clara River, in Ventura County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Linda Purpus, Senior Environmental Scientist, United Water Conservation District, 106 North 8th Street, Santa Paula, CA 93060; phone (805) 525–4431.

i. *FERC Contact:* Mark Ivy at (202) 502–6156, or *mark.ivy@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* January 18, 2019.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support 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–2153–041. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* As required by ordering paragraph (B) of the January 6, 2017 Order Approving Trail Plan, United Water Conservation District requests Commission approval of an amendment to the recreation trail plan, to develop the Pothole Trailhead Parking Area. Background information regarding development of the recreation trail plan can be found in the November 2, 2017 progress report (accession # 20171102–5035) on eLibrary.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be

viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: December 19, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–28054 Filed 12–26–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09–61–004]

Entergy Services, LLC; Notice of Filing

Take notice that on December 17, 2018, Entergy Services, LLC submitted a Compliance Refund Report providing the final calculation of refunds due from Entergy Arkansas, Inc. to other Entergy Operating Companies, pursuant to the Federal Energy Regulatory Commission's October 18, 2018 Order.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

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 January 7, 2019.

Dated: December 18, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27957 Filed 12–26–18; 8:45 am]

BILLING CODE 6717–01–P

[1] *La. Pub. Serv. Comm'n* v. *Entergy Corp., et al.,* 165 FERC ¶ 61,022 (October 18, 2018).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–11–000]

Sabine Pass LNG, L.P.; Notice of Schedule for Environmental Review of the SPLNG Third Berth Expansion Project

On October 29, 2018, Sabine Pass LNG, L.P. (SPLNG) filed an application in Docket No. CP19–11–000 requesting authorization pursuant to section 3(a) of the Natural Gas Act to construct and operate certain liquefied natural gas (LNG) facilities in Sabine Pass, Louisiana. The proposed project is known as the SPLNG Third Birth Expansion Project (Project) and would include an expansion of the existing Sabine Pass LNG facility (Terminal), located in Cameron Parish, Louisiana on the Sabine Pass Channel.

On November 7, 2018, the Federal Energy Regulatory Commission (FERC or Commission) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for completion of the EA for the Project. The forecasted schedule for the EA is based upon SPLNG providing complete and timely responses to any data requests. In addition, the schedule assumes that the cooperating agencies will provide input on their areas of responsibility on a timely basis.

Schedule for Environmental Review

Issuance of EA: (August 23, 2019).

90-day Federal Authorization Decision Deadline: (November 21, 2019).

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

The proposed expansion of the Terminal consists of the addition of a third marine berth (Third Berth) and supporting facilities. The Third Berth would be used to load LNG carriers for export and would be sized to accommodate vessels with a capacity of 125,000 cubic meters (m^3) to 180,000 m^3. The supporting facilities would

include tie-ins to the existing Terminal loading lines and boil-off gas lines associated with the five existing LNG tanks. The Project would also include the addition of piping, piperacks, utilities, and other additional infrastructure to transport LNG to the Third Berth.

Background

On March 8, 2018, the Commission staff granted SPLNG's request to use the FERC's pre-filing environmental review process and assigned the Project Docket No. PF18–3–000. On April 20, 2018, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Planned SPLNG Third Berth Expansion Project, and Request for Comments on Environmental Issues* (NOI). The NOI was issued during the pre-filing review of the Project in Docket No. PF18–3–000 and was sent to federal, state, and local government agencies; elected officials; affected landowners; environmental and public interest groups; Native American tribes and regional organizations; commenters and other interested parties; and local libraries and newspapers. In response to the NOI, the Commission received comments from the U.S. Fish and Wildlife Service, the Louisiana Department of Wildlife and Fisheries, and the Choctaw Nation. The primary issues raised by the commenters include effects on threatened and endangered species, wetland mitigation, and water quality impacts. All substantive comments will be addressed in the EA.

The U.S. Department of Transportation Pipeline and Hazardous Materials Administration, U.S. Coast Guard, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Louisiana Department of Wildlife and Fisheries; U.S. Department of Energy, and U.S. Environmental Protection Agency are cooperating agencies in the preparation of the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP19–11), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Dated: December 18, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27956 Filed 12–26–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC19–13–000]

Commission Information Collection Activities (FERC–715); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–715 (Annual Transmission Planning and Evaluation Report).

DATES: Comments on the collection of information are due February 25, 2019.

ADDRESSES: You may submit comments (identified by Docket No. IC19–13–000) by either of the following methods:

- *eFiling at Commission's website: http://www.ferc.gov/docs-filing/efiling.asp*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–715, Annual Transmission Planning and Evaluation Report.

OMB Control No.: 1902–0171.

Abstract: Acting under FPA section 213,[1] FERC requires each transmitting utility that operates integrated transmission system facilities rated above 100 kilovolts (kV) to submit annually:

- Contact information for the FERC–715;
- Base case power flow data (if it does not participate in the development and use of regional power flow data);
- Transmission system maps and diagrams used by the respondent for transmission planning;
- A detailed description of the transmission planning reliability criteria used to evaluate system performance for time frames and planning horizons used in regional and corporate planning;
- A detailed description of the respondent's transmission planning assessment practices (including, but not limited to, how reliability criteria are applied and the steps taken in performing transmission planning studies); and
- A detailed evaluation of the respondent's anticipated system performance as measured against its stated reliability criteria using its stated assessment practices.

The FERC–715 enables the Commission to use the information as part of their regulatory oversight functions which includes:

- The review of rates and charges;
- The disposition of jurisdictional facilities;
- The consolidation and mergers;
- The adequacy of supply and;
- Reliability of the nation's transmission grid.

The FERC–715 enables the Commission to facilitate and resolve transmission disputes. Additionally, the Office of Electric Reliability (OER) uses the FERC–715 data to help protect and improve the reliability and security of the nation's bulk power system. OER oversees the development and review of mandatory reliability and security standards and ensures compliance with

[1] 16 U.S.C. 824l.

the approved standards by the users, owners, and operators of the bulk power system. OER also monitors and addresses issues concerning the nation's bulk power system including assessments of resource adequacy and reliability.

Without the FERC–715 data, the Commission would be unable to evaluate planned projects or requests related to transmission.

Type of Respondent: Integrated transmission system facilities rated at or above 100 kilovolts (kV).

Estimate of Annual Burden: [2] The Commission estimates the total annual burden and cost [3] for this information collection as follows.

FERC–715, ANNUAL TRANSMISSION PLANNING AND EVALUATION REPORT

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response (4)	Total annual burden hours & total annual cost (3) * (4) = (5)	Cost per respondent $ (5) ÷ (1)
Annual Transmission Planning and Evaluation Report [4]	111	1	111	160 hrs.; $11,897.60.	17,760 hrs.; $1,320,633.60.	$11,897.60

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: December 19, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–28052 Filed 12–26–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ19–5–000]

City of Anaheim, California; Notice of Filing

Take notice that on December 17, 2018, City of Anaheim, California submitted its tariff filing: City of Anaheim 2019 Transmission Revenue Balancing Account Adjustment Update to be effective 1/1/2019.

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 January 7, 2019.

Dated: December 18, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27954 Filed 12–26–18; 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: RP19–441–001.
Applicants: WTG Hugoton, LP.
Description: WTG Hugoton LP submits tariff filing per 260.402 Corrected FERC Form 501–G Filing to be effective N/A.
Filed Date: 12/11/18.
Accession Number: 20181211–5116.
Comments Due: 5 p.m. ET 12/24/18.

Docket Numbers: RP19–442–001.
Applicants: West Texas Gas, Inc.

[2] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to Title 5 Code of Federal Regulations 1320.3.

[3] The hourly cost (for salary plus benefits) uses the figures from the Bureau of Labor Statistics, May 2017, for the listed reporting requirements. These figures include salary (*https://www.bls.gov/oes/current/naics2_22.htm*) and benefits (*http://www.bls.gov/news.release/ecec.nr0.htm*) and are:

—Management (Code 11–0000), $94.28/hr.

—Computer and mathematical (Code 15–0000), $63.25/hr.

—Electrical Engineers (Code 17–2071), $66.90/hr.

—Economist (Code 19–3011), $71.98/hr.

—Computer and Information Systems Managers (Code 11–3021), $96.51/hr.

—Accountants and Auditors (Code 13–2011), $56.59/hr.

—Transportation, Storage, and Distribution Managers (Code 11–3071), $88.61/hr.

—Power Distributors and Dispatchers (Code 51–8012), $56.74/hr.

—We are using the average hourly cost (for wages plus benefits, for these categories) of $74.36/hour.

[4] In 2018, FERC had 111 direct filings (responses) from entities. However there were 239 total respondents if Transmitting Utilities that have their filing submitted by a designated reporting agent, such as a regional entity, are counted independently.

Description: West Texas Gas submits tariff filing per 260.402 Corrected FERC Form 501–G Filing to be effective N/A.
Filed Date: 12/11/18.
Accession Number: 20181211–5145.
Comments Due: 5 p.m. ET 12/24/18.

Docket Numbers: RP19–443–001.
Applicants: Western Gas Interstate Company.
Description: Western Gas Interstate Company submits tariff filing per 260.402 Corrected FERC Form 501–G Filing to be effective N/A.
Filed Date: 12/11/18.
Accession Number: 20181211–5147.
Comments Due: 5 p.m. ET 12/24/18.

Docket Numbers: RP19–468–000.
Applicants: Anadarko Energy Services Company, Pacific Summit Energy LLC.
Description: Joint Petition for Temporary Waivers of Capacity Release Regulations and Policies, et al. of Anadarko Energy Services Company, et al. under RP19–468.
Filed Date: 12/17/18.
Accession Number: 20181217–5095.
Comments Due: 5 p.m. ET 12/24/18.

Docket Numbers: RP19–469–000.
Applicants: Enable Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Filing-December 2018 pilgrims Pride 1010887 to be effective 12/17/2018.
Filed Date: 12/17/18.
Accession Number: 20181217–5373.
Comments Due: 5 p.m. ET 12/31/18.

Docket Numbers: RP19–470–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 121818 Negotiated Rates—Mercuria Energy America, Inc. R–7540–02 to be effective 1/1/2019.
Filed Date: 12/18/18.
Accession Number: 20181218–5009.
Comments Due: 5 p.m. ET 12/31/18.

Docket Numbers: RP19–471–000.
Applicants: American Midstream (AlaTenn), LLC.
Description: § 4(d) Rate Filing: General Terms and Conditions Section 37, Version 3.0.0. to be effective 1/1/2019.
Filed Date: 12/18/18.
Accession Number: 20181218–5287.
Comments Due: 5 p.m. ET 12/31/18.

Docket Numbers: RP19–472–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: § 4(d) Rate Filing: NC Contract 2018–12–18 Colorado Springs Utilities to be effective 12/1/2018.
Filed Date: 12/18/18.
Accession Number: 20181218–5415.
Comments Due: 5 p.m. ET 12/31/18.

Docket Numbers: RP19–76–001.
Applicants: Kern River Gas Transmission Company.
Description: Compliance filing 2018 Tax Reform Settlement Filing to be effective 11/15/2018.
Filed Date: 12/18/18.
Accession Number: 20181218–5375.
Comments Due: 5 p.m. ET 12/26/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 19, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–28042 Filed 12–26–18; 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 exempt wholesale generator filings:

Docket Numbers: EG19–35–000.
Applicants: 226HC 8me LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of 226HC 8me LLC.
Filed Date: 12/18/18.
Accession Number: 20181218–5065.
Comments Due: 5 p.m. ET 1/8/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–1561–003.
Applicants: New York Independent System Operator, Inc.
Description: Compliance filing: Revised effective date offer cap compliance revisions to be effective 12/19/2018.
Filed Date: 12/17/18.
Accession Number: 20181217–5339.
Comments Due: 5 p.m. ET 1/7/19.

Docket Numbers: ER18–1596–001.
Applicants: Sky River LLC.
Description: eTariff filing per 1450: Compliance Filing in ER18–1596–001 & EL18–112–001 to be effective 3/21/2018.
Filed Date: 12/17/18.
Accession Number: 20181217–5372.
Comments Due: 5 p.m. ET 1/7/19.

Docket Numbers: ER18–1598–001.
Applicants: New York Independent System Operator, Inc.
Description: Compliance filing: Deficiency Response—Central Hudson Show Cause to be effective 3/21/2018.
Filed Date: 12/17/18.
Accession Number: 20181217–5341.
Comments Due: 5 p.m. ET 1/7/19.

Docket Numbers: ER18–2280–002.
Applicants: Alliant Energy Corporate Services, Inc.
Description: Tariff Amendment: Amendment to AECS Updated Rate Schedule 2 to be effective 11/1/2018.
Filed Date: 12/17/18.
Accession Number: 20181217–5294.
Comments Due: 5 p.m. ET 1/7/19.

Docket Numbers: ER18–2352–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2018–12–17_Deficiency response to Real-Time Buybacks of Spinning and Offline Sup to be effective 2/14/2019.
Filed Date: 12/17/18.
Accession Number: 20181217–5336.
Comments Due: 5 p.m. ET 1/7/19.

Docket Numbers: ER19–64–001.
Applicants: Emera Maine, ISO New England Inc.
Description: Tariff Amendment: Emera Maine Response to Deficiency Letter; ER19–64 to be effective 12/9/2018.
Filed Date: 12/18/18.
Accession Number: 20181218–5007.
Comments Due: 5 p.m. ET 1/8/19.

Docket Numbers: ER19–231–001.
Applicants: Dynegy Oakland, LLC.
Description: Tariff Amendment: Deferral of Commission Action to Permit Ongoing Settlement Discussions to be effective 12/31/9998.
Filed Date: 12/17/18.
Accession Number: 20181217–5351.
Comments Due: 5 p.m. ET 1/7/19.

Docket Numbers: ER19–578–000.
Applicants: Prairie Queen Wind Farm LLC.
Description: § 205(d) Rate Filing: Revised MBR Tariff to be effective 12/18/2018.
Filed Date: 12/17/18.
Accession Number: 20181217–5334.
Comments Due: 5 p.m. ET 1/7/19.

Docket Numbers: ER19–579–000.
Applicants: Redbed Plains Wind Farm LLC.

Description: § 205(d) Rate Filing: Revised MBR Tariff to be effective 12/18/2018.
Filed Date: 12/17/18.
Accession Number: 20181217–5335.
Comments Due: 5 p.m. ET 1/7/19.

Docket Numbers: ER19–580–000.
Applicants: Quilt Block Wind Farm LLC.
Description: § 205(d) Rate Filing: Revised MBR Tariff to be effective 12/18/2018.
Filed Date: 12/17/18.
Accession Number: 20181217–5337.
Comments Due: 5 p.m. ET 1/7/19.

Docket Numbers: ER19–581–000.
Applicants: Turtle Creek Wind Farm LLC.
Description: § 205(d) Rate Filing: Revised MBR Tariff to be effective 12/18/2018.
Filed Date: 12/17/18.
Accession Number: 20181217–5338.
Comments Due: 5 p.m. ET 1/7/19.

Docket Numbers: ER19–582–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2018–12–17 Custom Load Aggregation Points Clarification Amendment to be effective 3/1/2019.
Filed Date: 12/18/18.
Accession Number: 20181218–5000.
Comments Due: 5 p.m. ET 1/8/19.

Docket Numbers: ER19–583–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 760 4th Rev—NITSA with Beartooth Electric Coop to be effective 3/1/2019.
Filed Date: 12/18/18.
Accession Number: 20181218–5001.
Comments Due: 5 p.m. ET 1/8/19.

Docket Numbers: ER19–584–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 792 2nd Rev—NITSA with Big Horn County Electric Coop to be effective 3/1/2019.
Filed Date: 12/18/18.
Accession Number: 20181218–5002.
Comments Due: 5 p.m. ET 1/8/19.

Docket Numbers: ER19–585–000.
Applicants: Quilt Block Wind Farm LLC.
Description: Baseline eTariff Filing: Reactive Power Compensation Filing to be effective 2/16/2019.
Filed Date: 12/18/18.
Accession Number: 20181218–5003.
Comments Due: 5 p.m. ET 1/8/19.

Docket Numbers: ER19–586–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2810 City of Chanute and Westar Meter Agent Agr Cancellation to be effective 1/1/2019.
Filed Date: 12/18/18.
Accession Number: 20181218–5008.
Comments Due: 5 p.m. ET 1/8/19.

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: December 18, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–27968 Filed 12–26–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10855–300]

Upper Peninsula Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Temporary variance.
b. *Project No:* 10855–300.
c. *Date Filed:* December 17, 2018.
d. *Applicant:* Upper Peninsula Power Company.
e. *Name of Project:* Dead River Hydroelectric Project.
f. *Location:* The project is located on the Dead River in Marquette County, Michigan.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.
h. *Applicant Contact:* Virgil Schlorke, Upper Peninsula Power Company, 800 Greenwood Street, Ishpeming, MI 49849. (906) 232–1431.
i. *FERC Contact:* Mark Pawlowski, (202) 502–6052, *mark.pawlowski@ferc.gov.*
j. *Deadline for filing comments, motions to intervene, and protests:* January 18, 2019.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, 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–2503–161. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency

k. *Description of Request:* Upper Peninsula Power Company (licensee) proposes to modify the start of month target reservoir surface elevation requirements at the Silver Lake Storage Basin (SLSB) and Dead River Storage Basin (DRSB) for the year 2019. The license proposes to raise the start of month reservoir target elevation at SLSB to 1,479.0 feet NGVD for the months of February and March and raise the start of month reservoir target elevation for April, May, June, and July to 1,485.0 feet NGVD to allow for the capture of the maximum amount of spring runoff flows; and reduce the SLSB elevation by 2.5 feet in July and again by 2.5 feet through the month of August. The licensee proposes to raise the start of month reservoir target elevation at Dead River Storage Basin (DRSB) to 1,341 feet NGVD for the month of May.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling

(202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: December 19, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–28057 Filed 12–26–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR19–11–000]

EnLink NGL Pipeline, LP; Notice of Petition for Declaratory Order

December 18, 2018.

Take notice that on December 11, 2018, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2018), EnLink NGL Pipeline, LP (EnLink or Petitioner), filed a petition for a Declaratory Order approving the overall tariff and rate structure for an expansion of Enlink's interstate pipeline system (Petition) that transports natural gas liquids (NGLs) from the vicinity of Mont Belvieu, Texas to various NGL fractionation facilities located in Acadia and Iberville Parishes, Louisiana, all as more fully explained in the petition.

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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

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 January 14, 2019.

Dated: December 18, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27955 Filed 12–26–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC19–26–000.
Applicants: Buckleberry Solar, LLC.
Description: Amendment to November 9, 2018 Application for Authorization Under Section 203 of the Federal Power Act, et al. of Buckleberry Solar, LLC.
Filed Date: 12/17/18.
Accession Number: 20181217–5404.
Comments Due: 5 p.m. ET 12/26/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1107–006.
Applicants: Pacific Gas and Electric Company.
Description: Updated Market Power Analysis for the CAISO BAA Market of Pacific Gas and Electric Company.
Filed Date: 12/19/18.
Accession Number: 20181219–5133.
Comments Due: 5 p.m. ET 2/20/19.

Docket Numbers: ER10–2835–009.
Applicants: Google Energy LLC.
Description: Triennial Market Power Analysis for the SPP Region of Google Energy LLC.
Filed Date: 12/18/18.
Accession Number: 20181218–5466.
Comments Due: 5 p.m. ET 2/19/19.

Docket Numbers: ER16–1258–002; ER13–1266–019; ER15–2211–016; ER16–438–004.
Applicants: Grande Prairie Wind, LLC, Marshall Wind Energy LLC, CalEnergy, LLC, MidAmerican Energy Services, LLC.
Description: Triennial Market Power Update for the Southwest Power Pool Region of the BHE Renewables Companies.
Filed Date: 12/18/18.
Accession Number: 20181218–5465.
Comments Due: 5 p.m. ET 2/19/19.

Docket Numbers: ER17–1376–006.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2018–12–18_Stored Energy Resource—Type II

Compliance Filing to be effective 12/1/2017.
Filed Date: 12/18/18.
Accession Number: 20181218–5376.
Comments Due: 5 p.m. ET 1/8/19.

Docket Numbers: ER17–2386–004.
Applicants: Great Bay Solar I, LLC.
Description: Compliance filing: Compliance Filing to be effective 11/1/2017.
Filed Date: 12/19/18.
Accession Number: 20181219–5052.
Comments Due: 5 p.m. ET 1/9/19.

Docket Numbers: ER18–554–003.
Applicants: Carville Energy LLC.
Description: Compliance filing: Reactive Service Rate Schedule Compliance Filing to be effective 3/1/2018.
Filed Date: 12/19/18.
Accession Number: 20181219–5084.
Comments Due: 5 p.m. ET 1/9/19.

Docket Numbers: ER19–178–001.
Applicants: PACE RENEWABLE ENERGY 1 LLC.
Description: Tariff Amendment: Supplemental—Ownership Info to be effective 12/20/2018.
Filed Date: 12/19/18.
Accession Number: 20181219–5029.
Comments Due: 5 p.m. ET 1/9/19.

Docket Numbers: ER19–302–001.
Applicants: NTE Southeast Electric Company, LLC.
Description: Second Supplement to December 12, 2018 NTE Southeast Electric Company, LLC tariff filing [Asset Appendices].
Filed Date: 12/17/18.
Accession Number: 20181217–5387.
Comments Due: 5 p.m. ET 1/7/19.

Docket Numbers: ER19–464–000.
Applicants: Vermillion Power, L.L.C.
Description: Amendment to December 3, 2018 Vermillion Power, L.L.C. tariff filing.
Filed Date: 12/19/18.
Accession Number: 20181219–5131.
Comments Due: 5 p.m. ET 1/2/19.

Docket Numbers: ER19–592–000.
Applicants: Valentine Solar, LLC.
Description: Baseline eTariff Filing: Valentine Solar Initial Market-Based Rate Application Filing to be effective 2/17/2019.
Filed Date: 12/18/18.
Accession Number: 20181218–5381.
Comments Due: 5 p.m. ET 1/8/19.

Docket Numbers: ER19–593–000.
Applicants: El Paso Electric Company.
Description: § 205(d) Rate Filing: Non-Substantive Consolidation of Market-Based Rate Tariff Records to be effective 12/19/2018.
Filed Date: 12/18/18.
Accession Number: 20181218–5390.
Comments Due: 5 p.m. ET 1/8/19.

Docket Numbers: ER19–594–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: LGIA Daggett Solar 2 LLC SA No. 224 to be effective 2/17/2019.
Filed Date: 12/18/18.
Accession Number: 20181218–5413.
Comments Due: 5 p.m. ET 1/8/19.

Docket Numbers: ER19–595–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: LGIA Daggett Solar 3 LLC SA No. 225 to be effective 2/17/2019.
Filed Date: 12/18/18.
Accession Number: 20181218–5414.
Comments Due: 5 p.m. ET 1/8/19.

Docket Numbers: ER19–596–000.
Applicants: CPV Keenan II Renewable Energy Company, LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 2/18/2019.
Filed Date: 12/19/18.
Accession Number: 20181219–5027.
Comments Due: 5 p.m. ET 1/9/19.

Docket Numbers: ER19–597–000.
Applicants: Southern California Edison Company.
Description: Tariff Cancellation: Cancel GIA & DSA LA County Flood Control District San Gabriel Dam Hydroelectric to be effective 10/31/2018.
Filed Date: 12/19/18.
Accession Number: 20181219–5032.
Comments Due: 5 p.m. ET 1/9/19.

Docket Numbers: ER19–598–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2018–12–19_SA 3222 OTP–OTP GIA (J510) to be effective 12/5/2018.
Filed Date: 12/19/18.
Accession Number: 20181219–5081.
Comments Due: 5 p.m. ET 1/9/19.

Docket Numbers: ER19–599–000.
Applicants: American Transmission Systems, Incorporation, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: ATSI submits Revised Interconnection Agreement SA No. 3994 to be effective 2/18/2019.
Filed Date: 12/19/18.
Accession Number: 20181219–5103.
Comments Due: 5 p.m. ET 1/9/19.

Docket Numbers: ER19–600–000.
Applicants: American Transmission Systems, Incorporation, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: ATSI submits a ECSA, Service Agreement No. 5137 re: GM Cleveland RTU Replacement to be effective 2/18/2019.
Filed Date: 12/19/18.
Accession Number: 20181219–5114.
Comments Due: 5 p.m. ET 1/9/19.

Docket Numbers: ER19–601–000.
Applicants: AEP Energy Partners, Inc.
Description: § 205(d) Rate Filing: MBR Tariff, FERC Electric Tariff for Market Bases Sales to be effective 3/1/2019.
Filed Date: 12/19/18.
Accession Number: 20181219–5115.
Comments Due: 5 p.m. ET 1/9/19.

Docket Numbers: ER19–602–000.
Applicants: Southwest Power Pool, Inc., American Electric Power Service Corporation.
Description: § 205(d) Rate Filing: Cost Recovery Filing on Behalf of American Electric Power Service Corp. to be effective 3/1/2019.
Filed Date: 12/19/18.
Accession Number: 20181219–5116.
Comments Due: 5 p.m. ET 1/9/19.

Docket Numbers: ER19–603–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA and ICSA SA Nos. 5245 and 5250; Queue No. AB2–067/AC1–044 to be effective 12/31/9998.
Filed Date: 12/19/18.
Accession Number: 20181219–5117.
Comments Due: 5 p.m. ET 1/9/19.

Docket Numbers: ER19–604–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to Sch.12 of the OA to reflect termination of GreenHat Energy, LLC to be effective 2/19/2019.
Filed Date: 12/19/18.
Accession Number: 20181219–5118.
Comments Due: 5 p.m. ET 1/9/19.

Docket Numbers: ER19–605–000.
Applicants: Republic Transmission, LLC.
Description: Baseline eTariff Filing: Baseline Rate Transmission Filing for Republic Transmission to be effective 12/19/2018.
Filed Date: 12/19/18.
Accession Number: 20181219–5119.
Comments Due: 5 p.m. ET 1/9/19.

Docket Numbers: ER19–606–000.
Applicants: AEP Generation Resources Inc.
Description: § 205(d) Rate Filing: MBR Tariff, FERC Electric Tariff For Market-Based Sales to be effective 3/1/2014.
Filed Date: 12/19/18.
Accession Number: 20181219–5120.
Comments Due: 5 p.m. ET 1/9/19.

Docket Numbers: ER19–607–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to Sch. 12 of OA to reflect termination of Amerigreen Energy, LLC to be effective 2/19/2019.

Filed Date: 12/19/18.
Accession Number: 20181219–5122.
Comments Due: 5 p.m. ET 1/9/19.

Docket Numbers: ER19–608–000.
Applicants: Commonwealth Edison Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: ComEd submits revisions to Att. H–13 re: Marengo Battery Wholesale Dist. Charges to be effective 12/20/2018.
Filed Date: 12/19/18.
Accession Number: 20181219–5138.
Comments Due: 5 p.m. ET 1/9/19.

Docket Numbers: ER19–609–000.
Applicants: Pacific Gas and Electric Company.
Description: Request for One-time Tariff Waiver of Pacific Gas and Electric Company.
Filed Date: 12/19/18.
Accession Number: 20181219–5140.
Comments Due: 5 p.m. ET 1/9/19.

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: December 19, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–28043 Filed 12–26–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1403–064; Project No. 2678–009]

Notice of Application for Transfer of License and Amendment of License and Soliciting Comments, Motions To Intervene, and Protests; Pacific Gas and Electric Company, Yuba County Water Agency

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Transfer of License and Amendment.

b. *Project Nos.:* 1403–064 and 2678–009.

c. *Date filed:* October 17, 2018.

d. *Applicants:* Pacific Gas and Electric Company (transferor), Yuba County Water Agency (transferee).

e. *Name of Projects:* Narrows Project (P–1403), Narrows No. 2 Transmission Line Project (P–2678).

f. *Location:* Narrows Project—located at the U.S. Army Corps of Engineers' (Corps) Englebright Dam on the Yuba River in Nevada County, California.

Narrows No. 2 Transmission Line Project—located in the Sierra Nevada foothills in the Yuba River watershed adjacent to the Narrows Project in Yuba and Nevada counties, California, and occupies 1.28 acres of public land managed by the Corps.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicants Contact:* For Transferor: Ms. Annette Faraglia, Chief Counsel Hydro Generation, Pacific Gas and Electric Company, 77 Beale Street, B30A–3005, San Francisco, CA 94105, 415–973–7145, Email: *annette.faraglia@pge.com* and Ms. Stephanie Maggard, Director, Power Generation, Pacific Gas and Electric Company, 245 Market Street, N11E–1136, San Francisco, CA 94105, 415–973–2812, Email: *Stephanie.maggard@pge.com.*

For Transferee: Mr. Richard P. Shanahan, General Counsel, Bartkiewicz, Kronick & Shanahan, Yuba County Water Agency, 1011 22nd Street, Sacramento, CA 95816–4907, 916–446–4254, Email: *rps@bkslawfirm.com* and Mr. Curtis Aikens, General Manager, Yuba County Water Agency, 1220 F Street, Marysville, CA 95901, 530–741–5015, Email: *caikens@yubawater.org.*

i. *FERC Contacts:* Patricia W. Gillis, (202) 502–8735 or *patricia.gillis@ferc.gov,* or Steven Sachs, (202) 502–8666 or *steven.sachs@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* 30 days from the date that the Commission issues this notice.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, or protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, 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 numbers P–1403–064 and P–2678–009.

k. *Description of Transfer and Amendment Requests:* The applicants request that the Commission transfer the Narrows Project No. 1403 from Pacific Gas and Electric Company to Yuba County Water Agency. The applicants also request that the Commission remove the transmission line for the Narrows Project and incorporate it into the license for the Narrows No. 2 Transmission Line Project No. 2678. Furthermore, the applicants request that the Commission remove facilities and lands from the Narrows Project, which they state are not under the Commission's jurisdiction. These include a substation at the terminus of the Narrows Project transmission line, a telephone line connecting the project and the Corps' headworks, an access road, and adjoining lands not needed for project purposes.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676, email *FERCOnlineSupport@ferc.gov,* or for TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests and other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received

on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to the request to upgrade the turbine generator units. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: December 19, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–28053 Filed 12–26–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7804–030]

Gerald Ohs, Pony Hydro Energy, LLC; Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On September 12, 2018, Gerald Ohs (transferor) and Pony Hydro Energy, LLC (transferee) filed an application for the transfer of license for the North Willow Creek Project No. 7804. The project is located on North Willow Creek in Madison County, Montana.

The applicants seek Commission approval to transfer the license for the North Willow Creek Project from the transferor to transferee.

Applicant's Contacts: For Transferor: Mr. Gerald Ohs, P.O. Box 625, 63 North Willow Creek Road, Pony, Montana 59747, Phone: 406–431–5450, Email: *klazysranch@yahoo.com.*

For Transferee: Mr. Gary L. Perry, Managing Member, Pony Hydro Energy, LLC, 3325 W Cedar Meadows Lane, Manhattan, MT 59741, and Mr. Eric Lee Christensen, Esq., Cairncross & Hempelmann, P.S., 524 Second Ave., Suite 500, Seattle, WA 98104, Phone: 206–254–4451, Email: *EChristensen@Cairncross.com.*

FERC Contact: Patricia W. Gillis, (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, 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–7804–030.

Dated: December 19, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–28056 Filed 12–26–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF19–1–000]

Western Area Power Administration; Notice of Filing

Take notice that on December 13, 2018, Western Area Power Administration submitted tariff filing per: Extension of Firm Electric and Transmission Service Formula Rates for Parker-Davis Project-Western Area Power Administration-Rate Order No. WAPA–184 to be effective 12/31/2018.

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 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 p.m. Eastern Time on January 14, 2019.

Dated: December 19, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–28040 Filed 12–26–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2014–0079; FRL–9988–08–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Wet-Formed Fiberglass Mat Production (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an

information collection request (ICR), NESHAP for Wet-formed Fiberglass Mat Production (EPA ICR Number 1964.09; OMB Control Number 2060–0496), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December 31, 2018. Public comments were previously requested via the **Federal Register** on June 29, 2017 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before January 25, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2014–0079, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The NESHAP apply to wet-formed fiberglass mat production facilities that emit greater than or equal to 10 tons per year (tpy) of any one hazardous air pollutant (HAP) or greater than or equal to 25 tpy of any combination of HAP. Affected sources include new and existing drying and curing ovens. New facilities include those that commenced construction or reconstruction after the original date of proposal (May 26, 2000). The NESHAP standards require initial notifications, performance tests, and seminannual reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to NESHAP standards.

Form Numbers: None.

Respondents/affected entities: New and existing drying and curing ovens at wet-formed fiberglass mat production facilities.

Respondent's obligation to respond: Mandatory (40 CFR 63 Subpart HHHH).

Estimated number of respondents: 7 (total).

Frequency of response: Initial, semiannual.

Total estimated burden: 1,470 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $95,500 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: The adjustment decrease in burden from the most recently approved ICR is due to a decrease in the number of sources from 14 to 7, based on the Agency's evaluation of the source category as part of the residual risk and technology review (RTR). Additionally, the amendments to the NESHAP for Wet-Formed Fiberglass Mat Production (40 CFR, Part 63, Subpart HHHH) addressed in this ICR (1) adjust references to the Part 63 General Provisions (40 CFR, Part 63, Subpart A) and revise provisions in the NESHAP (40 CFR part 63, Subpart HHHH) to remove the SSM exemption and SSM plan and periodic report requirements; (2) require electronic submittal of performance test results; (3) reduce the frequency of compliance reports from a quarterly basis to a semiannual basis when there are deviations from applicable standards; and (4) reduce the parameter monitoring and recording requirements during use of binder containing no HAP.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–27959 Filed 12–26–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2015–0659; FRL–9988–48–ORD]

Proposed Information Collection Request; Comment Request; Generic Clearance for Citizen Science and Crowdsourcing Projects (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is preparing to submit an information collection request (ICR), ''Generic Clearance for Citizen Science and Crowdsourcing Projects (Renewal)'' (EPA ICR No. 2521.15, OMB Control No. 2080–0083) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed renewal of the existing ICR, which is currently approved through April 30, 2019. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before February 25, 2019.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–ORD–2015–0659 referencing the Docket ID numbers provided for each item in the text, online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Jay Benforado, IOAA–ORD, (Mail Code 8101R), Environmental Protection

Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number 202–564–3262; fax number: 202–565–2494; email address: *benforado.jay@epa.gov.*

SUPPLEMENTARY INFORMATION:

Supporting documents that explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: EPA relies on scientific information. Citizen science and crowdsourcing techniques will allow the Agency to collect qualitative and quantitative data that might help inform scientific research, assessments, or environmental screening; validate environmental models or tools; or enhance the quantity and quality of data collected across the country's diverse communities and ecosystems to support the Agency's mission. Information gathered under this generic clearance will be used by the Agency to support the activities listed above and might provide unprecedented avenues for conducting breakthrough research. Collections under this generic ICR will be from participants who actively seek to participate on their own initiative through an open and transparent process (the Agency does not select participants or require participation); the collections will be low-burden for participants; collections will be low-cost for both the participants and the Federal Government; and data will be available to support the scientific research (including assessments, environmental screening, tools, models, etc.) of the Agency, states, tribal or local entities where data collection occurs. EPA may, by virtue of collaborating with non-federal entities, sponsor the collection of this type of information in connection with citizen science projects. When applicable, all such collections will comply with Agency policies and regulations related to human subjects research and will follow the established approval paths through EPA's Human Subjects Research Review Official. Finally, personally identifiable information (PII) will only be collected when necessary and in accordance with applicable federal procedures and policies. If a new collection is not within the parameters of this generic ICR, the Agency will submit a separate information collection request to OMB for approval.

Form numbers: None.

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

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 17,500 (total) people.

Frequency of response: The frequency of responses will range from once to on occasion.

Total estimated burden: 389,083 hours (per year). Burden is defined at 5 CFR 1320.03(b)

Total estimated cost: $13,784,949 (per year), includes $525,000 annualized capital for operation & maintenance costs.

Changes in estimates: The dollar figures have been updated to reflect current wages.

Dated: December 17, 2018.

Jennifer Orme-Zavaleta,

Principal Deputy Assistant Administrator for Science.

[FR Doc. 2018–28121 Filed 12–26–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND– 2004–0006; FRL–9988–07–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Community Right-to-Know Reporting Requirements Under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Community Right-to-Know Reporting Requirements under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (EPA ICR Number 1352.14, OMB Control Number 2050–0072), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December 31, 2018. Public comments were previously requested via the **Federal Register** on July 18, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before January 28, 2019.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2004–0006, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *superfund.docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Wendy Hoffman, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–8794; email address: *hoffman.wendy@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The authority for these requirements is sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 1986 (42 U.S.C. 11011, 11012). EPCRA Section 311 requires owners and operators of facilities subject to OSHA Hazard Communication Standard (HCS) to submit a list of chemicals or MSDSs (for those chemicals that exceed thresholds, specified in 40 CFR part 370) to the State Emergency Response Commission (SERC) or Tribal Emergency Response Commission (TERC), Local Emergency Planning Committee (LEPC) or Tribal Emergency Planning Committee (TEPC) and the local fire department (LFD) with jurisdiction over their facility. This is a one-time requirement unless a facility becomes subject to the regulations or has updated information on the hazardous chemicals that were already submitted by the facility. EPCRA Section 312 requires owners and operators of facilities subject to OSHA HCS to submit an inventory form (for those chemicals that exceed the thresholds, specified in 40 CFR part 370) to the SERC (or TERC), LEPC (or TEPC), and LFD with jurisdiction over their facility. This inventory form, Tier II (Emergency and Hazardous Chemical Inventory Form), is to be submitted on March 1 of each year and must include the inventory of hazardous chemicals present at the facility in the previous calendar year.

On July 13, 2012, EPA published a final rule to add some new data elements to the facility identification and contact information sections of the Tier I and Tier II inventory forms. EPA also revised some existing data elements in the chemical reporting section of the Tier II form to ease reporting for facilities and make the forms more user-friendly for state and local agencies. The data elements that EPA added to the forms were requested by state and local agencies to improve their emergency response plans and response coordination during an emergency. The additional data elements, including general facility identification and contact information for the parent company, owner or operator of the company, facility emergency coordinator etc., are readily available to facilities and usually do not change from year to year. The burden and costs for adding these data elements, including one-time burden for familiarization by respondents and software updates by state agencies, as well as the additional annual burden, are approved under OMB Control Number 2050–0206. The facility-level burden to complete the new and revised data elements of per facility approved under OMB Control Number is being added to this ICR.

Respondents/affected entities: Manufacturers and non-manufacturers required to have available a Material Safety Data Sheet (or Safety Data Sheet) under the OSHA HCS.

Form Numbers: Tier II Emergency and Hazardous Chemical Inventory Form, EPA Form No. 8700–30.

Respondent's obligation to respond: Mandatory (Sections 311 and 312 of EPCRA).

Estimated number of respondents: 465,692 (includes 3,052 SERCs and LEPCs).

Frequency of response: Annual.

Total estimated burden: 6,963,565 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $301,067,822 (per year), includes $5,415,824 in annualized capital and operation & maintenance costs.

Changes in Estimates: There is an increase of 1,048,311 hours compared to the previous ICR approved by OMB. This increase in burden is attributable mainly to the 15.66 percent increase in the estimated number of facilities subject to Tier II reporting, based on a recount of the number of facilities in the E-Plan database and information provided by EPA Regions, and the additional burden for Inventory Reporting Activity from the consolidation of 2050–0206 with this ICR. A small portion of the change in burden is attributable to the correction of math errors in the previous ICR renewal.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–27960 Filed 12–26–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9988–21–Region 6]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption Reissuance—Class I Hazardous Waste Injection; ANGUS Chemical Company

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a final decision on a UIC no migration petition reissuance.

SUMMARY: Notice is hereby given that a reissuance of an exemption to the Land Disposal Restrictions, under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, has been granted to ANGUS for two Class I hazardous waste injection wells located at their Sterlington, Louisiana site. The company has adequately demonstrated to the satisfaction of the EPA by the petition reissuance application and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by ANGUS of the specific restricted hazardous waste (D002) identified in this exemption reissuance request, into Class I hazardous waste injection wells IW–1 and IW–2 until December 31, 2027, unless the EPA moves to terminate this exemption. Additional conditions included in this final decision may be reviewed by contacting the EPA Region 6 Ground Water/UIC Section. A public notice was issued August 28, 2018, and the public comment period closed on October 15, 2018, and no comments were received. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of November 19, 2018.

ADDRESSES: Copies of the petition reissuance and all pertinent information relating thereto are on file at the following location:

Environmental Protection Agency, Region 6, Water Division, Safe Drinking Water Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Philip Dellinger, Chief, Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–8324.

Dated: November 19, 2018.

Charles W. Maguire,

Director, Water Division.

[FR Doc. 2018–28120 Filed 12–26–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9988–50–ORD]

Environmental Laboratory Advisory Board Meeting Dates and Agenda

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Teleconference and Face-to-Face Meetings.

The Environmental Protection Agency's (EPA) Environmental Laboratory Advisory Board (ELAB) holds teleconference meetings the third Wednesday of each month at 1:00 p.m. ET and two face-to-face meetings each calendar year. For 2019, teleconference only meetings will be on February 20, March 20, April 17, May 15, June 19, July 17, September 18, October 16, November 20, and December 18. In addition to these teleconferences, ELAB will be holding their two face-to-face meetings with teleconference line also available on January 28, 2019 at the Hyatt Regency in Milwaukee, WI at 1:30 p.m. CT and on August 5, 2019 at the Hyatt Regency in Jacksonville, FL at 1:30 p.m. ET. Items to be discussed by ELAB over these coming meetings include: (1) Advice to the Agency on cross-cutting issues relating to measurement and monitoring; (2) topics related to improving laboratory performance; (3) approaches to improving communication between environmental measurement communities; and (4) follow-up, as needed, on ELAB topics.

Written comments on the discussion topics listed above are encouraged and should be sent to Dr. Thomas O'Farrell, Designated Federal Official, U.S. EPA (MC 8105R), 1200 Pennsylvania Ave., Washington, DC 20460, or emailed to *ofarrell.thomas@epa.gov.* Members of the public are invited to listen to the teleconference calls, and time permitting, will be allowed to comment on issues discussed during the meeting. Those persons interested in participating in ELAB teleconference meetings should contact Thomas O'Farrell on (202) 564–8451 to obtain teleconference information. For information on access or services for individuals with disabilities, please contact Thomas O'Farrell on the number above, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: December 17, 2018.

Jennifer Orme-Zavaleta,

EPA Science Advisor.

[FR Doc. 2018–28118 Filed 12–26–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Technological Advisory Council which had originally been scheduled for Wednesday, December 5, 2018 has been postponed to a later date.

DATES: December 5, 2018 TAC meeting postponed and will now hold its meeting on Monday, January 14, 2019 from 10:00 a.m. to 4:00 p.m.

ADDRESSES: Commission Meeting Room at the Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Walter Johnston, Chief, Electromagnetic Compatibility Division, 202–418–0807; *Walter.Johnston@FCC.gov.*

SUPPLEMENTARY INFORMATION: The meeting of the Technological Advisory Committee scheduled for Wednesday, December 5, 2018 was cancelled due to closure of all executive departments and agencies of the federal government on this date under an executive order issue by President Trump to mourn the death of the 41st President of the United States George H.W. Bush. This meeting is now rescheduled for Monday, January 14, 2019. At the January 14 meeting, which is the final meeting of the calendar year 2018 work program, the FCC Technological Advisory Council will discuss recommendations to the FCC Chairman on its work program agreed to at its initial meeting on April 12, 2018. Due to the exceptional nature of this rescheduling, the normal 15-day public notice period in the **Federal Register** may be waived. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. Meetings are also broadcast live with open captioning over the internet from the FCC Live web page at *http://www.fcc.gov/live/.* The public may submit written comments before the meeting to: Walter Johnston, the FCC's Designated Federal Officer for Technological Advisory Council by email: *Walter.Johnston@fcc.gov* or U.S. Postal Service Mail (Walter Johnston, Federal Communications Commission, Room 2–A665, 445 12th Street SW, Washington, DC 20554). Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Office of Engineering and Technology at 202–418–2470 (voice), (202) 418–1944 (fax). Such requests should include a detailed description of the accommodation needed. In addition, please include your contact information. Please allow at least five days advance notice; last minute requests will be accepted, but may not be possible to fill.

Federal Communications Commission.

Ronald T. Repasi,

Deputy Chief, Office of Engineering and Technology, Federal Communications Commission.

[FR Doc. 2018–27948 Filed 12–26–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060—0950]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility;

the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before February 25, 2019. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0950.

Title: Bidding Credits for Tribal Lands.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

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

Number of Respondents: 5 respondents; 5 responses.

Estimated Time per Response: 10 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 303(r), and 303(j)(3) and (4) of the Communications Act of 1934, as amended.

Total Annual Burden: 100 hours.

Total Annual Cost: $270,000.

Privacy Impact Assessment: No impact(s).

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

Needs and Uses: The Commission will be submitting this expiring information collection after this comment period to the Office of Management and Budget (OMB) for approval of an extension request.

From June 2000 to August 2004, the Commission adopted various rulemakings in which a winning bidder seeking a bidding credit to serve a qualifying tribal land within a particular market must:

- Indicate on the long-form application (FCC Form 601) that it intends to serve a qualifying tribal land within that market;
- Within 180 days after the filing deadline for the long-form application, amend its long-form application to identify the tribal land it intends to serve and attach a certification from the tribal government stating that:

(a) The tribal government authorizes the winning bidder to site facilities and provide service on its tribal land;

(b) The tribal area to be served by the winning bidder constitutes qualifying tribal land;

(c) The tribal government has not and will not enter into an exclusive contract with the applicant precluding entry by other carriers, and will not unreasonably discriminate among wireless carriers seeking to provide service on the qualifying tribal land; and

(d) Provide certification of the telephone penetration rates demonstrating that the tribal land has a penetration level at or below 85 percent.

The rulemakings also require what each winning bidder must do.

In addition, it also requires that a winning bidder seeking a credit in excess of the amount calculated under the Commission's bidding credit must submit certain information; and a final winning bidder receiving a higher credit must provide within 15 days of the third anniversary of the initial grant of its license, file a certification that the credit amount was spent on infrastructure to provide wireless coverage to qualifying tribal lands, which also includes a final report prepared by an independent auditor verifying that the infrastructure costs are reasonable to comply with our build-out requirements.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2018–28119 Filed 12–26–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0748]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before January 28, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy

Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0748.

Title: Section 64.1504, 64.1509, 64.1510 Pay-Per-Call and Other Information Services.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 5,125 respondents; 5,175 responses.

Estimated Time per Response: 2 to 260 hours.

Frequency of Response: Annual and on occasion reporting and recordkeeping requirements; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority(s) for the information collection is found at 47 U.S.C. 228(c)(7)–(10); Public Law 192–556, 106 stat. 4181 (1992), codified at 47 U.S.C. 228 (The Telephone Disclosure and Dispute Resolution Act of 1992).

Total Annual Burden: 47,750 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 64.1504 of the Commission's rules incorporates the requirements of Sections 228(c)(7)–(10) of the Communications Act restricting the manner in which toll-free numbers may be used to charge telephone subscribers for information services. Common carriers may not charge a calling party for information conveyed on a toll-free number call, unless the calling party: (1) Has executed a written agreement that specifies the material terms and conditions under which the information is provided, or (2) pays for the information by means of a prepaid account, credit, debit, charge, or calling card and the information service provider gives the calling party an introductory message disclosing the cost and other terms and conditions for the service. The disclosure requirements are intended to ensure that consumers know when charges will be levied for calls to toll-free numbers and are able to obtain information necessary to make informed choices about whether to purchase toll-free information services.

47 CFR 64.1509 of the Commission rules incorporates the requirements of 47 U.S.C. (c)(2) and 228 (d)(2)–(3) of the Communications Act. Common carriers that assign telephone numbers to pay-per-call services must disclose to all interested parties, upon request, a list of all assigned pay-per-call numbers. For each assigned number, carriers must also make available: (1) A description of the pay-per-call services; (2) the total cost per minute or other fees associated with the service; and (3) the service provider's name, business address, and telephone number. In addition, carriers handling pay-per-call services must establish a toll-free number that consumers may call to receive information about pay-per-call services. Finally, the Commission requires carriers to provide statements of pay-per-call rights and responsibilities to new telephone subscribers at the time service is established and, although not required by statute, to all subscribers annually.

Under 47 CFR 64.1510 of the Commission's rules, telephone bills containing charges for interstate pay-per-call and other information services must include information detailing consumers' rights and responsibilities with respect to these charges. Specifically, telephone bills carrying pay-per-call charges must include a consumer notification stating that: (1) The charges are for non-communication services; (2) local and long distance telephone services may not be disconnected for failure to pay per-call charges; (3) pay-per-call (900 number) blocking is available upon request; and (4) access to pay-per-call services may be involuntarily blocked for failure to pay per-call charges. In addition, each call billed must show the type of services, the amount of the charge, and the date, time, and duration of the call. Finally, the bill must display a toll-free number which subscribers may call to obtain information about pay-per-call services. Similar billing disclosure requirements apply to charges for information services either billed to subscribers on a collect basis or accessed by subscribers through a toll-free number. The billing disclosure requirements are intended to ensure that telephone subscribers billed for pay-per-call or other information services can understand the charges levied and are informed of their rights and responsibilities with respect to payment of such charges.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–28127 Filed 12–26–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Technological Advisory Council which had originally been scheduled to meet on December 5, 2018 has been rescheduled.

DATES: On Monday, January 14, 2019 in the Commission Meeting Room, from 10:00 a.m. to 4 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Walter Johnston, Chief, Electromagnetic Compatibility Division, 202–418–0807; *Walter.Johnston@FCC.gov.*

SUPPLEMENTARY INFORMATION: The meeting of the Technological Advisory Committee scheduled for Wednesday, December 5, 2018 was cancelled due to closure of all executive departments and agencies of the federal government on this date under an executive order issue by President Trump to mourn the death of the 41st President of the United States George H.W. Bush. This meeting is now rescheduled for Monday, January 14, 2019. At the January 14 meeting, which is the final meeting of the calendar year 2018 work program, the FCC Technological Advisory Council will discuss recommendations to the FCC Chairman on its work program agreed to at its initial meeting on April 12, 2018. Due to the exceptional nature of this rescheduling, the normal 15-day public notice period in the **Federal Register** may be waived. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. Meetings are also broadcast live with open captioning over the internet from the FCC Live web page at *http://www.fcc.gov/live/.* The public may submit written comments before the meeting to: Walter Johnston, the FCC's Designated Federal Officer for Technological Advisory Council by email: *Walter.Johnston@fcc.gov* or U.S. Postal Service Mail (Walter Johnston, Federal Communications Commission, Room 2–A665, 445 12th Street SW, Washington, DC 20554). Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Office of Engineering and Technology at 202–418–2470 (voice), (202) 418–1944 (fax). Such requests should include a detailed description of the accommodation needed. In addition, please include your contact information. Please allow at least five days advance notice; last minute requests will be accepted, but may not be possible to fill.

Federal Communications Commission.

Ronald T. Repasi,

Deputy Chief, Office of Engineering and Technology, Federal Communications Commission.

[FR Doc. 2018–27947 Filed 12–26–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0692]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before January 28, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov*; and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *<http://www.reginfo.gov/public/do/PRAMain>,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0692.

Type of Review: Extension of a currently approved collection.

Title: Sections 76.802 and 76.804, Home Wiring Provisions; Section 76.613, Interference from a Multi-channel Video Programming Distributor (MVPD).

Form Number: N/A.

Respondents: Individuals or households; Business or other for-profit entities.

Number of Respondents and Responses: 22,000 respondents and 253,010.

Estimated Time per Response: 0.083–2 hours.

Frequency of Response: On occasion reporting requirement; Recordkeeping

requirement; Annual reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 1, 4, 224, 251, 303, 601, 623, 624 and 632 of the Communications Act of 1934, as amended.

Total Annual Burden: 36,114 hours.

Total Annual Cost: No cost.

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: In the Cable Television Consumer Protection and Competition Act of 1992, Congress directed the FCC to adopt rules governing the disposition of home wiring owned by a cable operator when a subscriber terminates service. The rules at 76.800 *et seq.,* implement that directive. The intention of the rules is to clarify the status and provide for the disposition of existing cable operator-owned wiring in single family homes and multiple dwelling units upon the termination of a contract for cable service by the home owner or MDU owner. Section 76.613(d) requires that when Multichannel Video Programming Distributors (MVPDs) cause harmful signal interference MVPDs may be required by the District Director and/or Resident Agent to prepare and submit a report regarding the cause(s) of the interference, corrective measures planned or taken, and the efficacy of the remedial measures.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–28126 Filed 12–26–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0384]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before February 25, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0384.

Title: Sections 64.901, 64.904 and 64.905, Auditor's Attestation and Certification.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1 respondent, 1 response.

Estimated Time per Response: 5–250 hours.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority is contained in Sections 1, 4, 201–205, 215, and 218–220 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154, 201–205, 215, and 218–220.

Frequency of Response: On-occasion, biennial, and annual reporting requirements.

Total Annual Burden: 255 hours.

Total Annual Cost: $1,200,000.

Privacy Act Impact Assessment: No impact(s).

Nature of Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR Section 0.459 of the Commission's rules.

Needs and Uses: Section 64.904(a) states that each incumbent LEC required to file a cost allocation manual shall elect to either have an attest engagement performed by an independent auditor every two years, covering the prior two year period, or have a financial audit performed by an independent auditor biennially. In either case, the initial engagement shall be performed in the calendar year after the carrier is first required to file a cost allocation manual. See Section 64.904(a)–(c). Instead of requiring mid-sized carriers to incur the expense of a biennial attestation engagement, they now file a certification with the Commission stating that they are in compliance with 47 CFR 64.901 of the Commission's rules, which sets out the rules regarding allocation of costs. The certification must be signed, under oath, by an officer of the incumbent LEC, and filed with the Commission on an annual basis. Such certification of compliance represents a less costly means of enforcing compliance with our cost allocation rules. See 47 CFR 64.905 of the Commission's rules. The requirements are imposed to ensure that the carriers are properly complying with Commission rules. They serve as an important aid in the Commission's monitoring program. Section 64.905 requires mid-sized LECs to file a certification with the Commission stating that they are complying with section 64.901. The certification must be signed, under oath, by an officer of the mid-sized LEC, and filed with the Commission on an annual basis at the time that the mid-sized incumbent LEC files the annual reports required by section 43.21(e)(2).

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–28125 Filed 12–26–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0386, 3060–0920, 3060–1178 and 3060–1209]

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before January 28, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control No.: 3060–0386.

Title: Special Temporary Authorization (STA) Requests; Notifications; and Informal Filings; Sections 1.5, 73.1615, 73.1635, 73.1740 and 73.3598; CDBS Informal Forms; Section 74.788; Low Power Television, TV Translator and Class A Television Digital Transition Notifications; Section 73.3700(b)(5), Post Auction Licensing; Section 73.3700(f), Service Rule Waiver; FCC Form 337.

Form No.: FCC Form 337.

Type of Review: Extension of a currently information collection.

Respondents: Business or other for-profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents and Responses: 6,609 respondents and 6,609 responses.

Estimated Time per Response: .50–4.0 hours.

Frequency of Response: One-time reporting requirement and on occasion reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 154(i), 157 and 309(j) as amended; Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, § 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 Stat. 156 (2012) (Spectrum Act); and Sections 1, 4(i) and (j), 7, 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, and 337 of the Communications Act of 1934, as amended.

Total Annual Burden: 5,475 hours.

Annual Cost Burden: $2,156,510.

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: The data contained in this collection is used by FCC staff to determine whether to grant and/or accept the requested special temporary authority (or other request for FCC action), waiver request, required notification, informal filing, application filings or other non-form submission. FCC staff will review for compliance with legal and technical regulations, including but not limited to ensuring that impermissible interference will not be caused to other stations.

OMB Control Number: 3060–0920.

Title: Application for Construction Permit for a Low Power FM Broadcast Station; Report and Order in MM Docket No. 99–25 Creation of Low Power Radio Service; §§ 73.807, 73.809, 73.810, 73.827, 73.850, 73.865, 73.870, 73.871, 73.872, 73.877, 73.878, 73.318, 73.1030, 73.1207, 73.1212, 73.1230, 73.1300, 73.1350, 73.1610, 73.1620, 73.1750, 73.1943, 73.3525, 73.3550, 73.3598, 11.61(ii), FCC Form 318.

Form No.: FCC Form 318.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions; State, local or Tribal governments.

Number of Respondents and Responses: 21,019 respondents with multiple responses; 27,737 responses.

Estimated Time per Response: .0025–12 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement;

Monthly reporting requirement; Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in sections 154(i), 303, 308 and 325(a) of the Communications Act of 1934, as amended.

Total Annual Burden: 35,371 hours.

Total Annual Costs: $39,750.

Privacy Act Impact Assessment: This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

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

Needs and Uses: This submission is being made as an extension to an existing information collection pursuant to 44 U.S.C. 3507. This submission covers FCC Form 318 and its accompanying instructions and worksheets. FCC Form 318 is required: (1) To apply for a construction permit for a new Low Power FM (LPFM) station; (2) to make changes in the existing facilities of such a station; (3) to amend a pending FCC Form 318 application; or (4) to propose mandatory time-sharing.

OMB Control No.: 3060–1178.

Title: TV Broadcaster Relocation Fund Reimbursement Form, FCC Form 2100, Schedule 399; Section 73.3700(e), Reimbursement Rules.

Form No.: FCC Form 2100, Schedule 399.

Type of Review: Extension of a currently approved collection.

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

Number of Respondents and Responses: 1,900 respondents and 22,800 responses.

Estimated Time per Response: 1–4 hours.

Frequency of Response: One-time reporting requirement; On occasion reporting requirement; Recordkeeping requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 154(i), 157 and 309(j) as amended; and Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, § 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 Stat. 156 (2012) (Spectrum Act).

Total Annual Burden: 31,100 hours.

Annual Cost Burden: $5,625,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is some need for confidentiality with this collection of information. Invoices, receipts, contracts and other cost documentation submitted along with the form will be kept confidential in order to protect the identification of vendors and the terms of private contracts between parties. Vendor name and Employer Identification Numbers (EIN) or Taxpayer Identification Number (TIN) will not be disclosed to the public.

Needs and Uses: The following is a summary of each rule section which contains information collection requirements for which the Commission seeks continued approval from the Office of Management and Budget (OMB):

(a) Section 73.3700(e)(2) requires all broadcast television station licensees and multichannel video programming distributors (MVPDs) that are eligible to receive payment of relocation costs to file an estimated cost form providing an estimate of their reasonably incurred relocation costs no later than three months following the release of the Channel Reassignment Public Notice. If a broadcast television station licensee or MVPD seeks reimbursement for new equipment, it must provide a justification as to why it is reasonable under the circumstances to purchase new equipment rather than modify its corresponding current equipment in order to change channels or to continue to carry the signal of a broadcast television station that changes channels. Entities that submit their own cost estimates, as opposed to the predetermined cost estimates provided in the estimated cost form, must submit supporting evidence and certify that the estimate is made in good faith. Entities must also update the form if circumstances change significantly.

(b) Section 73.3700(e)(3) requires all broadcast television station licensees and MVPDs that received an initial allocation from the TV Broadcaster Relocation Fund, upon completing construction or other reimbursable changes, or by a specific deadline prior to the end of the Reimbursement Period to be established by the Media Bureau, whichever is earlier, to provide the Commission with information and documentation, including invoices and receipts, regarding their actual expenses incurred as of a date to be determined by the Media Bureau. If a broadcast television station licensee or MVPD has not yet completed construction or other reimbursable changes by the Final Allocation Deadline, it must provide the Commission with information and documentation regarding any remaining eligible expenses that it expects to reasonably incur.

(c) Section 73.3700(e)(4) requires broadcast television station licensees and MVPDs that have received money from the TV Broadcaster Relocation Fund, after completing all construction or reimbursable changes, to submit final expense documentation containing a list of estimated expenses and actual expenses as of a date to be determined by the Media Bureau. Entities that have finished construction and have submitted all actual expense documentation by the Final Allocation Deadline will not be required to file at the final accounting stage.

(d) Section 73.3700(e)(6) requires broadcast television station licensees and MVPDs that receive payment from the TV Broadcaster Relocation Fund to retain all relevant documents pertaining to construction or other reimbursable changes for a period ending not less than 10 years after the date on which it receives final payment from the TV Broadcaster Relocation Fund and to make available all relevant documentation upon request from the Commission or its contractor.

OMB Control Number: 3060–1209.

Title: Section 73.1216, Licensee-Conducted Contests.

Form Number: None. (Complaints alleging violations of the Contest Rule generally are filed on via the Commission's Consumer Complaint Portal entitled General Complaints, Obscenity or Indecency Complaints, Complaints under the Telephone Consumer Protection Act, Slamming Complaints, Requests for Dispute Assistance and Communications Accessibility Complaints which is approved under OMB control number 3060–0874).

Type of Review: Extension of a currently approved collection.

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

Number of Respondents and Responses: 21,736 respondents; 21,736 responses.

Estimated Time per Response: 0.1–9 hours.

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

Total Annual Burden: 128,788 hours.

Total Annual Costs: $6,520,800.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 1, 4 and 303 of the Communications Act of 1934, as amended.

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

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: The Commission adopted the Contest Rule in 1976 to address concerns about the manner in which broadcast stations were conducting contests over the air. The Contest Rule generally requires stations to broadcast material contest terms fully and accurately the first time the audience is told how to participate in a contest, and periodically thereafter. In addition, stations must conduct contests substantially as announced. These information collection requirements are necessary to ensure that broadcast licensees conduct contests with due regard for the public interest.

The Contest Rule permit broadcasters to meet their obligation to disclose contest material terms on an internet website in lieu of making broadcast announcements. Under the amended Contest Rule, broadcasters are required to (i) announce the relevant internet website address on air the first time the audience is told about the contest and periodically thereafter; (ii) disclose the material contest terms fully and accurately on a publicly accessible internet website, establishing a link or tab to such terms through a link or tab on the announced website's home page, and ensure that any material terms disclosed on such a website conform in all substantive respects to those mentioned over the air; (iii) maintain contest material terms online for at least thirty days after the contest has ended; and (v) announce on air that the material terms of a contest have changed (where that is the case) within 24 hours of the change in terms on a website, and periodically thereafter, and to direct consumers to the website to review the changes.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–28128 Filed 12–26–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Tuesday, January 8, 2019 at 10:00 a.m.

PLACE: 1050 First Street NE, Washington, DC.

STATUS: This Meeting Will be Closed to the Public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters concerning participation in civil actions or proceedings or arbitration.

Additional Information:

This meeting will be cancelled if the Commission is not open due to a funding lapse.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Laura E. Sinram,

Deputy Secretary of the Commission.

[FR Doc. 2018–28165 Filed 12–21–18; 11:15 am]

BILLING CODE 6715–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; National and Tribal Evaluation of the 2nd Generation of the Health Profession Opportunity Grants (OMB #0970–0462)

AGENCY: Office of Planning, Research, and Evaluation; Administration for Children and Families; HHS.

ACTION: Request for Public Comment.

SUMMARY: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS) is proposing data collection activities as part of the Health Profession Opportunity Grants (HPOG) to Serve TANF Recipients and Other Low Income Individuals. ACF has developed a multi-pronged research and evaluation approach for the HPOG Program to better understand and assess the activities conducted and their results. Two rounds of HPOG grants have been awarded—the first in 2010 (HPOG 1.0) and the second in 2015 (HPOG 2.0). There are federal evaluations associated with each round of grants. HPOG grants provide funding to government agencies, community-based organizations, post-secondary educational institutions, and tribal-affiliated organizations to provide education and training services to Temporary Assistance for Needy Families (TANF) recipients and other low-income individuals, including tribal members. Under HPOG 2.0, ACF provided grants to five tribal-affiliated organizations and 27 non-tribal entities. OMB previously approved data collection under OMB Control Number 0970–0462 for the HPOG 2.0 National and Tribal Evaluation. The first submission, approved in August 2015, included baseline data collection instruments and the grant performance management system. A second submission, approved in June 2017, included additional data collection for the National Evaluation impact study, the National Evaluation descriptive study, and the Tribal Evaluation. A third submission for National Evaluation impact study data collection was approved in June 2018. The proposed data collection activities described in this **Federal Register** Notice will provide data for the impact, descriptive, and cost benefit studies of the 27 non-tribal grantees participating in the National Evaluation of HPOG 2.0.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The National Evaluation pertains only to the 27 non-tribal grantees that received HPOG 2.0 funding. The design for the National Evaluation features an impact study, a descriptive study, and a cost benefit study. The National Evaluation is using an *experimental design* to measure and analyze key participant outcomes including completion of education and training, receipt of certificates and/or degrees, earnings, and employment in a healthcare career. The impact evaluation will assess the outcomes for study participants that were offered HPOG 2.0 training, financial assistance, and support services, compared to outcomes for a control group that were not offered HPOG 2.0 services.

ACF and the study team estimates that the non-tribal grantees will randomize about 40,000 applicants. As detailed in the burden estimates below, the study team will only survey a subset of those randomized.

The goal of the descriptive study is to describe and assess the implementation, systems change, outcomes, and other important information about the operations of the 27 non-tribal HPOG grantees, which are operating 38 distinct programs. To achieve these goals, it is

necessary to collect data about the non-tribal HPOG programs' design and implementation, HPOG partner and program networks, the composition and intensity of HPOG services received by participants, participant characteristics and HPOG experiences, and participant outputs and outcomes.

The cost benefit study will estimate the costs of providing the HPOG 2.0 programs and compare the costs with gains in participant employment and earnings measured in the impact analysis. To achieve this goal, it is necessary to collect information from the 38 HPOG 2.0 programs on the cost of providing education and training and associated services.

This Notice provides the opportunity to comment on proposed new information collection activities for the HPOG 2.0 National Evaluation's impact, descriptive, and cost-benefit studies.

The information collection activities to be submitted in the request package include:

1. *Screening Interview to identify respondents for the HPOG 2.0 National Evaluation descriptive study second-round telephone interviews.*

2. *HPOG 2.0 National Evaluation descriptive study second-round telephone interview guide* for program management, staff, partners, and stakeholders. These interviews will confirm or update information collected in a first round of calls, approved in June 2017. The second round interviews will update or confirm any new information about the HPOG program context and about program administration, activities and services, partner and stakeholder roles and networks, and respondent perceptions of the program's strengths.

3. *HPOG 2.0 National Evaluation descriptive study program operator interview guide* will collect information for the systems study from HPOG 2.0 programs operators. These interviews will collect information on how local service delivery systems (*i.e.,* the economic and service delivery environment in which specific HPOG 2.0 programs operate) may have influenced HPOG program design and implementation and how HPOG 2.0 implementation may have influenced these local systems.

4. *HPOG 2.0 National Evaluation descriptive study partner interview guide* will collect information for the systems study from HPOG 2.0 partner organizations.

5. *HPOG 2.0 National Evaluation descriptive study participant in-depth interview guide* will collect qualitative information about the experiences of treatment group members participating in HPOG 2.0 program services.

6. *Intermediate Follow-up Survey for the HPOG 2.0 National Evaluation impact study* will collect information from both treatment and control group members at the 27 non-tribal grantees, approximately 36 months after baseline data collection and random assignment.

7. *HPOG 2.0 National Evaluation impact study instrument for a Pilot Study of Phone-Based Skills Assessment* will collect information from HPOG 2.0 study participants in a subset of non-tribal grantee programs. The phone-based questionnaire will pilot an assessment of respondents' literacy and numeracy skills to inform the selection of survey questions for inclusion in the intermediate follow-up survey.

8. *HPOG 2.0 National Evaluation Program Cost Survey* will collect information from program staff at the 27 non-tribal grantees to support the cost-benefit study.

At this time, the Department does not foresee the need for any subsequent requests for clearance for the HPOG 2.0 National and Tribal Evaluations.

Respondents: HPOG impact study participants from the 27 non-tribal HPOG 2.0 grantees (treatment and control group); HPOG program managers; HPOG program staff; and representatives of partner agencies and stakeholders, including support service providers, educational and vocational training partners, Workforce Investment Boards, and TANF agencies.

This information collection request is for 3 years.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Screening interview to identify respondents for the HPOG 2.0 National Evaluation descriptive study second-round telephone interviews	38	13	1	.5	7
HPOG 2.0 National Evaluation descriptive study second round telephone interview protocol	190	63	1	1.25	79
HPOG 2.0 National Evaluation descriptive study program operator interview guide	16	5	1	1.25	6
HPOG 2.0 National Evaluation descriptive study partner interview guide	112	37	1	1	37
HPOG 2.0 National Evaluation descriptive study participant in-depth interview guide	140	47	1	1.33	63
Intermediate follow-up survey for the HPOG 2.0 National Evaluation impact study	4,000	1,333	1	1	1,333
HPOG 2.0 National Evaluation impact study instrument for a Pilot Study of Phone-Based Skills Assessment	300	100	1	.75	75
HPOG 2.0 National Evaluation program cost survey	38	13	1	6	78

Estimated Total Annual Burden Hours: 1,678.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Section 2008 of the Social Security Act as enacted by Section 5507 of the Affordable Care Act.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2018–28018 Filed 12–26–18; 8:45 am]

BILLING CODE 4184–72–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–1989]

Ranjan Bhandari: Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Ranjan Bhandari, MD (Dr. Bhandari), for a period of 3 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Dr. Bhandari was convicted of a misdemeanor under the FD&C Act for causing the introduction or delivery for introduction into interstate commerce of prescription drugs that were misbranded. In addition, FDA has determined that the type of conduct that served as the basis for the conviction undermines the process for the regulation of drugs. Dr. Bhandari was given notice of the proposed debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. Dr. Bhandari failed to request a hearing. Dr. Bhandari's failure to request a hearing constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is effective December 27, 2018.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenny Shade (ELEM–4144), Division of Enforcement, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 301–796–4640.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(2)(B)(i)(I) of the FD&C Act (21 U.S.C. 335a(b)(2)(B)(i)(I)) permits debarment of an individual if FDA finds that the individual has been convicted of a misdemeanor under Federal law for conduct relating to the regulation of drug products under the FD&C Act, and if FDA finds that the type of conduct that served as the basis for the conviction undermines the process for the regulation of drugs.

On December 9, 2013, in the U.S. District Court for the Northern District of Ohio, judgment was entered against Dr. Bhandari after he entered a plea of guilty to one count of misbranding in violation of section 301(a) of the FD&C Act (21 U.S.C. 331(a)), which is a misdemeanor offense under section 303(a)(1) of the FD&C Act (21 U.S.C. 333(a)(1)). FDA's finding that debarment is appropriate is based on the misdemeanor conviction referenced herein. The factual basis for this conviction is as follows: Between June 1, 2006, and March 31, 2008, Dr. Bhandari was a physician (oncologist) in Ohio. During this time, Dr. Bhandari purchased and received oncology drugs, including ZOMETA, IRINOTECAN, ELOXATIN, GEMZAR, HYCAMTIN, ARANESP, and TAXOTERE, from a drug distributor located in Canada. These new drugs originated outside the United States and were not approved by FDA for introduction or delivery for introduction into interstate commerce in the United States. Thus, Dr. Bhandari caused the introduction or delivery for introduction into interstate commerce of prescription drugs that were misbranded for lacking adequate directions for use in their labeling.

As a result of this conviction, on August 29, 2018, FDA sent Dr. Bhandari a notice by certified mail proposing to debar him for 3 years from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding under section 306(b)(2)(B)(i)(I) of the FD&C Act, that Dr. Bhandari was convicted of a misdemeanor under Federal law for conduct relating to the regulation of drug products under the FD&C Act, and that the type of conduct that served as the basis for the conviction undermines the process for the regulation of drugs.

The proposal offered Dr. Bhandari an opportunity to request a hearing, provided him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Dr. Bhandari received the proposal on September 4, 2018. Dr. Bhandari did not request a hearing within the timeframe prescribed by regulation and, therefore, has waived his opportunity for a hearing and has waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Director, Office of Enforcement and Import Operations, Office of Regulatory Affairs, under section 306(b)(2)(B)(i)(I) of the FD&C Act, under authority delegated to the Director (Staff Manual Guide 1410.35), finds that Dr. Bhandari has been convicted of a misdemeanor under Federal law for conduct relating to the regulation of drug products under the FD&C Act, and that the type of conduct that served as the basis for the conviction undermines the process for the regulation of drugs.

As a result of the foregoing findings and in consideration of the factors described in section 306(c)(3) of the FD&C Act, Dr. Bhandari is debarred for a period of 3 years from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**) (see sections 306(c)(1)(B), (c)(3), and 201(dd) of the FD&C Act (21 U.S.C. 335a(c)(1)(B), (c)(3), and 321(dd))). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Dr. Bhandari, in any capacity during his debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6)). If Dr. Bhandari provides services in any capacity to a person with an approved or pending drug product application during his period of debarment he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act).

In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Dr. Bhandari during his period of debarment (section 306(c)(1)(B) of the FD&C Act).

Any application by Dr. Bhandari for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA–2018–N–1989 and sent to the Dockets Management Staff (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions will be placed in the docket and will be viewable at *https://www.regulations.gov* or at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–27951 Filed 12–26–18; 8:45 am]

BILLING CODE 4164–01–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: Environmental Information Documentation (EID), OMB No. 0915–0324—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 should be received no later than February 25, 2019.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 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, the 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 Environmental Information and Documentation, OMB Number: 0915–0324—Revision.

Abstract: HRSA proposes revisions to the Environmental Information and Documentation (EID) checklist, which consists of information that the agency is required to obtain to comply with the National Environmental Policy Act of 1969 (NEPA). NEPA establishes the federal government's national policy for protection of the environment. The EID checklist must be completed and submitted by applicants for HRSA funds that plan to engage in construction or other projects that would potentially impact the environment. HRSA utilizes the checklist to ensure that decision-making processes are consistent with NEPA. The revisions will update some of the language in the checklist. For example, to better align with 45 CFR part 75, HRSA proposes to change the term ''grant'' to ''award'' and ''grantee'' to ''award recipient.''

Need and Proposed Use of the Information: Applicants for HRSA funds must provide information and assurance of compliance with NEPA on the EID checklist. This information is reviewed during the pre-award stage.

Likely Respondents: HRSA applicants applying for federal construction grants and cooperative agreements.

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
NEPA EID Checklist	1,500	1	1,500	1	1,500
Total	1,500		1,500		1,500

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. 2018–28029 Filed 12–26–18; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) Announces the Following Advisory Committee Meeting

Name: National Committee on Vital and Health Statistics (NCVHS), Full Committee Meeting.

Dates and Times: Wednesday, February 6, 2019: 9:00 a.m.–5:30 p.m.; Thursday, February 7, 2019: 8:30 a.m.–3:00 p.m.

Place: U.S. Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW, Rm. 505A, Washington, DC 20201.

Status: Open.

Purpose: At the February 6–7, 2019 meeting, the Committee will deliberate draft recommendations for the HHS Secretary, move forward on activities outlined in the NCVHS 2019 workplan, and hold discussions on several health data policy topics. Anticipated action items during this meeting include: (1) A letter to the Secretary regarding recommendations for revisions to principles for adoption of health terminology and vocabulary standards and new principles for curation and

update of already adopted standards in follow up to the July 2018 meeting on Health Terminologies and Vocabularies; and (2) draft of the NCVHS Thirteenth Report to Congress focused on actions that Congress might take in coordination with the executive branch and the industry to improve administrative simplification and reductions in burden for stakeholders involved in producing and using health data. In addition, the Committee will review proceedings from the December 2018 hearing on the Predictability Roadmap to identify recommendations for approaches to improve predictability and timeliness of the adoption and implementation processes related to updating standards and operating rules adopted under the authority of the Health Insurance Portability and Accountability Act (HIPAA).

The Privacy, Confidentiality and Security Subcommittee will provide an update on plans for a hearing in March 2019 focused on health information privacy and security beyond HIPAA. The Subcommittee on Population Health will discuss several topics including: Follow up with the Institute for Healthcare Improvement/100 Million Healthier Lives on the public-private partnership to achieve implementation of the NCVHS Measurement Framework for Community Health and Well-being; the federal role in supporting state, local and community measurement as it relates to Healthy People 2030; and the essential role of vital registration data and statistics in measuring, monitoring and understanding health at the community level.

The Committee will further refine its 2019 workplan and discuss activities of mutual significance with the Office of the National Coordinator for Health Information and Technology (ONC).

The times and topics are subject to change. Please refer to the posted agenda for any updates.

Contact Person for More Information: Substantive program information may be obtained from Rebecca Hines, MHS, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone (301) 458–4715. Summaries of meetings and a roster of Committee members are available on the home page of the NCVHS website: *www.ncvhs.hhs.gov,* where further information including an agenda and instructions to access the broadcast of the meeting will also be posted.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (770) 488–3210 as soon as possible.

Dated: December 18, 2018.

Sharon Arnold,

Associate Deputy Assistant Secretary for Planning and Evaluation, Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2018–28106 Filed 12–26–18; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Council on Alzheimer's Research, Care, and Services; Meeting

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces the public meeting of the Advisory Council on Alzheimer's Research, Care, and Services (Advisory Council). The Advisory Council on Alzheimer's Research, Care, and Services provides advice on how to prevent or reduce the burden of Alzheimer's disease and related dementias on people with the disease and their caregivers. During the January meeting, the Research Subcommittee will be taking charge of the theme. The topics covered will include: Non-pharmacological interventions, pragmatic trials, and maximizing the quality of life for people living with dementia. The meeting will also include updates on work from the previous meetings and federal workgroup updates.

DATES: The meeting will be held on January 28, 2019 from 9:00 a.m. to 5:00 p.m. EDT.

ADDRESSES: The meeting will be held in Room 800 in the Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201.

Comments: Time is allocated in the afternoon on the agenda to hear public comments. The time for oral comments will be limited to two (2) minutes per individual. In lieu of oral comments, formal written comments may be submitted for the record to Helen Lamont, Ph.D., OASPE, 200 Independence Avenue SW, Room 424E, Washington, DC 20201. Comments may also be sent to *napa@hhs.gov.* Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Helen Lamont, 202–260–6075, *helen.lamont@hhs.gov. Note:* Seating may be limited. Those wishing to attend the meeting must send an email to *napa@hhs.gov* and put ''January 28 Meeting Attendance'' in the subject line by Thursday, January 17, so that their names may be put on a list of expected attendees and forwarded to the security officers at the Department of Health and Human Services. Any interested member of the public who is a non-U.S. citizen should include this information at the time of registration to ensure that the appropriate security procedure to gain entry to the building is carried out. Although the meeting is open to the public, procedures governing security and the entrance to Federal buildings may change without notice. If you wish to make a public comment, you must note that within your email.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). Topics of the Meeting: During the January meeting, the Research Subcommittee will be taking charge of the theme. The topics covered will include: Non-pharmacological interventions, pragmatic trials, and maximizing the quality of life for people living with dementia. The meeting will also include updates on work from the previous meetings and federal workgroup updates.

Procedure and Agenda: This meeting is open to the public. Please allow 30 minutes to go through security and walk to the meeting room. The meeting will also be webcast at *www.hhs.gov/live.*

Authority: 42 U.S.C. 11225; Section 2(e)(3) of the National Alzheimer's Project Act. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: December 17, 2018.

Brenda Destro,

Deputy Assistant Secretary for Planning and Evaluation, Office of Human Services Policy.

[FR Doc. 2018–28058 Filed 12–26–18; 8:45 am]

BILLING CODE 4150–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID SBIR Phase II Clinical Trial Implementation Cooperative Agreement (U44), Clinical Trial Implementation Cooperative Agreement (U01), and Clinical Trial Planning Grant (R34).

Date: January 16, 2019.

Time: 9:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Gregory P. Jarosik, Ph.D., Scientific Review Program, Division of Extramural Activities, Room #3G60, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5080, *gjarosik@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 19, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–28020 Filed 12–26–18; 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, 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: Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Risk and Disease Prevention Study Section.

Date: January 28–29, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Stacey FitzSimmons, MPH, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 451–9956, *fitzsimmonss@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Clinical Translational Imaging Science Study Section.

Date: January 31–February 1, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Xiang-Ning Li, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, 301–435–1744, *lixiang@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Developmental Brain Disorders Study Section.

Date: January 31–February 1, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Pat Manos, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–408–9866, *manospa@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 19, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–28022 Filed 12–26–18; 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 52b(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; Frontotemporal Lobar Degeneration Review.

Date: January 28, 2019.

Time: 11:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, The Gateway Building, Suite 2W–200, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Greg Bissonette, Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–1622, *bissonettegb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 19, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–28011 Filed 12–26–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or 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/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: January 31, 2019.

Closed: 8:00 a.m. to 9:00 a.m.

Agenda: To review and evaluate the NIMH Division of Intramural Research Programs.

Place: National Institutes of Health Neuroscience Center, Conference Rooms C/D/E, 6001 Executive Boulevard, Rockville, MD 20852.

Open: 9:15 a.m. to 12:30 p.m.

Agenda: Presentation of the NIMH Director's Report and discussion of NIMH program.

Place: National Institutes of Health, Neuroscience Center, Conference Rooms C/D/E, 6001 Executive Boulevard, Rockville, MD 20852.

Closed: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Neuroscience Center, Conference Rooms C/D/E, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Jean G. Noronha, Ph.D., Director, Division of Extramural Activities National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–3367, *jnoronha@mail.nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nimh.nih.gov/about/advisory-boards-and-groups/namhc/index.shtml* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: December 19, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–28014 Filed 12–26–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the meeting of the Council of Councils.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Council of Councils.

Open: January 25, 2019.

Time: 8:15 a.m. to 11:45 a.m.

Agenda: Call to Order and Introductions; Announcements and Updates; Office of Research Infrastructure Programs (ORIP) Strategic Plan Mid-Point Update; NIH Update; Sexual and Gender Minority Research (SGMR) Working Group Recommendations.

Place: National Institutes of Health, John E. Porter Neuroscience Research Center, Building 35A, Rooms 620/630, 35 Convent Drive, Bethesda, MD 20892.

Closed: January 25, 2019.

Time: 11:45 a.m. to 12:45 p.m.

Agenda: Review of Grant Applications.

Place: National Institutes of Health, John E. Porter Neuroscience Research Center, Building 35A, Rooms 620/630, 35 Convent Drive, Bethesda, MD 20892.

Open: January 25, 2019.

Time: 12:45 p.m. to 4:00 p.m.

Agenda: ECHO Concept Clearance—IDeA States Pediatric Clinical Trials Network (ISPCTN); Common Fund High-Risk, High-Reward Research Program; Prevention Research Funded in 2012–2017.

Place: National Institutes of Health, John E. Porter Neuroscience Research Center, Building 35A, Rooms 620/630, 35 Convent Drive, Bethesda, MD 20892.

Contact Person: Franziska Grieder, D.V.M., Ph.D., Executive Secretary, Council of Councils, Director, Office of Research Infrastructure Programs, Division of Program Coordination, Planning, and Strategic Initiatives, Office of the Director, NIH, 6701 Democracy Boulevard, Room 948, Bethesda, MD 20892, *GriederF@mail.nih.gov*, 301–435–0744.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Council of Council's home page at *http://dpcpsi.nih.gov/council/* where an agenda will be posted before the meeting date.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: December 18, 2018.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–28010 Filed 12–26–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed 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 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 of Allergy and Infectious Diseases Special Emphasis Panel PHS 2019–1 SBIR Topic 71 and 72: Adjuvant Discovery/Development for Vaccines and for Autoimmune and Allergic Diseases.

Date: January 15–16, 2019.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Ann Marie M. Cruz, Ph.D., Program Management & Operations Branch, DEA/SRP Rm. 3E71, National Institutes of Health, NIAID, 5601 Fishers Lane, Rockville, MD 20852, 301–761–3100, *mailto:ann-marie.cruz@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel PHS 2019–1 SBIR Topic 74: Development of POC Assays to Quantify Anti-Tuberculosis Antibiotics in Blood.

Date: January 17–18, 2019.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Ann Marie M. Cruz, Ph.D., Scientific Review Officer, Program Management & Operations Branch, DEA/SRP Rm. 3E71, National Institutes of Health, NIAID, 5601 Fishers Lane, Rockville, MD 20852, 301–761–3100, *AnnMarie.Cruz@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel PHS 2019–1 SBIR Topic 68: Reagents for Immunologic Analysis of Non-mammalian and Underrepresented Mammalian Models.

Date: January 24–25, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Ann Marie M. Cruz, Ph.D., Program Management & Operations Branch, DEA/SRP Rm. 3E71, National Institutes of Health, NIAID, 5601 Fishers Lane, Rockville, MD 20852, 301–761–3100, *mailto:ann-marie.cruz@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 14, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–28021 Filed 12–26–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Mental Health.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute Of Mental Health, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: January 28–30, 2019.

Time: January 28, 2019, 1:00 p.m. to 5:10 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Porter Neuroscience Research Center, GE 610/620/630, Building 35A Convent Drive, Bethesda, MD 20892.

Time: January 28, 2019, 6:00 p.m. to 7:30 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Potomac/Pac Room, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Time: January 29, 2019, 9:00 a.m. to 6:25 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Porter Neuroscience Research Center, GE 610/620/630, Building, 35A Convent Drive, Bethesda, MD 20892.

Time: January 30, 2019, 9:00 a.m. to 5:45 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Porter Neuroscience Research Center, GE 610/620/630, Building, 35A Convent Drive, Bethesda, MD 20892.

Contact Person: Jennifer E. Mehren, Ph.D., Scientific Advisor, Division of Intramural Research Programs National Institute of Mental Health, NIH 35A Convent Drive, Room GE 412, Bethesda, MD 20892–3747, 301–496–3501, *mehrenj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: December 19, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–28016 Filed 12–26–18; 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 RM18–031 and RM18–032: Acute to Chronic Pain Signatures (A2CPS) for Omics Data Generation and Data Integration Centers.

Date: January 31, 2019.

Time: 8:00 a.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: Susan Gillmor, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 240–762–3076, *susan.gillmor@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel AREA Review: Bioengineering Sciences and Technologies (R15).

Date: January 31–February 1, 2019.

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: David Filpula, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, 301–435–2902, *filpuladr@mail.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group;

Behavioral Medicine, Interventions and Outcomes Study Section.

Date: February 4–5, 2019.

Time: 8:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Lee S. Mann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3224, MSC 7808, Bethesda, MD 20892, 301–435–0677, *mannl@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Sensorimotor Integration Study Section.

Date: February 5–6, 2019.

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: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Cellular, Molecular, and Immunobiology Study Section.

Date: February 5–6, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: George M. Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR–18–018: Stimulating Innovations in Intervention Research for Cancer Prevention and Control.

Date: February 5, 2019.

Time: 10:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Lee S. Mann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, 301–435–0677, *mannl@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 19, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–28015 Filed 12–26–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Review of NIGMS ESI MIRA Grant Applications.

Date: April 5, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Ruth S. Grossman, DDS, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12J, Bethesda, MD 20892, 301–594–3998, *grossmanrs@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: December 19, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–28019 Filed 12–26–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse 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 Drug Abuse Special Emphasis Panel; National Addiction and HIV Data Archive Program (5587).

Date: January 22, 2019.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lyle Furr, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4227, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–9550, (301) 827–5702, *lf33c.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: December 19, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–28013 Filed 12–26–18; 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: Brain Disorders and Clinical Neuroscience Integrated Review Group; Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section.

Date: January 31–February 1, 2019.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Julius Cinque, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, *cinquej@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Kidney, Nutrition, Obesity and Diabetes Study Section.

Date: February 4–5, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW, Washington, DC 20037.

Contact Person: Fungai Chanetsa, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–408–9436, *fungai.chanetsa@nih.hhs.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: December 19, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–28017 Filed 12–26–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002; Internal Agency Docket No. FEMA–B–1871]

Changes in Flood Hazard Determinations

Correction

In notice document 2018–26937 beginning on page 64135 in the issue of Thursday, December 13, 2018 make the following correction:

1. In the table on page 64137, for the ''State and County'' entry of ''North Carolina: Montgomery'', the ''Date of Modification'' in column six ''Nov. 23, 2019'' should read ''Nov. 23, 2018''.

[FR Doc. C1–2018–26937 Filed 12–26–18; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4409–DR; Docket ID FEMA–2018–0001]

Tohono O'odham Nation; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Tohono O'odham Nation (FEMA–4409–DR), dated November 30, 2018, and related determinations.

DATES: The declaration was issued November 30, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 30, 2018, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage to the lands associated with the Tohono O'odham Nation resulting from severe storms and flooding during the period of October 1–3, 2018, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists for the Tohono O'odham Nation.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation for the Tohono O'odham Nation. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mark Wingate, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas have been designated as adversely affected by this major disaster:

Tohono O'odham Nation for Public Assistance.

The Tohono O'odham Nation is eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–28143 Filed 12–26–18; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2018–0076]

Homeland Security Advisory Council

AGENCY: Office of Partnership and Engagement (OPE), The Department of Homeland Security (DHS).

ACTION: Notice of open teleconference federal advisory committee meeting.

SUMMARY: The Homeland Security Advisory Council (''HSAC'' or ''Council'') will meet via teleconference on January 31, 2019. The meeting will be open to the public.

DATES: The Council conference call will take place from 12:00 noon to 2:00 p.m. EDT on Thursday, January 31, 2019. Please note that the meeting may end early if the Council has completed its business.

ADDRESSES: The HSAC meeting will be held via teleconference. Members of the public interested in participating may do so by following the process outlined below (see ''Public Participation'').

Written comments must be submitted and received by Monday, January 28, 2019 to February, 28, 2019. Comments must be identified by Docket No. DHS–2018–0076 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: HSAC@hq.dhs.gov.* Include Docket No. DHS–2018–0076 in the subject line of the message.
- *Fax:* (202) 282–9207. Include Mike Miron and the Docket No. DHS–2018–0076 in the subject line of the message.
- *Mail:* Homeland Security Advisory Council, Attention Mike Miron, Department of Homeland Security, Mailstop 0445, 245 Murray Lane SW, Washington, DC 20528.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and ''DHS–2018–0076,'' the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read comments received by the Council, go to *http://www.regulations.gov,* search ''DHS–2018–0076,'' ''Open Docket Folder'' and provide your comments.

FOR FURTHER INFORMATION CONTACT: Mike Miron at *HSAC@hq.dhs.gov* or at (202) 447–3135.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under Section 10(a) of the Federal Advisory Committee Act (FACA), Public Law 92–463 (5 U.S.C. Appendix), which requires each FACA committee meeting to be open to the public.

The Council provides organizationally independent, strategic, timely, specific, actionable advice, and recommendations to the Secretary of Homeland Security on matters related to homeland security. The Council is comprised of leaders of local law enforcement, first responders, Federal, State, and local government, the private sector, and academia.

The agenda for the meeting is as follows: The Council will receive briefings from senior officials, and receive progress updates from the CBP Families and Children Care Panel, Countering Foreign Influence, Emerging Technologies, and the State, Local, Tribal, and Territorial Cybersecurity Subcommittees.

Participation: Members of the public will be in listen-only mode. The public may register to participate in this Council teleconference via the following procedures. Each individual must provide his or her full legal name and email address no later than 5:00 p.m. EDT on Tuesday, January 29, 2019 to Mike Miron of the Council via email to *HSAC@hq.dhs.gov* or via phone at (202) 447–3135. The conference call details will be provided to interested members of the public after the closing of the public registration period and prior to the start of the meeting.

For information on services for individuals with disabilities, or to request special assistance at the meeting, contact Mike Miron at *HSAC@hq.dhs.gov* or (202) 447–3135 as soon as possible.

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities, or to request special assistance during the teleconference contact Mike Miron at (202) 447–3135.

Mike Miron,

Deputy Executive Director, Homeland Security Advisory Council, DHS.

[FR Doc. 2018–27941 Filed 12–26–18; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Failure to Maintain and Carry Out Effective Security Measures—Notice to Passengers Transiting Ninoy Aquino International Airport, Pasay City, Republic of the Philippines

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Homeland Security (DHS) has determined that Ninoy Aquino International Airport (MNL), Pasay City, Republic of the Philippines, does not maintain and carry out effective security measures that meet standards prescribed by the International Civil Aviation Organization (ICAO). Pursuant to this notice, all U.S. aircraft operators and foreign air carriers (and their agents) providing transportation between the United States and MNL are directed to provide written notice of this determination to any passenger purchasing a ticket for transportation between the United States and MNL in accordance with statutory requirements.

DATES: Applicable December 26, 2018.

FOR FURTHER INFORMATION CONTACT: Michael Bilello, Assistant Administrator, Strategic Communications and Public Affairs, TSA–4, Transportation Security Administration (TSA), 601 South 12th Street, Arlington, VA 20598–6004; telephone: (571) 227–2865; email: *Michael.Bilello@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 49 U.S.C. 44907(a), the Secretary of Homeland Security is required to assess periodically the effectiveness of the security measures maintained by foreign airports that handle air carriers that serve the United States or that may pose a ''high risk of introducing danger to international air travel.'' If the Secretary initially determines that a foreign airport does not maintain and carry out effective security measures, the Secretary is required to ''notify the appropriate authorities of the government of the foreign country of the decision and recommend the steps necessary to bring the security measures in use at the airport up to the standard used by the Secretary [of Homeland Security] in making the assessment.'' 49 U.S.C. 44907(c).

Further, upon finding that an airport does not ''maintain and carry out effective security measures, the Secretary must: (a) Publish the identity of the foreign airport in the **Federal Register**, (b) have the identity of the airport posted and displayed prominently at all U.S. airports at which scheduled air carrier operations are provided regularly, and (c) notify the news media of the identity of the airport. 49 U.S.C. 44907(d)(l)(A). In addition, the statute requires all air carriers providing transportation between the United States and the foreign airport in question to provide written notice of the determination, either on or with the ticket, to all passengers purchasing transportation between the United States and the airport. 49 U.S.C. 44907(d)(l)(B).

Determination Regarding Security Measures

On December 26, 2018, the Secretary of Homeland Security notified the Government of the Philippines that, pursuant to 49 U.S.C. 44907, she had determined that MNL, Pasay City, Republic of the Philippines, does not maintain and carry out effective security measures in accordance with ICAO standards. This determination is based on TSA assessments that have found that security measures used at MNL do not meet the standards established by ICAO.

DHS is issuing this notice pursuant to 49 U.S.C. 44907(d)(1) to inform the public of this determination. Notice of this decision shall be displayed prominently in all U.S. airports with

regularly scheduled air carrier operations. Further, DHS will notify the news media of this determination. In addition, as a result of this determination, 49 U.S.C. 44907(d)(l)(B) requires that each United States and foreign air carrier (and their agents) providing transportation between the United States and MNL will provide written notice of DHS's determination to each passenger buying a ticket for transportation between the United States and MNL.

Dated: December 18, 2018.

Kirstien M. Nielsen,

Secretary of Homeland Security.

[FR Doc. 2018–27983 Filed 12–26–18; 8:45 am]

BILLING CODE 9110–14–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

New Agency Information Collection Activity Under OMB Review: Law Enforcement Officers (LEOs) Flying Armed

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the new Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves gathering information from Federal, State, local, and tribal armed law enforcement officers (LEOs) who require specialized screening at the TSA checkpoint.

DATES: Send your comments by January 28, 2019. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on July 27, 2018, 83 FR 35675.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Consistent with the requirements of Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, and E.O. 13777, Enforcing the Regulatory Reform Agenda, TSA is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

Information Collection Requirement

Title: Law Enforcement Officers (LEOs) Flying Armed.

Type of Request: New collection.

OMB Control Number: 1652–XXXX.

Form(s): TSA Form 413A, Checkpoint Sign-In Log.

Affected Public: Federal, state, local, and tribal armed LEOs.

Abstract: Under 49 CFR 1540.111(b), LEOs may carry a firearm or other weapons while in the performance of law enforcement duties at the airport. In addition, LEOs may fly armed if they meet the requirements of 49 CFR 1544.219. TSA has established a specialized screening process for Federal, State, local, and tribal LEOs when they are flying armed. To document completion of TSA's specialized screening process, LEOs who traverse a TSA checkpoint must complete TSA Form 413A, Checkpoint Sign-in Log. This process confirms, documents, and memorializes that LEOs have met the requirements of 49 CFR 1544.219, presented themselves at the airport for specialized screening with authenticated credentials, and are flying armed to conduct or in furtherance of official law enforcement duties.

Number of Respondents: 68,000.

Estimated Annual Burden Hours: An estimated 1,133 hours annually.

Dated: December 18, 2018.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2018–27942 Filed 12–26–18; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6134–N–01]

Section 8 Housing Assistance Payments Program-Annual Adjustment Factors, Fiscal Year 2019

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Fiscal Year (FY) 2019 Annual Adjustment Factors (AAFs).

SUMMARY: The United States Housing Act of 1937 requires that certain assistance contracts signed by owners participating in the Department's Section 8 housing assistance payment programs provide annual adjustments to monthly rentals for units covered by the contracts. This notice announces FY 2019 AAFs for adjustment of contract rents on the anniversary of those assistance contracts. The factors are based on a formula using residential rent and utility cost changes from the most recent annual Bureau of Labor Statistics Consumer Price Index (CPI) survey. Beginning with the FY 2014 AAFs and continuing with these FY 2019 AAFs, the Puerto Rico CPI is used in place of the South Region CPI for all areas in Puerto Rico. These factors are applied at the anniversary of Housing Assistance Payment (HAP) contracts for which rents are to be adjusted using the AAF for those calendar months commencing after the effective date of this notice. AAFs are distinct from, and do not apply to the same properties as, Operating Cost Adjustment Factors (OCAFs). OCAFs are annual factors used to adjust rents for project-based rental assistance contracts issued under

Section 8 of the United States Housing Act of 1937 and renewed under section 515 or section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA). A separate **Federal Register** Notice, to be published following the finalization of the FY 2019 federal appropriations, will be used in the calculation of the calendar year (CY) 2019 Housing Choice Voucher (HCV) renewal funding for public housing agencies (PHAs).

DATES: December 27, 2018.

FOR FURTHER INFORMATION CONTACT: Contact Becky Primeaux, Director, Management and Operations Division, Office of Housing Voucher Programs, Office of Public and Indian Housing, 202–708–1380, for questions relating to the Project-Based Certificate and Moderate Rehabilitation programs (not the Single Room Occupancy program); Norman A. Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, 202–402–5015, for questions regarding the Single Room Occupancy (SRO) Moderate Rehabilitation program; Katherine Nzive, Director, OAMPO Program Administration Office, Office of Multifamily Housing, 202–402–3440, for questions relating to all other Section 8 programs; and Marie Lihn, Economist, Economic and Market Analysis Division, Office of Policy Development and Research, 202–402–5866, for technical information regarding the development of the schedules for specific areas or the methods used for calculating the AAFs. The mailing address for these individuals is: Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410. Hearing- or speech-impaired persons may contact the Federal Information Relay Service at 800–877–8339 (TTY). (Other than the ''800'' TTY number, the above-listed telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION: Tables showing AAFs will be available electronically from the HUD data information page at *http://www.huduser.gov/portal/datasets/aaf.html.*

I. Applying AAFs to Various Section 8 Programs

AAFs established by this Notice are used to adjust contract rents for units assisted in certain Section 8 housing assistance payment programs during the initial (*i.e.,* pre-renewal) term of the HAP contract. There are two categories of Section 8 programs that use the AAFs:

Category 1: The Section 8 New Construction, Substantial Rehabilitation, and Moderate Rehabilitation programs;

Category 2: The Section 8 Loan Management (LM) and Property Disposition (PD) programs.

Each Section 8 program category uses the AAFs differently. The specific application of the AAFs is determined by the law, the HAP contract, and appropriate program regulations or requirements.

AAFs are not used in the following cases:

Renewal Rents. AAFs are not used to determine renewal rents after expiration of the original Section 8 HAP contract (either for projects where the Section 8 HAP contract is renewed under a restructuring plan adopted under 24 CFR part 401; or renewed without restructuring under 24 CFR part 402). In general, renewal rents are established in accordance with the statutory provision in the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), as amended, under which the HAP is renewed. After renewal, annual rent adjustments will be provided in accordance with MAHRA.

Budget-based Rents. AAFs are not used for budget-based rent adjustments. For projects receiving Section 8 subsidies under the LM program (24 CFR part 886, subpart A) and for projects receiving Section 8 subsidies under the PD program (24 CFR part 886, subpart C), contract rents are adjusted, at HUD's option, either by applying the AAFs or by budget-based adjustments in accordance with 24 CFR 886.112(b) and 24 CFR 886.312(b). Budget-based adjustments are used for most Section 8/202 projects.

Housing Choice Voucher Program. AAFs are not used to adjust rents in the Tenant-Based or the Project-Based Voucher programs.

II. Adjustment Procedures

This section of the notice provides a broad description of procedures for adjusting the contract rent. Technical details and requirements are described in HUD notices H 2002—10 (Section 8 New Construction and Substantial Rehabilitation, Loan Management, and Property Disposition) and PIH 97—57 (Moderate Rehabilitation and Project-Based Certificates). Because of statutory and structural distinctions among the various Section 8 programs, there are separate rent adjustment procedures for the two program categories:

Category 1: Section 8 New Construction, Substantial Rehabilitation, and Moderate Rehabilitation Programs

In the Section 8 New Construction and Substantial Rehabilitation programs, the published AAF factor is applied to the pre-adjustment contract rent. In the Section 8 Moderate Rehabilitation program (both the regular program and the single room occupancy program) the published AAF is applied to the pre-adjustment base rent.

For Category 1 programs, the Table 1 AAF factor is applied before determining comparability (rent reasonableness). Comparability applies if the pre-adjustment gross rent (pre-adjustment contract rent plus any allowance for tenant-paid utilities) is above the published Fair Market Rent (FMR).

If the comparable rent level (plus any initial difference) is lower than the contract rent as adjusted by application of the Table 1 AAF, the comparable rent level (plus any initial difference) will be the new contract rent. However, the pre-adjustment contract rent will not be decreased by application of comparability.

In all other cases (*i.e.,* unless the contract rent is reduced by comparability):

- Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 2: Section 8 Loan Management Program (24 CFR part 886, subpart A) and Property Disposition Program (24 CFR part 886, subpart C)

Category 2 programs are not currently subject to comparability. Comparability will again apply if HUD establishes regulations for conducting comparability studies under 42 U.S.C. 1437f(c)(2)(C).

The applicable AAF is determined as follows:

- Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

III. When to Use Reduced AAFs (From AAF Table 2)

In accordance with Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)), the AAF is reduced by 0.01:

In Section 8 programs, for a unit occupied by the same family at the time

of the last annual rent adjustment (and where the rent is not reduced by application of comparability (rent reasonableness)).

The law provides that:

> Except for assistance under the certificate program, for any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0. In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type and age in the market area. 42 U.S.C. 1437f(c)(2)(A).

Legislative history for this statutory provision states that ''the rationale [for lower AAFs for non-turnover units is] that operating costs are less if tenant turnover is less . . .'' (see Department of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations for 1995, Hearings Before a Subcommittee of the Committee on Appropriations 103d Cong., 2d Sess. 591 (1994)). The Congressional Record also states the following:

> Because the cost to owners of turnover-related vacancies, maintenance, and marketing are lower for long-term stable tenants, these tenants are typically charged less than recent movers in the unassisted market. Since HUD pays the full amount of any rent increases for assisted tenants in section 8 projects and under the Certificate program, HUD should expect to benefit from this 'tenure discount.' Turnover is lower in assisted properties than in the unassisted market, so the effect of the current inconsistency with market-based rent increases is exacerbated. (140 Cong. Rec. 8659, 8693 (1994)).

To implement the law, HUD publishes two separate AAF Tables, Table 1 and Table 2. The difference between Table 1 and Table 2 is that each AAF in Table 2 is 0.01 less than the corresponding AAF in Table 1. Where an AAF in Table 1 would otherwise be less than 1.0, it is set at 1.0, as required by statute; the corresponding AAF in Table 2 will also be set at 1.0, as required by statute.

IV. How to Find the AAF

AAF Table 1 and Table 2 are posted on the HUD User website at *http://www.huduser.gov/portal/datasets/aaf.html.* There are two columns in each AAF table. The first column is used to adjust contract rent for rental units where the highest cost utility is included in the contract rent, *i.e.,* where the owner pays for the highest cost utility. The second column is used where the highest cost utility is not included in the contract rent, *i.e.,* where the tenant pays for the highest cost utility.

The applicable AAF is selected as follows:

- Determine whether Table 1 or Table 2 is applicable. In Table 1 or Table 2, locate the AAF for the geographic area where the contract unit is located.
- Determine whether the highest cost utility is or is not included in contract rent for the contract unit.
- If highest cost utility is included, select the AAF from the column for ''Highest Cost Utility Included.'' If highest cost utility is not included, select the AAF from the column for ''Highest Cost Utility Excluded.''

V. Methodology

AAFs are rent inflation factors. Two types of rent inflation factors are calculated for AAFs: Gross rent factors and shelter rent factors. The gross rent factor accounts for inflation in the cost of both the rent of the residence and the utilities used by the unit; the shelter rent factor accounts for the inflation in the rent of the residence but does not reflect any change in the cost of utilities. The gross rent inflation factor is designated as ''Highest Cost Utility Included'' and the shelter rent inflation factor is designated as ''Highest Cost Utility Excluded.''

AAFs are calculated using CPI data on ''rent of primary residence'' and ''fuels and utilities.'' [1] The CPI inflation index for rent of primary residence measures the inflation of all surveyed units regardless of whether utilities are included in the rent of the unit or not. In other words, it measures the inflation of the ''contract rent'' which includes units with all utilities included in the rent, units with some utilities included in the rent, and units with no utilities included in the rent. In producing a gross rent inflation factor and a shelter rent inflation factor, HUD decomposes the contract rent CPI inflation factor into parts to represent the gross rent change and the shelter rent change. This is done by applying data from the Consumer Expenditure Survey (CEX) on the percentage of renters who pay for heat (a proxy for the percentage of renters who pay shelter rent) and also American Community Survey (ACS) data on the ratio of utilities to rents. For Puerto Rico, the Puerto Rico Community Survey (PRCS) is used to determine the ratio of utilities to rents, resulting in different AAFs for some metropolitan areas in Puerto Rico.[2]

Survey Data Used to Produce AAFs

The rent and fuel and utilities inflation factors for large metropolitan areas and Census regions are based on changes in the rent of primary residence and fuels and utilities CPI indices from 2016 to 2017. The CEX data used to decompose the contract rent inflation factor into gross rent and shelter rent inflation factors come from a special tabulation of 2017 CEX survey data produced for HUD. The utility-to-rent ratio used to produce AAFs comes from 2016 ACS median rent and utility costs.

Geographic Areas

AAFs are produced for all Class A CPI cities (CPI cities with a population of 1.5 million or more) and for the four Census Regions. They are applied to Core-Based Statistical Areas (CBSAs) where more than 75 percent of the population of the CBSA is covered by the CPI city-survey. The AAF that is based on that CPI survey is applied to the whole CBSA and to any HUD-defined metropolitan area, called the ''HUD Metro FMR Area'' (HMFA), within that CBSA. If the CBSA is not covered by a CPI city-survey, the CBSA uses the relevant regional CPI factor. All non-metropolitan counties use regional CPI factors, except for those that are in CPI cities, but have been dropped from metropolitan area by OMB definitions (Lenawee County, MI; Ashtabula County, OH; Henderson County, TX; King George County, VA; Island County, WA). For areas assigned the Census Region CPI factor, both metropolitan and non-metropolitan areas receive the same factor.

Each metropolitan area that uses a local CPI update factor is listed alphabetically in the tables and each HMFA is listed alphabetically within its respective CBSA. Each AAF applies to a specific geographic area and to units of all bedroom sizes. AAFs are provided:

- For separate metropolitan areas, including HMFAs and counties that are currently designated as non-metropolitan, but are part of the metropolitan area defined in the local CPI survey.
- For the four Census Regions (to be used for those metropolitan and non-

[1] CPI indexes CUUSA103SEHA and CUSR0000SAH2 respectively.

[2] The formulas used to produce these factors can be found in the Annual Adjustment Factors overview and in the FMR documentation at *www.HUDUSER.gov.*

metropolitan areas that are not covered by a CPI city-survey).

AAFs use the same OMB metropolitan area definitions, as revised by HUD, that are used for the FY 2019 FMRs.

Area Definitions

To make certain that they are using the correct AAFs, users should refer to the Area Definitions Table section at *http://www.huduser.gov/portal/datasets/aaf.html.* The Area Definitions Table lists CPI areas in alphabetical order by state, and the associated Census region is shown next to each state name. Areas whose AAFs are determined by local CPI surveys are listed first. All metropolitan areas with local CPI surveys have separate AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. In the six New England states, the listings are for counties or parts of counties as defined by towns or cities. The remaining counties use the CPI for the Census Region and are not separately listed in the Area Definitions Table at *http://www.huduser.gov/portal/datasets/aaf.html.*

Puerto Rico uses its own AAFs calculated from the Puerto Rico CPI as adjusted by the PRCS, the Virgin Islands uses the South Region AAFs and the Pacific Islands uses the West Region AAFs. All areas in Hawaii use the AAFs listed next to ''Hawaii'' in the Tables which are based on the CPI survey for the Honolulu metropolitan area.

Dated: December 20, 2018.

Todd M. Richardson,

General Deputy Assistant Secretary for Office of Policy Development and Research.

[FR Doc. 2018–28097 Filed 12–26–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7006–N–15]

60-Day Notice of Proposed Information Collection: Comment Request: Agency Information Collection Activities: Public Housing Annual Contributions Contract for Capital and Operating Grant Funds

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information and collection described below. The public housing program provides Operating Funds and Capital Funds to low rent projects owned and operated by public housing agencies (PHAs), subject to the terms and conditions contained in the Annual Contributions Contract (ACC) grant agreement. These program requirements govern how projects are funded and operated by PHAs. HUD has made changes and updates to its grant agreement, the Annual Contributions Contract (ACC) (the ''New ACC''), based on current applicable statutes and regulations. This notice is to provide PHAs with notice of the changes and the opportunity to comment on such changes. 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:* February 25, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. All comments must refer to the proposal by name and OMB Control Number. There are two methods for submitting public comments.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may also submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimiled Comments. Facsimiled (faxed) comments are not acceptable.

Public Inspection of Public Comments. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.* In addition, all properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, Room 3178, Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department is re-submitting the proposed information collection to OMB for review, under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Public Housing Annual Contributions Contract for Capital and Operating Grant Funds.[1]

OMB Approval Number: 2577–0075.

Type of Request: Revision of a currently approved collection.

Form Number: HUD–52840A; HUD–53012A; HUD–53012 B.

Description of the need for the information and proposed use: The ACC establishes the basic terms and conditions for the PHA's public housing programs and requires the PHA to manage and operate its public housing properties in accordance with the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) and all applicable HUD requirements. The ACC governs the award and use of two distinct public housing grant funds. The Capital Fund Program (CFP) provides financial assistance in the form of grants

[1] The previous title was ''Public Housing Annual Contribution Contract and Inventory Removal Application''.

to PHAs to carry out eligible capital and management activities authorized by Section 9(d)(1) of the 1937 Act. The Operating Fund Program provides financial assistance in the form of grants to PHAs for the operation and maintenance of public housing authorized by Section 9(e)(1) of the 1937 Act. Section 6 of the 1937 Act, 24 CFR 5.403, 24 CFR 905.100 (Capital Fund), and 24 CFR 990.115 (Operating Fund) authorizes the Secretary of HUD to make annual contributions for federal financial assistance in the form of grants to PHAs to achieve and maintain the low income character of public housing projects. The Secretary is required to embody the provisions for such annual grant contributions in a grant agreement (*i.e.,* the ACC). Additional applicable regulations include: 24 CFR part 907 for Substantial Default by a PHA; 2 CFR part 200 for Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and 24 CFR part 5 for General HUD Program Requirements.

The amendment of this notice of proposed information collection provides PHAs with sufficient notice of the changes to the New ACC, which was revised in order to align the agreement with existing statutes and regulations. It combines Part A and B of the 1995 ACC and the Mixed Finance Amendment to the 1995 ACC to streamline the grant agreement. The New ACC also removes Section 10, Operating Budget and Section 11, Pooling of Funds formerly in the 1995 version of ACC, because these provisions are no longer included in 24 CFR part 990 and thus no longer apply. Section 22, Performance of Conditions Precedent to the Validity, which discussed implementation of the 1995 version of the ACC, is also deleted. Additionally, the New ACC includes additional definitions that were not in the 1995 ACC but are already in existing regulations required by the 1937 Act and makes changes to definitions of ''Operating Costs'' and ''Operating Receipts'' to be consistent with 24 CFR part 905 subpart F, 24 CFR 990.110 and 990.115, 2 CFR 200.80 and 2 CFR 200.307. Finally, the New ACC incorporates a definition for ''Annual Contributions Contract'' consistent with the terms and conditions under which the public housing grant program has been administered by HUD, and consistent with existing regulations at 2 CFR 200.51, 24 CFR 905.100(b), and 905.300(b), 905.306, 905.322, which refer to the programs as grants. This definition applies to both the Capital Fund and Operating Fund.

Respondents: Public housing agencies.

ACC provision	Total responses	Total hours	Cost per hour	Total cost ($)
1. Execute new ACC via HUD form 53012–A and B	42	205	$24.34	$4,990
2. Terminate or amend ACC	78	390	24.34	9,493
3. Request HUD approval of non-dwelling leases or agreements	114	735	24.34	17,890
4. HUD approval for easement uses	48	3524	24.34	8,567
5. Submit General Depository Agreement (GDA) via form HUD 51999	265	651	24.34	15,845
6. Request to terminate GDA	107	202	24.34	4,917
7. ACC revisions to change year end dates	23	257	24.34	6,255
8. ACC to consolidate PHAS	18	217	24.34	5,282
9. ACC revision to transfer programs	43	391	24.34	9,517
10. Request review of Conflict of interest	102	951	24.34	23,147
11. Request pooling of insurance	5	97	24.34	2,361
12. Request for new Declaration of Trust (DOT) via form HUD 52190–A and B	142	1249	24.34	30,400
13. Request DOT amendment or termination	221	2031	24.34	49,435
14. Amend ACC for Capital Fund Finance via form HUD 52840–A	73	788	24.34	19,180
15. Amend ACC for Mixed Finance Supplementary Legal Document	94	1981	50	99,050
16. Amend ACC for Capital Grant	2820	11,070	24.34	269,443
17. Amend ACC for Emergency Capital Fund Grant	38	100	24.34	2,434
18. Amend ACC Capital Fund for Safety and Security	75	96	24.34	2,337
19. Amend ACC to Recapture Capital Fund Grant	123	643	24.34	15,650
20. Amend ACC for Energy Performance Contract	38	192	24.34	4,673
21. Amend ACC for Community Facilities Grants	13	28	24.34	682
22. Demo Disposition Approvals and Removing Units form ACC–HUD Form 52860	162	1746	24.34	42,498
23. Chicago Special Applications Center Approval for Inventory Removal Applications	851	6,010	33.06	225,072
24. Supplementary Document: Unique Legal Document used by HQ Staff Mixed-Finance Amendment to the ACC	60	1440	50	72,000
Totals	6,765	34,944	.....	927,423

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.

Affected Public Who Will Be Asked or Required to Respond: The primary respondents are Public Housing Agencies.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Date: December 19, 2018.

Dominique Blom,

General Deputy Assistant Secretary for Public and Indian Housing.

Annual Contributions Contract HUD–53012 (ACC)

U.S. Department of Housing and Urban Development Office of Public and Indian Housing

OMB Approval No. 2577–0075 (exp. 01/31/2021)

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2577–0075. There is no personal information contained in this application. Information on activities and expenditures of grant funds is public information and is generally available for disclosure. Recipients are responsible for ensuring confidentiality when disclosure is not required. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

1. Definitions

Act—The United Stated Housing Act of 1937 (42 U.S.C. 1437, *et al.*), as amended.

Annual Contributions Contract (ACC)—This agreement between HUD and the HA which establishes the basic terms and conditions for the HA's public housing grant program.

Consolidated Annual Contributions Contract (consolidated ACC or CACC)—HUD's annual Grant Funding Exhibits to the ACC, which together with the ACC, constitute the annual grant agreement for the HA's public housing program.

Cooperation Agreement—Agreement(s) prescribed by HUD for execution by the HA and the local governing body relative to the cooperation of the local governing body in the development and operation of the Project(s) and the obligation of the HA for payments in lieu of taxes (PILOT).

Fiscal Year—The HA fiscal year.

Grant Funding Exhibit—Exhibits to the ACC, in a form prescribed by HUD, reflecting HUD's estimate of Operating Fund and Capital Fund grant funding or other public housing grant funding for which the HA is eligible.

Housing Agency (HA)—The entity that meets the statutory definition set forth under the Act, and which is subject to the CACC.

HUD—The U.S. Department of Housing and Urban Development.

Mixed-Finance—Development or modernization of public housing units where the public housing units are owned in whole or in party by an entity other than a PHA (*i.e.,* Owner-Entity).

Operating Costs (Operating Expenditures or Operating Expenses)—Costs incurred by the HA for the necessary administration, operation and maintenance of a public housing Project; and which may be charged against Operating Receipts in accordance with the CACC and HUD requirements. Except as allowed by HUD, such costs do not include: any costs, expenses, expenditures, or charges incurred as part of the development or modernization of a public housing Project.

Operating Receipts—All rents, revenues, income, and receipts accruing from, out of, generated by, or in connection with the ownership or operation of public housing, including grant funds received pursuant to HUD Requirements and is not limited to income from fees for services performed, the use or rental of real or personal property acquired with grant funds, the sale of commodities or items fabricated under the grant, license fees and royalties on patents and copyrights, and principal and interest on loans made with grant funds. Operating Receipts shall not include any funds received for the development or modernization of a Project; annual contributions pledged for payment of bonds or notes; proceeds from the disposition of real property; or rebates, credits, discounts and interest.

Interest on the Operating Receipts (including the investment of Operating Receipts) constitutes Operating Receipts.

Operating Reserve—The cumulative amount by which Operating Receipts have exceeded Operating Costs.

Owner Entity—An entity, including the HA, that owns public housing units in a mixed finance project.

Project (Public Housing Project)—Low-income housing, developed, acquired, or assisted by HUD under the Act, and the improvement of such housing, and necessary appurtenances thereto. The term includes all real and personal property, tangible and intangible, that is acquired or held by a HA in connection with a Project covered under the CACC. The term does not include housing under section 8 of the Act.

Program (Public Housing program)—The HA's public housing grant program.

Program Receipts—Program Receipts shall mean Operating Receipts and any other funds received by the HA for the development, modernization, sale or transfer of Public Housing Projects. Subject to HUD Requirements, as defined in Paragraph 3, interest on the Program Receipts (including the investment of program receipts) constitutes Program Receipts. Program Receipts shall only be used to pay for public housing program expenditures, unless otherwise allowed by HUD Requirements.

Public Housing—The term shall include Public Housing Projects, as well as all other real and personal property, tangible and intangible, which is acquired, or held by, the HA in connection with its public housing program covered under a CACC.

Replacement Reserve Account—An account established by the HA, as approved by HUD, that may be used to fund any of the eligible capital activities outlined in the HA's Capital Fund 5 Year Action Plan as approved by HUD.

2. Mission of HUD and HA

a. HUD shall administer its Public Housing Program for the provision of decent, safe, and sanitary housing to eligible families in accordance with the CACC and all applicable HUD Requirements. HUD shall provide maximum responsibility and flexibility to HAs in making administrative decisions within all applicable statutes, executive orders, regulations and this ACC. HUD shall provide annual contributions, in the form of grants, to the HA in accordance with all applicable statutes, executive orders, regulations, and the CACC.

b. The HA shall use Program Receipts to provide decent, safe, and sanitary housing for eligible families in compliance with the Act and all HUD requirements. HA shall at all times develop and operate Public Housing Projects in a manner that promotes serviceability, economy, efficiency, and stability of the Projects, and the economic and social well-being of the tenants.

c. Except as otherwise provide by law, the HA shall develop, modernize and operate all Projects covered by the CACC, in accordance with HUD Requirements. The HA shall also ensure compliance with such requirements by any Owner Entity, contractor or subcontractor engaged in the development or operation of a Project covered under the CACC.

3. HUD Requirements

Except as otherwise provided by law, the HA must comply with the following ''HUD Requirements,'' including all

such requirements as amended from time to time:

a. The Act;

b. Regulations at Title 2 of the Code of Federal Regulations, and regulations issued by HUD at Title 24 of the Code of Federal Regulations);

c. Other Federal statutes (including appropriations acts), executive orders and regulatory requirements; and

d. HUD-issued notices, and HUD-required forms, or agreements.

4. Cooperation Agreement(s)

During the development and operation of the Project(s), the HA shall perform and comply with all applicable provisions of a Cooperation Agreement in the form prescribed by HUD, including the making of PILOT provided therein (or such lesser amount as may be prescribed by State law or agreed to by the local governing body); and shall at all times preserve and enforce its rights thereunder, and shall not terminate or amend the Cooperation Agreement(s) without the prior written approval of HUD.

5. Declaration of Restrictive Covenants

a. Record of Obligation. Upon the acquisition, development, or assistance of any real property with funds covered by the CACC, the HA shall execute and file for record against the Project and/or the owner's leasehold interest an instrument (which shall be in the form of a declaration of trust, declaration of restrictive covenant, or such other document as approved or prescribed by HUD), confirming and further evidencing, but not limited to, (1) the obligation of the HA not to convey or encumber the Project except as expressly authorized in the CACC, (2) the obligation of the HA to develop, maintain and operate such Project in compliance with the CACC and HUD Requirements.

1. Such instrument and all amendments shall be duly recorded or filed for record to give public notice of their contents and to protect the rights and interests of HUD.

2. The HA shall promptly furnish HUD with appropriate evidence of such recording or filing. From time to time, as additional real property is acquired, assisted, or disposed of (or removed from the public housing program) by the HA in connection with its Public Housing Program, the HA shall promptly amend such instrument to incorporate all such real property and shall record the instrument, as amended. The declaration shall provide further that it may not be modified, amended or released without the prior written approval of HUD. The HA shall promptly furnish HUD with appropriate evidence of such recording or filing.

b. Mixed-Financed Projects. The HA shall require the Owner Entity to execute and file for record against the Project, prior to the recordation of any other encumbrance, a declaration in the form approved by HUD.

1. The declaration shall confirm and evidence the Owner Entity's obligation during the term of CACC covering the Project units and throughout such further period when such approval may be required by law as then in effect, to develop, maintain and operate the Project units in compliance with the HUD Requirements. Such declaration and all amendments shall be duly recorded or filed for record to give public notice of their contents and to protect the rights and interests of HUD.

2. The declaration shall provide further that it may not be modified, amended or released without the prior written approval of HUD. The HA shall promptly furnish HUD with appropriate evidence of such recording or filing.

6. Disposition and Encumbrances

a. Covenant Against Disposition and Encumbrances. The HA shall not demolish or dispose of any Project, or portion thereof, other than in accordance with the terms of the CACC and applicable HUD Requirements. The HA shall not encumber any Project, or portion thereof, without the prior written approval of HUD. The HA shall not pledge any assets of any Project covered by the CACC as collateral for any loan or other obligation, without the prior written approval of HUD. However, prior written approval by HUD is not required for the HA to enter into dwelling leases with eligible families for dwelling units in the Projects covered by the CACC, and such other normal uses associated with the operation of the Project(s).

b. Mixed-Finance Projects. Without the prior written approval of HUD, no transfer, conveyance, or assignment shall be made: (i) Of any interest of a managing member, general partner, or controlling shareholder (any such interest being referred to as a ''Controlling Interest'') of the Owner Entity; (ii) of a Controlling Interest in any entity which has a Controlling Interest in the Owner Entity; or, (iii) prior to the payment in full of all equity contributions described in the approved evidentiary documents, any other interest in the Owner Entity, or in any partner or member thereof.

1. Notwithstanding the foregoing, HUD consent is not required where a business organization that has a limited interest (non-controlling and non-managing) in the Owner Entity transfers a non-controlling and non-managing interest in the business organization, provided that: (i) The Owner Entity provides HUD with written notice of such transfer; (ii) the transfer of such interest does not result in an entity obtaining a Controlling Interest or managing interest following the transfer; and, (iii) the Owner Entity certifies to HUD that the new owner of the limited interest remains obligated to fund its equity contribution in accordance with the terms of the HUD-approved organizational documents of the Owner Entity.

2. HUD will not unreasonably withhold, delay, or condition a request by the Owner Entity for HUD's consent to an internal reorganization of the corporate or partnership structure of the Owner Entity or any of the partners, members or stockholders of the Owner Entity.

3. Notwithstanding the foregoing, the prior approval of HUD and the HA will not be required for the exercise by any investor partner of the Owner Entity (''Investor'') of its right pursuant to the Amended and Restated Limited Partnership Agreement of the Owner Entity (''Partnership Agreement'') to remove the general partner of the Owner Entity and appoint the Investor or its Affiliate (*i.e.,* any entity which directly or indirectly controls, or is controlled by, or is under common control with, the specified entity) as an interim general partner of the Owner Entity so long as the Investor gives prompt written notice to HUD of such removal and appointment (''Removal Notice''); provided that HUD and the HA consent will be required for the appointment of such interim general partner to extend beyond a ninety (90) day period and for the appointment of any entity (including the Investor of an affiliate thereof) as the permanent replacement general partner. Such 90-day period will commence on the date of the Removal Notice (''Interim Replacement Period''). With the prior written approval of HUD and the HA, the Interim Replacement Period may be extended for an additional 90 days to allow the substitute general partner of the Owner Entity to find a replacement general partner acceptable to HUD and all other parties, provided that prior to the expiration of such additional 90-day period, the substitute general partner demonstrates that the Investor is continuing to fund (or has already funded) capital as required under the Partnership Agreement and that the Project continues to be operated in a manner consistent with HUD Requirements.

4. The consent of HUD and the HA will not be required for (i) any exercise by the Investor of its right to require the repurchase of its limited partnership interests as against the General Partner, any guarantor, and/or any affiliate thereof (''Repurchaser'') pursuant to the Partnership Agreement, provided that the Investor provides prompt written notice to HUD and the HA at the time of its exercise of such right, and further provided that any resale of the limited partnership interests by the Repurchaser will be subject to the approval of HUD and the HA, such approval not to be unreasonably withheld, delayed or conditioned, or (ii) the exercise by the HA (or any approved Affiliate thereof) of its rights to acquire interests or the Property pursuant to the Right of First Refusal and Purchase Option Agreement of approximately even date herewith.

7. Insurance Requirements

a. Except as otherwise provided by HUD, and in accordance with the CACC and HUD regulations and requirements, the HA shall procure adequate insurance to protect the HA from financial loss resulting from various hazards.

b. Mandatory Insurance Coverage. The following types of insurance coverage are required:

1. Commercial Property. Each policy must be written with a blanket limit, on a replacement cost basis, and with an agreed value clause eliminating any coinsurance provision.
2. Commercial General Liability.
3. Workers Compensation and Employers Liability.
4. Owned and Non-Owned Automobile Liability.
5. Theft, Disappearance, and Destruction, only if the amount of cash and checks on hand at any one time exceeds the amount prescribed by HUD.
6. Employee Dishonesty.
7. Boiler and Machinery if steam boilers have been installed.
8. Flood Insurance for property located in a flood plain, as determined in the Federal Government's National Flood Insurance Program.
9. Lead-Based Paint Liability for HAs undergoing lead-based paint testing and abatement.
10. Fidelity Bond Coverage. The HA must carry adequate fidelity bond coverage, as required by HUD, of its officers, agents, or employees handling cash or authorized to sign checks.

c. Optional Insurance Coverage. The following types of insurance coverage are recommended and should be purchased when the HA has exposure to these covered risks:

1. Boiler and Machinery (equipment breakdown).
2. Directors and Officers or Public Officials Liability.
3. Law Enforcement Liability when the Commercial General Liability insurer has excluded coverage.

d. Authorized Insurance Companies. Insurance must be purchased from an insurance company or other entity that is licensed or duly authorized to write insurance in the State where the HA is located.

e. Certificates of Insurance. At each renewal, the HA shall promptly have certificates of insurance submitted by the insurers to HUD describing the types of coverage, limits of insurance, policy numbers, and inception and expiration dates.

f. Waivers and Self-Insurance Funds. Requests for waivers of this section not to purchase any form of required insurance, or to establish a self-insurance fund in lieu of purchasing insurance, must be submitted in writing to HUD for approval and include specific justification and risk analysis.

g. Restoration. Unless the HA has received prior written approval of HUD to the contrary, the HA shall, to the extent that insurance proceeds permit, promptly restore, reconstruct, and/or repair any damaged or destroyed property of a Project, in accordance with all HUD Requirements.

h. Mixed Finance Projects. The HA, to the extent that insurance proceeds or condemnation award proceeds (''Proceeds'') permit, shall promptly cause the restoration, reconstruction, and/or repair (''Restoration'') of any damaged or destroyed property of the Project. The Owner Entity, to the extent Proceeds and other funds (if any are made available by the Owner Entity or the HA) permit, and to the extent Restoration is feasible, shall promptly cause the Restoration of ay damaged or destroyed property of the Project. Each mortgagee must permit Restoration if feasible (rather than require application of Proceeds to reduction of debt). If Restoration is not feasible, then the following requirements, which shall be incorporated into the Regulatory and Operating Agreement (or other such agreement) between the HA and the Owner Entity (and ground lease, if applicable), and with which all mortgage documents encumbering the Project shall be consistent, shall apply:

1. *Partial loss.* In the event that less than all of the dwelling units in the Project are damaged, destroyed or lost as a result of casualty or condemnation, the following provisions shall apply:

(A) If the Proceeds are less than, or equal to, the sum of the existing outstanding mortgage debt secured by the Project, excluding any such debt held by the HA to secure a loan of Capital Funds, other public housing development funds, or Program Receipts for the Project (''Existing Mortgages''), and such Proceeds are applied to reduction of Existing Mortgages, the number of Project units in the Project shall remain the number required immediately prior to the occurrence of the casualty or condemnation.

(B) If the Proceeds are less than, or equal to, the sum of the Existing Mortgages but, at the election of the holders of the Existing Mortgages, are distributed among the holders thereof and the HA, by application first to reduction of the Existing Mortgages in an aggregate amount not to exceed the proportion of the Proceeds equal to the ratio of non-Project units to all dwelling units in the Project, and then by payment to the HA of the balance of the Proceeds; then the percentage of units in the Project (and the percentage of bedrooms contained therein) which shall be Project units shall remain the same as required immediately prior to the casualty or condemnation.

(C) If the Proceeds are more than sufficient to pay off the Existing Mortgages, Proceeds in excess of the aggregate amount of the Existing Mortgages shall be applied in the following order of priority:

(i). To reduce any outstanding indebtedness to the HA for a loan of Capital Funds, other public housing development funds, or Program Receipts;

(ii). To reimburse the HA for any Capital Funds, HOPE VI Grant Funds or other public housing funds disbursed to the Owner Entity for development of the Project other than by loan;

(iii). To the HA an amount equal to the total ''cost of construction'' attributable to the Project units, less the sum of (A) and (B) above; and

(iv). To the Owner Entity.

(D) Following application of Proceeds in accordance with this subparagraph the percentage of dwelling units in the Project which shall be Project units (and the percentage of bedrooms contained therein) shall remain the same as required immediately prior to the casualty or condemnation; provided, however, that to the extent that the payment to the HA pursuant to clauses (A), (B), and (C) shall be less than the ''cost of construction'' attributable to the Project units, the number of remaining Project units shall be increased by a number of units (rounded down) equal to (1) the amount by which such payments to the HA shall be less than the cost of construction, divided by (2)

the quotient of (x) cost of construction, divided by (y) the number of Project units immediately prior to the occurrence of the casualty or condemnation.

2. *Total loss.* In the event that all of the units in the Project are damaged, destroyed or lost as a result of casualty or condemnation, the following provisions shall apply:

(A) The Proceeds shall be used to reduce the amount of the outstanding indebtedness of any mortgage(s) secured by the Project, including any mortgage(s) held by the HA, based on the priority recorded order of such mortgage(s);

(B) If the Proceeds are more than sufficient to pay off the amount of the outstanding indebtedness of all mortgage(s) secured by the Project, including any mortgage(s) held by the HA, then the amount of the Proceeds in excess of such indebtedness shall be applied in the following order of priority:

(i). To reduce any outstanding indebtedness to the HA for an unsecured loan of Capital Funds, or other HUD Development Funds or Program Receipts;

(ii). To reimburse the HA for any Capital Funds, other public housing funds or Program Receipts disbursed to the Owner Entity for development of the Project other than by loan;

(iii). To the HA an amount equal to the total ''cost of construction'' attributable to the Project units, less the sum of (a) and (b) above, and

(iv). To the Owner Entity.

For the purposes of this subsection, the term ''cost of construction'' shall mean the total cost of developing the Project, less land acquisition costs, if any, and non-capitalized soft costs.

8. Employer Requirements

The HA shall comply with all State and Federal laws applicable to employee benefit plans and other conditions of employment.

9. Accounts, Records, and Government Access

a. The HA shall maintain complete and accurate books of account for the Projects of the HA in such a manner as to permit the preparation of statements and reports in accordance with HUD Requirements, and to permit timely and effective audit.

b. The HA shall furnish HUD such financial and program data, reports, records, statements, and documents at such times, in such form, and accompanied by such supporting data as required by HUD. The HA is required to submit information to, or access HUD's system of records (SOR). HUD's SOR are subject to the Privacy Act, the Freedom of Information Act, and other such applicable law. The HA shall not release, without prior HUD approval, any information contained in such records.

c. The United States Government, including HUD and the Comptroller General, and its duly authorized representatives, shall have full and free access to all HA offices and facilities, and to all books, documents, and records of the HA relevant to the administration of the Projects under this CACC, including the right to audit and make copies.

d. The HA shall engage and pay an independent public accountant to conduct audits that are required by HUD Requirements. The cost of audits required by HUD Requirements may be charged against Program Receipts.

e. The foregoing (a)–(d) shall apply to any records and/or any facilities operated or maintained by an agent or independent contractor for the HA that assists in fulfilling any obligation under this CACC. Any such agent or independent contractor that denies or unduly limits HUD or its duly authorized representatives from reviewing records or denies or unduly limits HUD or its duly authorized representative entry to an office or facility, or prevents access to any office or facility, is a denial by the HA.

10. Grant Funding

a. HUD shall make annual contributions in the form of grant funding in the amounts provided for the Public Housing Program as stated in the Grant Funding Exhibits.

b. Grant funding is subject to each year's annual appropriations act. Appropriations may be reduced by HUD as directed by the Congress in an appropriations act. Grant funding may be reduced by an offset of a HA's funding, pursuant to a formula prescribed by Congress in an appropriations act. Grant funding may also be reduced or offset pursuant to a formula devised by HUD if Congress has invested HUD with the discretion to devise and implement a funding formula in the appropriations act. Grant funding may also be terminated, recaptured, withheld, suspended, reduced or such other actions taken in accordance with HUD Requirements.

c. Grant funding is calculated by applying applicable regulations in Title 24 of the Code of Federal Regulations unless Congress provides otherwise. HUD will provide grant funding to the HA in accordance with HUD Requirements, unless modified by an appropriations act. The appropriations act, not the Title 24 of the Code of Federal Regulations, will always take precedence in formulating each year's grant funding. Each year's funding amounts and related information will be provided to the HA. Any change in funding or requirements to a Grant Funding Exhibit will be provided in a written notice to the HA.

d. The HUD notice of a revised Grant Funding Exhibit(s) constitutes an amendment of the CACC.

11. Depository

a. The HA shall deposit and invest Program Receipts and investment securities received by or held for the account of the HA in connection with the development, operation and improvement of the Projects under a CACC with HUD in accordance with the terms of the General Depository Agreement(s) and all investment requirements provided in HUD and Treasury Notices and Regulations. The General Depository Agreement shall be in the form prescribed by HUD and must be executed by the HA and the depository. Immediately upon the execution of any General Depository Agreement, the HA shall furnish to HUD such executed or conformed copies thereof as HUD may require. A General Depository Agreement shall not be terminated except after 30 days' notice to HUD.

b. The HA shall maintain records that identify the source and application of funds in such a manner as to allow HUD to determine that all funds are and have been expended in accordance with HUD Requirements. The HA may only use Program Receipts for: (1) The payment of the costs of development and operation of the Projects under the CACC with HUD; (2) the purchase of investment securities as approved by HUD; and (3) such other purposes as may be specifically approved by HUD. Except as approved by HUD, and consistent with HUD Requirements, grant funds are not fungible.

12. Termination of a Project

If any Project covered by this ACC is terminated, all related Program Receipts shall, in accordance with the terms of this CACC and HUD Requirements, become part of another Project administered by the HA. If no Public Housing Project(s) exists, the remaining personal and real property, and Program Receipts, shall be distributed (including the possible remittance to HUD) as directed by HUD, consistent with HUD Requirements.

13. Notices, Defaults, Remedies

a. Notice. Any notice required or permitted to be given under this ACC or CACC shall be in writing, signed by a duly authorized official, and addressed, if to the HA, to the principal office of the HA, and if to HUD, to the HUD office with jurisdiction over the HA, unless otherwise directed by regulation or other HUD Requirements.

b. Substantial Default. A substantial default is a serious and material violation of any one or more of the covenants contained in the CACC. Events of substantial default shall include, but shall not be limited to, any of the following occurrences: (1) Failure to maintain and operate the Project(s) under this ACC in a decent, safe, and sanitary manner; (2) the disposition or encumbrance of any Project or portion thereof without HUD approval; (3) failure of the HA to comply with any civil rights requirements applicable to the HA and the Project(s); (4) abandonment of any Project by the HA, or if the powers of the HA to operate the public housing program in accordance with the provisions of this ACC are curtailed or limited to an extent that will prevent the accomplishment of the objectives of this ACC; (5) failure to carry out modernization or development in a timely, efficient and effective manner; and (6) termination of tax exemption (either real or personal property) on behalf of a Project covered under the CACC.

1. Delivery of a notice of substantial default shall be required before the exercise of any remedy permitted under this ACC. Such notice shall: (1) Identify the specific covenants, statutes, executive orders, or regulations alleged to have been violated; (2) identify the specific events, actions, failure to act, or conditions that constitute the alleged substantial default; and (3) provide a specific timeframe for the HA to cure the substantial default, taking into consideration the nature of the default.

2. Except in cases involving clear and apparent fraud, serious criminal behavior, or emergency conditions that pose an imminent threat to life, health, or safety, the HA shall have the right to appeal any such notice received from the HUD office with jurisdiction over the HA. Such informal appeals shall be in writing and shall be submitted within ten (10) working days from the date of the HA's receipt of such notice. Appeals of the action of a HUD Office shall be made to the Assistant Secretary for Public and Indian Housing, or such other official as shall be a successor thereto.

c. Remedies. Upon the occurrence of a substantial default, or the expiration of any applicable cure period provided by HUD, the HA shall: (1) Convey to HUD title to the Project(s) as demanded by HUD if, in the determination of HUD (which determination shall be final and conclusive), such conveyance of title is necessary to achieve the purposes of the Act; or (2) deliver possession and control of the Project(s) to HUD.

d. Additional Remedies. Nothing contained in this ACC shall prohibit or limit HUD from the exercise of any other right or remedy existing under applicable law, or available at equity. HUD's exercise or non-exercise of any right or remedy under this ACC or CACC shall not be construed as a waiver of HUD's right to exercise that or any other right or remedy at any time.

e. If HUD shall acquire title to, or possession of the Project(s), HUD shall re-convey or redeliver possession of the Project(s) to the HA, or to any entity recognized by HUD: (1) Upon a determination by HUD that the Substantial Default has been cured and that the Project(s) will thereafter be operated in accordance with the terms of the CACC; or (2) after the termination of HUD's obligation to make payments, unless there are any obligations or covenants of the HA to HUD that are then in default.

f. Termination for cause. HUD may at any time by notice to the HA declare this ACC or the CACC terminated with respect to any Project if:

1. The HA has made any fraudulent or willful misrepresentation of any material fact in any document or data submitted to HUD as a basis for the CACC or as an inducement to HUD to enter into the CACC; or

2. A substantial default exists in connection with any of the Projects.

g. Mixed Finance Projects. In addition to the above the following shall apply to Mixed-Finance Projects:

1. Each of the following shall also constitute an event of substantial default under the CACC:

(A) The drawdown of Capital Funds, development grant funds, or other public housing funds, as applicable, in amounts greater than authorized, or in amounts greater than allowed by HUD Requirements;

(B) Breach of any approved performance schedule; or

(C) Serious and material breach of any terms, covenants, agreements, provisions, or warranties of:

(i). The HA which, in the opinion of HUD, adversely affects the performance obligations of the HA, the Owner Entity, or other participating parties, and

(ii). The Owner Entity, partner, or other participating party, made in any agreement submitted to HUD as part of the evidentiary materials which, in the opinion of HUD, adversely affects the performance obligations of the HA, the Owner Entity, partner, or other participating parties.

2. HUD shall permit an Owner Entity, partner, or lender to participate, and may in its discretion, permit any other participating party to participate, in any appeal from a notice of substantial default delivered by HUD to the HA pursuant to this ACC with respect to a Project.

3. During the term of any agreement between the HA and Owner Entity, and so long as the Owner Entity shall not be in default of its obligations thereunder, HUD agrees that in the event of the substantial default by the HA under the CACC, HUD shall exercise any remedies or sanctions authorized under the CACC, including taking possession of the HA's interest in the Mixed Finance Project, in such manner as not to disturb the Owner Entity's rights under any such agreements.

4. Any rights of the mortgagee under a Note and First Mortgage (if any), including the right to exercise all remedies specified therein, shall not be subordinate to any other obligations imposed upon the Project, except as such obligations (1) shall be reflected in the Declaration of Restrictive Covenants, as required by the CACC, or a memorandum of lease (if applicable), and/or any other recorded instrument which shall have been recorded prior to the lien of the First Mortgage, or (2) shall be the subject of a subordination agreement with such mortgagee.

14. HUD in Possession of Project(s)

a. During any period in which HUD holds title to or possession of the Projects after a substantial default by the HA, HUD shall develop and/or operate such Project(s) as nearly as practicable in accordance with the provisions of the CACC.

b. During any such period, HUD may, in the name and on behalf of the HA, or in its own name and on its own behalf (as HUD shall solely determine), exercise any and all rights of the HA under the CACC, and perform any and all obligations of the HA under the CACC. Nothing herein shall be deemed to make the action(s) or omission(s) of the HA attributable to HUD.

15. Conflict of Interest

a. In addition to any other applicable conflict of interest requirements, including those provided herein, HAs must also maintain written standards of

conduct covering conflicts of interest and governing the performance of its Board Member, executives, and employees engaged in the administration and operation of Projects covered by the CACC. A conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs (or is about to employ any of the parties indicated herein), has a financial or other interest in an organization considered for a contract with the HA, an RMC, other resident organization of the HA; or otherwise does business with, a tenant organization or tenants of the HA. The HA must disclose in writing any potential) conflict of interest to HUD.

b. The HA, its contractors and subcontractors shall not enter into, or be a party to, any contract, subcontract, or arrangement in connection with a Project under the CACC in which any of the following classes of people has an interest, direct or indirect, during his or her tenure or for one year thereafter:

1. Any present or former member or officer of the governing body of the HA, or any member of such individual's immediate family. There shall be excepted from this prohibition any present or former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the resident corporation, the HA or a related business entity.

2. Any employee of the HA who formulates policy or who influences decisions with respect to the Project(s), or any member of the employee's immediate family, or the employee's partner.

3. Any public official, member of the local governing body, or State or local legislator, or any member of such individual's immediate family, who exercises functions or responsibilities with respect to the Project(s) or the HA.

4. Any member of these classes of persons must disclose the member's interest or prospective interest to the HA.

5. The requirements of this subsection may be waived by HUD for good cause, if the prohibited contract, subcontract or arrangement is otherwise permitted under State and local law. No person for whom a waiver is requested may exercise responsibilities or functions with respect to the contract, subcontract or arrangement to which the waiver pertains.

6. The provisions of this subsection (b) shall not apply to the General Depository Agreement entered into with an institution regulated by a Federal agency, or to utility service for which the rates are fixed or controlled by a State or local agency.

c. The HA shall not hire an employee in connection with a Project under this ACC if the prospective employee is an immediate family member of any person belonging to one of the following classes:

1. Any present or former member or officer of the governing body of the HA. There shall be excepted from this prohibition any former tenant commissioner who does not serve on the governing body of a resident corporation, and who does not occupy a policymaking position with the HA.

2. Any employee of the HA who formulates policy or who influences decisions with respect to the Project(s).

3. Any public official, member of the local governing body, or State or local legislator, who exercises functions or responsibilities with respect to the Project(s) or the HA.

d. The prohibition referred to in subsection (c) shall remain in effect throughout the class member's tenure and for one year thereafter.

e. A class member shall disclose to the HA the member's familial relationship to any prospective employee.

f. For purposes of this section, the term ''immediate family member'' means: the spouse, mother, father, mother-in-law, father-in-law, brother, sister, brother-in-law, sister-in-law, daughter-in-law, son-in-law or child of a covered class member (whether related as a full blood relative or adoption, or as a ''half'' or ''step'' relative, *e.g.,* a half-brother or stepchild).

1. The officers, employees, and agents of the HA must neither solicit nor accept gratuities, favors, or anything of monetary value from residents residing in Projects or participating in programs covered by the CACC. However, HAs may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the HA.

2. If the HA has a parent, affiliate, or subsidiary organization that is not a state or local government, the HA must also maintain equivalent written standards of conduct covering organizational conflicts of interest. ''Organizational conflicts of interest'' means that because of relationships with a parent company, affiliate, or subsidiary organization, the HA is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization; or in administering or operating a Project involving a related organization.

g. Consistent with this section and HUD Requirements, the HA shall ensure that tenants served directly by the HA serve on the governing body of the HA.

16. Civil Rights and Employment Requirements

a. The HA shall comply with all statutory, regulatory, and executive order requirements pertaining to civil rights, equal opportunity, and nondiscrimination, as those requirements now exist, or as they may be enacted, promulgated, or amended from time to time. These requirements currently include, but are not be limited to, compliance with the following authorities: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d; 24 CFR part 1); the Fair Housing Act (42 U.S.C. 3601–3619; 24 CFR part 100); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794; 24 CFR part 8); (the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107; 24 CFR part 146); the Americans with Disabilities Act (Pub. L. 101–336, approved July 26, 1990; 28 CFR part 35); Executive Order 11063 on Equal Opportunity in Housing (24 CFR part 107); Executive Order 11246 on Equal Employment Opportunity, as amended by Executive Order 11375 (41 CFR part 60); and Executive Order 12892 on Affirmatively Furthering Fair Housing.

b. In connection with the development or operation of any Project, the HA shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, age, or national origin. The HA shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The HA shall insert the foregoing provision (modified only to show the particular contractual relationship) in all its contracts in connection with the development or operation of any Project, except contracts for standard commercial supplies or raw materials and contracts referred to in subsection (C) of this section, and shall require all contractors

to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. The HA shall post at the Projects, in conspicuous places available to employees and applicants for employment, notices to be provided by HUD setting forth the provisions of this nondiscriminatory clause.

c. The HA shall incorporate the language required by Executive Order 11246, codified at 41 CFR 60–1.4(b) (or any successor provision), into any contract for construction work, or any modification thereof, which is paid for in whole or in part with funds obtained under this ACC. In addition, the HA agrees that it will be bound by the equal employment opportunity provisions set forth at 41 CFR 60–1.4(b) (or any successor provision) with respect to its own employment practices when it uses its own staff (force account) to carry out Federally assisted construction work.

d. The HA shall, consistent with 12 U.S.C. 1701u, codified at 24 CFR 135.1 (or any successor provision), provide economic opportunities for Section 3 residents and Section 3 business concerns. The HA may, consistent with applicable law and regulation, utilize work requirements when and where appropriate.

17. Members or Delegates to Congress

No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this ACC or to any benefits which may arise from it. (As used in this section, the term ''resident commissioner'' refers to an individual appointed to oversee a territory or possession of the United States of America, *e.g.,* Guam.)

18. Rights of Third Parties

Nothing in this ACC shall be construed as creating any right of any third party to enforce any provision of the ACC, the CACC, or to assert any claim against HUD or the HA.

19. Waiver or Amendment

Any right or remedy that HUD may have under this ACC may be waived in writing by HUD without the execution of a new or supplemental agreement, or by mutual agreement of the parties to this ACC. This agreement may be amended in writing: Provided that, none of the provisions of this ACC may be modified or amended in a manner that impairs HUD's obligation to pay any annual contributions that have been pledged as security for any obligations of the HA.

[FR Doc. 2018–28095 Filed 12–26–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7006–N–19]

60-Day Notice of Proposed Information Collection: Public Housing Mortgage Program and Section 30

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, 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:* February 25, 2019.

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: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

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: Public Housing Mortgage Program and Section 30.

OMB Approval Number: 2577–0265.

Type of Request: Extension of an approved collection.

Form Number: N/A—Because federal regulations have not been adopted for this program, no specific forms are required.

Description of the need for the information and proposed use: Section 516 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA)(Pub. L. 105–276, October 21, 1998) added Section 30, Public Housing Mortgages and Security Interest, to the United States Housing Act of 1937 (1937 Act)(42 U.S.C. 1437z–2). Section 30 authorizes the Secretary of the Department of Housing and Urban Development (HUD) to approve a Housing Authority's (HA) request to mortgage public housing real property or grant a security interest in other tangible forms of personal property if the proceeds of the loan resulting from the mortgage or security interest are used for low-income housing uses. Public Housing Agencies (PHAs) must provide information to HUD for approval to allow PHAs to grant a mortgage in public housing real estate or a security interest in some tangible form of personal property owned by the PHA for the purposes of securing loans or other financing for modernization or development of low-income housing.

Respondents (i.e. affected public): Members of Affected Public: State, Local or Local Government and Non-profit organization.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
2577–0157	30	3	90	41.78	3,760	$157.65	$592,750
Total							

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.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 13, 2018.

Merrie Nichols-Dixon,

Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2018–28090 Filed 12–26–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7005–N–20]

60-Day Notice of Proposed Information Collection: Multifamily Contractor's/Mortgagor's Cost Breakdowns and Certifications HUD–2328, HUD–2205–A, HUD–92330–A

AGENCY: Office of the Assistant Secretary for Housing- Federal Housing Commissioner, 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:* February 25, 2019.

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: Patricia M. Burke, Acting Director, Office of Multifamily Production, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, email, *Patricia.M.Burke@hud.gov,* or telephone 202–402–5693. 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: Multifamily Contractor's/Mortgagor's Cost Breakdowns and Certifications.

OMB Approval Number: 2502–0044.

OMB Expiration Date: 12–31–2018.

Type of Request: Reinstatement without change, of a currently approved collection, that is soon to expire.

Form Number: HUD–92330–A, HUD–2328, HUD–2205–A *Description of the need for the information and proposed use:* Contractors use the form HUD–2328 to establish a schedule of values of construction items on which the monthly advances or mortgage proceeds are based. Contractors use the form HUD–92330–A to convey actual construction costs in a standardized format of cost certification. In addition to assuring that the mortgage proceeds have not been used for purposes other than construction costs, HUD–92330–A further protects the interest of the Department by directly monitoring the accuracy of the itemized trades on form HUD–2328. This form also serves as project data to keep Field Office cost data banks and cost estimates current and accurate. HUD–2205A is used to certify the actual costs of acquisition or refinancing of projects insured under Section 223(f) program.

Respondents: Business or other for profit. Not for profit institutions.

Estimated Number of Respondents: 1,229.

Estimated Number of Responses: 1,229.

Frequency of Response: 1.

Average Hours per Response: 16.

Total Estimated Burden: 6,948.

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.

C. Authority Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35

Dated: December 4, 2018.

Vance T. Morris,

Special Assistant to the Assistant Secretary for Housing—Federal Housing Commissioner, H.

[FR Doc. 2018–28094 Filed 12–26–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7006–N–20]

60-Day Notice of Proposed Information Collection: Moving to Work Amendment To Consolidated Annual Contributions Contract

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, 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:* February 25, 2019.

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: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; e-mail Colette Pollard at *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 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: Moving to Work Amendment to Consolidated Annual Contributions Contract.

OMB Approval Number: Pending OMB Approval.

Type of Request: New Collection.

Form Number: TBD.

Description of the need for the information and proposed use: The Moving to Work (MTW) amendment to the Consolidated Annual Contributions Contract, signed by HUD and the selected Public Housing Authority (PHA) is necessary to govern 100 new PHA's participation in the MTW demonstration pursuant to the 2016 Appropriations Act. It will allow the PHA to operate under the MTW Operations Notice and its respective selection notice, while remaining subject to the CACC when not otherwise waived by the Operations Notice, and to detail the termination and default rights of HUD should an agency fail in its implementation of the demonstration.

Respondents: Public Housing Authorities.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Total	100	Once	1	0	0	0	0

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.

C. Authority Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35

Date: December 13, 2018.

Merrie Nichols-Dixon,

Director, Office of Policy, Programs and Legislative Initiatives.

MOVING TO WORK AMENDMENT TO CONSOLIDATED ANNUAL CONTRIBUTIONS CONTRACT

Section 1. This Moving to Work (MTW) Amendment to the Consolidated Annual Contributions Contract (MTW CACC Amendment) is entered into between the United States Department of Housing and Urban Development (''HUD'') and____(the ''Authority'').

Section 2. This MTW CACC Amendment is an amendment to any Consolidated Annual Contributions Contracts (''the CACC'') between the Authority and HUD for the Public Housing and Housing Choice Voucher programs.

Section 3. The CACC is amended in connection with the Authority's designation as a participant in the expansion of the MTW demonstration pursuant to Section 239 of the Consolidated Appropriations Act, 2016, P.L. 114–113; 129 Stat. 2897 (2016 MTW Expansion Statute) and Section 204 of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996, P.L. 104–134; 110 Stat. 1321–281 (1996 MTW statute). The Authority's participation in the expansion of the MTW demonstration shall be governed by the MTW Operations Notice for the Expansion of the Moving to Work Demonstration (PIH Notice 2019–XXXX) or any successor notice issued by HUD, (which shall collectively be called ''the Operations Notice'' throughout this document).

Section 4. The term of this amendment shall be for 12 years from the effective date of this amendment or until termination of this amendment, whichever is sooner

Section 5. Requirements and Covenants.

(A) As a participant in the MTW demonstration, the Authority must operate in accordance with the express terms and conditions set forth in the Operations Notice. The MTW Operations Notice may be superseded or amended by HUD at any time during the MTW term of the Authority's participation in the MTW demonstration.

(B) The Authority will cooperate fully with HUD and its contractors for the duration of the HUD-sponsored evaluation of the cohort of the MTW

Expansion for which the PHA was selected and shall comply with all aspects of its Cohort Study as outlined in the Selection Notice (PIH Notice __–__), under which the Authority was designated.

(C) The Authority may be exempted from certain provisions of the Housing Act of 1937 and its implementing regulations in accordance with the requirements and procedures set forth in the Operations Notice. However, the Authority remains subject to all other federal laws and HUD requirements, as they be amended from time to time even in the event of a conflict between such a requirement and a waiver or activity authorized by the Operations Notice.

(D) HUD reserves the right to require the Authority to discontinue any activity or to revise any activity to comply with the Operations Notice and other applicable HUD requirements in the event of a conflict between an MTW activity and such requirements, as determined by HUD.

(E) HUD reserves the right to require the Authority to discontinue any activity derived from a waiver granted by the Operations Notice should it have significant negative impacts on families or the agency's operation of its assisted housing programs using Section 8 and 9 funds, as determined by HUD.

Section 6. Transition

At least one year prior to expiration of this MTW CACC Amendment, the Authority shall submit a transition plan to HUD. It is the Authority's responsibility to be able to end all MTW activities that it has implemented through its MTW Supplement to the PHA Plan upon expiration of this MTW CACC Amendment. The transition plan shall describe plans for phasing out such activities.

Section 7. Termination and Default

(A) If the Authority violates or fails to comply with any requirement or provision of the CACC, including this amendment, HUD is authorized to take any corrective or remedial action described in this Section 7 for Authority default or any other right or remedy existing under applicable law, or available at equity. HUD will give the Authority written notice of any default, which shall identify with specificity the measures, which the Authority must take to cure the default and provide a specific time frame for the Authority to cure the default, taking into consideration the nature of the default. The Authority will have the opportunity to cure such default within the specified period after the date of said notice, or to demonstrate within 10 days after the date of said notice, by submitting substantial evidence satisfactory to HUD, that it is not in default. However, in cases involving clear and apparent fraud, serious criminal behavior, or emergency conditions that pose an imminent threat to life, health, or safety, if HUD, in its sole discretion, determines that immediate action is necessary it may institute the remedies under Section 7(B) of this MTW ACC Amendment without giving the Authority the opportunity to cure.

(B) If the Authority is in default and the default has not been cured, HUD may, undertake any one or all remedies available by law, including but not limited to the following:

i. Suspend payment or reimbursement for any MTW activities affected;
ii. Suspend the Authority's authority to make draws or receive or use funds for affected activities;
iii. Require additional reporting by the Authority on the deficient areas and the steps being taken to address the deficiencies;
iv. Require the Authority to prepare and follow a HUD-approved schedule of actions and/or a management plan for properly completing the activities approved under this MTW ACC Amendment;
v. Suspend the MTW waiver authorization for the affected activities;
vi. Prohibit payment or reimbursement for any MTW activities affected by the default;
vii. Require reimbursement by the Authority to HUD for amounts used in violation of this MTW ACC Amendment;
viii. Reduce/offset the Authority's future funding;
ix. Terminate this MTW ACC Amendment and require the Authority to transition out of MTW;
x. Take any other corrective or remedial action legally available; and/or
xi. Implement administrative or judicial receivership of part, or all, of the Authority.

(C) The Authority may choose to terminate this MTW CACC Amendment at any time. Upon HUD's receipt of written notification from the Authority and a copy of a resolution approving termination from its governing board, termination will be effective. The Authority will then begin to transition out of MTW, and will work with HUD to establish an orderly phase-out of MTW activities, consistent with Section 6 of this MTW CACC Amendment.

(D) Nothing contained in this CACC amendment shall prohibit or limit HUD from the exercise of any other right or remedy existing under any ACC, CACC, or available under applicable law. HUD's exercise or non-exercise of any right or remedy under this amendment shall not be construed as a waiver of HUD's right to exercise that or any other right or remedy at any time.

Section 8. Notwithstanding any provision set forth in this MTW CACC Amendment, any future laws that conflict with any provision of this CACC Amendment, as determined by HUD, HUD's implementation of any future laws that conflict with any provision of this MTW CACC Amendment, or any HUD determination that a future law conflicts with any provision of this CACC Amendment, shall not be deemed to be a breach of this CACC Amendment. HUD's execution of the conflicting law, or the execution of a law that HUD deems conflicting, shall not serve as any basis for a breach of contract claim, or breach of contract cause of action, in any court. Any future laws affecting the Authority's funding, even if that effect is a decrease in funding, and HUD's implementation thereof that affects funding shall not be deemed a breach of this CACC Amendment and shall not serve as any basis for a breach of contract claim, or breach of contract cause of action, in any court.

Section 9. This MTW CACC Amendment is effective upon the date of execution by HUD.

In consideration of the foregoing covenants, the parties do hereby execute this MTW CACC Amendment:

HOUSING AUTHORITY

_____
By:____
Its:____
Date:____

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

_____
By:____
Its:____
Date:____

[FR Doc. 2018–28096 Filed 12–26–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–LE–2018–N158; FF09L00200–FX–LE18110900000; OMB Control Number 1018–0129]

Agency Information Collection Activities; Captive Wildlife Safety Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we,

the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before February 25, 2019.

ADDRESSES: Send your comments on the information collection request (ICR) by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0129 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the Service; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Service enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Service minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Captive Wildlife Safety Act (CWSA; Pub. L. 108–191; 16 U.S.C. 3371 note and 16 U.S.C. 3372 note) amends the Lacey Act (16 U.S.C. 3371 *et seq.;* 18 U.S.C. 42–43) by making it illegal to import, export, buy, sell, transport, receive, or acquire, in interstate or foreign commerce, live lions, tigers, leopards, snow leopards, clouded leopards, cheetahs, jaguars, or cougars, or any hybrid combination of any of these species, unless certain exceptions are met. There are several exemptions to the prohibitions of the CWSA, including accredited wildlife sanctuaries. There is no requirement for wildlife sanctuaries to submit applications to qualify for the accredited wildlife sanctuary exemption. Wildlife sanctuaries themselves will determine if they qualify. To qualify, they must meet all of the following criteria:

- Obtain approval by the United States Internal Revenue Service (IRS) as a corporation that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 (Pub. L. 99–514), which is described in sections 501(c)(3) and 170(b)(1)(A)(vi) of that code.
- Do not engage in commercial trade in the prohibited wildlife species, including offspring, parts, and products.
- Do not propagate the prohibited wildlife species.
- Have no direct contact between the public and the prohibited wildlife species.

The basis for this information collection is the recordkeeping requirement that we place on accredited wildlife sanctuaries. We require accredited wildlife sanctuaries to maintain complete and accurate records of any possession, transportation, acquisition, disposition, importation, or exportation of the prohibited wildlife species as defined in the CWSA (see title 50 of the Code of Federal Regulations (CFR) at part 14, subpart K). Records must be up to date and include: (1) Names and addresses of persons to or from whom any prohibited wildlife species has been acquired, imported, exported, purchased, sold, or otherwise transferred; and (2) dates of these transactions. Accredited wildlife sanctuaries must:

- Maintain these records for 5 years.
- Make these records accessible to Service officials for inspection at reasonable hours.
- Copy these records for Service officials, if requested.

Title of Collection: Captive Wildlife Safety Act, 50 CFR 14.250–14.255.

OMB Control Number: 1018–0129.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Accredited wildlife sanctuaries.

Total Estimated Number of Annual Respondents: 750.

Total Estimated Number of Annual Responses: 750.

Estimated Completion Time per Response: 1 hour.

Total Estimated Number of Annual Burden Hours: 750.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Ongoing.

Total Estimated Annual Nonhour Burden Cost: $300.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: December 20, 2018.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2018–28025 Filed 12–26–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/A0A501010.999900253G]

Indian Gaming; Tribal-State Class III Gaming Compacts Taking Effect in the State of California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The notice announces that the Tribal-State Compacts between the State of California and the Big Valley Band of Pomo Indians of the Big Valley Rancheria, the Dry Creek Rancheria Band of Pomo Indians, the Habematolel Pomo of Upper Lake, the Karuk Tribe, the La Jolla Band of Luiseno Indians, the Mechoopda Indian Tribe of Chico Rancheria, the San Pasqual Band of Diegueno Mission Indians of California, the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, the Torres Martinez Desert Cahuilla Indians, and the Twenty-Nine Palms Band of Mission Indians of California are taking effect.

DATES: These compacts take effect on December 27, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian

Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by IGRA and 25 CFR 293.4, all compacts are subject to review and approval by the Secretary. The Secretary took no action on the compacts between the State of California and the Big Valley Band of Pomo Indians of the Big Valley Rancheria, the Dry Creek Rancheria Band of Pomo Indians, the Habematolel Pomo of Upper Lake, the Karuk Tribe, the La Jolla Band of Luiseno Indians, the Mechoopda Indian Tribe of Chico Rancheria, the San Pasqual Band of Diegueno Mission Indians of California, the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, the Torres Martinez Desert Cahuilla Indians, and the Twenty-Nine Palms Band of Mission Indians of California within 45 days of their submission. Therefore, the Compacts are considered to have been approved, but only to the extent they are consistent with IGRA. *See* 25 U.S.C. 2710(d)(8)(C).

Dated: December 13, 2018.

John Tahsuda,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2018–28135 Filed 12–26–18; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/A0A501010.999900253G]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact Amendment in the State of Oklahoma

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of the Modification Compact for Kaw Nation/Oklahoma Off-Track Wagering Compact of May 25, 2001, between the Kaw Nation and the State of Oklahoma.

DATES: December 27, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Pub. L. 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Modification changes the existing off-track wagering location in the Compact from Newkirk, Oklahoma, to Braman, Oklahoma. The Secretary took no action on the compact between the Kaw Nation and the State of Oklahoma within 45 days of its submission. Therefore, the Compact is considered to have been approved, but only to the extent the Compact is consistent with IGRA. *See* 25 U.S.C. 2710(d)(8)(C).

Dated: December 13, 2018.

John Tahsuda,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2018–28134 Filed 12–26–18; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[19XD4523WD DS68647000 DWDHV0000.000000 DQ.FEDJG.19000000; OMB Control Number 1093–NEW]

Agency Information Collection Activities; FedTalent Registration

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of the Interior (DOI) is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before February 25, 2019.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to the Jeffrey Parrillo, 1849 C Street NW, Washington, DC 20240; or by email to *jeffrey_parrillo@ios.doi.gov.* Please reference OMB Control Number 1093–NEW FedTalent in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Jeffrey Parrillo, 1849 C Street NW, Washington, DC 20240; or by email to *jeffrey_parrillo@ios.doi.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the OS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the OS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the OS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: FedTalent is the Department of the Interior's (DOI) shared services system to maintain and validate training records, manage class rosters and transcripts for course administrators and the student or training recipient, meet Federal mandatory training and statistical reporting requirements, and manage other programmatic functions related to training and educational programs.

DOI collects personal information from students in order to communicate training opportunities, manage course registration and delivery, validate training records necessary for certification or granting of college credit, process billing information for training classes, and to meet Federal training reporting requirements. Information may also be collected to comply with the Americans with Disabilities Act requirements to address

facilities accommodations. Training and learning records are maintained in DOI's web-based learning management system, and bureau and office systems and locations where training programs are managed. DOI bureau's offer training programs which extend to external customers; such as Universities, State governments, local governments and not-for-profit organizations and in some cases private citizens.

Each year approximately 3,000 external users request to register for training offered by DOI bureau's and offices through FedTalent. Each registration will require approximately 3 minutes. Upon deployment in the Fall 2018, *FedTalent* will:

- Create an authoritative system of record for all training completions,
- Offer a more flexible approach for external training requests and documentation (Forms SF–182),
- Create a learning environment that encourages engagement on multiple levels,
- Improve the supervisory approval workflow for external requests (Forms SF–182),
- Enhance training delivery options, and
- Create opportunities to offer world-class instruction and to engage directly with learners through discussion forums and communities of practice.

Title of Collection: FedTalent Registration.

OMB Control Number: 1093–NEW.

Form Number: SF–182.

Type of Review: New.

Respondents/Affected Public: Contractors, students, volunteers, partners, State and local employees, and Federal employees from agencies outside DOI.

Total Estimated Number of Annual Respondents: 3,000.

Total Estimated Number of Annual Responses: 3,000.

Estimated Completion Time per Response: 3 minutes per response.

Total Estimated Number of Annual Burden Hours: 150.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Michele F. Singer,

Director, Interior Business Center/Department of the Interior.

[FR Doc. 2018–28133 Filed 12–26–18; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM922000.L51100000. GA0000. LVEMG15CG420]

Notice of Availability of the Environmental Assessment for Evans McCurtain Federal Coal Lease-by-Application OKNM127509, Haskell and LeFlore Counties, OK, Notice of Public Hearing, and Request for Comment on Environmental Assessment, Maximum Economic Recovery, and Fair Market Value

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM), Oklahoma Field Office (Field Office) is publishing this Notice to announce that an environmental assessment (EA) for Evans Coal Company Federal coal Lease-by-Application (LBA), serial number OKNM–127509, is available for public review and comment. The BLM is also announcing that it will hold a public hearing to receive comments on the EA, proposed sale, fair market value (FMV), and maximum economic recovery (MER) of the coal resources contained in the proposed LBA tract.

DATES: The public hearing will be held on January 7, 2019 from 5:00 p.m. to 7:00 p.m. Written comments should be received no later than January 11, 2019.

ADDRESSES: The public hearing will be held at McCurtain City Hall, 308 Main Street, McCurtain, OK 74944. Comments related to the Evans McCurtain LBA EA, FMV, and MER may be submitted through either of the following methods:

- Electronic submissions may be uploaded in ePlanning. A link to the Evans-McCurtain LBA–OKNM–127509 ePlanning site is at: *https://www.blm.gov/programs/energy-and-minerals/new-mexico/coal.*
- Hardcopy submissions may be mailed to April Crawley, BLM Oklahoma Field Office, 201 Stephenson Pkwy, Ste. 1200, Norman, OK 73072

Comments submitted by the public related to the Evans McCurtain LBA EA, FMV, and MER for the tract, will be made available for public inspection at the Field Office address listed above.

FOR FURTHER CONTACT INFORMATION: April Crawley, BLM Natural Resource Specialist, BLM Oklahoma Field Office, 201 Stephenson Parkway, Norman, OK 73072; *acrawley@blm.gov;* 405–579–7171. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Evans Coal Company (Evans) filed an LBA for Federal segregated coal reserves underlying 1,270 acres of private surface acres in Haskell and LeFlore counties, Oklahoma. Coal reserves within the tract are recoverable by underground mining methods only. The BLM's EA analyzes and discloses the potential direct, indirect, and cumulative impacts of leasing and subsequent mining of the proposed LBA tract. The tract contains an estimated 3.28 tons of recoverable coal. The applicant plans on entering underground mining operations on land previously surface mined and owned by Evans.

Indian Meridian, Oklahoma (OK)

T. 8 N., R. 22 E., Indian Meridian, Haskell County, Oklahoma

sec. 11, E½NW¼, E½SW¼, E½;

sec. 12, N½, N½SW¼, N½SE¼, and a tract commencing at the southwest corner of section 12, T. 8 N., R. 22 E., thence a distance of 111.61 feet N 0°1′ W, along the west line of said section 12 to the point of beginning, thence easterly a distance of 5,326.57 feet N 80°45′30″ E, to a point on the east line of said section 12, thence north a distance of 397.42 feet north along the east line of said section 12 to the southeast corner of the NE¼SE¼ of said section 12, thence west a distance of 5,280 feet to the west line of said section 12, thence a distance of 1,208.39 feet S 0°1′ E, along the west line of said section to the point of beginning.

sec. 14, a tract of land commencing at the northeast corner of section 14, T. 8 N., R. 22 E., thence a distance of 682.72 feet S 89°40′ W, along the north line of said section 14 to the point of beginning, thence a distance of 1,946.72 feet S 89°40′ W, along the north line of said section 14 to the north quarter corner, thence a distance of 794.04

feet S 0°1′8″ W, along the west line of the NE quarter of said section 14, thence a distance of 2,106.95 feet N 67°31′38″ E, to the point of beginning.

T. 8 N., R. 23 E., Indian Meridian, LeFlore County, Oklahoma

sec. 7, lots 2 to 4, inclusive, SE¼NW¼, NE¼SW¼, N½SE¼SW¼;

Containing 1,270.85 acres, more or less.

The three alternatives listed in the EA are generally described below:

- Alternative A: (No Action): The application would be rejected or denied. A competitive lease sale would not be held at this time;
- Alternative B: (Proposed Action): The tracts would be leased as requested in the application, subject to standard and special lease stipulations developed for the tract; or
- Alternative C: (Reduced Acreage Action): The tract would be reduced to 940 acres, subject to standard and special lease stipulations developed for the tract.

If you submit proprietary data marked as confidential to the BLM in response to this solicitation of public comments, the BLM will treat the data so marked in accordance with the laws and regulations governing the confidentiality of such information, including the Freedom of Information Act. A copy of the comments submitted by the public on the EA, FMV, and MER, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the address listed in the **ADDRESSES** section of this notice during regular business hours from 8 a.m. to 4:30 p.m. Monday through Friday, excluding Federal holidays.

Public comments on the LBA EA should address the potential environmental impacts of the proposed action. Public comments on the FMV and MER for the proposed lease tract may address, but do not have to be limited to, the following:

1. The quality and quantity of the Federal coal reserves;
2. The method of mining to be employed to obtain the MER of the coal, including: Specifications of the seams to be mined; timing and rate of production; restrictions to mining; and the inclusions of tracts in an existing mining operation;
3. The price that the mined coal would bring when sold;
4. Costs, including mining and reclamation costs, of producing the coal and the anticipated timing of production;
5. The percentage rate at which anticipated income streams should be discounted, either with inflation, or in the absence of inflation, in which case the anticipated rate of inflation should be given;
6. Depreciation, depletion, amortization, and other tax accounting factors; and
7. The value of any privately held mineral or surface estate in the McCurtain area.

The values given above may or may not change because of comments received from the public and changes in market conditions between now and when final economic evaluations are completed.

Please send written comments on the LBA EA, MER, and FMV to April Crawley at the address listed in the **ADDRESSES** section in the notice or through ePlanning, as described above, prior to close of business January 11, 2019. Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 3422, 43 CFR 3425, 43 CFR 3427.

Timothy R. Spisak,

Acting BLM New Mexico State Director.

[FR Doc. 2018–27175 Filed 12–26–18; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[19X.LLID957000. L14400000. BJOOOO.241A.X. 4500104880]

Filing of Plat of Survey: Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management, Idaho State Office, Boise, Idaho, 30 days from the date of this publication.

BOISE MERIDIAN

IDAHO

T. 3 N., R. 3 W.,
Section 17, accepted December 13, 2018.

T. 6 S., R. 5 E.,
Section 26, accepted December 13, 2018.

ADDRESSES: A copy of the plat may be obtained from the Public Room at the Bureau of Land Management, Idaho State Office, 1387 S Vinnell Way, Boise, Idaho 83709, upon required payment.

FOR FURTHER INFORMATION CONTACT: Timothy A. Quincy, (208) 373–3981, Branch of Cadastral Survey, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339 to contact Mr. Quincy during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with Mr. Quincy. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: A person or party who wishes to protest one or more plats of survey identified above must file a written notice with the Chief Cadastral Surveyor for Idaho, Bureau of Land Management. The protest must identify the plat(s) of survey that the person or party wishes to protest and contain all reasons and evidence in support of the protest. The protest must be filed before the scheduled date of official filing for the plat(s) of survey being protested. Any protest filed after the scheduled date of official filing will be untimely and will not be considered. A protest is considered filed on the date it is received by the Chief Cadastral Surveyor for Idaho during regular business hours; if received after regular business hours, a protest will be considered filed the next business day. If a protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the next business day following dismissal or resolution of all protests of the plat. Before including your address, phone number, email address, or other personal identifying information in a protest, you should be aware that the documents you submit—including your personal identifying information—may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from

public review, we cannot guarantee that we will be able to do so.

Timothy A. Quincy,

Chief Cadastral Surveyor, Bureau of Land Management, Idaho.

[FR Doc. 2018–28071 Filed 12–26–18; 8:45 am]

BILLING CODE 4310–GG–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 Integrated Circuits and Products Containing the Same, DN 3358;* 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 Tela Innovations, Inc. on December 19, 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 integrated circuits and products containing the same. The complaint names as respondents: Acer, Inc. of Taiwan; Acer America Corporation of San Jose, CA; AsusTek Computer Inc. of Taiwan; Asus Computer International of Fremont, CA; Intel Corporation of Santa Clara, CA; Lenovo Group Ltd. of China; Lenovo (United States) Inc. of Morrisville, NC; Micro-Star International Co., Ltd. of Taiwan; and MSI Computer Corp. of City of Industry, CA. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond during the 60-day 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 on the public interest 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. Any written submissions on other issues should be filed no later than by close of business nine calendar days after the date of publication of this notice in the **Federal Register**. Complainant may file a reply to any written submission no later than the date on which complainant's reply would be due under § 210.8(c)(2) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(c)(2)).

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. 3358) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic 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

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

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: December 20, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–28069 Filed 12–26–18; 8:45 am]

BILLING CODE 7020–02–P

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1141]

Certain Cartridges for Electronic Nicotine Delivery Systems and Components Thereof: Institution of Investigation

AGENCY: U.S. International Trade Commission

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 20, 2018, under section 337 of the Tariff Act of 1930, as amended, on behalf of Juul Labs, Inc. of San Francisco, California. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cartridges for electronic nicotine delivery systems and components thereof by reason of infringement of certain claims of U.S. Patent No. 10,058,129 (''the '129 patent''); U.S. Patent No. 10,104,915 (''the '915 patent''); U.S. Patent No. 10,111,470 (''the '470 patent''); U.S. Patent No. 10,117,465 (''the '465 patent''); and U.S. Patent No. 10,117,466 (''the '466 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2018).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 19, 2018, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–3, 5–8, 12, 13, 16–20, and 22 of the '129 patent; claims 10, 15, 17, and 29–32 of the '915; claims 1–4, 7, 8, 10, and 11 of the '470 patent; claims 1–7 and 9–20 of the '465 patent; and 1, 4–8, 10, 12, 14, and 16–23 of the '466 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''cartridges for nicotine vaporizers, and components thereof, such as the mouthpiece, storage compartment, and heater;''

(3) Pursuant to Commission Rule 210.50(b)(l), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(4) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Juul Labs, Inc., 560 20th Street, San Francisco, CA 94107.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

DripTip Vapes LLC, 151 N Nob Hill Rd. #115, Plantation, FL 33324.

The Electric Tobacconist, LLC, 3235 Prairie Avenue, Boulder, CO 80301.

Fuma Vapor, Inc., 605 S Westgate Rd., Des Plaines, IL 60016.

Lan & Mike International Trading, Inc., 20435 Gramercy Place, Suite 101, Torrance, CA 90501.

Lizard Juice, LLC, 8565 Somerset Drive, Unit A, Largo, FL 33773.

Maduro Distributors, Inc., 245 Roselawn Ave E #24, Maplewood, MN 55117.

MistHub, LLC, 1674 Barclay Blvd., Buffalo Grove, IL 60089.

ParallelDirect LLC, 103 Schelter Rd, #20, Lincolnshire, IL 60069.

Saddam Aburoumi, 193 Homestead Street, Unit D3, Manchester, CT 06042.

Sarvasva LLC, D/b/a One Stop Food Mart, 32 Church Road, Maple Shade, NJ 08052.

Shenzhen Haka Flavor Technology Co., Ltd., 4F, Building B, Anjia Industrial Park, Gonghe Industrial Rd., Shajing Town, Bao'an District, Shenzhen City, Guangdong, China 518104.

Shenzhen OCIGA Technology Co., Ltd., 4F, Building B, Anjia Industrial Park, Gonghe Industrial Rd, Shajing Town, Bao'an District, Shenzhen City, Guangdong Province, China 518104.

Shenzhen OVNS Technology Co., Ltd., 6F, North Side Of Xinlong Tech Park, No. 2, Dawangshan Industrial 1st Road, Shajing Town, Bao'an District, Shenzhen, Guangdong, China 518101.

Shenzhen Yibo Technology Co., Ltd., E District 4F, 5 Building, Wen Ge Industrial Zone, Heshuikou, Gongming St., Guangming New District, Shenzhen City, Guangdong Province, China 518106.

Twist Vapor Franchising, LLC, 14937 Bruce B Downs Boulevard, Tampa, FL 33613.

United Wholesale LLC, 73 Linden Street, Glastonbury, CT 06033.

Vape4U LLC, 8926 Benson Ave. Ste E, Montclair, CA 91763.

Vaperz LLC, 19818 S Harlem Ave., Frankfort, IL 60423.

Vaportronix, LLC, 2941 NE 185th Street, Aventura, FL 33180.

Vapor 4 Life Holdings, Inc., 4080 Commercial Ave., Suite A, Northbrook, IL 60062.

The ZFO, 42 Nichols St., Suite 14, Spencerport, NY 14559.

Ziip Lab Co., Ltd., E District 4F, 5 Building, Wen Ge Industrial Zone, Heshuikou, Gongming St., Guangming New District, Shenzhen City, Guangdong Province, China 518106.

Ziip Lab S.A., Ave. Golero, 911 Office 27, Punta del Este—Maldonado, Uruguay, 20100.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: December 20, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–28068 Filed 12–26–18; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on December 5, 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''), the DVD Copy Control Association (''DVD CCA'') 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, Shenzhen Soling Industrial Co., Ltd., Shenzhen City, Guangdong, PEOPLE'S REPUBLIC OF CHINA, has been added as a party to this venture.

Also, Fujitsu Limited, Nakahara-ku, Kawasaki, JAPAN; and Koninklijke Philips Electronics N.V., Eindhoven, NETHERLANDS, have withdrawn as parties 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 DVD CCA intends to file additional written notifications disclosing all changes in membership.

On April 11, 2001, DVD CCA 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 August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on August 14, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 4, 2018 (83 FR 44903).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2018–28041 Filed 12–26–18; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 2018–48]

Stephen R. Kovacs, D.O.; Decision and Order

On August 2, 2018, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Stephen R. Kovacs, D.O. (hereinafter, Respondent), of Owasso and Claremore, Oklahoma. Order to Show Cause (hereinafter, OSC), at 1. The Show Cause Order proposes the revocation of Respondent's Certificates of Registration on the ground that he has ''no state authority to handle controlled substances'' in Oklahoma, the State in which he is registered with the DEA. *Id.* (citing 21 U.S.C. 824(a)(3)). It also proposes the denial of ''any applications for renewal or modification of such registrations and any applications for any other DEA registrations.'' OSC, at 1 (citing 21 U.S.C. 824(a)(3)).

Regarding jurisdiction, the Show Cause Order alleges that Respondent holds DEA Certificate of Registration No. BK9173840 at the registered address of 10314 N 138th E Ave., Suite 101, Owasso, Oklahoma 74055. OSC, at 2. This registration, the OSC alleges, authorizes Respondent to dispense controlled substances in schedules II through V as a practitioner-DW/275. *Id.* The Show Cause Order alleges that this registration expires on December 31, 2019. *Id.*

The Show Cause Order further alleges that Respondent holds DEA Certificate of Registration No. BK7370492 at the registered address of 985 West Will Rogers Blvd., Claremore, OK 74017, with a mailing address of 13616 E 103rd St. N, Ste. A, Owasso, Oklahoma 74055. *Id.* This registration, the OSC alleges, authorizes Respondent to dispense controlled substances in schedules II through V as a practitioner. *Id.* The Show Cause Order alleges that this registration expires on December 31, 2018. *Id.*

The substantive ground for the proceeding, as alleged in the Show Cause Order, is that Respondent is

''currently without authority to handle controlled substances in the State of Oklahoma, the state in which . . . [he is] registered with DEA.'' *Id.* Specifically, the Show Cause Order alleges that, on May 31, 2018, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control immediately suspended Respondent's Oklahoma controlled substances registration OBN#29222, and that this registration is associated with Respondent's practice location at 10314 N 138th E Ave., Suite 101, Owasso, Oklahoma 74055. *Id.* The Show Cause Order further alleges that Respondent's Oklahoma controlled substances registration OBN#33269, associated with Respondent's practice location at 985 West Will Rogers Blvd., Claremore, Oklahoma 74017, expired on October 31, 2017 and is listed as ''INACTIVE.'' *Id.*

The Show Cause Order notifies Respondent of his right to request a hearing on the allegations or to submit a written statement while waiving his right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 2–3 (citing 21 CFR 1301.43). The Show Cause Order also notifies Respondent of the opportunity to submit a corrective action plan. OSC, at 3–4 (citing 21 U.S.C. 824(c)(2)(C)).

By letter dated September 7, 2018, Respondent timely requested a hearing.[1] Hearing Request, at 1. According to the Hearing Request, the Oklahoma Bureau of Narcotics & Dangerous Drugs Control (hereinafter, OBNDDC) immediately suspended ''for imminent endangerment'' Respondent's State controlled substances registration based on ''allegations of professional misconduct.'' *Id.* Respondent contests the OBNDDC allegations. *Id.* The Hearing Request admits that Respondent ''is currently suspended under the State order from prescribing medications.'' *Id.* at 2. It states that, ''upon a full and fair hearing of the facts,'' Respondent ''should not have his State or Federal Certificates of Registration revoked or modified.'' *Id.*

The Office of Administrative Law Judges put the matter on the docket and assigned it to Chief Administrative Law Judge John J. Mulrooney, II (hereinafter, CALJ). On September 10, 2018, the CALJ issued an Order directing the filing of evidence of lack of State authority and a briefing schedule.

The Government filed a timely Summary Disposition Motion ''based on Respondent's lack of state authority to handle controlled substances.'' Summary Disposition Motion, at 1. The Government attached to its Summary Disposition Motion a certified copy of the OBNDDC's letter to Respondent notifying him of his ''Immediate Suspension Due to Imminent Danger'' dated May 31, 2018. *Id.* at Exh. 4. According to the Summary Disposition Motion, Respondent ''is not authorized to possess a DEA registration'' in Oklahoma ''[a]bsent authority by the State of Oklahoma to dispense controlled substances.'' *Id.* at 4. Citing Agency precedent, the Government argues that ''even if the period of suspension is temporary or if there is the potential that Respondent's state controlled substances privileges will be reinstated, summary disposition is warranted.'' *Id.*

On September 27, 2018, Respondent timely filed a Response to the Summary Disposition Motion. Attached to the Response is an email from the Deputy General Counsel of the Oklahoma Bureau of Narcotics dated September 13, 2018. The email asks Respondent's attorney if he ''[w]ould . . . be opposed to continuing . . . [Respondent's] hearing until October 25, 2018.'' Response, Exh. 1, at 1. Counsel for Respondent did not object to the continuance. *Id.* at 1. According to the Response, ''Respondent's rights have been severely prejudiced by delaying the state hearing.'' *Id.* at 2.

Respondent ''admits that the OBNDDC filed the Notice of Immediate Suspension of Respondent's Oklahoma controlled substances registration on May 31, 2018.'' *Id.* at 1. He states, however, that he ''has had no opportunity to present evidence or cross-examine witnesses, defenses to which he is absolutely entitled under Oklahoma law'' and that ''but for'' the continuance, he ''would have had that opportunity today.'' *Id.* at 3. Respondent argues that the Agency precedent on which the Government relies ''allowed some form of process with the state . . . before the Government's motion for summary disposition was granted.'' *Id.* at 2. He states that the ''state administrative hearing will be concluded in less than one month . . . [at which] time both sides will have a much more complete understanding of the facts, and the ALJ will be able to more effectively rule on the status of Respondent's DEA registration.'' *Id.* at 3. Respondent asks that the Summary Disposition Motion be denied or, in the alternative, that the deadline for his response be ''extended . . . beyond the date of his state administrative hearing.'' *Id.*

The CALJ granted the Summary Disposition Motion and recommended that Respondent's registration be revoked. Order Denying the Respondent's Request for Extension, Granting the Government's Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge dated September 28, 2018 (hereinafter, R.D.). The CALJ notes Respondent's concession that his Oklahoma registration was suspended on May 31, 2018. *Id.* at 3. Citing Agency precedent about stay requests, the CALJ denied Respondent's request for an extended response deadline. *Id.* After summarizing Agency precedent concerning a registrant's loss of State authority to dispense controlled substances, the CALJ recommended that Respondent's registration be revoked and that pending applications for renewal be denied. *Id.* at 4–7.

By letter dated October 18, 2018, the CALJ certified and transmitted the record to me for final Agency action. In that letter, the CALJ advises that neither party filed exceptions.

I issue this Decision and Order based on the entire record before me. 21 CFR 1301.43(e). I make the following findings of fact.

Findings of Fact

Respondent's DEA Registrations

Respondent holds two DEA Certificates of Registration. First, Respondent holds DEA Certificate of Registration No. BK9173840, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner DW/275, at the registered address of 10314 N 138th E Ave., Suite 101, Owasso, Oklahoma 74055. Summary Disposition Motion, Exh. 1 (Certification of Registration Status), at 1. This registration expires on December 31, 2019. *Id.*

Second, Respondent holds DEA Certificate of Registration No. BK7370492, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 985 West Will Rogers Blvd., Claremore, Oklahoma 74017. *Id.* at Exh. 2 (Certification of Registration Status), at

[1] Attached to the Government's Motion for Summary Disposition is a DEA–12 (Receipt for Cash or Other Items) that, according to the Government's allegations, Respondent executed when the Government served the OSC on August 8, 2018. Respondent does not challenge the Government's service-related allegations. The Government does not contest the timeliness of Respondent's request for a hearing. Government's Motion for Summary Disposition dated September 19, 2018 (hereinafter ''Summary Disposition Motion''), at 2. Thus, I find that Respondent's Hearing Request was timely since it was filed within 30 days of service of the OSC. 21 CFR 1301.43(a).

1. This registration expires on December 31, 2018. *Id.*

The Status of Respondent's State License

On May 31, 2018, the OBNDDC immediately suspended due to imminent danger Respondent's ''privileges to possess, administer, dispense, prescribe and/or distribute scheduled controlled dangerous substances.'' *Id.* at Exh. 4, at 1. According to the immediate suspension, the OBNDDC found ''by clear and convincing evidence . . . [that Respondent's] continuing status as an Oklahoma Bureau of Narcotics registrant represents an imminent danger to the public health, safety and welfare of the citizens of Oklahoma.'' *Id.* at Exh. 4, at 3. The OBNDDC's action was based on information that Respondent wrote false Oxycodone (30mg) prescriptions for a patient with the intention of diverting the narcotics back to himself; that Respondent urged a patient to include a false report of stolen Oxycodone on a police report with the intention of getting another refill; that Respondent deleted messages pertaining to his illegal activity from a patient's electronic device; that a patient witnessed Respondent snort Oxycodone between meetings with patients; and that Respondent was opioid dependent. *Id.* at Exh. 4, at 2–3.

Respondent admits that the OBNDDC filed the Notice of Immediate Suspension on May 31, 2018. Response, at 1. There is no evidence in the record that the OBNDDC lifted this Immediate Suspension. Further, according to the online records of the State of Oklahoma, of which I take official notice, I find that this Immediate Suspension is still in effect today and that no Oklahoma controlled substances registration ever assigned to Respondent is currently active.[2] OBNDDC Registration Search Lookup, *https://pay.apps.ok.gov/obndd/_app/search/index.php* (last visited December 11, 2018).

Accordingly, I find that Respondent currently is without authority to dispense controlled substances in Oklahoma, the State in which he is registered.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA), ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71,371 (2011), *pet. for rev. denied,* 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . ., to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess State authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he practices. *See, e.g., Hooper, supra,* 76 FR at 71,371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.,* 53 FR 11,919, 11,920 (1988), *Blanton, supra,* 43 FR at 27,617.

Under longstanding Agency precedent, DEA revokes the registration of a practitioner who lacks State authority to handle controlled substances even when the practitioner's State authority was suspended summarily or pending a final decision on the merits. *See, e.g., Bourne Pharmacy, Inc.,* 72 FR 18,273, 18,274 (2007). Similarly, as the CALJ made clear, the facts that a State immediately suspended a respondent's registration and that the respondent may, some day, regain his State registration to dispense controlled substances do not change the salient fact—the respondent is not currently authorized to handle controlled substances in the State in which he is registered.[3] *Mehdi Nikparvarfard, M.D.,* 83 FR 14,503, 14,504 (2018).

Here, Respondent admits that the OBNDDC suspended his Oklahoma controlled substances registration. Further, there is no evidence in the record that Respondent holds any active Oklahoma registration to handle controlled substances. As such, according to Oklahoma law, Respondent currently does not have authority to handle controlled substances in Oklahoma. Okla. Stat. tit. 63, § 2–302 (Westlaw, current with legislation of the Second Regular Session of the 56th Legislature (2018)) (Every person who dispenses any controlled dangerous substance within Oklahoma shall obtain a registration issued by OBNDDC.). Respondent, therefore, is not eligible for a DEA registration. Accordingly, I will order that Respondent's DEA registrations be revoked and that any pending application for the renewal or modification of those registrations be denied. 21 U.S.C. 824(a)(3).

Order

Pursuant to 28 CFR 0.100(b) and the authority thus vested in me by 21 U.S.C. 824(a), I order that DEA Certificate of Registration Nos. BK9173840 and BK7370492 issued to Stephen R. Kovacs, D.O., be, and they hereby are, revoked. I further order that any pending application of Stephen R. Kovacs, D.O., to renew or modify these registration, as well as any other pending application by him for registration in the State of Oklahoma, be, and it hereby is, denied. This Order is effective immediately.[4]

[2] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Respondent may dispute my finding by filing a properly supported motion for reconsideration within 15 calendar days of the date of this Order. Any such motion shall be filed with the Office of the Administrator and a copy shall be served on the Government; in the event Respondent files a motion, the Government shall have 15 calendar days to file a response.

[3] The CALJ's denial of Respondent's request for an enlargement of time is the correct result. Also, as already discussed, Oklahoma's online records still indicate that Respondent's Oklahoma controlled substances registrations are inactive or inactivated.

[4] For the same reasons the OBNDDC found by clear and convincing evidence that Respondent's continuing status as an Oklahoma Bureau of Narcotics registrant represents an imminent danger to the public health, safety and welfare of the citizens of Oklahoma, I find that the public interest

Continued

Dated: December 11, 2018.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2018–28072 Filed 12–26–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Johnson Matthey Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 28, 2019. Such persons may also file a written request for a hearing on the application on or before January 28, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417, (January 25, 2007)

SUPPLEMENTARY INFORMATION:

The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on October 15, 2018, Johnson Matthey Inc., 2003 Nolte Drive, West Deptford, New Jersey 08066 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Coca Leaves	9040	II
Thebaine	9333	II
Opium, raw	9600	II
Noroxymorphone	9668	II
Poppy Straw Concentrate	9670	II
Fentanyl	9801	II

The company plans to import coca leaves (9040), raw opium (9600), and poppy straw concentrate (9670) in order to bulk manufacture active pharmaceutical ingredients (API) for distribution to its customers. The company plans to also import thebaine (9333), noroxymorophone (9668), and fentanyl (9801) to use as analytical reference standards, both internally and to be sold to their customers to support testing of Johnson Matthey Inc.'s API's only.

Dated: December 8, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018–28073 Filed 12–26–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Registration

ACTION: Notice of registration.

SUMMARY: The registrant listed below has applied for and been granted registration by the Drug Enforcement Administration (DEA) as an importer of various classes of schedule I or II controlled substances.

SUPPLEMENTARY INFORMATION: The company listed below applied to be registered as an importer of various basic classes of controlled substances. Information on previously published notices is listed in the table below. No comments or objections were submitted and no requests for hearing were submitted for this notice.

Company	FR docket	Published
R & D Systems, Inc.	83 FR 49580.	October 2, 2018.

The Drug Enforcement Administration (DEA) has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of the listed registrant to import the applicable basic classes of schedule I or II controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the DEA has granted a registration as an importer for schedule I or II controlled substances to the above listed company.

necessitates that this Order be effective immediately. 21 CFR 1316.67.

Dated: December 8, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018–28078 Filed 12–26–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Myoderm

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 28, 2019. Such persons may also file a written request for a hearing on the application on or before January 28, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on November 2, 2018, Myoderm, 48 East Main Street, Norristown, Pennsylvania 19401–4915 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Amphetamine	1100	II
Lisdexamfetamine	1205	II
Methylphenidate	1724	II
Nabilone	7379	II
Oxycodone	9143	II
Hydromorphone	9150	II
Hydrocodone	9193	II
Morphine	9300	II
Oxymorphone	9652	II
Fentanyl	9801	II

The company plans to import the listed controlled substances for clinical trials, research, and analytical purposes.

Approval of permit applications will occur only when the registrant's activity is consistent with what is authorized under to 21 U.S.C.952(a)(2).

Authorization will not extend to the import of FDA approved or non-approved finished dosage forms for commercial sale.

Dated: December 8, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018–28081 Filed 12–26–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Agilent Technologies

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 28, 2019. Such persons may also file a written request for a hearing on the application on or before January 28, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on August 13, 2018, Agilent Technologies, 250 Smith Street, North Kingstown, Rhode Island 02852 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Marihuana	7360	I
Tetrahydrocannabinols	7370	I

This company plans to import the listed controlled substances in bulk form for testing and calibration only. The listed controlled substances are not for human or animal use.

Dated: December 8, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018–28080 Filed 12–26–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Registration

ACTION: Notice of registration.

SUMMARY: The registrant listed below has applied for and been granted registration by the Drug Enforcement Administration (DEA) as an importer of schedule I or schedule II controlled substances.

SUPPLEMENTARY INFORMATION:

The company listed below applied to be registered as an importer of various basic classes of controlled substances. Information on the previously published notice is listed in the table below. No comments or objections were submitted and no requests for hearing were submitted for this notice.

Company: Fisher Clinical Services, Inc.

FR Docket: 83 FR 53108.

Published: October 19, 2018.

The DEA has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of the listed registrant to import the applicable basic classes of schedule I or II controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the DEA has granted a registration as an importer for schedule I controlled substance to the above listed company.

Dated: December 8, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018–28076 Filed 12–26–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Exemptions from Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grants of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: 2018–08, Liberty Media 401(k) Savings Plan, D–11890; and 2018–09, CLS Investments, LLC and Affiliates, D–11931.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. Each notice set forth a summary of the facts and representations made by the applicant for the exemption, and referred interested persons to the application for a complete statement of the facts and representations. Each application is available for public inspection at the Department in Washington, DC Each notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, each notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). Each applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

Each notice of proposed exemption was issued, and each exemption is being granted, solely by the Department, because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011) and based upon the entire record, the Department makes the following findings:

(a) Each exemption is administratively feasible;

(b) Each exemption is in the interests of the plan and its participants and beneficiaries; and

(c) Each exemption is protective of the rights of the participants and beneficiaries of the plan.

Liberty Media 401(k) Savings Plan (the Plan) Located in Englewood, CO

[Prohibited Transaction Exemption 2018–08; Exemption Application No. D–11890]

Written Comments

In the Notice of Proposed Exemption published in the **Federal Register** on April 4, 2018 at 83 FR 14505 (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing within thirty-seven (37) days of the date of the publication. All comments and requests for a hearing were due by May 11, 2018.

During the comment period, the Department received no comments and no requests for a public hearing.

After full consideration and review of the entire record, the Department has determined to grant the exemption, as set forth above. The complete application file (D–11890) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue NW, Washington DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on April 4, 2018 at 83 FR 14505.

Exemption

Section I. Transactions

Effective for the period beginning May 24, 2016, and ending June 16, 2016, the restrictions of sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) of the Act [1] shall not apply to:

(a) The acquisition by the Plan of certain stock subscription rights (the Rights) to purchase shares of Series C Liberty Braves common stock (the Series

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, should be read to refer as well to the corresponding provisions of the Code.

C Liberty Braves Stock), in connection with a rights offering (the Rights Offering) held by Liberty Media Corporation (LMC), the Plan sponsor and a party in interest with respect to the Plan; and

(b) The holding of the Rights by the Plan during the subscription period of the Rights Offering, provided that certain conditions are satisfied.

Section II. Conditions

(a) The Plan's acquisition of the Rights resulted solely from an independent corporate act of LMC;

(b) All holders of Series A, Series B, or Series C Liberty Braves common stock (Series A, B, or C Liberty Braves Stock), including the Plan, were issued the same proportionate number of Rights based on the number of shares of the Series A, B, or C Liberty Braves Stock held by each such shareholder;

(c) For purposes of the Rights Offering, all holders of Series A, B, or C Liberty Braves Stock, including the Plan, were treated in a like manner, with two exceptions: (1) The oversubscription option available under the Rights Offering was not available to participants in the Plan; and (2) certain participants deemed to be reporting persons under Rule 16(b) with respect to LMC did not have the right to instruct Fidelity to either sell or exercise the Rights credited to their Plan Accounts;

(d) The acquisition of the Rights by the Plan was made in a manner that was consistent with provisions of the Plan for the individually-directed investment of participant accounts;

(e) The Liberty Media 401(k) Savings Plan Committee (the Committee) directed the Plan trustee to sell the Rights on the NASDAQ Global Select Market (the NASDAQ), in accordance with Plan provisions that precluded the Plan from acquiring additional shares of Series C Liberty Braves Stock;

(f) The Committee did not exercise any discretion with respect to the acquisition and holding of the Rights; and

(g) The Plan did not pay any fees or commissions in connection with the acquisition or holding of the Rights, and it did not pay any commissions to any affiliates of LMC in connection with the sale of the Rights.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department, telephone (202) 693–8456. (This is not a toll-free number.)

CLS Investments, LLC and Affiliates (CLS or the Applicant) Located in Omaha, NE

[Prohibited Transaction Exemption 2018–09; Exemption Application No. D–11931]

Written Comments

In the Notice of Proposed Exemption published in the **Federal Register** on April 4, 2018 at 83 FR 14509 (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing within forty-five (45) days of the date of the publication. All comments and requests for a hearing were due by May 19, 2018.

During the comment period, the Department received one comment letter, dated May 7, 2018, and no requests for a public hearing. The comment letter, which was submitted by CLS (the Applicant), requests certain clarifications and corrections to the operative language and the Summary of Facts and Representations (the Summary) of the Notice. Specifically, the Applicant requested that:

1. The first paragraph of Section II(m)(l) be revised so that the reference therein to ''Section II(m)(l)(i)–(v)'' should be changed to ''Section II(m)(l)(i)–(iv).''

2. Section II(m)(1)(iv) be revised so that the reference therein to ''this Section II(m)(l)(v)'' should be changed to ''this Section II(m)(l)(iv).''

3. Section II(o) be revised so that the reference therein to ''those sections'' should be changed to ''that section.''

4. The second sentence of Section II(p) be revised so that the reference to ''paragraph (d) therein'' should be changed to ''paragraph (f) therein.''

5. The last paragraph of Section II(q) be deleted, as the definition of ''Best Interest'' is already provided in Section IV(o).

6. Section IV(k)(3) be revised so that both references therein to ''Section II(a)(l)–(4)'' should be changed to ''Section II(a)(l)–(2).''

7. Section IV(k)(4) be revised by adding the word ''expenses'' between the words ''operating'' and ''payable.''

8. Representation 2 of the Summary clarify that CLS does not provide secondary services, although its affiliates may provide such services.

In response, the Department concurs with the Applicant's clarifications and revisions to the Notice, and has made corresponding changes to the operative language. The Department has also noted changes to the Summary in accordance with the Applicant's request.

After full consideration and review of the entire record, including the comment letter filed by the Applicant, the Department has determined to grant the exemption, as set forth above. The Applicant's comment letter has been included as part of the public record of the exemption application. The complete application file (D–11931) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue NW, Washington DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on April 4, 2018 at 83 FR 14509.

Exemption

Section I. Transactions

The restrictions of sections 406(a)(1)(D) and 406(b) of the Act (or ERISA) and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(D) through (F) of the Code,[2] shall not apply to the receipt of a fee by CLS from a registered, open-end investment company for which CLS serves as an investment advisor (an Affiliated Fund), in connection with the investment by an employee benefit plan in shares of such Affiliated Fund, where CLS serves as an investment advisor or investment manager with respect to such plan (Client Plan), provided the conditions of this exemption are met.

Section II. Specific Conditions

(a) Each Client Plan which is invested in shares of an Affiliated Fund either:

(1) Does not pay to CLS, for the entire period of such investment, any investment management fee, or any investment advisory fee, or any similar fee at the plan-level (the Plan-Level Management Fee), as defined below in Section IV(l), with respect to any of the assets of such Client Plan which are invested in shares of such Affiliated Fund; or

(2) Pays to CLS a Plan-Level Management Fee, based on total assets of such Client Plan under management by CLS at the plan-level, from which a credit has been subtracted from such Plan-Level Management Fee, where the amount subtracted represents such Client Plan's pro rata share of any investment advisory fee and any similar fee (the Affiliated Fund Level Advisory Fee), as defined below in Section IV(m), paid by such Affiliated Fund to CLS.

If, during any fee period, in the case of a Client Plan invested in shares of an Affiliated Fund, such Client Plan has prepaid its Plan Level Management Fee, and such Client Plan purchases shares

[2] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, should be read to refer as well to the corresponding provisions of the Code.

of an Affiliated Fund, the requirement of this Section II(a)(2) shall be deemed met with respect to such prepaid Plan-Level Management Fee, if, by a method reasonably designed to accomplish the same, the amount of the prepaid Plan-Level Management Fee that constitutes the fee with respect to the assets of such Client Plan invested in shares of an Affiliated Fund:

(i) Is anticipated and subtracted from the prepaid Plan-Level Management Fee at the time of the payment of such fee; or

(ii) Is returned to such Client Plan, no later than during the immediately following fee period; or

(iii) Is offset against the Plan-Level Management Fee for the immediately following fee period or for the fee period immediately following thereafter.

For purposes of Section II(a)(2), a Plan-Level Management Fee shall be deemed to be prepaid for any fee period, if the amount of such Plan-Level Management Fee is calculated as of a date not later than the first day of such period.

(b) No sales commissions, no redemption fees, and no other similar fees are paid in connection with any purchase and in connection with any sale by a Client Plan in shares of an Affiliated Fund. However, this Section II(b) does not prohibit the payment of a redemption fee, if:

(1) Such redemption fee is paid only to an Affiliated Fund; and

(2) The existence of such redemption fee is disclosed in the summary prospectus for such Affiliated Fund in effect both at the time of any purchase of shares in such Affiliated Fund and at the time of any sale of such shares.

(c) The combined total of all fees received by CLS is not in excess of reasonable compensation within the meaning of section 408(b)(2) of the Act, for services provided:

(1) By CLS to each Client Plan; and

(2) By CLS to each Affiliated Fund in which a Client Plan invests in shares of such Affiliated Fund;

(d) CLS does not receive any fees payable pursuant to Rule 12b–1 under the Investment Company Act in connection with the transactions covered by this exemption;

(e) No Client Plan is an employee benefit plan sponsored or maintained by CLS;

(f) In the case of a Client Plan investing in shares of an Affiliated Fund, the Second Fiduciary, as defined below in Section IV(h), acting on behalf of such Client Plan, receives, in writing, in advance of any investment by such Client Plan in shares of such Affiliated Fund, a full and detailed disclosure via first class mail or via personal delivery of (or, if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(n), as set forth below) information concerning such Affiliated Fund, including but not limited to the items listed below:

(1) A current summary prospectus issued by each such Affiliated Fund;

(2) A statement describing the fees, including the nature and extent of any differential between the rates of such fees for:

(i) Investment advisory and similar services to be paid to CLS by each Affiliated Fund;

(ii) Secondary Services to be paid to CLS by each such Affiliated Fund; and

(iii) All other fees to be charged by CLS to such Client Plan and to each such Affiliated Fund and all other fees to be paid to CLS by each such Client Plan and by each such Affiliated Fund;

(3) The reasons why CLS may consider investment in shares of such Affiliated Fund by such Client Plan to be appropriate for such Client Plan;

(4) A statement describing whether there are any limitations applicable to CLS with respect to which assets of such Client Plan may be invested in shares of such Affiliated Fund, and if so, the nature of such limitations; and

(5) Upon the request of the Second Fiduciary acting on behalf of such Client Plan, a copy of the Notice of Proposed Exemption (the Notice), a copy of the final exemption, if granted, and any other reasonably available information regarding the transactions which are the subject of this exemption;

(g) On the basis of the information described above in Section II(f), a Second Fiduciary acting on behalf of a Client Plan authorizes, in writing:

(1) The investment of the assets of such Client Plan in shares of an Affiliated Fund;

(2) The Affiliated Fund-Level Advisory Fee received by CLS for investment advisory services and similar services provided by CLS to such Affiliated Fund;

(3) The fee received by CLS for Secondary Services provided by CLS to such Affiliated Fund;

(4) The Plan-Level Management Fee received by CLS for investment management and similar services provided by CLS to such Client Plan at the plan-level; and

(5) The selection, by CLS, of the applicable fee method, as described above in Section II(a)(1)–(2);

All authorizations made by a Second Fiduciary pursuant to this Section II(g) must be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(h)(1) Any authorization, described above in Section II(g), and any authorization made pursuant to negative consent, as described below in Section II(i), made by a Second Fiduciary, acting on behalf of a Client Plan, shall be terminable at will by such Second Fiduciary, without penalty to such Client Plan (including any fee or charge related to such penalty), upon receipt by CLS via first class mail, via personal delivery, or via electronic email of a written notification of the intent of such Second Fiduciary to terminate any such authorization;

(2) A form (the Termination Form), expressly providing an election to terminate any authorization, described above in Section II(g), or to terminate any authorization made pursuant to negative consent, as described below in Section II(i), with instructions on the use of such Termination Form, must be provided to such Second Fiduciary at least annually, either in writing via first class mail or via personal delivery (or if such Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(n), as set forth below). However, if a Termination Form has been provided to such Second Fiduciary pursuant to Section II(i), then a Termination Form need not be provided pursuant to this Section II(h), until at least six (6) months, but no more than twelve (12) months, have elapsed, since the prior Termination Form was provided;

(3) The instructions for the Termination Form must include the following statements:

(i) Any authorization, described above in Section II(g), and any authorization made pursuant to negative consent, as described below in Section II(i), is terminable at will by a Second Fiduciary, acting on behalf of a Client Plan, without penalty to such Client Plan, upon receipt by CLS, via first class mail or via personal delivery or via electronic email, of the Termination Form, or some other written notification of the intent of such Second Fiduciary to terminate such authorization; and

(ii) As of the date that is at least thirty (30) days from the date that CLS sends the Termination Form to such Second Fiduciary, the failure by such Second Fiduciary to return such Termination Form or the failure by such Second Fiduciary to provide some other written notification of the Client Plan's intent to terminate any authorization, described in Section II(g), or intent to terminate any authorization made pursuant to negative consent, as described below in

Section II(i), will be deemed to be an approval by such Second Fiduciary;

(4) In the event that a Second Fiduciary, acting on behalf of a Client Plan, at any time returns a Termination Form or returns some other written notification of intent to terminate any authorization, as described above in Section II(g), or intent to terminate any authorization made pursuant to negative consent, as described below in Section II(i), the termination will be implemented by the withdrawal of all investments made by such Client Plan in the affected Affiliated Fund, and such withdrawal will be implemented by CLS within one (1) business day of the date that CLS receives such Termination Form or receives from the Second Fiduciary, acting on behalf of such Client Plan, some other written notification of intent to terminate any such authorization;

(5) From the date a Second Fiduciary, acting on behalf of a Client Plan that invests in shares of an Affiliated Fund, returns a Termination Form or returns some other written notification of intent to terminate such Client Plan's investment in such Affiliated Fund, such Client Plan will not be subject to pay a pro rata share of any Affiliated Fund-Level Advisory Fee and will not be subject to pay any fees for Secondary Services paid to CLS by such Affiliated Fund, or any other fees or charges;

(i)(1) CLS, at least thirty (30) days in advance of the implementation of each fee increase (Fee Increase(s)), as defined below in Section IV(k), must provide in writing via first class mail or via personal delivery (or if the Second Fiduciary consents to such means of delivery through electronic email, in accordance with Section II(n), as set forth below), a notice of change in fees (the Notice of Change in Fees) (which may take the form of a proxy statement, letter, or similar communication which is separate from the summary prospectus of such Affiliated Fund) and which explains the nature and the amount of such Fee Increase to the Second Fiduciary of each affected Client Plan. Such Notice of Change in Fees shall be accompanied by a Termination Form and by instructions on the use of such Termination Form, as described above in Section II(h); and

(2) As of the date that is at least thirty (30) days from the date that CLS sends the Notice of Change of Fees and the Termination Form to such Second Fiduciary, the failure by such Second to return such Termination Form and the failure by such Second Fiduciary to provide some other written notification of the Client Plan's intent to terminate the authorization, described in Section II(g), or to terminate the negative consent authorization, as described in Section II(i), will be deemed to be an approval by such Second Fiduciary of such Fee Increase.

(j) CLS is subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Second Fiduciary of such Client Plan requests CLS to provide.

(k) All dealings between a Client Plan and an Affiliated Fund are on a basis no less favorable to such Client Plan, than dealings between such Affiliated Fund and other shareholders of the same class of shares in such Affiliated Fund.

(l) In the event a Client Plan invests in shares of an Affiliated Fund, if such Affiliated Fund places brokerage transactions with CLS, CLS will provide to the Second Fiduciary of each such Client Plan, so invested, at least annually a statement specifying:

(1) The total, expressed in dollars, of brokerage commissions that are paid to CLS by each such Affiliated Fund;

(2) The total, expressed in dollars, of brokerage commissions that are paid by each such Affiliated Fund to brokerage firms unrelated to CLS;

(3) The average brokerage commissions per share, expressed as cents per share, paid to CLS by each such Affiliated Fund; and

(4) The average brokerage commissions per share, expressed as cents per share, paid by each such Affiliated Fund to brokerage firms unrelated to CLS;

(m)(1) CLS provides to the Second Fiduciary of each Client Plan invested in shares of an Affiliated Fund with the disclosures, as set forth below, and at the times set forth below in Section II(m)(1)(i)–(iv), either in writing via first class mail or via personal delivery (or if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q) as set forth below):

(i) Annually, with a copy of the current summary prospectus for each Affiliated Fund in which such Client Plan invests in shares of such Affiliated Fund;

(ii) Upon the request of such Second Fiduciary, a copy of the statement of additional information for each Affiliated Fund in which such Client Plan invests in shares of such Affiliated Fund which contains a description of all fees paid by such Affiliated Fund to CLS;

(iii) Oral or written responses to the inquiries posed by the Second Fiduciary of such Client Plan, as such inquiries arise; and

(iv) Annually, with a Termination form, as described in Section II(h)(1), and instructions on the use of such form, as described in Section II(h)(3), except that if a Termination Form has been provided to such Second Fiduciary pursuant to Section II(i), then a Termination Form need not be provided again pursuant to this Section II(m)(1)(iv) until at least six (6) months but no more than twelve (12) months have elapsed since a Termination Form was provided;

(n) Any disclosure required herein to be made by CLS to a Second Fiduciary may be delivered by electronic email containing direct hyperlinks to the location of each such document required to be disclosed, which are maintained on a website by CLS, provided:

(1) CLS obtains from such Second Fiduciary prior consent in writing to the receipt by such Second Fiduciary of such disclosure via electronic email;

(2) Such Second Fiduciary has provided to CLS a valid email address; and

(3) The delivery of such electronic email to such Second Fiduciary is provided by CLS in a manner consistent with the relevant provisions of the Department's regulations at 29 CFR 2520.104b–1(c) (substituting the word ''CLS'' for the word ''administrator'' as set forth therein, and substituting the phrase ''Second Fiduciary'' for the phrase ''the participant, beneficiary or other individual'' as set forth therein).

(o) The authorizations described in Section II(i) may be made affirmatively, in writing, by a Second Fiduciary, in a manner that is otherwise consistent with the requirements of that section;

(p) All of the conditions of PTE 77–4, as amended and/or restated, are met. Notwithstanding this, if PTE 77–4 is amended and/or restated, the requirements of paragraph (e) therein will be deemed to be met with respect to authorizations described in Section II(i) above, but only to the extent the requirements of Section II(i) are met. Similarly, if PTE 77–4 is amended and/or restated, the requirements of paragraph (f) therein will be deemed to be met with respect to authorizations described in Section II(i) above, if the requirements of Section II(i) are met;

(q) *Standards of Impartial Conduct.* If CLS is a fiduciary within the meaning of section 3(21)(A)(i) or (ii) of the Act, or section 4975(e)(3)(A) or (B) of the Code, with respect to the assets of a Client Plan involved in the transaction, CLS must comply with the following conditions with respect to the transaction: (1) CLS acts in the Best Interest (as defined below, in Section

IV(o)) of the Client Plan; (2) all compensation received by CLS in connection with the transaction in relation to the total services the fiduciary provides to the Client Plan does not exceed reasonable compensation within the meaning of section 408(b)(2) of the Act; and (3) CLS's statements about recommended investments, fees, material conflicts of interest,[3] and any other matters relevant to a Client Plan's investment decisions are not materially misleading at the time they are made.

(r) The purchase price paid and the sales price received by a Client Plan for shares in an Affiliated Fund purchased or sold directly is the net asset value per share (NAV), as defined below in Section IV(f), at the time of the transaction, and is the same purchase price that would have been paid, and the same sales price that would have been received, for such shares by any other shareholder of the same class of shares in such Affiliated Fund at that time; and

(s) CLS, including any officer and any director of CLS, does not purchase any shares of an Affiliated Fund from, and does not sell any shares of an Affiliated Fund to, any Client Plan which invests directly in such Affiliated Fund.

Section III. General Conditions

(a) CLS maintains for a period of six (6) years the records necessary to enable the persons, described below in Section III(b), to determine whether the conditions of this exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred, if solely because of circumstances beyond the control of CLS, the records are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest other than CLS shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained or are not available for examination, as required below by Section III(b).

(b)(1) Except as provided in Section III(b)(2) and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to in Section III(a) are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service, or the Securities & Exchange Commission;

(ii) Any fiduciary of a Client Plan invested in shares of an Affiliated Fund and any duly authorized employee or representative of such fiduciary; and

(iii) Any participant or beneficiary of a Client Plan invested in shares of an Affiliated Fund and any representative of such participant or beneficiary;

(2) None of the persons described in Section III(b)(1)(ii) and (iii) shall be authorized to examine trade secrets of CLS, or commercial or financial information which is privileged or confidential.

Section IV. Definitions

For purposes of this exemption:

(a) The term ''CLS'' means CLS Investments, LLC and any affiliate thereof, as defined below, in Section IV(c).

(b) The term ''Client Plan(s)'' means a 401(k) plan(s), an individual retirement account(s), other tax-qualified plan(s), and other plan(s) as defined in the Act and Code, but does not include any employee benefit plan sponsored or maintained by CLS, as defined above in Section IV(a).

(c) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(d) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term ''Affiliated Fund'' means a diversified open-end investment company registered with the U.S. Securities and Exchange Commission under the Investment Company Act, as amended, for which CLS serves as an investment adviser.

(f) The term ''net asset value per share'' and the term ''NAV'' mean the amount for purposes of pricing all purchases and sales of shares of an Affiliated Fund, calculated by dividing the value of all securities, determined by a method as set forth in the summary prospectus for such Affiliated Fund and in the statement of additional information, and other assets belonging to such Affiliated Fund or portfolio of such Affiliated Fund, less the liabilities charged to each such portfolio or each such Affiliated Fund, by the number of outstanding shares.

(g) The term ''relative'' means a relative as that term is defined in section 3(15) of the Act (or a member of the family as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(h) The term ''Second Fiduciary'' means the fiduciary of a Client Plan who is independent of and unrelated to CLS. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to CLS if:

(1) Such Second Fiduciary, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with CLS;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary, is an officer, director, partner, or employee of CLS (or is a relative of such person); or

(3) Such Second Fiduciary, directly or indirectly, receives any compensation or other consideration for his or her personal account in connection with any transaction described in this exemption.

If an officer, director, partner, or employee of CLS (or relative of such person) is a director of such Second Fiduciary, and if he or she abstains from participation in:

(i) The decision of a Client Plan to invest in and to remain invested in shares of an Affiliated Fund;

(ii) Any authorization in accordance with Section II(g), and any authorization, pursuant to negative consent, as described in Section II(i); and

(iii) The choice of such Client Plan's investment adviser, then Section IV(h)(2) above shall not apply.

(i) The term ''Secondary Service(s)'' means a service or services other than an investment management service, investment advisory service, and any similar service which is provided by CLS to an Affiliated Fund, including, but not limited to, custodial, accounting, administrative services, and brokerage services. CLS may also serve as a dividend disbursing agent, shareholder servicing agent, transfer agent, fund accountant, or provider of some other Secondary Service, as defined in this Section IV(i).

(j) The term ''business day'' means any day that:

(1) CLS is open for conducting all or substantially all of its business; and

[3] A ''material conflict of interest'' exists when a fiduciary has a financial interest that could affect the exercise of its best judgment as a fiduciary in rendering advice to a Client Plan. For this purpose, the failure of CLS to disclose a material conflict of interest relevant to the services it is providing to a Client Plan, or other actions it is taking in relation to a Client Plan's investment decisions, is deemed to be a misleading statement.

(2) The New York Stock Exchange (or any successor exchange) is open for trading.

(k) The term ''Fee Increase(s)'' includes any increase by CLS in a rate of a fee previously authorized in writing by the Second Fiduciary of each affected Client Plan pursuant to Section II(g) above, and in addition includes, but is not limited to:

(1) Any fee increase that results from the addition of a service;

(2) Any increase in any fee that results from a decrease in the number of services and any increase in any fee that results from a decrease in the kind of service(s) performed by CLS for such fee over an existing rate of fee for each such service previously authorized by the Second Fiduciary, in accordance with Section II(g) above;

(3) Any increase in any fee that results from CLS changing from one of the fee methods, as described above in Section II(a)(1)–(2), to another of the fee methods, as described above in Section II(a)(1)–(2); and

(4) Any change in the amount of operating expenses of a Fund that is reimbursed or otherwise waived by CLS or its affiliates to the extent that such change results in an increase in the total operating expenses payable by the Fund.

(l) The term ''Plan-Level Management Fee'' includes any investment management fee, investment advisory fee, and any similar fee paid by a Client Plan to CLS for any investment management services, investment advisory services, and similar services provided by CLS to such Client Plan at the plan-level. The term ''Plan-Level Management Fee'' does not include a separate fee paid by a Client Plan to CLS for asset allocation service(s) (Asset Allocation Service(s)), as defined below in Section IV(n), provided by CLS to such Client Plan at the plan-level.

(m) The term ''Affiliated Fund-Level Advisory Fee'' includes any investment advisory fee and any similar fee paid by an Affiliated Fund to CLS under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act.

(n) The term ''Asset Allocation Service(s)'' means a service or services to a Client Plan relating to the selection of appropriate asset classes or target-date ''glidepath'' and the allocation or reallocation (including rebalancing) of the assets of a Client Plan among the selected asset classes. Such services do not include the management of the underlying assets of a Client Plan, the selection of specific funds or manager, and the management of the selected Affiliated Funds.

(o) The term ''Best Interest'' means acting with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the plan or IRA, without regard to the financial or other interests of CLS, any affiliate or other party.

DATES: This exemption will be effective as of the date the notice granting the final exemption is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department, telephone (202) 693–8456. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 20th day of December, 2018.

Lyssa Hall,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2018–28092 Filed 12–26–18; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Industry-Recognized Apprenticeship Programs Accrediting Entity Information

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) proposal titled, ''Industry-Recognized Apprenticeship Programs Accrediting Entity Information,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before January 28, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov website at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201812–1205–001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–6881 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn:

Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue, NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for the Industry-Recognized Apprenticeship Programs Accrediting Entity Information information collection. This ICR will enable ETA to collect essential data under Training and Employment Notice (TEN) No. 3–18 titled, ''Creating Industry-Recognized Apprenticeship Programs to Expand Opportunity in America,'' established under the statutory authority of the National Apprenticeship Act (29 U.S.C. 50), concerning the operational characteristics of certain industry-recognized apprenticeship programs. According to the TEN, these new industry-recognized apprenticeship programs will be reviewed and recognized by qualified accrediting entities; the accrediting entities, in turn, may request a determination from the Department concerning their qualifications. The TEN, pending a rulemaking to amend 29 CFR part 29, provides interim information and guidance to accreditors on the process for obtaining a determination from the Department on whether that entity's standards meet the criteria outlined in TEN No. 3–18. To obtain a favorable determination from the Department, the accrediting entity should, among other things, demonstrate that it has received broad sector-wide input and consensus in the setting of industry-wide quality standards. The accrediting entity should also demonstrate that their program accreditation process ensures that the industry programs will operate in a manner consistent with DOL-identified hallmarks of high-quality apprenticeship programs. To collect the information necessary for the Department to determine whether the entity accrediting these industry-recognized apprenticeship programs has satisfied the foregoing criteria, the Department proposes the development of a form titled, ''Industry-Recognized Apprenticeship Programs Accrediting Entity Information'' intended for completion by the accrediting entity, that will enable the Department to determine whether that entity's standards meet the criteria outlined in the TEN. The National Apprenticeship Act of 1937 authorizes this information collection. *See* 29 U.S.C. 50.

This proposed information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional substantive information about this ICR, see the related notice published in the **Federal Register*** on September 20, 2018 (83 FR 47643).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should mention OMB Control Number 201812–1205–001. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Industry-Recognized Apprenticeship Programs Accrediting Entity Information.

OMB ICR Reference Number: 201812–1205–001.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 300.

Total Estimated Number of Responses: 308.

Total Estimated Annual Time Burden: 10,030 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: December 20, 2018.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2018–28044 Filed 12–26–18; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standard

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petitions must be received by MSHA's Office of Standards, Regulations, and Variances on or before January 28, 2019.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Email: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 202–693–9441.
3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, Attention: Sheila McConnell, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect a copy of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations, and Variances at 202–693–9447 (voice), *barron.barbara@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor (Secretary) determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2018–020–C.

Petitioner: Signal Peak Energy, LLC, Three Gateway Center, Suite 1500, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Bull Mountains Mine No. 1, MSHA I.D. No. 24–01950, located in Musselshell County, Montana.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of nonpermissible electronic surveying equipment in or inby the last open crosscut.

The petitioner states that:

(1) The use of nonpermissible electronic surveying equipment, includes, but is not limited to, portable, low voltage battery-operated mine transits and total station surveying equipment.

(2) In the alternative to compliance with 30 CFR 75.500(d), the petitioner proposes the following:

—The operator will use the following nonpermissible electronic surveying equipment and similar nonpermissible electronic surveying equipment if it has an ingress protection (IP) rating of 66 or greater, in or inby the last open crosscut subject to the conditions of the Proposed Decision and Order (PDO):

(a) Sokkia CX–101
(b) Sokkia Im-101
(c) Topcon ES–101
(d) Topcon GM–101
(e) Leica FlexLine TS03 Manual Total Station
(f) Leica FlexLine TS07 Manual Total Station
(g) Leica FlexLine TS10 Manual Total Station

—The operator will maintain a logbook for nonpermissible electronic surveying equipment with the equipment, in the location where mine record books are kept, or in the location where the surveying record books are kept. The logbook will contain the date of manufacture and/or purchase of each piece of nonpermissible electronic surveying equipment. The logbook will be made available to MSHA on request.

—All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by the person operating the equipment prior to taking the equipment underground to ensure it is maintained in safe operating condition. These examinations will include:

(a) Checking the instrument for any physical damage and the integrity of the case;

(b) Removing the battery and inspecting for corrosion;

(c) Inspecting the contact points to ensure a secure connection to the battery;

(d) Reinserting the battery and powering-up and shutting-down to ensure proper connections; and

(e) Checking the battery compartment cover or battery attachment to ensure that it is securely fastened.

—The equipment will be examined at least weekly by a qualified person, as defined in 30 CFR 75.153. The examination results will be recorded weekly in the equipment logbook. Examination entries in the logbook will be maintained for 1 year from the date of entry.

—The operator will ensure that all nonpermissible electronic surveying equipment is serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment's logbook and will include a description of the work performed.

—The nonpermissible electronic surveying equipment used in or inby the last open crosscut will not be put into service until MSHA has inspected the equipment and determined that it is in compliance with all the terms and condition of the PDO.

—Nonpermissible electronic surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more methane is detected while such equipment is being used, the equipment will be de-energized immediately and withdrawn outby the last open crosscut. All requirements of 30 CFR 75.323 will be complied with prior to entering in or inby the last open crosscut.

—Prior to setting up and energizing nonpermissible electronic surveying equipment in or inby the last open crosscut, the surveyor(s) will conduct a visual examination of the immediate area for evidence that the area appears to be sufficiently rock-dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or the presence of accumulated float coal dust is observed, the equipment will not be energized until sufficient rock-dust has been applied and/or the accumulations of float coal dust have been cleaned up. If nonpermissible electronic surveying equipment is to be used in an area not rock-dusted within 40 feet of a working face where a continuous mining machine is used, the area will be rocked-dusted prior to energizing the nonpermissible electronic surveying equipment.

—All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition, as defined in 30 CFR 75.320. All methane detectors will provide visual and audible warnings when methane is detected at or above 1.0 percent.

—Prior to energizing nonpermissible electronic surveying equipment in or inby the last open crosscut, methane tests will be made in accordance with 30 CFR 75.323. Nonpermissible electronic surveying equipment will not be used in or inby the last open crosscut when production is occurring.

—Prior to surveying, the area will be examined, according to 30 CFR 75.360. If the area has not been examined, a supplemental examination according to 30 CFR 75.361 will be performed before any non-certified person enters the area.

—A qualified person, as defined in 30 CFR 75.151, will continuously monitor for methane immediately before and during the use of nonpermissible electronic surveying equipment in or inby the last open crosscut. If there are two people in the surveying crew, both persons will continuously monitor for methane. The other person will either be a qualified person, as defined in 30 CFR 75.151, or be in the process of being trained to be a qualified person but has yet to make such tests for a period of 6 months, as required in 30 CFR 75.150. Upon completion of the 6-

month training period, the second person on the surveying crew must become qualified, as defined in 30 CFR 75.151, in order to continue on the surveying crew. If the surveying crew consists of one person, that person will monitor for methane with two separate devices.

—Batteries contained in the nonpermissible electronic surveying equipment will be changed out or charged in intake air outby the last open crosscut. Replacement batteries will be carried only in the compartment provided for a spare battery in the nonpermissible electronic surveying equipment carrying case. Before each shift of surveying, all batteries for the nonpermissible electronic surveying equipment will be charged sufficiently so that they are not expected to be replaced on that shift.

—When using nonpermissible electronic surveying equipment in or inby the last open crosscut, the surveyor will confirm by measurement or by inquiry of the person in charge of the section, that the air quantity on the section, on that shift, in the last open crosscut is at least the minimum quantity that is required by the mine's ventilation plan.

—Personnel engaged in the use of nonpermissible electronic surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of such equipment in areas where methane could be present.

—All members of the surveying crew will receive specific training before using nonpermissible electronic surveying equipment in or inby the last open crosscut. A record of the training will be kept with the other training records.

—Within 60 days after the proposed decision and order (PDO) becomes final, the operator will submit proposed revisions for its approved 30 CFR part 48 training plans to the District Manager. These revisions will specify initial and refresher training regarding the terms and conditions of the PDO. When training is conducted on the terms and conditions in the PDO, an MSHA Certificate of Training (Form 5000–23) will be completed and will indicate that it was surveyor training.

—The operator will replace or retire from service any electronic surveying instrument that was acquired prior to December 31, 2004 within 1 year of the PDO becoming final. Within 3 years of the date that the PDO becomes final, the operator will replace or retire from service any theodolite that was acquired more than 5 years prior to the date that the PDO became final or any total station or other electronic surveying equipment identified in the PDO acquired more than 10 years prior to the date that the PDO became final. After 5 years, the operator will maintain a cycle of purchasing new electronic surveying equipment whereby theodolites will be no older than 5 years from date of manufacture and total stations and other electronic surveying equipment will be no older than 10 years from date of manufacture.

—The operator will ensure that all surveying contractors hired by the operator are using nonpermissible electronic surveying equipment in accordance with the requirements in the PDO.

—The petitioner states that it may use nonpermissible electronic surveying equipment when production is occurring, subject to the following conditions:

(a) On a mechanized mining unit (MMU) where production is occurring, nonpermissible electronic surveying equipment will not be used downwind of the discharge point of any face ventilation controls, such as tubing (including controls such as ''baloney skins'') or curtains.

(b) Production may continue while nonpermissible electronic surveying equipment is used, if the surveying equipment is used in a separate split of air from where production is occurring.

(c) Nonpermissible electronic surveying equipment will not be used in a split of air ventilating an MMU if any ventilation controls will be disrupted during such surveying. Disruption of ventilation controls means any change to the mine's ventilation system that causes the ventilation system not to function in accordance with the mine's approved ventilation plan.

(d) If, while surveying, a surveyor must disrupt ventilation, the surveyor will cease surveying and communicate to the section foreman that ventilation must be disrupted. Production will stop while ventilation is disrupted. Ventilation controls will be reestablished immediately after the disruption is no longer necessary. Production can only resume after all ventilation controls are reestablished and are in compliance with approved ventilation or other plans, and other applicable laws, standards, or regulations.

(e) Any disruption in ventilation will be recorded in the logbook required by the PDO. The logbook will include a description of the nature of the disruption, the location of the disruption, the date and time of the disruption and the date and time the surveyor communicated the disruption to the section foreman, the date and time production ceased, the date and time ventilation was reestablished, and the date and time production resumed.

(f) All surveyors, section foremen, section crew members, and other personnel who will be involved with or affected by surveying operations will receive training in accordance with 30 CFR 48.7 on the requirements of the PDO within 60 days of the date the PDO becomes final. The training will be completed before any nonpermissible electronic surveying equipment can be used while production is occurring. The operator will keep a record of the training and provide the record to MSHA on request.

(g) The operator will provide annual retraining to all personnel who will be involved with or affected by surveying operations in accordance with 30 CFR 48.8. The operator will train new miners on the requirements of the PDO in accordance with 30 CFR 48.5, and will train experienced miners, as defined in 30 CFR 48.6, on the requirements of the PDO in accordance with 30 CFR 48.6. The operator will keep a record of the training and provide the record to MSHA upon request.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2018–021–C.

Petitioner: Signal Peak Energy, LLC, Three Gateway Center, Suite 1500, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Bull Mountains Mine No. 1, MSHA I.D. No. 24–01950, located in Musselshell County, Montana.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of nonpermissible electronic surveying equipment in return airways.

The petitioner states that:

(1) The use of nonpermissible electronic surveying equipment, includes, but is not limited to, portable, low voltage battery-operated mine transits and total station surveying equipment.

(2) In the alternative to compliance with 30 CFR 75.507–1(a), the petitioner proposes the following:

—The operator may use the following nonpermissible electronic surveying equipment and similar nonpermissible electronic surveying equipment if it has an ingress protection (IP) rating of 66 or greater in return airways subject to the conditions of the Proposed Decision and Order (PDO):

(a) Sokkia CX–101
(b) Sokkia Im–101
(c) Topcon ES–101
(d) Topcon GM–101
(e) Leica FlexLine TS03 Manual Total Station
(f) Leica FlexLine TS07 Manual Total Station
(g) Leica FlexLine TS10 Manual Total Station

—The operator will maintain a logbook for nonpermissible electronic surveying equipment with the equipment, in the location where mine record books are kept, or in the location where the surveying record books are kept. The logbook will contain the date of manufacture and/or purchase of each piece of nonpermissible electronic surveying equipment. The logbook will be made available to MSHA on request.

—All nonpermissible electronic surveying equipment used in return airways will be examined by the person operating the equipment prior to taking the equipment underground to ensure it is maintained in safe operating condition. These examinations will include:

(a) Checking the instrument for any physical damage and the integrity of the case;

(b) Removing the battery and inspecting for corrosion;

(c) Inspecting the contact points to ensure a secure connection to the battery;

(d) Reinserting the battery and powering-up and shutting-down to ensure proper connections; and

(e) Checking the battery compartment cover or battery attachment to ensure that it is securely fastened.

—The equipment will be examined at least weekly by a qualified person, as defined in 30 CFR 75.153. The examination results will be recorded weekly in the equipment logbook. Examination entries in the logbook will be maintained for 1 year from the date of entry.

—The operator will ensure that all nonpermissible electronic surveying equipment is serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment's logbook and will include a description of the work performed.

—The nonpermissible electronic surveying equipment used in return airways will not be put into service until MSHA has inspected the equipment and determined that it is in compliance with all the terms and condition of the PDO.

—Nonpermissible electronic surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more methane is detected while such equipment is being used, the equipment will be de-energized immediately and withdrawn out of the return airways. All requirements of 30 CFR 75.323 will be complied with prior to entering in the return airways.

—Prior to setting up and energizing nonpermissible electronic surveying equipment in return airways, the surveyor(s) will conduct a visual examination of the immediate area for evidence that the area appears to be sufficiently rock-dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or the presence of accumulated float coal dust is observed, the equipment will not be energized until sufficient rock-dust has been applied and/or the accumulations of float coal dust have been cleaned up. If nonpermissible electronic surveying equipment is to be used in an area within 40 feet of a working face where a continuous mining machine is used and the area has not been rock-dusted, the area will be rocked-dusted prior to energizing the nonpermissible electronic surveying equipment.

—All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition, as defined in 30 CFR 75.320. All methane detectors will provide visual and audible warnings when methane is detected at or above 1.0 percent.

—Prior to energizing nonpermissible electronic surveying equipment in return airways, methane tests will be made in accordance with 30 CFR 75.323.

—Prior to surveying, the area will be examined, according to 30 CFR 75.360. If the area has not been examined, a supplemental examination according to 30 CFR 75.361 will be performed before any non-certified person enters the area.

—A qualified person, as defined in 30 CFR 75.151, will continuously monitor for methane immediately before and during the use of nonpermissible electronic surveying equipment in return airways. If there are two people in the surveying crew, both persons will continuously monitor for methane. The other person will either be a qualified person, as defined in 30 CFR 75.151, or be in the process of being trained to be a qualified person but has yet to make such tests for a period of 6 months, as required in 30 CFR 75.150. Upon completion of the 6-month training period, the second person on the surveying crew must become qualified, as defined in 30 CFR 75.151, in order to continue on the surveying crew. If the surveying crew consists of one person, that person will monitor for methane with two separate devices.

—Batteries contained in the nonpermissible electronic surveying equipment will be changed out or charged in fresh air out of the return airways. Replacement batteries will be carried only in the compartment provided for a spare battery in the nonpermissible electronic surveying equipment carrying case. Before each shift of surveying, all batteries for the nonpermissible electronic surveying equipment will be charged sufficiently so that they are not expected to be replaced on that shift.

—When using nonpermissible electronic surveying equipment in return airways, the surveyor will confirm by measurement or by inquiry of the person in charge of the section, that the air quantity on the section, on that shift, in the last open crosscut is at least the minimum quantity that is required by the mine's ventilation plan.

—Personnel engaged in the use of nonpermissible electronic surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of such equipment in areas where methane could be present.

—All members of the surveying crew will receive specific training before using nonpermissible electronic surveying equipment in return airways. A record of the training will be kept with the other training records.

—Within 60 days after the proposed decision and order (PDO) becomes final, the operator will submit proposed revisions for its approved 30 CFR part 48 training plans to the District Manager. These revisions will specify initial and refresher training regarding the terms and conditions of the PDO. When training is conducted

on the terms and conditions in the PDO, an MSHA Certificate of Training (Form 5000–23) will be completed and will indicate that it was surveyor training.

—The operator will replace or retire from service any electronic surveying instrument that was acquired prior to December 31, 2004 within 1 year of the PDO becoming final. Within 3 years of the date that the PDO becomes final, the operator will replace or retire from service any theodolite that was acquired more than 5 years prior to the date that the PDO became final or any total station or other electronic surveying equipment identified in the PDO acquired more than 10 years prior to the date that the PDO became final. After 5 years, the operator will maintain a cycle of purchasing new electronic surveying equipment whereby theodolites will be no older than 5 years from date of manufacture and total stations and other electronic surveying equipment will be no older than 10 years from date of manufacture.

—The operator will ensure that all surveying contractors hired by the operator are using nonpermissible electronic surveying equipment in accordance with the requirements in the PDO.

—The petitioner states that it may use nonpermissible surveying equipment when production is occurring, subject the following conditions:

(a) On a mechanized mining unit (MMU) where production is occurring, nonpermissible electronic surveying equipment will not be used downwind of the discharge point of any face ventilation controls, such as tubing (including controls such as ''baloney skins'') or curtains.

(b) Production may continue while nonpermissible electronic surveying equipment is used, if the surveying equipment is used in a separate split of air from where production is occurring.

(c) Nonpermissible electronic surveying equipment will not be used in a split of air ventilating an MMU if any ventilation controls will be disrupted during such surveying. Disruption of ventilation controls means any change to the mine's ventilation system that causes the ventilation system not to function in accordance with the mine's approved ventilation plan.

(d) If, while surveying, a surveyor must disrupt ventilation, the surveyor will cease surveying and communicate to the section foreman that ventilation must be disrupted. Production will stop while ventilation is disrupted. Ventilation controls will be reestablished immediately after the disruption is no longer necessary. Production can only resume after all ventilation controls are reestablished and are in compliance with approved ventilation or other plans, and other applicable laws, standards, or regulations.

(e) Any disruption in ventilation will be recorded in the logbook required by the PDO. The logbook will include a description of the nature of the disruption, the location of the disruption, the date and time of the disruption and the date and time the surveyor communicated the disruption to the section foreman, the date and time production ceased, the date and time ventilation was reestablished, and the date and time production resumed.

(f) All surveyors, section foremen, section crew members, and other personnel who will be involved with or affected by surveying operations will receive training in accordance with 30 CFR 48.7 on the requirements of the PDO within 60 days of the date the PDO becomes final. The training will be completed before any nonpermissible electronic surveying equipment can be used while production is occurring. The operator will keep a record of the training and provide the record to MSHA on request.

(g) The operator will provide annual retraining to all personnel who will be involved with or affected by surveying operations in accordance with 30 CFR 48.8. The operator will train new miners on the requirements of the PDO in accordance with 30 CFR 48.5, and will train experienced miners, as defined in 30 CFR 48.6, on the requirements of the PDO in accordance with 30 CFR 48.6. The operator will keep a record of the training and provide the record to MSHA on request.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2018–022–C.

Petitioner: Signal Peak Energy, LLC, Three Gateway Center, Suite 1500, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Bull Mountains Mine No. 1, MSHA I.D. No. 24–01950, located in Musselshell County, Montana.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of nonpermissible electronic surveying equipment within 150 feet of pillar workings or longwall faces.

The petitioner states that:

(1) The use of nonpermissible electronic surveying equipment, includes, but is not limited to, portable, low voltage battery-operated mine transits and total station surveying equipment.

(2) In the alternative to compliance with 30 CFR 75.500(d), the petitioner proposes the following:

—The operator will use the following nonpermissible electronic surveying equipment and similar nonpermissible electronic surveying equipment if it has an Ingress Protection (IP) rating of 66 or greater, within 150 feet of pillar workings or longwall faces subject the conditions of the Proposed Decision and Order (PDO):

(a) Sokkia CX–101
(b) Sokkia Im–101
(c) Topcon ES–101
(d) Topcon GM–101
(e) Leica FlexLine TS03 Manual Total Station
(f) Leica FlexLine TS07 Manual Total Station
(g) Leica FlexLine TS10 Manual Total Station

—The operator will maintain a logbook for nonpermissible electronic surveying equipment with the equipment, in the location where mine record books are kept, or in the location where the surveying record books are kept. The logbook will contain the date of manufacture and/or purchase of each piece of nonpermissible electronic surveying equipment. The logbook will be made available to MSHA on request.

—All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings or longwall faces will be examined by the person operating the equipment prior to taking the equipment underground to ensure it is maintained in safe operating condition. These examinations will include:

(a) Checking the instrument for any physical damage and the integrity of the case;

(b) Removing the battery and inspecting for corrosion;

(c) Inspecting the contact points to ensure a secure connection to the battery;

(d) Reinserting the battery and powering-up and shutting-down to ensure proper connections; and

(e) Checking the battery compartment cover or battery attachment to ensure that it is securely fastened.

—The equipment will be examined at least weekly by a qualified person, as defined in 30 CFR 75.153. The examination results will be recorded weekly in the equipment logbook. Examination entries in the logbook will be maintained for 1 year from the date of entry.

—The operator will ensure that all nonpermissible electronic surveying equipment is serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment's logbook and will include a description of the work performed.

—The nonpermissible electronic surveying equipment used within 150 feet of pillar workings or longwall faces will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and condition of the PDO.

—Nonpermissible electronic surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more methane is detected while the nonpermissible electronic surveying equipment is being used, the equipment will be de-energized immediately and withdrawn further than 150 feet from pillar workings and longwall faces. All requirements of 30 CFR 75.323 will be complied with prior to entering within 150 feet of pillar workings or longwall faces.

—Prior to setting up and energizing nonpermissible electronic surveying equipment within 150 feet of pillar workings or longwall faces, the surveyor(s) will conduct a visual examination of the immediate area for evidence that the area appears to be sufficiently rock-dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or the presence of accumulated float coal dust is observed, the equipment will not be energized until sufficient rock-dust has been applied and/or the accumulations of float coal dust have been cleaned up. If nonpermissible electronic surveying equipment is to be used in an area not rock-dusted within 40 feet of a working face where a continuous mining machine is used, the area will be rocked-dusted prior to energizing the nonpermissible electronic surveying equipment.

—All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition, as defined in 30 CFR 75.320. All methane detectors will provide visual and audible warnings when methane is detected at or above 1.0 percent.

—Prior to energizing nonpermissible electronic surveying equipment within 150 feet of pillar workings or longwall faces, methane tests will be made in accordance with 30 CFR 75.323. Nonpermissible electronic surveying equipment will not be used within 150 feet of pillar workings or the longwall faces when production is occurring.

—Prior to surveying, the area will be examined, according to 30 CFR 75.360. If the area has not been examined, a supplemental examination according to 30 CFR 75.361 will be performed before any non-certified person enters the area.

—A qualified person, as defined in 30 CFR 75.151, will continuously monitor for methane immediately before and during the use of nonpermissible electronic surveying equipment within 150 feet of pillar workings or longwall faces. If there are two people in the surveying crew, both persons will continuously monitor for methane. The other person will either be a qualified person, as defined in 30 CFR 75.151, or be in the process of being trained to be a qualified person but has yet to make such tests for period of 6 months as required in 30 CFR 75.150. Upon completion of the 6-month training period, the second person on the surveying crew must become qualified, as defined in 30 CFR 75.151, in order to continue on the surveying crew. If the surveying crew consists of one person, that person will monitor for methane with two separate devices.

—Batteries contained in the nonpermissible electronic surveying equipment will be changed out or charged in fresh air more than 150 feet from pillar workings or longwall faces. Replacement batteries will be carried only in the compartment provided for a spare battery in the nonpermissible electronic survey equipment carrying case. Before each shift of surveying, all batteries for the electronic surveying equipment will be charged sufficiently so that they are not expected to be replaced on that shift.

—When using nonpermissible electronic surveying equipment within 150 feet of pillar workings or longwall faces, the surveyor will confirm by measurement or by inquiry of the person in charge of the section, that the air quantity on the section, on that shift, within 150 feet of pillar workings or longwall faces is at least the minimum quantity that is required by the mine's ventilation plan.

—Personnel engaged in the use of nonpermissible electronic surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of such equipment in areas where methane could be present.

—All members of the surveying crew will receive specific training before using nonpermissible electronic surveying equipment within 150 feet of pillar workings or longwall faces. A record of the training will be kept with the other training records.

—Within 60 days after the proposed decision and order (PDO) becomes final, the operator will submit proposed revisions for its approved 30 CFR part 48 training plans to the District Manager. These revisions will specify initial and refresher training regarding the terms and conditions of the PDO. When training is conducted on the terms and conditions in the PDO, an MSHA Certificate of Training (Form 5000–23) will be completed and will indicate that it was surveyor training.

—The operator will replace or retire from service any electronic surveying instrument that was acquired prior to December 31, 2004 within 1 year of the PDO becoming final. Within 3 years of the date that the PDO becomes final, the operator will replace or retire from service any theodolite that was acquired more than 5 years prior to the date that the PDO became final or any total station or other electronic surveying equipment identified in the PDO acquired more than 10 years prior to the date that the PDO became final. After 5 years, the operator will maintain a cycle of purchasing new electronic surveying equipment whereby theodolites will be no older than 5 years from date of manufacture and total stations and other electronic surveying equipment will be no older than 10 years from date of manufacture.

—The operator will ensure that all surveying contractors hired by the operator are using nonpermissible electronic surveying equipment in accordance with the requirements in the PDO.

—The petitioner states that it may use nonpermissible surveying equipment when production is occurring, subject to the following conditions:

(a) On a mechanized mining unit (MMU) where production is occurring, nonpermissible electronic surveying equipment will not be used downwind

of the discharge point of any face ventilation controls, such as tubing (including controls such as ''baloney skins'') or curtains.

(b) Production may continue while nonpermissible electronic surveying equipment is used, if the surveying equipment is used in a separate split of air from where production is occurring.

(c) Nonpermissible electronic surveying equipment will not be used in a split of air ventilating an MMU if any ventilation controls will be disrupted during such surveying. Disruption of ventilation controls means any change to the mine's ventilation system that causes the ventilation system not to function in accordance with the mine's approved ventilation plan.

(d) If, while surveying, a surveyor must disrupt ventilation, the surveyor will cease surveying and communicate to the section foreman that ventilation must be disrupted. Production will stop while ventilation is disrupted. Ventilation controls will be reestablished immediately after the disruption is no longer necessary. Production can only resume after all ventilation controls are reestablished and are in compliance with approved ventilation or other plans, and other applicable laws, standards, or regulations.

(e) Any disruption in ventilation will be recorded in the logbook required by the PDO. The logbook will include a description of the nature of the disruption, the location of the disruption, the date and time of the disruption and the date and time the surveyor communicated the disruption to the section foreman, the date and time production ceased, the date and time ventilation was reestablished, and the date and time production resumed.

(f) All surveyors, section foremen, section crew members, and other personnel who will be involved with or affected by surveying operations will receive training in accordance with 30 CFR 48.7 on the requirements of the PDO within 60 days of the date the PDO becomes final. The training will be completed before any nonpermissible electronic surveying equipment can be used while production is occurring. The operator will keep a record of the training and provide the record to MSHA on request.

(g) The operator will provide annual retraining to all personnel who will be involved with or affected by surveying operations in accordance with 30 CFR 48.8. The operator will train new miners on the requirements of the PDO in accordance with 30 CFR 48.5, and will train experienced miners, as defined in 30 CFR 48.6, on the requirements of the PDO in accordance with 30 CFR 48.6. The operator will keep a record of the training and provide the record to MSHA on request.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Roslyn B. Fontaine,

Deputy Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2018–28047 Filed 12–26–18; 8:45 am]

BILLING CODE 4520–43–P

OFFICE OF MANAGEMENT AND BUDGET

Discount Rates for Cost-Effectiveness Analysis of Federal Programs

AGENCY: Office of Management and Budget.

ACTION: Revisions to Appendix C of OMB Circular A–94.

SUMMARY: The Office of Management and Budget revised Circular A–94 in 1992. The revised Circular specified certain discount rates to be updated annually when the interest rate and inflation assumptions used to prepare the Budget of the United States Government were changed. These discount rates are found in Appendix C of the revised Circular. The updated discount rates are shown below. The discount rates in Appendix C are to be used for cost-effectiveness analysis, including lease-purchase analysis, as specified in the revised Circular. They do not apply to regulatory analysis. The revised Circular can be accessed at *https://www.whitehouse.gov/wp-content/uploads/2018/12/Appendix-C.pdf.*

DATES: The revised discount rates will be in effect through December 2019.

FOR FURTHER INFORMATION CONTACT: Rachel Hernández, Office of Economic Policy, Office of Management and Budget, (202) 395–3585.

Jeffrey Schlagenhauf,

Associate Director for Economic Policy, Office of Management and Budget.

[FR Doc. 2018–27962 Filed 12–26–18; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

[NARA–2019–009]

State, Local, Tribal, and Private Sector Policy Advisory Committee (SLTPS–PAC)

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: We are announcing a Federal advisory committee meeting of the State, Local, Tribal, and Private Sector Policy Advisory Committee.

DATES: The meeting will be on January 30, 2019, from 10:00 a.m. to 12:00 p.m.

ADDRESSES: National Archives and Records Administration; 700 Pennsylvania Avenue NW; Jefferson Room; Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Robert J. Skwirot, Senior Program Analyst, by mail at Information Security Oversight Office (ISOO); National Archives Building; 700 Pennsylvania Avenue NW, Washington, DC 20408, by telephone at 202.357.5398, or by email at *robert.skwirot@nara.gov.* Contact ISOO at *ISOO@nara.gov*.

SUPPLEMENTARY INFORMATION: We announce advisory committee meetings in accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and its implementing regulation (41 CFR 101–6).

The purpose of this meeting is to discuss matters relating to the Classified National Security Information Program for State, Local, Tribal, and Private Sector Entities.

The meeting is open to the public. However, due to space limitations and access procedures, you must submit the name and telephone number of individuals planning to attend to the Information Security Oversight Office (ISOO) no later than Wednesday, January 23, 2019. ISOO will provide additional instructions for accessing the meeting's location.

Miranda Andreacchio,

Committee Management Officer.

[FR Doc. 2018–27964 Filed 12–26–18; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of 24, 31, 2018, January 7, 14, 21, 28, 2019.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 24, 2018

There are no meetings scheduled for the week of December 24, 2018.

Week of December 31, 2018—Tentative

There are no meetings scheduled for the week of December 31, 2018.

Week of January 7, 2019—Tentative

There are no meetings scheduled for the week of January 7, 2019.

Week of January 14, 2019—Tentative

There are no meetings scheduled for the week of January 14, 2019.

Week of January 21, 2019—Tentative

Thursday, January 24, 2019

10:00 a.m. Strategic Programmatic Overview of the New Reactors Business Line (Public Meeting); (Contact: Donna Williams: 301–415–1322).

Week of January 28, 2019—Tentative

Monday, January 28, 2019

1:30 p.m. NRC All Employees Meeting (Public Meeting); Marriott Bethesda North Hotel, 5701 Marinelli Road, Rockville, MD 20852.

Thursday, January 31, 2019

9:00 a.m. Transformation at the NRC: Innovation (Public Meeting); (Contact: June Cai: 301–415–1771).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

CONTACT PERSON FOR MORE INFORMATION: 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 schedule for Commission meetings is subject to change on short notice.

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 by email at *Wendy.Moore@nrc.gov* or *Diane.Garvin@nrc.gov.*

Dated at Rockville, Maryland, this 20th day of December 2018.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2018–28050 Filed 12–20–18; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–458; NRC–2017–0141]

Entergy Operations, Inc.; River Bend Station, Unit 1

AGENCY: U.S. Nuclear Regulatory Commission

ACTION: License renewal and record of decision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued Renewed Facility Operating License No. NPF–47 to Entergy Operations, Inc. (Entergy or licensee), for River Bend Station, Unit 1 (RBS). Renewed Facility Operating License No. NPF–47 authorizes Entergy to operate RBS at reactor core power levels not in excess of 3,091 megawatts thermal and in accordance with the provisions of the RBS renewed license and technical specifications. In addition, the NRC has prepared a record of decision (ROD) that supports the NRC's decision to issue Renewed Facility Operating License No. NPF–47.

DATES: The NRC issued Renewed Facility Operating License No. NPF–47 on December 20, 2018.

ADDRESSES: Please refer to Docket ID NRC–2017–0141 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–2017–0141. Address questions about docket IDs in *Regulations.gov* to Krupskaya Castellon; telephone: 301–287–9221; email: *Krupskaya.Castellon@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 ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's Public Document Room:* You may examine and purchase copies of public documents at the NRC's Public Document Room, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Emmanuel Sayoc, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–4084; email: *Emmanuel.Sayoc@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC hereby gives notice that it has issued Renewed Facility Operating License No. NPF–47 to Entergy Operations, Inc. (Entergy or licensee), the operator of River Bend Station, Unit 1 (RBS). Renewed Facility Operating License No. NPF–47 authorizes Entergy to operate RBS at reactor core power levels not in excess of 3,091 megawatts thermal and in accordance with the provisions of the RBS renewed license and technical specifications. The NRC's record of decision (ROD) supports the NRC's decision to issue Renewed Facility Operating License No. NPF–47 and is available in the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML18284A374.

The NRC staff documented its environmental review of the RBS license renewal application in the ROD and the final supplemental environmental impact statement (FSEIS) for RBS, which it published November

8, 2018 as Supplement 58 to NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding River Bend Station, Unit 1, Final Report'' dated November 8, 2018'' (ADAMS Accession No. ML18310A072). As part of its environmental review, the NRC considered a range of reasonable alternatives to RBS license renewal. These alternatives included generating replacement energy from a new nuclear reactor, from supercritical pulverized coal (SCPC) power, from natural gas combined-cycle (NGCC) power, or from a combination alternative (natural gas combined-cycle, biomass, and demand-side management). The NRC also considered the no-action alternative (simply not issuing the renewed license for RBS). Ultimately, the NRC determined that the adverse environmental impacts of license renewal for RBS are not so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable.

RBS is a boiling-water reactor located approximately 38.6 km (24 miles) northwest of Baton Rouge, LA. Entergy's application for RBS license renewal, dated May 25, 2017 (ADAMS Package Accession No. ML17153A282), as supplemented by letters dated through October 9, 2018, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. As required by the Act and the NRC's regulations in Chapter 1, ''Nuclear Regulatory Commission,'' of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Energy,'' the NRC has made appropriate findings, which are set forth in the license. The NRC published a public notice in the **Federal Register** on May 31, 2016, announcing its proposed issuance of the renewed license and an opportunity for a hearing (81 FR 34379). No adjudicatory matters are pending before the Commission or the Atomic Safety and Licensing Board Panel regarding the RBS license renewal application.

For more information on the issuance of the renewed license for RBS, see: (1) Entergy's license renewal application for RBS dated May 25, 2017 (ADAMS Package Accession No. ML17153A282), as supplemented by letters through October 9, 2018, (2) the NRC's safety evaluation report, which documents the staff's safety review of the license renewal application (published on August 16, 2018, ADAMS Accession No. ML18212A151, as revised on October 18, 2018 (ADAMS Accession No. ML18291B147)), (3) the NRC's final supplemental environmental impact statement (NUREG–1437, Supplement 58) for RBS, which documents the staff's environmental review of the RBS license renewal (published on November 8, 2018 ADAMS Accession No. ML18310A072), and (4) the NRC's record of decision for this action (ADAMS Accession No. ML18284A374).

II. Conclusion

As discussed in Chapter 5 of the final supplemental environmental impact statement for the RBS license renewal (Supplement 58 to NUREG–1437), the NRC determined that the adverse environmental impacts of license renewal for River Bend Station, Unit 1 are not so great that preserving the option of license renewal for energy-planning decisionmakers would be unreasonable. The NRC based its recommendation on: (1) The analysis and findings in NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants,'' (2) Entergy's license renewal application, including its environmental report and other documents submitted by Entergy, (3) consultation with Federal, State, local, and Tribal agencies, (4) the NRC staff's independent environmental review, and (5) consideration of public comments received during the scoping process and on the draft supplemental environmental impact statement.

Dated at Rockville, MD, this 20th day of December 2018.

For the Nuclear Regulatory Commission.

George A. Wilson, Jr.,

Director, Division of Materials and License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–28129 Filed 12–26–18; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2019–53 and CP2019–57; MC2019–54 and CP2019–58; MC2019–55 and CP2019–59; MC2019–56 and CP2019–60; MC2019–57 and CP2019–61; MC2019–58 and CP2019–62; MC2019–59 and CP2019–63; and CP2019–64]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 27, 2018 and December 28, 2018.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION: The December 27, 2018 comment due date applies to Docket Nos. MC2019–53 and CP2019–57; MC2019–59 and CP2019–63; and CP2019–64.

The December 28, 2018 comment due date applies to Docket Nos. MC2019–54 and CP2019–58; MC2019–55 and CP2019–59; MC2019–56 and CP2019–60; MC2019–57 and CP2019–61; and MC2019–58 and CP2019–62.

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s)

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2019–53 and CP2019–57; *Filing Title:* USPS Request to Add Priority Mail Contract 496 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 19, 2018; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 27, 2018.

2. *Docket No(s).:* MC2019–54 and CP2019–58; *Filing Title:* USPS Request to Add Priority Mail Contract 497 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 19, 2018; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 28, 2018.

3. *Docket No(s).:* MC2019–55 and CP2019–59; *Filing Title:* USPS Request to Add Priority Mail Contract 498 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 19, 2018; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 28, 2018.

4. *Docket No(s).:* MC2019–56 and CP2019–60; *Filing Title:* USPS Request to Add Priority Mail Contract 499 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 19, 2018; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Michael L. Leibert; *Comments Due:* December 28, 2018.

5. *Docket No(s).:* MC2019–57 and CP2019–61; *Filing Title:* USPS Request to Add Priority Mail Contract 500 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 19, 2018; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Michael L. Leibert; *Comments Due:* December 28, 2018.

6. *Docket No(s).:* MC2019–58 and CP2019–62; *Filing Title:* USPS Request to Add First-Class Package Service Contract 97 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 19, 2018; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Michael L. Leibert; *Comments Due:* December 28, 2018.

7. *Docket No(s).:* MC2019–59 and CP2019–63; *Filing Title:* Request of the United States Postal Service to Add Global Plus 5 to the Competitive Product List and Notice of Filing a Global Plus 5 Contract Negotiated Service Agreement and Application for Non-Public Materials Filed Under Seal; *Filing Acceptance Date:* December 19, 2018; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Gregory Stanton; *Comments Due:* December 27, 2018.

8. *Docket No(s).:* CP2019–64; *Filing Title:* Second Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1D Negotiated Service Agreement; *Filing Acceptance Date:* December 19, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Gregory Stanton; *Comments Due:* December 27, 2018.

This Notice will be published in the **Federal Register**.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2018–28103 Filed 12–26–18; 8:45 am]

BILLING CODE 7710–FW–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:* December 27, 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 December 19, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 496 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–53, CP2019–57.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–27934 Filed 12–26–18; 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:* December 27, 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 December 19, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 500 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–57, CP2019–61.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–27938 Filed 12–26–18; 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:* December 27, 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 December 19, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 498 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–55, CP2019–59.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–27936 Filed 12–26–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—First-Class Package Service 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:* December 27, 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 December 19, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add First-Class Package Service Contract 97 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–58, CP2019–62.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–27939 Filed 12–26–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

International Product Change—Global Plus 5

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add the Global Plus 5 product to the Competitive Products List.

DATES: *Date of notice:* December 27, 2018.

FOR FURTHER INFORMATION CONTACT: Kyle R. Coppin, 202–268–2368.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642, on December 19, 2018, it filed with the Postal Regulatory Commission a Request of the United States Postal Service to add Global Plus 5 to the Competitive Products List. Documents are available at *www.prc.gov,* Docket Nos. MC2019–59 and CP2019–63.

Christopher C. Meyerson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–28026 Filed 12–26–18; 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:* December 27, 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 December 19, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 497 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–54, CP2019–58.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–27935 Filed 12–26–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service™.

ACTION: Notice of a modified systems of records.

SUMMARY: The United States Postal Service® (Postal Service) is proposing to revise five Customer Privacy Act Systems of Records (SORs). These changes are being made to support the new Address Matching Database, which will be used to identify, prevent, and mitigate fraudulent activity within the Change of Address and Hold Mail processes.

DATES: These revisions will become effective without further notice on January 28, 2019, unless, in response to comments received on or before that date, the Postal Service makes any substantive change to the purpose or routine uses set forth, or to expand the availability of information in this system, as described in this notice. If the Postal Service determines that certain portions of this SOR should not be implemented, or that implementation of certain portions should be postponed in light of comments received, the Postal Service may choose to implement the remaining portions of the SOR on the stated effective date, and will provide notice of that action.

ADDRESSES: Comments may be mailed or delivered to the Privacy and Records Management Office, United States Postal Service, 475 L'Enfant Plaza SW, Room 1P830, Washington, DC 20260–1101. Copies of all written comments will be available at this address for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Janine Castorina, Chief Privacy and Records Management Officer, Privacy and Records Management Office, 202–268–3069 or *privacy@usps.gov.*

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their systems of records in the **Federal Register** when there is a revision, change, or addition, or when the agency establishes a new system of records. The following Postal Service Privacy Act System of Records are being revised to facilitate the new Address Matching Database for the purposes of protecting the mail and detecting fraudulent activity within the Change of Address and Hold Mail processes:

- USPS 800.000 Address Change, Mail Forwarding, and Related Services
- USPS 810.100 *www.usps.com* Registration
- USPS 810.200 *www.usps.com* Ordering, Payment and Fulfillment
- USPS 820.200 Mail Management and Tracking Activity
- USPS 820.300 Informed Delivery

In an effort to provide secure mailing services, the Postal Service is using a new Address Matching Database to identify, prevent, and mitigate fraudulent activity within the Change of Address and Hold Mail processes. The Postal Service is establishing a dataflow between existing customer systems and the Address Matching Database. This dataflow will allow the Address

Matching Database to: Confirm if there is an address match when a new Hold Mail request is submitted; confirm the presence of a Change of Address request when a Hold Mail request is submitted during a 30 day time frame; and confirm the presence of a Hold Mail request when a Change of Address request is submitted during a 30 day time frame. The Address Matching Database will also send confirmation notifications to customers who submit a Hold Mail request.

Pursuant to 5 U.S.C. 552a (e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed revisions has been sent to Congress and to the Office of Management and Budget for their evaluations. The Postal Service does not expect these amended systems of records to have any adverse effect on individual privacy rights. The affected systems are as follows:

SYSTEM NAME AND NUMBER:

USPS 800.000, Address Change, Mail Forwarding, and Related Services.

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

USPS National Customer Support Center (NCSC), Computerized Forwarding System (CFS) sites, Post Offices, USPS Processing and Distribution Centers, USPS IT Eagan Host Computing Services Center, and contractor sites.

SYSTEM MANAGER(S):

Vice President, Enterprise Analytics, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–5626, (202) 268–7542.

Vice President, Delivery Operations, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–7116, (202) 268–6500.

Vice President, Customer Experience, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–0004, (202) 268–2252.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401(2), 403, and 404(a)(1).

PURPOSE(S) OF THE SYSTEM:

1. To provide mail forwarding and COA services, including local community information, and move related advertisements.

2. To provide address correction services.

3. To counter efforts to abuse the COA process.

4. To provide address information to the American Red Cross or other disaster relief organization about a customer who has been relocated because of disaster.

5. To support investigations related to law enforcement for fraudulent transactions.

6. To provide automatic updates to USPS customer systems using mail forwarding and COA services.

7. To facilitate communication between USPS customers and the Postal Service with regard to COA and address correction services.

8. To enhance the customer experience by improving the security of COA and Hold Mail processes.

9. To protect USPS customers from becoming potential victims of mail fraud and identity theft.

10. To identify and mitigate potential fraud in the COA and Hold Mail processes.

11. To verify a customer's identity when applying for COA and Hold Mail services.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers requesting Change of Address (COA), mail forwarding, or other related services either electronically or in writing.

Customers who are victims of a natural disaster who request mail forwarding services through the Postal Service or the American Red Cross.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Customer information:* Name, title, signature, customer number, old address, new address, filing date, email address(es), telephone numbers, and other contact information.

2. *Verification and payment information:* Credit and/or debit card number, type, and expiration date; or date of birth and driver's state and license number; information for identity verification; and billing information. Customers who are victims of a natural disaster who request mail forwarding service electronically may be required to provide date of birth for verification if credit and/or debit card information is unavailable.

3. *Demographic information:* Designation as individual/family/business.

4. *Customer preferences:* Permanent or temporary move; mail forwarding instructions; service requests and responses.

5. *Customer inquiries and comments:* Description of service requests and responses.

6. *Records from service providers* for identity verification.

7. *Online user information:* Internet Protocol (IP) address, domain name, operating system versions, browser version, date and time of connection, and geographic location.

8. *Protective Orders.*

RECORD SOURCE CATEGORIES:

Customers, personnel, contractors, service providers, and for call center operations, commercially available sources of names, addresses, and telephone numbers. For emergency change-of-addresses only, commercially available sources of names, previous addresses, and dates of birth. For alternative authentication, sources of names, previous and new addresses, dates of birth, and driver's state and license number.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Standard routine uses 1. through 7., 10., and 11. apply. In addition:

a. *Disclosure upon request.* The new address of a specific business or organization that has filed a permanent change-of-address order may be furnished to any individual on request. (Note: The new address of an individual or family will not be furnished pursuant to this routine use, unless authorized by one of the standard routine uses listed above or one of the specific routine uses listed below.) If a domestic violence shelter has filed a letter on official letterhead from a domestic violence coalition stating (i) that such domestic violence coalition meets the requirements of 42 U.S.C. 10410 and (ii) that the organization filing the change of address is a domestic violence shelter, the new address shall not be released except pursuant to routine use d, e, or f pursuant to the order of a court of competent jurisdiction.

b. *Disclosure for Address Correction.* Disclosure of any customer's new permanent address may be made to a mailer, only if the mailer is in possession of the name and old address: From the National Change-of-Address Linkage (NCOALink®) file if the mailer is seeking corrected addresses for a mailing list; from the Computerized Forwarding System (CFS), from the Postal Automated Redirection System (PARS) if a mailpiece is undeliverable as addressed, or from the Locatable Address Conversion System if an address designation has been changed or assigned. Copies of change-of-address orders may not be furnished. In the event of a disaster or manmade hazard, temporary address changes may be disclosed to a mailer when, in the sole determination of the Postal Service, such disclosure serves the primary interest of the customer, for example, to enable a mailer to send medicines

directly to the customer's temporary address, and only if the mailer is in possession of the customer's name and permanent address. If a domestic violence shelter has filed a letter on official letterhead from a domestic violence coalition stating (i) that such domestic violence coalition meets the requirements of 42 U.S.C. 10410 and (ii) that the organization filing the change of address is a domestic violence shelter, the new address shall not be released except pursuant to routine use d, e, or f pursuant to the order of a court of competent jurisdiction.

c. *Disclosure for Voter Registration.* Any customer's permanent change of address may be disclosed to a duly formed election board or registration commission using permanent voter registration. Copies of change of address orders may be furnished.

d. *Disclosure to Government Agency.* Any customer's permanent or temporary change of address information may be disclosed to a federal, state, or local government agency upon prior written certification that the information is required for the performance of its duties. A copy of the change of address order may be furnished. Name and address information may be disclosed to government planning authorities, or firms under contract with those authorities, if an address designation has been changed or assigned.

e. *Disclosure to Law Enforcement Agency.* Any customer's permanent or temporary change of address information may be disclosed to a law enforcement agency, for oral requests made through the Postal Inspection Service, but only after the Postal Inspection Service has confirmed that the information is needed for a criminal investigation. A copy of the change of address order may be furnished.

f. *Disclosure for Service of Process.* Any customer's permanent or temporary change of address information may be disclosed to a person empowered by law to serve legal process, or the attorney for a party in whose behalf service will be made, or a party who is acting pro se, upon receipt of written information that meets prescribed certification requirements. Disclosure will be limited to the address of the specifically identified individual (not other family members or individuals whose names may also appear on the change of address order). A copy of the change of address order may not be furnished.

g. *Disclosure for Jury Service.* Any customer's change of address information may be disclosed to a jury commission or other court official, such as a judge or court clerk, for purpose of jury service. A copy of the change of address order may be furnished.

h. *Disclosure at Customer's Request.* If the customer elects, change of address information may be disclosed to government agencies or other entities.

i. *Disclosure to a disaster relief organization.* Any customer's permanent or temporary change of address may be disclosed to the American Red Cross or other disaster relief organizations, if that address has been impacted by disaster or manmade hazard.

All routine uses are subject to the following exception: Information concerning an individual who has filed an appropriate protective court order with the postmaster/CFS manager will not be disclosed under any routine use except pursuant to the order of a court of competent jurisdiction.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the following methods: For paper records: by name, address, date, and ZIP Code. For electronic records: by name, address, date, ZIP Code™, and customer number for electronic change of address and related service records; by name, address, and email address for customer service records.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. National change-of-address and mail forwarding records are retained 4 years from the effective date.

2. Delivery units access COA records from the Change- Of-Address Reporting System (COARS) database, which retains 2 years of information from the COA effective date. The physical change-of-address order is retained in the CFS unit for 30 days if it was scanned, or 18 months if it was manually entered into the national database.

3. Online user information may be retained for 12 months. Records existing on paper are destroyed by shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act.

CONTESTING RECORD PROCEDURES:

See NOTIFICATION PROCEDURES and RECORD ACCESS PROCEDURES.

NOTIFICATION PROCEDURES:

Customers wanting to know if information about them is maintained in this system of records should address inquiries to their local postmaster. Inquiries should contain full name, address, effective date of change order, route number (if known), and ZIP Code. Customers wanting to know if information about them is also maintained in the NCOA File should address such inquiries to: Manager, NCOA, National Customer Support Center, United States Postal Service, 6060 Primacy Parkway, Memphis, TN 38188.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

June 30, 2016, *81 FR 42760;* August 21, 2014, *79 FR 49543;* September 13, 2012, *77 FR 56676;* July 17, 2008, *73 FR 41135;* April 29, 2005, *70 FR 22516.*

SYSTEM NAME AND NUMBER:

USPS 810.100, *www.usps.com* Registration.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Computer Operations Service Centers.

SYSTEM MANAGER(S):

Chief Customer and Marketing Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–5005, (202) 268–7536.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404.

PURPOSE(S) OF THE SYSTEM:

1. To provide online registration with single sign-on services for customers.

2. To facilitate online registration, provide enrollment capability, and administer internet-based services or features.

3. To maintain current and up-to-date address information to assure accurate and reliable delivery and fulfillment of postal products, services, and other material.

4. To obtain accurate contact information in order to deliver requested products, services, and other material.

5. To authenticate customer logon information for *usps.com.*

6. To permit customer feedback in order to improve *usps.com* or USPS products and services.

7. To enhance understanding and fulfillment of customer needs.

8. To verify a customer's identity when the customer establishes, or attempts to access his or her account.

9. To identify, prevent, and mitigate the effects of fraudulent transactions.

10. To enhance the customer experience by improving the security of Change of Address (COA) and Hold Mail processes.

11. To protect USPS customers from becoming potential victims of mail fraud and identity theft.

12. To identify and mitigate potential fraud in the COA and Hold Mail processes.

13. To verify a customer's identity when applying for COA and Hold Mail services.

14. To provide online registration for Informed Address platform service for customers.

15. To authenticate customer logon information for Informed Address platform services.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers who register via the USPS website at *usps.com.*

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

1. *Customer information:* Name; customer ID(s); company name; job title and role; home, business, and billing address; phone number(s) and fax number; email(s); URL; text message number(s) and carrier; and Automated Clearing House (ACH) information.

2. *Identity verification information:* Question, answer, username, user ID, password, email address, text message address and carrier, and results of identity proofing validation.

3. *Business specific information:* Business type and location, business IDs, annual revenue, number of employees, industry, nonprofit rate status, mail owner, mail service provider, PC postage user, PC postage vendor, product usage information, annual and/or monthly shipping budget, payment method and information, planned use of product, age of website, and information submitted by, or collected from, business customers in connection with promotional marketing campaigns.

4. *Customer preferences:* Preferences to receive USPS marketing information, preferences to receive marketing information from USPS partners, preferred means of contact, preferred email language and format, preferred on-screen viewing language, product and/or service marketing preference.

5. *Customer feedback:* Method of referral to website.

6. *Registration information:* Date of registration.

7. *Online user information:* Internet Protocol (IP) address, domain name, operating system versions, browser version, date and time of connection, Media Access Control (MAC) address, device identifier, information about the software acting on behalf of the user (*i.e.,* user agent), and geographic location.

RECORD SOURCE CATEGORIES:

Customers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Standard routine uses 1. through 7., 10., and 11. apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated database, computer storage media, and paper.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

By customer name, customer ID(s), phone number, mail, email address, IP address, text message address, and any customer information or online user information.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. ACH records are retained up to 2 years.

2. Records stored in the registration database are retained until the customer cancels the profile record, 3 years after the customer last accesses records, or until the relationship ends.

3. For small business registration, records are retained 5 years after the relationship ends.

4. Online user information may be retained for 6 months. Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections. Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software. Online data transmissions are protected by encryption.

For small business registration, computer storage tapes and disks are maintained in controlled-access areas or under general scrutiny of program personnel. Access is controlled by logon ID and password as authorized by the Marketing organization via secure website. Online data transmissions are protected by encryption.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See NOTIFICATION PROCEDURES and RECORD ACCESS PROCEDURES.

NOTIFICATION PROCEDURES:

Customers wanting to know if information about them is maintained in this system of records must address inquiries in writing to the system manager. Inquiries must contain name, address, and other identifying information.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

August 25, 2016, *81 FR 58542;* June 30, 2016, *81 FR 42760;* June 20, 2014, *79 FR 35389;* January 23, 2014, *79 FR 3881;* July 11, 2012, *77 FR 40921;* October 24, 2011, *76 FR 65756;* May 08, 2008, *73 FR 26155;* April 29, 2005, *70 FR 22516.*

SYSTEM NAME AND NUMBER:

USPS 810.200, *www.usps.com* Ordering, Payment, and Fulfillment.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Computer Operations Service Centers.

SYSTEM MANAGER(S):

Chief Customer and Marketing Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–5005, (202) 268–7536.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, 404, and 407; 13 U.S.C. 301–307; and 50 U.S.C. 1702.

PURPOSE(S) OF THE SYSTEM:

1. To fulfill orders for USPS products and services.
2. To promote increased use of the mail by providing electronic document preparation and mailing services for customers.
3. To provide shipping supplies and services, including return receipts and labels.
4. To provide recurring ordering and payment services for products and services.
5. To support investigations related to law enforcement for fraudulent financial transactions.
6. To satisfy reporting requirements for customs purposes.
7. To support the administration and enforcement of U.S. customs, export control, and export statistics laws.
8. To enhance the customer experience by improving the security of Change of Address (COA) and Hold Mail processes.
9. To protect USPS customers from becoming potential victims of mail fraud and identity theft.
10. To identify and mitigate potential fraud in the COA and Hold Mail processes.
11. To verify a customer's identity when applying for COA and Hold Mail services.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers who place orders and/or make payment for USPS products and services through *usps.com.*

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Customer information:* Name, customer ID(s), phone and/or fax number, mail address, and email address.
2. *Payment information:* Credit and/or debit card number, type, and expiration date, billing information, ACH information.
3. *Shipping and transaction information:* Product and/or service ID numbers, descriptions, value, date, postage and fees, and prices; name and address(es) of recipients; order number and delivery status; electronic address lists; electronic documents or images; job number; and applicable citation or legend required by the foreign trade regulations.
4. Claims submitted for lost or damaged merchandise.
5. *Online user information:* Internet Protocol (IP) address, domain name, operating system version, browser version, date and time of connection, and geographic location.

RECORD SOURCE CATEGORIES:

Customers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING

CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Standard routine uses 1. through 7., 10., and 11. apply. In addition:

a. Customs declaration records may be disclosed to domestic and foreign customs agencies and postal operators, as well as intermediary companies involved in electronic data exchanges, for the purpose of facilitating carriage, security protocols, foreign or domestic customs processing, payment to operators, or delivery.

b. Records may be disclosed to the Office of Foreign Assets Control, the Bureau of Industry and Security, Customs and Border Protection, and other government authorities for the purpose of administering and enforcing export control laws, rules, and policies, including 50 U.S.C. 1702.

c. Customs declaration records may be disclosed to the U.S. Census Bureau for export statistical purposes pursuant to 13 U.S.C. 301–307.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated databases, computer storage media, and digital and paper files.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

By customer name, customer ID(s), phone number, mail or email address, or job number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Records related to mailing online and online tracking and/or confirmation services supporting a customer order are retained for up to 30 days from completion of fulfillment of the order, unless retained longer by request of the customer.
2. Records related to shipping services and domestic and international labels are retained up to 90 days.
3. Delivery Confirmation and return receipt records are retained for 6 months.
4. Signature Confirmation records are retained for 1 year.
5. ACH records are retained for up to 2 years.
6. Customs declaration records stored in electronic data systems are retained 5 years, and then purged according to the requirement of domestic and foreign customs services. Other hard copy customs declaration records are retained 30 days.
7. Other records related to shipping services and domestic and international labels are retained up to 90 days.
8. Other customer records are retained for 3 years after the customer relationship ends.
9. Online user information may be retained for 12 months.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

Online data transmission is protected by encryption, dedicated lines, and authorized access codes. For shipping supplies, data is protected within a stand-alone system within a controlled-access facility.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See NOTIFICATION PROCEDURES and RECORD ACCESS PROCEDURES.

NOTIFICATION PROCEDURES:

Customers wanting to know if information about them is maintained in this system of records must address inquiries in writing to the system manager. Inquiries must contain name, address, customer ID(s), and order number, if known.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

May 24, 2017, *82 FR 23850;* September 13, 2012, *77 FR 56676;* June 27, 2012, *77 FR 38342;* June 17, 2011, *76 FR 35483;* May 12, 2009, *74 FR 22186;* May 08, 2008, *73 FR 26155;* May 06, 2005, *70 FR 24128;* April 29, 2005, *70 FR 22516*.

SYSTEM NAME AND NUMBER:

USPS 820.200, Mail Management and Tracking Activity.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

USPS Headquarters; Integrated Business Solutions Services Centers; USPS IT Eagan Host Computing Services Center; and Mail Transportation Equipment Service Centers.

SYSTEM MANAGER(S):

Chief Information Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1500, (202) 268–6900.

Chief Customer and Marketing Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–5005, (202) 268–7536.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404.

PURPOSE(S) OF THE SYSTEM:

1. To provide mail acceptance, induction, and scheduling services.
2. To fulfill orders for mail transportation equipment.
3. To provide customers with information about the status of mailings within the USPS network or other carrier networks.
4. To provide customers with mail or package delivery options.
5. To provide business mailers with information about the status of mailings within the USPS mail processing network.
6. To help mailers identify performance issues regarding their mail.
7. To provide delivery units with information needed to fulfill requests for mail redelivery and hold mail service at the address and for the dates specified by the customer.
8. To enhance the customer experience by improving the security of Change of Address (COA) and Hold Mail processes.
9. To protect USPS customers from becoming potential victims of mail fraud and identity theft.
10. To identify and mitigate potential fraud in the COA and Hold Mail processes.
11. To verify a customer's identity when applying for COA and Hold Mail services.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers who use USPS mail management and tracking services.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Customer information:* Customer or contact name, mail and email address(es), title or role, phone number(s), text message number, and cell phone carrier.
2. *Identification information:* Customer ID(s), last four digits of Social Security Number (SSN), D–U–N–S Number; mailer and mailing ID, advertiser name/ID, username, and password.
3. *Data on mailings:* Paper and electronic data on mailings, including postage statement data (such as volume, class, rate, postage amount, date and time of delivery, mailpiece count), destination of mailing, delivery status, mailing problems, presort information, reply mailpiece information, container label numbers, package label, Special Services label, article number, and permit numbers.
4. *Payment information:* Credit and/or debit card number, type, and expiration date; ACH information.
5. *Customer preference data:* Hold mail begin and end date, redelivery date, delivery options, shipping and pickup preferences, drop ship codes, comments and instructions, mailing frequency, preferred delivery dates, and preferred means of contact.
6. *Product usage information:* Special Services label and article number.
7. *Mail images:* Images of mailpieces captured during normal mail processing operations.

RECORD SOURCE CATEGORIES:

Customers and, for call center operations, commercially available sources of names, addresses, and telephone numbers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Standard routine uses 1. through 7., 10., and 11. apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated databases, computer storage media, and paper.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

By customer name, customer ID(s), logon ID, mailing address(es), 11-digit ZIP Code, or any Intelligent Mail barcode.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Records are retained for up to 30 days.
2. Records related to ePubWatch, Confirmation Services and hold mail services are retained for up to 1 year.
3. Special Services and drop ship records are retained 2 years.
4. ACH records are retained up to 2 years.
5. Mailpiece images will be retained up to 3 days.
6. Other records are retained 4 years after the relationship ends.
7. USPS and other carrier network tracking records are retained for up to 30 days for mail and up to 90 days for packages and special services.

Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software. Online data transmissions are protected by encryption.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See NOTIFICATIONS PROCEDURES and RECORD ACCESS PROCEDURES.

NOTIFICATION PROCEDURES:

Customers wanting to know if information about them is maintained in this system of records must address inquiries in writing to the system manager. Inquiries should contain name, customer ID(s), if any, and/or logon ID.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

June 05, 2017, *82 FR 25819;* August 25, 2016, *81 FR 58542;* January 21, 2014, *79 FR 3423;* August 03, 2012, *77 FR 46528;* June 27, 2012, *77 FR 38342;* October 24, 2011, *76 FR 65756;* April 29, 2005, *70 FR 22516.*

SYSTEM NAME AND NUMBER:

USPS 820.300, Informed Delivery.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

USPS Headquarters; Wilkes-Barre Solutions Center; and Eagan, MN.

SYSTEM MANAGER(S):

Vice President, Product Innovation, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1010, (202) 268–6078.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404.

PURPOSE(S) OF THE SYSTEM:

1. To support the Informed Delivery notification service which provides customers with electronic notification of physical mail that is intended for delivery at the customer's address.

2. To provide daily email communication to consumers with images of the letter-size mailpieces that they can expect to be delivered to their mailbox each day.

3. To provide an enhanced customer experience and convenience for mail delivery services by linking physical mail to electronic content.

4. To obtain and maintain current and up-to-date address and other contact information to assure accurate and reliable delivery and fulfillment of postal products, services, and other material.

5. To determine the outcomes of marketing or advertising campaigns and to guide policy and business decisions through the use of analytics.

6. To identify, prevent, or mitigate the effects of fraudulent transactions.

7. To demonstrate the value of Informed Delivery in enhancing the responsiveness to physical mail and to promote use of the mail by commercial mailers and other postal customers.

8. To enhance the customer experience by improving the security of Change of Address (COA) and Hold Mail processes.

9. To protect USPS customers from becoming potential victims of mail fraud and identity theft.

10. To identify and mitigate potential fraud in the COA and Hold Mail processes.

11. To verify a customer's identity when applying for COA and Hold Mail services.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Customers who are enrolled in Informed Delivery notification service.

2. Mailers that use Informed Delivery notification service to enhance the value of the physical mail sent to customers.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Customer information:* Name; customer ID(s); mailing (physical) address(es) and corresponding 11-digit delivery point ZIP Code; phone number(s); email address(es); text message number(s) and carrier.

2. *Customer account preferences:* Individual customer preferences related to email and online communication participation level for USPS and marketing information.

3. *Customer feedback:* Information submitted by customers related to Informed Delivery notification service or any other postal product or service.

4. *Subscription information:* Date of customer sign-up for services through an opt-in process; date customer opts-out of services; nature of service provided.

5. *Data on mailpieces:* Destination address of mailpiece; Intelligent Mail barcode (IMb); 11-digit delivery point ZIP Code; and delivery status; identification number assigned to equipment used to process mailpiece.

6. *Mail Images:* Electronic files containing images of mailpieces captured during normal mail processing operations.

7. *User Data associated with 11-digit ZIP Codes:* Information related to the user's interaction with Informed Delivery email messages, including but not limited to, email open and click-through rates, dates, times, and open rates appended to mailpiece images (user data is not associated with personally identifiable information).

8. *Data on Mailings:* Intelligent Mail barcode (IMb) and its components including the Mailer Identifier (Mailer ID or MID), Service Type Identifier (STID) and Serial Number.

RECORD SOURCE CATEGORIES:

Individual customers who request Informed Delivery notification service; *usps.com* account holders; other USPS systems and applications including those that support online change of address, mail hold services, Premium Forwarding Service, or P.O. Boxes Online; commercial entities, including commercial mailers or other Postal Service business partners and third-party mailing list providers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Standard routine uses 1. through 7., 10., and 11. apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated database and computer storage media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

By customer email address, 11-Digit ZIP Code and/or the Mailer ID component of the Intelligent Mail Barcode.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Mailpiece images will be retained up to 7 days (mailpiece images are not associated with personally identifiable information). Records stored in the subscription database are retained until the customer cancels or opts out of the service.

2. User data is retained for 2 years, 11 months.

Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice. Any records existing on paper will be destroyed by burning, pulping, or shredding.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Computers and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge. Access to records is limited to individuals whose official duties require such access. Contractors and licensees are

subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software. Online data transmissions are protected by encryption. Access is controlled by logon ID and password. Online data transmissions are protected by encryption.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See NOTIFICATION PROCEDURES and RECORD ACCESS PROCEDURES.

NOTIFICATION PROCEDURES:

Customers who want to know if information about them is maintained in this system of records must address inquiries in writing to the system manager. Inquiries must contain name, address, email, and other identifying information.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

August 25, 2016, *81 FR 58542.*

Ruth Stevenson,

Attorney, Federal Compliance.

[FR Doc. 2018–27965 Filed 12–26–18; 8:45 am]

BILLING CODE 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:* December 27, 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 December 19, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 499 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–56, CP2019–60.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–27937 Filed 12–26–18; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84860; File No. SR–GEMX–2018–42]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Makers Trading in Non-Appointed Options Classes

December 19, 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 December 12, 2018, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 805(b) relating to Market Makers [3] trading in non-appointed options classes.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqgemx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Rule 100(a)(33).

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 805(b) relating to Market Makers trading in non-appointed options classes.

Rule 805(b) presently governs the submission of orders by Market Makers in non-appointed options classes. Subparagraphs (b)(2) and (b)(3) place limitations on the overall percentage of executions that can occur in the non-appointed options classes. Specifically, subparagraph (b)(2) limits a Competitive Market Maker's (''CMM'') total number of contracts executed in non-appointed options classes to 25% of the CMM's total number of contracts executed in its appointed options classes and with respect to which it was quoting pursuant to Rule 804(e)(1), and subparagraph (b)(3) limits a Primary Market Maker's (''PMM'') total number of contracts executed in non-appointed options classes to 10% of the PMM's total number of contracts executed in its appointed classes.

The Exchange now proposes in subparagraph (b)(3) to increase the overall percentage of executions that can occur in a PMM's non-appointed options classes from 10% to 25% to align with the CMM allowance as well as other options exchanges, including its affiliated options market, BX Options.[4] The Exchange adopted the

[4] BX Options Market Makers (including Lead Market Makers) can execute no more than 25% of their total volume outside of their registered options classes. *See* BX Options Rules, Chapter VII, Section 6(e). In addition, CBOE Rule 8.7, Interpretations and Policies .03 provides that 75% of a Market-Maker's total contract volume must be in classes to which the Market-Maker is appointed. Accordingly, only 25% of a CBOE Market-Maker's contract volume can be in non-appointed classes. CBOE Rule 8.7 applies equally to Lead Market-Makers and Designated Primary Market-Makers in the same

Continued

10% volume limitation for PMMs as part of its application to be registered as a national securities exchange, and initially restricted PMMs in this manner because as a nascent exchange, it sought to promote PMM activity in their appointed options classes in order to encourage liquidity on the Exchange. Since then, there has been a proliferation of options classes added to the Exchange for trading, and the Exchange therefore believes that the 10% limitation is restrictive in light of the current environment. The Exchange does not believe that its proposal will adversely impact the quality of the Exchange's market or lead to a material decrease in liquidity. As noted above, other options exchanges are operating today with similar or more generous allowances for its market makers without sacrificing market quality, and the Exchange believes that its proposed increase will likewise not result in a decrease of market quality.[5] Furthermore, Market Makers and in particular, PMMs, will continue to be subject to the highest standard applicable on the Exchange to provide liquidity. For instance as set forth in Rule 804(e)(2), PMMs are held to the highest quoting standards on the Exchange. Specifically, PMMs are required to provide two-sided quotations in 90% of the cumulative number of seconds for which that PMM's appointed options class is open for trading.[6] Furthermore, PMMs are required to quote in certain options series of their appointed classes that are excluded from the quoting requirements of CMMs (*i.e.,* Quarterly Options Series, Adjusted Options Series, and long-term options). In addition, the Exchange can announce a higher percentage than the current 90% quoting requirement if doing so would be in the interest of a fair and orderly market.[7] PMMs are also required to enter quotes in their appointed options classes and participate in the Opening Process.[8] Accordingly, the Exchange believes that the foregoing obligations will continue to ensure that PMMs will provide liquidity in their appointed options classes notwithstanding the proposed increase in the trading allowance in non-appointed classes.

In addition, the Exchange believes that the proposed increase in the overall percentage from 10% to 25% will bring GEMX in line with other options exchanges, and permit its Market Makers to effectively compete with market makers on other options exchanges. Moreover, applying requirements that are substantially similar to other options exchanges will remove a significant compliance burden on market makers who provide liquidity across multiple options exchanges.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] 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. In particular, the Exchange believes that the proposed rule change promotes just and equitable principles of trade because it reduces an outdated restriction on PMMs, and simplifies the application of the rule by imposing the same 25% volume limitation on all Market Makers. The purpose of limiting the number of contracts executed in non-appointed classes to a small percentage of contracts executed in appointed classes was to encourage Market Makers to provide liquidity in their appointed classes. As discussed above, the Exchange initially adopted the 10% volume limitation for PMMs because as a nascent exchange, it sought to promote PMM activity in their appointed options classes in order to encourage liquidity on the Exchange. Since then, there has been a proliferation of options classes added to the Exchange for trading, and the Exchange therefore believes that the 10% limitation is restrictive in light of the current environment. Other options exchanges are operating today with similar or more generous allowances for its market makers without sacrificing market quality, and the Exchange therefore believes that the proposed increase will not result in a decrease of quality on its own market.[11] In addition, the Exchange believes that the heightened obligations for PMMs to participate in the Opening Process and provide intra-day quotes will continue to ensure that PMMs provide liquidity in their appointed options classes notwithstanding the proposed increase in the trading allowance in non-appointed classes.[12] As discussed above, the proposed rule change will also conform GEMX's Market Maker obligations to the requirements of other options markets, which will promote the application of consistent compliance standards for market makers who provide liquidity across multiple options exchanges.

Furthermore, such volume limitations were traditionally put in place and especially important at ''floor-based'' exchanges, since market makers were limited in the number of classes in which they could physically make markets, and it was in the floor-based exchange's interest that market makers focus their market making abilities on their appointed classes.[13] Although limitations on trading in non-appointed classes may be less important on a fully electronic exchange since electronic quoting and trading systems allow market makers to make markets and provide liquidity in many more options classes than on a floor-based exchange, GEMX still believes focusing its Market Makers on trading in their appointed classes is important for providing liquidity in those classes. In this respect, the Exchange believes that its proposal would continue to meet that objective because the proposed limitation for PMMs would still require that a substantial percentage (*i.e.,* 75%) of a PMM's transactions be effected in their appointed classes.

Finally, in determining to revise requirements for its Market Makers, the Exchange is mindful of the balance between the obligations and benefits provided to Market Makers. While the proposal will change obligations currently in place for Market Makers, the Exchange does not believe that these changes reduce the overall obligations applicable to Market Makers. In this respect, the Exchange still imposes many obligations on Market Makers to maintain a fair and orderly market in their appointed classes, which the Exchange believes eliminates the risk of a material decrease in liquidity.[14] In addition, Market Makers are required to abide by quoting requirements in their appointed options classes in order to maintain the status of a Market Maker,

manner as Market-Makers. The Exchange also notes that NYSE Arca Options does not impose a strict percentage limitation on its market makers for transacting in non-appointed classes. *See* NYSE Arca Options Rules 6.37–O(d) and 6.37B–O.

[5] *Id.*

[6] *See* Rule 804(e)(2).

[7] *See* Rule 804(e)(2). *See also* Securities Exchange Act Release No. 84581 (November 14, 2018), 83 FR 58657 (November 20, 2018) (SR–GEMX–2018–37).

[8] *See* Rule 701(c)(3).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* note 4 above.

[12] *See* notes 6—8 above, with accompanying text.

[13] *See e.g.,* Securities Exchange Act Release No. 35786 (May 31, 1995), 60 FR 30122 (June 7, 1995) (SR–Amex–94–51) (order approving proposal by American Stock Exchange, Inc. relating to the in person trading volume requirement for registered options traders).

[14] *See* Rule 803(b)(1)–(4).

and PMMs in particular are held to the highest quoting standards on the Exchange.[15] As further discussed above, PMMs are also required to enter quotes and participate during the Opening Process, pursuant to Rule 701. Lastly, the Exchange also notes that for non-appointed options classes of Market Makers, Rule 803(d) would continue to prohibit a Market Maker from engaging in transactions for an account in which it has an interest that are disproportionate in relation to, or in derogation of, the performance of its obligations as specified in Rule 803(b) with respect to its appointed options classes. In particular, Market Makers would be prohibited from (1) individually or as a group, intentionally or unintentionally, dominating the market in options contracts of a particular class and (2) effecting purchases or sales on the Exchange except in a reasonable and orderly manner.[16] Accordingly, the proposal supports the quality of the Exchange's markets by helping to ensure that Market Makers and in particular, PMMs, will continue to be obligated to and have incentives to provide liquidity in their appointed classes. Ultimately, the benefit that the proposed rule change confers upon PMMs by increasing the percentage of contracts executed in the PMM's non-appointed classes from 10% to 25% is offset by the PMM's continued responsibilities to provide significant liquidity to the market to the benefit of market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that its proposal will impose an undue burden on intra-market competition because it will align the percentage limitations for both PMMs and CMMs to 25% of their non-appointed classes, and will treat all Market Makers uniformly in this respect. In terms of inter-market competition, the Exchange operates in a highly competitive market in which market participants can send order flow to competing exchanges if they deem trading practices at a particular exchange to be onerous or cumbersome. The proposal to increase the limitation on the percentage of contracts executed in a PMM's non-appointed classes from 10% to 25% will serve to better align the Exchange's requirements with those in place at other options exchanges, which enhances the ability of its Market Makers to effectively compete with market makers on other options exchanges.[17]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[20] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[21] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. GEMX has requested that the Commission waive the 30-day operative delay contained in Rule 19b–4(f)(6)(iii). The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The proposal raises no novel issues. As the Exchange notes, other options markets require their market makers to a 25% restriction for trading in non-appointed classes. Further, pursuant to the proposal, PMMs' obligation to their appointed classes would remain unchanged. Accordingly, the Commission waives the operative delay and designates the proposed rule change operative upon filing.[22]

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–GEMX–2018–42 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–GEMX–2018–42. 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

[15] *See* notes 6 and 7 above, with accompanying text.

[16] *See* Rule 803(d)(1) and (2).

[17] *See* note 4 above.

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] 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).

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–GEMX–2018–42 and should be submitted on or before January 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Brent J. Fields,

Secretary.

[FR Doc. 2018–28001 Filed 12–26–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84864; File No. SR–MIAX–2018–38]

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange, LLC To Amend Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments To Extend the Penny Pilot Program

December 19, 2018.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2018, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 is filing a proposal to amend Rule 510, Minimum Price Variations and Minimum Trading Increments, Interpretations and Policies .01 to extend the pilot program for the quoting and trading of certain options in pennies.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is a participant in an industry-wide pilot program that provides for the quoting and trading of certain option classes in penny increments (the ''Penny Pilot Program'' or ''Program''). The Penny Pilot Program allows the quoting and trading of certain option classes in minimum increments of $0.01 for all series in such option classes with a price of less than $3.00; and in minimum increments of $0.05 for all series in such option classes with a price of $3.00 or higher. Options overlying the PowerShares QQQ™ (''QQQ''), SPDR® S&P 500® ETF (''SPY''), and iShares® Russell 2000 ETF (''IWM''), however, are quoted and traded in minimum increments of $0.01 for all series regardless of the price. The Penny Pilot Program was initiated at the then existing option exchanges in January 2007[3] and currently includes more than 300 of the most active option classes. The Penny Pilot Program is currently scheduled to expire on December 31, 2018.[4] The purpose of the proposed rule change is to extend the Penny Pilot Program in its current format through June 30, 2019.

In addition to the extension of the Penny Pilot Program through June 30, 2019, the Exchange proposes to extend one other date in the Rule. Currently, Interpretations and Policies .01 states that the Exchange will replace any Penny Pilot issues that have been delisted with the next most actively traded multiply listed option classes that are not yet included in the Penny Pilot Program, and that the replacement issues will be selected based on trading activity in the previous six months. Such option classes will be added to the Penny Pilot Program on the second trading day following July 1, 2018.[5] Because this date has expired and the Exchange intends to continue this practice for the duration of the Penny Pilot Program, the Exchange is proposing to amend the Rule to reflect that such option classes will be added to the Penny Pilot Program on the second trading day following January 1, 2019.

The purpose of this provision is to reflect the new date on which replacement issues may be added to the Penny Pilot Program.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

In particular, the proposed rule change, which extends the Penny Pilot Program for six months, allows the Exchange to continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it.

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX Options does not believe that the proposed rule change will impose any burden on competition that is not

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR–CBOE–2006–92); 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR–ISE–2006–62); 54886 (December 6, 2006), 71 FR 74979 (December 13, 2006) (SR–Phlx–2006–74); 54590 (October 12, 2006), 71 FR 61525 (October 18, 2006) (SR–NYSEArca–2006–73); and 54741 (November 9, 2006), 71 FR 67176 (November 20, 2006) (SR–Amex–2006–106).

[4] *See* Securities Exchange Act Release No. 83515 (June 25, 2018), 83 FR 30786 (June 29, 2018) (SR–MIAX–2018–12) (extending the Penny Pilot Program from June 30, 2018 to December 31, 2018).

[5] The month immediately preceding a replacement class's addition to the Pilot Program (*i.e.,* December) is not used for purposes of the six-month analysis. For example, a replacement added on the second trading day following January 1, 2019, will be identified based on trading activity from June 1, 2018, through November 30, 2018.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Penny Pilot Program and a determination of how the Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace, facilitating investor protection, and fostering a competitive environment. In addition, consistent with previous practices, the Exchange believes the other options exchanges will be filing similar extensions of the Penny Pilot Program.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) [9] thereunder. 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 after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) [11] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program.[14] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email *to rule-comments@sec.gov.* Please include File Number SR–MIAX–2018–38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2018–38. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2018–38 and should be submitted on or before January 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Brent J. Fields,

Secretary.

[FR Doc. 2018–27998 Filed 12–26–18; 8:45 am]

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[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *See* Securities Exchange Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44).

[15] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84870; File No. SR–NYSEAMER–2018–39]

Self-Regulatory Organizations; NYSE American LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Allow Flexible Exchange Equity Options Where the Underlying Security Is an Exchange-Traded Fund That Is Included in the Option Penny Pilot To Be Settled in Cash

December 19, 2018.

I. Introduction

On September 20, 2018, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act

of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the rules related to Flexible Exchange (''FLEX'') Options to allow FLEX Equity Options where the underlying security is an Exchange-Traded Fund (''ETF'') that is included in the Option Penny Pilot to be settled in cash.[3] The proposed rule change was published for comment in the **Federal Register** on October 11, 2018.[4] On November 19, 2018, pursuant to Section 19(b(2) of the Act,[5] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] The Commission received one comment on the proposed rule change.[7] This order institutes proceedings under Section 19(b)(2)(B) of the Act[8] to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposal and Comments Received

The Exchange has proposed to amend NYSE American Rule 903G(c) to allow for cash settlement for certain FLEX Equity Options.[9] Currently, FLEX Equity Options settle by physical delivery of the underlying security.[10] The Exchange proposes, in the case of a FLEX Equity Option whose underlying security is an ETF that is included in the Option Penny Pilot[11] (''FLEX ETF Option''), to allow settlement either by the delivery of cash or, as currently permitted under the Exchange rules, by physical delivery of the underlying security.[12]

The Exchange states that it believes that it is appropriate to introduce cash settlement as an alternative for FLEX ETF Options because ETFs generally have increasingly become a major part of investors' portfolios, allowing investors to take advantage of many unique opportunities to hedge their portfolios and manage risk.[13] The Exchange asserts that physical settlement possess certain risks with respect to volatility and movement of the underlying security at expiration that market participants may need to hedge against and cash settlement does not present these same risks.[14]

The Exchange states that it seeks to allay concerns about cash-settled equity options by proposing to adopt cash settlement as an alternative settlement method for 64 ETFs that are included in the Option Penny Pilot.[15] The Exchange adds that generally index options are cash-settled and derive their value from a disseminated index price, and that similarly ETFs typically have their values linked to a disseminated index price.[16] The Exchange states that the option classes included in the original pilot were chosen based on being one of the most actively-traded multiply-listed options classes and also states that the most recent expansion identified the most-active classes based on the ''underlying security's 'national average daily volume over a six-month period.' ''[17]

The Exchange states that cash-settled FLEX ETF Options would be subject to the same position limits as non-cash-settled FLEX ETF Options (*i.e.,* the position limits in NYSE American Rule 906G).[18] The Exchange represents that it confirmed with the Options Clearing Corporation (''OCC'') that OCC can support the clearance and settlement of cash-settled FLEX ETF Options.[19] The Exchange also states that it believes the Exchange and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the additional traffic associated with the listing of cash-settled FLEX ETF Options and that it believes that its members will not have a capacity issue as a result of the proposal.[20] The Exchange represents that it does not believe that the proposed rule change will cause fragmentation of liquidity.[21] The Exchange further represents that it will monitor the trading volume associated with the options series listed as a result of this proposed rule change and the effect, if any, of these series on market fragmentation and on the capacity of the Exchange's automated systems.[22]

The Exchange represents that it will have an adequate surveillance program for cash-settled FLEX ETF Options and states that it intends to use the same surveillance procedures, including procedures concerning surveillance for manipulation, for cash-settled FLEX ETF Options that it uses for the Exchange's other options products.[23] The Exchange states that it believes manipulating the settlement price of cash-settled FLEX ETF Options would be difficult because of the size of the market for such ETFs.[24] According to the Exchange each cash-settled FLEX ETF Option is sufficiently active so as to alleviate concerns about the potential

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For the definitions of ''FLEX Options,'' ''FLEX Equity Options,'' and ''Option Penny Pilot,'' *see infra* notes 9 and 11.

[4] *See* Securities Exchange Act Release No. 84364 (October 4, 2018), 83 FR 51535 (October 11, 2018) (''Notice'').

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 82994 (April 4, 2018), 83 FR 15441 (April 10, 2018). The Commission designated January 9, 2019, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[7] *See* Letter to Brent J. Fields, Secretary, Commission, from Samara Cohen, Head of ETF Global Markets, BlackRock, dated November 27, 2018 (''BlackRock Letter'').

[8] 15 U.S.C. 78s(b)(2)(B).

[9] A ''FLEX Option'' is a customized options contract that is subject to the rules in Section 15, Flexible Exchange Options. *See* NYSE American Rule 900G(b)(1). A ''FLEX Equity Option'' is an option on a specified underlying equity security that is subject to the rules of Section 15. *See* NYSE American Rule 900G(b)(10).

[10] *See* NYSE American Rule 903G(c)(3)(i). There is an exception to physical settlement for settlement of FLEX Binary Return Derivatives (''ByRDs''). *See* NYSE American Rules 900G(b)(17), 903G(c)(3)(ii), and 910ByRDs.

[11] The ''Option Penny Pilot'' is a pilot program by the options exchanges that permits certain option classes to be quoted in penny or nickel increments on a pilot basis. *See* NYSE American Rule 960NY, Commentary .02. *See also* Securities Exchange Act Release No. 55162 (January 24, 2007), 72 FR 4738, 4739 (February 1, 2007) (SR–Amex–2006–106) (''Option Penny Pilot Approval Order''). The Option Penny Pilot is currently set to expire on December 31, 2018. *See* NYSE American Rule 960NY, Commentary .02.

[12] *See* proposed NYSE American Rule 903G(c)(3)(ii). The Exchange proposes conforming changes to NYSE American Rule 903G(c)(3) to reflect that the proposed rule change would add a second exception to the general requirement for physical settlement for FLEX Equity Options. *See* proposed NYSE American Rule 903G(c)(3)(i) and (iii).

[13] *See* Notice, *supra* note 4, at 51535–36.

[14] *See id.* at 51536. The Exchange also states that market participants trade cash-settled FLEX ETF Options in the over-the-counter market and exchange trading would provide benefits to these market participants. *See id.*

[15] *See id.*

[16] *See id.*

[17] *See id.* The Commission notes that the criteria for qualifying for the Option Penny Pilot is based on the national average daily volume over a six month period in the options class itself, not based on the volume of the underlying ETF. *See* Securities Exchange Act Release No. 60711 (September 23, 2009), 74 FR 49419 (September 28, 2009) (SR–NYSEArca–2009–44) (''Option Penny Pilot Expansion Order'') and Securities Exchange Act Release No. 61106 (December 3, 2009), 74 FR 65193 (December 9, 2009) (NYSEAmex–2009–74) (Option Penny Pilot Expansion Notice'').

[18] *See* Notice, *supra* note 4, at 51536. The Exchange adds that other existing regulatory safeguards, such as exercise limits and reporting requirements, would also continue to apply. *See id.* at 51537. The Commission notes that NYSE American Rule 906G provides generally that there are no position limits for FLEX Equity Options, but that positions in FLEX Options that expire on a third Friday-of-the-month expiration day (''Expiration Friday'') will be aggregated with positions in non-FLEX Options on the same underlying and subject to the position limits applicable to such options. *See* NYSE American Rule 906G(b).

[19] *See* Notice, *supra* note 4, at 51536.

[20] *See id.*

[21] *See id.*

[22] *See id.*

[23] *See id.*

[24] *See id.*

for manipulation.[25] The Exchange states that the vast liquidity of ETF options and the underlying equities markets and the high level of participation among market participants that enter quotes or orders in ETF options would, according to the Exchange, make it very difficult for a single participant to alter the prices of each security underlying an ETF without becoming exposed to regulatory scrutiny and that such attempt at manipulation would be cost-prohibitive.[26] Moreover, the Exchange states that it is a member of the Intermarket Surveillance Group (''ISG'') and therefore would have access to surveillance and investigative information regarding trading in the underlying securities.[27]

The Commission received one comment letter, which supports the proposed rule change.[28] The commenter states that it agrees with the Exchange that the proposal alleviates several potential challenges associated with physical settlement and presents advantages to the end investor. This commenter asserts that the proposal would lead to greater standardization of contract terms, mitigate counterparty risk, increase price discovery, and improve information dissemination, which would lead to greater transparency.[29]

III. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEAMER–2018–39 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposal should be approved or disapproved.[30] Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B) of the Act, the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning the proposed rule change's consistency with the Act[31] and, in particular, with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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.[32]

As discussed above, the Exchange proposes to modify NYSE American Rule 903G(c)(3)(ii) to allow cash settlement for FLEX ETF Options. In its proposal, the Exchange acknowledges that concerns have been raised in the past regarding the susceptibility of cash-settled equity options to manipulation. The Exchange asserts that to address such concerns, it has proposed to limit cash settlement to options on a narrow set of ETFs that are the most actively traded, as evidenced by the inclusion of options on those ETFs in the Option Penny Pilot.[33] The Commission notes that the goal of the Option Penny Pilot since its inception has been to analyze the impact of penny quoting on options spreads, transaction costs, payment for order flow, and quote message traffic.[34] As a result, the Option Penny Pilot eligibility criterion is based on the national average daily volume of the options classes rather than the volume in the underlying securities.

The Commission notes that critical to any assessment of the potential for manipulation when trading cash-settled options on ETFs is also an analysis of the liquidity and depth of the market for both the ETFs underlying the options and the component securities of the ETFs themselves. The Exchange has not, however, provided any specific data, analysis, and studies demonstrating that the ETFs underlying the options included in the Option Penny Pilot have the liquidity necessary to adequately address concerns on the risks of manipulation and potential for market disruption that may arise from cash settlement on such options.

As noted above, because options in the Option Penny Pilot are assessed every six months based on options trading volume, we believe the 64 ETFs underlying the options in the Option Penny Pilot that the Exchange identifies generally in its proposal were those eligible for the pilot as of the date the Exchange submitted its proposal to the Commission. This raises further questions, which are not addressed in the current proposal, as to how the Exchange will treat options on those ETFs that become ineligible for the Option Penny Pilot in the future, as well as how to analyze the potential for manipulation and market disruption from future ETFs underlying options that are not yet, but later, included in the Option Penny Pilot and will therefore become eligible for cash settlement under the Exchange's proposal.

The Exchange also takes the position that cash settlement for options is not unique because other options exchanges trade cash-settled options.[35] Cash-settled options on equity securities such as ETFs that hold specific component securities, however, are unique and present distinct issues different from cash-settled index options that track an index. The Commission notes that allowing for cash settlement of FLEX ETF Options, as proposed, would permit cash settlement on a significantly broader set of equity options than that previously approved. Further, it is not clear from the Exchange's proposal how the expanded use of cash settlement for equity options may bear on the potential for manipulation or impact market quality since, as noted above, the proposal lacks any supporting data or analysis on these issues.

The Exchange proposes to apply the same position limits to cash-settled FLEX ETF Options as for other FLEX Equity Options. The Commission notes that the Exchange generally does not impose position limits for FLEX Equity Options unless the FLEX Equity Options' expiration coincides with an Expiration Friday.[36] This means that there would be no position limits, including on the days leading up to and surrounding Expiration Friday, for many of the cash-settled FLEX ETF Options under the proposal. The Commission is therefore concerned that the lack of position limits for non-Expiration Friday expiring cash-settled FLEX ETF Options could make them more susceptible to manipulation and could lead to market disruption.

Finally, the Commission notes that the proposal would allow for settlement in cash or by physical delivery on options that otherwise have the same terms. The Commission notes that allowing both physical delivery and cash settlement alternatives could

[25] *See id.* at 51536–37.

[26] *See id.* at 51537.

[27] *See id.*

[28] *See* BlackRock Letter, *supra* note 7.

[29] *See id.*

[30] 15 U.S.C. 78s(b)(2)(B).

[31] 15 U.S.C. 78f(b)(5).

[32] *Id.*

[33] *See* Notice, *supra* note 4, at 51536.

[34] *See* Option Penny Pilot Approval Order, *supra* note 11, at 4740. As noted in the 2009 Option Penny Pilot Expansion Order, for example, the pilot report provided information on the most active and least active options classes in the pilot and analyzed the impact the pilot had on those options in certain specified areas. *See supra* note 17, at 49420. *See also* Option Penny Pilot Expansion Notice, *supra* note 17, at 65194.

[35] *See* Notice, *supra* note 4, at 51536.

[36] *See* NYSE American Rule 906G(b).

increase market fragmentation and raise additional manipulation concerns.

The Commission notes that under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change.'' [37] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[38] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.[39]

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposal should be approved or disapproved.

IV. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written view of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[40]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by January 17, 2019. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 31, 2019. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal which are set forth in the Notice,[41] in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEAMER–2018–39 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–NYSEAMER–2018–39. 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 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–NYSEAMER–2018–39 and should be submitted on or before January 17, 2019. Rebuttal comments should be submitted by January 31, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Brent J. Fields,

Secretary.

[FR Doc. 2018–27992 Filed 12–26–18; 8:45 am]

BILLING CODE 8011–01–P

[37] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[38] *See id.*

[39] *See id.*

[40] Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[41] *See* Notice, *supra* note 4.

[42] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Securities Act of 1933 Release No. 10592/December 19, 2018; Securities Exchange Act of 1934 Release No. 84877/December 19, 2018]

Order Approving Public Company Accounting Oversight Board Budget and Annual Accounting Support Fee for Calendar Year 2019

The Sarbanes-Oxley Act of 2002, as amended (the ''Sarbanes-Oxley Act''),[1] established the Public Company Accounting Oversight Board (''PCAOB'') to oversee the audits of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports. Section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') [2] amended the Sarbanes-Oxley Act to provide the PCAOB with explicit authority to oversee auditors of broker-dealers registered with the Securities and Exchange Commission (the ''Commission''). The PCAOB is to accomplish these goals through registration of public accounting firms and standard setting, inspection, and disciplinary programs. The PCAOB is subject to the comprehensive oversight of the Commission.

Section 109 of the Sarbanes-Oxley Act provides that the PCAOB shall establish a reasonable annual accounting support fee, as may be necessary or appropriate to establish and maintain the PCAOB. Under Section 109(f) of the Sarbanes-Oxley Act, the aggregate annual accounting support fee shall not exceed the PCAOB's aggregate ''recoverable budget expenses,'' which may include operating, capital, and accrued items. The PCAOB's annual budget and accounting support fee are subject to approval by the Commission. In

[1] 15 U.S.C. 7201 *et seq.*

[2] Public Law 111–203, 124 Stat. 1376 (2010).

addition, the PCAOB must allocate the annual accounting support fee among issuers and among brokers and dealers.

Section 109(b) of the Sarbanes-Oxley Act directs the PCAOB to establish a budget for each fiscal year in accordance with the PCAOB's internal procedures, subject to approval by the Commission. Rule 190 of Regulation P governs the Commission's review and approval of PCAOB budgets and annual accounting support fees.[3] This budget rule provides, among other things, a timetable for the preparation and submission of the PCAOB budget and for Commission actions related to each budget, a description of the information that should be included in each budget submission, limits on the PCAOB's ability to incur expenses and obligations except as provided in the approved budget, procedures relating to supplemental budget requests, requirements for the PCAOB to furnish on a quarterly basis certain budget-related information, and a list of definitions that apply to the rule and to general discussions of PCAOB budget matters.

In accordance with the budget rule, in March 2018 the PCAOB provided the Commission with a narrative description of its program issues and outlook for the 2019 budget year. In response, the Commission provided the PCAOB with economic assumptions and general budgetary guidance for the 2019 budget year. The PCAOB subsequently delivered a preliminary budget and budget justification to the Commission. Staff from the Commission's Office of the Chief Accountant and Office of Financial Management dedicated a substantial amount of time to the review and analysis of the PCAOB's programs, projects, and budget estimates; reviewed the PCAOB's estimates of 2018 actual spending; and attended several meetings with management and staff of the PCAOB to further develop their understanding of the PCAOB's budget and operations. During the course of this review, Commission staff relied upon representations and supporting documentation from the PCAOB. Based on this review, the Commission issued a ''passback'' letter to the PCAOB on November 1, 2018. On November 15, 2018, the PCAOB adopted its 2019 budget and accounting support fee during an open meeting, and subsequently submitted that budget to the Commission for approval.

After considering the above, the Commission did not identify any proposed disbursements in the 2019 budget adopted by the PCAOB that are not properly recoverable through the annual accounting support fee, and the Commission believes that the aggregate proposed 2019 annual accounting support fee does not exceed the PCAOB's aggregate recoverable budget expenses for 2019.

The Commission also acknowledges the PCAOB's updated strategic plan, which involved extensive outreach, and encourages the PCAOB to continue keeping the Commission and its staff apprised of significant new developments during its implementation. In addition, the PCAOB should submit its 2018 annual report to the Commission by April 1, 2019.

The Commission directs the PCAOB during 2019 to schedule monthly meetings with the Commission's staff about the transformation initiatives that are expected to have a significant impact on the 2020 PCAOB budget. In addition, the Commission directs the Board during 2019 to continue providing quarterly updates to the Commission that describe (i) the activities and progress towards the stated goals of the PCAOB's Office of Economic and Risk Analysis (''ERA''); (ii) detailed information about the state of the PCAOB's information technology program as administered by the PCAOB's Office of Information Technology (''OIT); and (iii) information about the PCAOB's inspections program as administered by the PCAOB's Division of Registration and Inspections (''DRI''), consistent with the quarterly updates reflected in the Commission's Order approving the PCAOB's annual budget and accounting support fee for calendar year 2018 dated January 10, 2018. In addition, the quarterly updates should include updates on the transformation projects for ERA, OIT, and DRI.

The Commission understands that the Office of Management and Budget (''OMB'') has determined that the 2019 budget of the PCAOB is subject to sequestration under the Budget Control Act of 2011.[4] For 2018, the PCAOB sequestered $17.2 million. That amount will become available in 2019. For 2019, the sequestration amount will be 6.2% or $17.0 million. Consequently, we expect the PCAOB will have approximately $0.2 million in excess funds available from the 2018 sequestration for spending in 2019. Accordingly, the PCAOB has reduced its accounting support fee for 2019 by approximately $0.2 million.

The Commission has determined that the PCAOB's 2019 budget and annual accounting support fee are consistent with Section 109 of the Sarbanes-Oxley Act. Accordingly,

It is ordered, pursuant to Section 109 of the Sarbanes-Oxley Act, that the PCAOB budget and annual accounting support fee for calendar year 2019 are approved.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2018–27978 Filed 12–26–18; 8:45 am]

BILLING CODE 8011–01–P

[3] 17 CFR 202.190.

[4] *See* ''OMB Report to the Congress on the Joint Committee Reductions for Fiscal Year 2019'', Appendix page 16 of 17 *available at https://www.whitehouse.gov/wp-content/uploads/2018/02/Sequestration_Report_February_2018.pdf* .

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33332; 812–14961]

RYZZ Capital Management, LLC, et al.

December 19, 2018.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) actively-managed series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds; and (f) certain Funds (''Feeder Funds'') to create and

redeem Creation Units in-kind in a master-feeder structure.

Applicants: RYZZ Capital Management, LLC (the ''Initial Adviser''), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940, ETF Series Solutions (the ''Trust''), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and Quasar Distributors, LLC (the ''Initial Distributor''), a Delaware limited liability company registered as a broker under the Securities Exchange Act of 1934.

Filing Dates: The application was filed on October 4, 2018.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 14, 2019, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: RYZZ Capital Management, LLC, 9260 East Raintree Drive, Suite 100, Scottsdale, Arizona 85260, ETF Series Solutions, 615 East Michigan Street, 4th Floor, Milwaukee, Wisconsin 53202, and Quasar Distributors, LLC, 777 East Wisconsin Avenue, 6th Floor, Milwaukee, Wisconsin 53202.

FOR FURTHER INFORMATION CONTACT: Jill Corrigan, Senior Counsel, at (202) 551–8929, or Parisa Haghshenas, Branch Chief, at (202) 551–6723 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as actively-managed exchange traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant'' which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will consist of a portfolio of securities and other assets and investment positions (''Portfolio Instruments''). Each Fund will disclose on its website the identities and quantities of the Portfolio Instruments that will form the basis for the Fund's calculation of NAV at the end of the day.

3. Shares will be purchased and redeemed in Creation Units only and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Instruments and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are affiliated persons, or second-tier affiliates, of the Funds, solely by virtue of certain

[1] Applicants request that the order apply to the new series of the Trust as well as to additional series of the Trust and any other open-end management investment company or series thereof that currently exist or that may be created in the future (each, included in the term ''Fund''), each of which will operate as an actively-managed ETF. Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each such entity and any successor thereto is included in the term ''Adviser'') and (b) comply with the terms and conditions of the application. For purposes of the requested order, the term ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[2] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2018–27985 Filed 12–26–18; 8:45 am]

BILLING CODE 8011–01–P

[2] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84682; File No. SR–ISE–2018–95]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Supplementary Material .07 to ISE Rule 722

November 29, 2018.

Correction

In notice document 2018–26405 beginning on page 62938 in the issue of Thursday, December 6, 2018, make the following correction:

On page 62939, in the third column, the last line of the first full paragraph ''December 26, 2018'' should read ''December 27, 2018''.

[FR Doc. C1–2018–26405 Filed 12–26–18; 8:45 am]

BILLING CODE 1301–00–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84685; File No. SR–Phlx–2018–76]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Pilot Period for the Listing of P.M.-Settled Nasdaq-100 Index Options Expiring on the Third Friday of the Month

November 29, 2018.

Correction

In notice document 2018–26396 beginning on page 62942 in the issue of Thursday, December 6, 2018, make the following correction:

On page 62943, in the third column, the last line of the first full paragraph ''December 26, 2018'' should read ''December 27, 2018''.

[FR Doc. C1–2018–26396 Filed 12–26–18; 8:45 am]

BILLING CODE 1301–00–D

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33330; 812–14960]

OSI ETF Trust, et al.

December 19, 2018.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) actively-managed series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds; and (f) certain Funds (''Feeder Funds'') to create and redeem Creation Units in-kind in a master-feeder structure.

Applicants: OSI ETF Trust (the ''Trust''), a Delaware statutory trust that is registered under the Act as an open-end management investment company with multiple series, O'Shares Investment Advisers, LLC (''Initial Adviser''), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940, and Foreside Fund Services, LLC (the ''Distributor''), a Delaware limited liability company and broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act'').

Filing Dates: The application was filed on October 3, 2018.

Hearing or Notification of Hearing: An order granting the requested relief will

be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 14, 2019, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: Michael W. Mundt, Esq., Stradley Ronon Stevens & Young, LLP, 1250 Connecticut Avenue NW, Ste. 500, Washington, DC 20036; Louise Anne Poirier, O'Shares Investment Advisers, LLC, 1010 Sherbrooke St. West, Suite 2105, Montreal, QC H3A 2R7 Canada.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817, or Kaitlin C. Bottock, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as actively-managed exchange traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant,'' which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will consist of a portfolio of securities and other assets and investment positions (''Portfolio Instruments''). Each Fund will disclose on its website the identities and quantities of the Portfolio Instruments that will form the basis for the Fund's calculation of NAV at the end of the day.

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c-1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Instruments and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit a person who is an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[2]

[1] Applicants request that the order apply to the Initial Funds, as well as to future series of the Trust, and any other open-end management investment companies or series thereof (each, included in the term ''Fund''), each of which will operate as an actively-managed ETF. Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an ''Adviser'') and (b) comply with the terms and conditions of the application.

[2] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a)

The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Brent J. Fields,

Secretary.

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for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an investment adviser to the Funds is also an investment adviser to a Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84863; File No. SR–NYSEArca–2018–67]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend NYSE Arca Rule 5.2–E(j)(6) Relating to Equity Index-Linked Securities Listing Standards Set Forth in NYSE Arca Rule 5.2–E(j)(6)(B)(I)

December 19, 2018.

On September 10, 2018, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend listing standards set forth in NYSE Arca Rule 5.2–E(j)(6)(B)(I) relating to criteria applicable to components of an index underlying an issue of Equity Index-Linked Securities. The proposed rule change was published for comment in the **Federal Register** on October 1, 2018.[3]

On November 13, 2018, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission has received no comment letters on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Proposal [7]

NYSE Arca Rule 5.2–E(j)(6)(B)(I) sets forth the listing standards applicable to Equity Index-Linked Securities.[8] The Exchange proposes to amend NYSE Arca Rule 5.2–E(j)(6)(B)(I) relating to criteria applicable to components of an index underlying an issue of Equity Index-Linked Securities, as described below.[9]

Proposed Amendments to NYSE Arca Rule 5.2–E(j)(6)(B)(I)(1)(b)(v)

The Exchange proposes to amend NYSE Arca Rule 5.2–E(j)(6)(B)(I)(1)(b)(v) to provide that all component securities of an index underlying an issue of Equity Index-Linked Securities shall be either (1) U.S. Component Stocks (as described in NYSE Arca Rule 5.2–E(j)(3)) [10] that are listed on a national securities exchange and are NMS Stocks as defined in Rule 600 of Regulation NMS under the Exchange Act; or (2) Non-U.S. Component Stocks (as described in NYSE Arca Rule 5.2–E(j)(3)) [11] that are listed and traded on an exchange that has last-sale reporting.[12] The proposed amendment,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 84279 (Sept. 25, 2018), 83 FR 49437 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 84576, 83 FR 58315 (Nov. 19, 2018). The Commission designated December 30, 2018, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] The Commission notes that additional aspects and information regarding the proposal can be found in the Notice. *See* Notice, *supra* note 3.

[8] Equity Index-Linked Securities are securities that provide for the payment at maturity based on the performance of an underlying index or indexes of equity securities, securities of closed-end management investment companies registered under the Investment Company Act of 1940 (''1940 Act''), and/or Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)). In the proposal, the Exchange also refers to these securities as ''Exchange-Traded Notes'' or ''ETNs.''

[9] NYSE Arca Rule 5.2–E(j)(6)(B)(I)(1)(b)(v) provides that all component securities shall be either: (A) Securities (other than foreign country securities and American Depository Receipts (''ADRs'')) that are (x) issued by a 1934 Act reporting company or by an investment company registered under the 1940 Act, which in each case is listed on a national securities exchange, and (y) an ''NMS stock'' (as defined in Rule 600 of SEC Regulation NMS); or (B) Foreign country securities or ADRs, provided that foreign country securities or foreign country securities underlying ADRs having their primary trading market outside the United States on foreign trading markets that are not members of the Intermarket Surveillance Group (''ISG'') or parties to comprehensive surveillance sharing agreements with the Exchange will not in the aggregate represent more than 50% of the dollar weight of the index, and provided further that: (i) The securities of any one such market do not represent more than 20% of the dollar weight of the index; and (ii) the securities of any two such markets do not represent more than 33% of the dollar weight of the index.

[10] NYSE Arca Rule 5.2–E(j)(3) provides that the term ''US Component Stock'' shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934.

[11] NYSE Arca Rule 5.2–E(j)(3) provides that the term ''Non-US Component Stock'' shall mean an equity security that is not registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 and that is issued by an entity that (a) is not organized, domiciled or incorporated in the United States, and (b) is an operating company (including Real Estate Investment Trusts (REITS) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

[12] The text of proposed NYSE Arca Rule 5.2–E(j)(6)(B)(I)(1)(b)(v)(1) is comparable to the requirement for US Component Stocks in Commentary .01(a)(A)(5) to NYSE Arca Rule 5.2–E(j)(3). The text of proposed NYSE Arca Rule 5.2–E(j)(6)(B)(I)(1)(b)(v)(2) is comparable to the

Continued

therefore, would delete from Rule 5.2–E (j)(6)(B)(I)(1)(b)(v) the requirement that foreign country securities or foreign country securities underlying ADRs in an index satisfy requirements that a specified percentage of the dollar weight of the index have primary trading markets that are members of ISG or primary trading markets that are parties to comprehensive surveillance sharing agreements with the Exchange.

According to the Exchange, the proposed amendment would eliminate a requirement for Equity Index-Linked Securities that is not applicable to Investment Company Units and Managed Fund Shares with respect to Non-U.S. Component Stock index components or holdings of Non-U.S. Component Stocks. The Exchange states that the amendment, therefore, would afford greater flexibility to ETN issuers to list securities that include foreign stocks and to better compete with issuers of Investment Company Units and Managed Fund Shares, which are not subject to this requirement.

Proposed Amendments to NYSE Arca Rule 5.2–E(j)(6)(B)(I)(1)(a)

The Exchange also proposes to amend NYSE Arca Rule 5.2–E(j)(6)(B)(I)(1)(a) by increasing the required minimum number of components in an index underlying Equity Index-Linked Securities that includes Non-U.S. Component Stocks.[13] The Exchange proposes that an underlying index consisting only of U.S. Component Stocks (as described in Rule 5.2–E(j)(3)) that are listed on a national securities exchange and are NMS Stocks as defined in Rule 600 of Regulation NMS under the Exchange Act would be required to have at least ten (10) component securities; and an underlying index consisting of (a) only Non-U.S. Component Stocks (as described in Rule 5.2–E(j)(3)), or (b) both U.S. Component Stocks and Non-U.S. Component Stocks, would be required to have at least twenty (20) component securities. According to the Exchange, an increase in the required minimum number of components in an index that includes Non-U.S. Component Stocks would be comparable to the requirement applicable to equity indexes underlying series of Investment Company Units listed under Commentary .01 to NYSE Arca Rule 5.2–E(j)(3), and would provide for greater diversification among index components.[14]

The Exchange reasons that the proposed amendments to the generic listing rules for Equity Index-Linked Securities should help ensure that index components of the applicable reference asset are adequately capitalized, sufficiently liquid, and diversified, and that these proposed requirements should significantly minimize the potential for manipulation. The Exchange believes the amendments are appropriate and in the public interest in that Equity Index-Linked Securities would continue to be subject to numerical criteria for index components underlying Equity Index-Linked Securities that are comparable in significant respects to the criteria for U.S. Component Stocks and Non-U.S. Component Stocks in Commentary .01 to NYSE Arca Rule 5.2–E(j)(3) for Investment Company Units and Commentary .01(a) to NYSE Arca Rule 8.600–E for Managed Fund Shares.[15]

II. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2018–67 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[16] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[17] the Commission is providing notice of the grounds for disapproval under consideration, as discussed below. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' [18]

Under the proposal, the Exchange would eliminate from NYSE Arca Rule 5.2–E (j)(6)(B)(I)(1)(b)(v) the requirement that foreign country securities or foreign country securities underlying ADRs in an index satisfy requirements that a specified percentage of the dollar weight of the index have primary trading markets that are members of ISG or primary trading markets that are parties to comprehensive surveillance sharing agreements with the Exchange. According to the Exchange, the proposed amendment would eliminate a requirement for Equity Index-Linked Securities that is not applicable to Investment Company Units and Managed Fund Shares with respect to Non-U.S. Component Stock index components or holdings of Non-U.S. Component Stocks. The Exchange asserts that the amendment to NYSE Arca Rule 5.2–E (j)(6)(B)(I)(1)(b)(v) would afford greater flexibility to ETN issuers to list securities that include foreign stocks and to better compete with issuers of Investment Company Units and Managed Fund Shares, which are not subject to this requirement. In making this assertion, the Exchange compares the listing standards of Equity Index-Linked Securities to the standards of Investment Company Units and Managed Fund Shares. Based on the differences between ETNs and Investment Company Units and Managed Fund Shares, what are commenters' views on the applicability of the Exchange's comparisons in justifying the proposed amendments? Based on the unique structure of ETNs, which, unlike Investment Company Units and Managed Fund Shares, are not governed by the requirements of the 1940 Act and the rules thereunder, what are commenters' views on the

requirement for Non-US Component Stocks in Commentary .01(a)(B)(5) to NYSE Arca Rule 5.2–E(j)(3).

[13] NYSE Arca Rule 5.2–E(j)(6)(B)(I)(1)(a) provides that each underlying index is required to have at least ten (10) component securities; provided, however, that there shall be no minimum number of component securities if one or more issues of Derivative Securities Products (*i.e.,* Investment Company Units (as described in Rule 5.2–E(j)(3)) and securities described in Section 2 of Rule 8) or Index-Linked Securities (as described in Rule 5.2–E(j)(6)), constitute, at least in part, component securities underlying an issue of Equity Index-Linked Securities.

[14] *See* Commentary .01(a)(B)(4) to NYSE Arca Rule 5.2–E(j)(3). *See also* Commentary .01(a)(2)(D) to NYSE Arca Rule 8.600–E, which provides that, where the equity portion of the portfolio includes Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 20 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares.

[15] Commentary .01 to NYSE Arca Rule 5.2–E(j)(3) and Commentary .01(a) to NYSE Arca Rule 8.600–E provide generic initial and continued listing criteria applicable to an equity index or portfolio underlying Investment Company Units and Managed Fund Shares, respectively.

[16] 15 U.S.C. 78s(b)(2)(B).

[17] *Id.*

[18] 15 U.S.C. 78f(b)(5).

Exchange's proposal to eliminate the requirement that a minimum percentage of component foreign country securities or foreign country securities underlying ADRs in an index be traded primarily on markets that are members of ISG or on markets that are parties to comprehensive surveillance sharing agreements with the Exchange? In light of the proposed amendment to NYSE Arca Rule 5.2–E (j)(6)(B)(I)(1)(b)(v) that would eliminate the requirement that a minimum percentage of component foreign country securities or foreign country securities underlying ADRs in an index be traded primarily on markets that are members of ISG or on markets that are parties to comprehensive surveillance sharing agreements with the Exchange, what are commenters' views about whether the Exchange has met its burden in demonstrating that the proposal is consistent with Section 6(b)(5) of the Act, which requires the rules of the Exchange be designed to, among other things, prevent fraudulent and manipulative acts and practices? The Commission requests any comment, data, or analysis that commenters think may be relevant to the Commission's consideration of the Exchange's proposal.

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[19]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by January 17, 2019. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 31, 2019. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[20] in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2018–67 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2018–67. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2018–67 and should be submitted by January 17, 2019. Rebuttal comments should be submitted by January 31, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Brent J. Fields,

Secretary.

[FR Doc. 2018–27999 Filed 12–26–18; 8:45 am]

BILLING CODE 8011–01–P

[19] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[20] *See* Notice, *supra* note 3.

[21] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84871; File No. SR–NYSEAMER–2018–57]

Self-Regulatory Organizations; NYSE American LLC.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Commentary .02 to Rule 960NY in Order to Extend the Penny Pilot in Options Classes in Certain Issues Through June 30, 2019

December 19, 2018.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on December 18, 2018, NYSE American LLC (the ''Exchange'' or ''NYSE American'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .02 to Rule 960NY in order to extend the Penny Pilot in options classes in certain issues (''Pilot Program'') previously approved by the Securities and Exchange Commission (''Commission'') through June 30, 2019. The Pilot Program is currently scheduled to expire on December 31, 2018. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange hereby proposes to amend Commentary .02 to Rule 960NY to extend the time period of the Pilot Program, which is currently scheduled to expire on December 31, 2018, through June 30, 2019.[4] The Exchange also proposes that the date to replace issues in the Pilot Program that have been delisted be revised to the second trading day following January 1, 2019.[5] The Exchange believes that extending the Pilot would allow for further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future.

This filing does not propose any substantive changes to the Pilot Program: all classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[6] of the Act, in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

In particular, the proposed rule change, which extends the Penny Pilot Program for six months, allows the Exchange to continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it. Accordingly, the Exchange believes that the proposal is consistent with the Act because it would allow the Exchange to extend the Pilot Program prior to its expiration on December 31, 2018. The Exchange notes that this proposal does not propose any new policies or provisions that are unique or unproven, but instead relates to the continuation of an existing program that operates on a pilot basis.

The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

The proposal to extend the Pilot Program is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by allowing the Exchange and the Commission additional time to analyze the impact of the Pilot Program while also allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Pilot Program and a determination of how this Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot Program is an industry-wide initiative supported by all other option exchanges. The Exchange believes that extending the Pilot Program will allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot Program.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder. 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 after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The

[4] *See* Securities Exchange Act Release No. 83507 (June 25, 2018), 83 FR 30808 (June 29, 2018) (SR–NYSEAMER–2018–33).

[5] The month immediately preceding a replacement class's addition to the Pilot Program (*i.e.,* December) would not be used for purposes of the analysis for determining the replacement class. Thus, a replacement class to be added on the second trading day following January 1, 2019 would be identified based on The Option Clearing Corporation's trading volume data from June 1, 2018 through November 30, 2018. The Exchange will announce the replacement issues to the Exchange's membership through a Trader Update.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program.[14] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[15]

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–NYSEAMER–2018–57 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–NYSEAMER–2018–57. 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 20549–1090 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–NYSEAMER–2018–57 and should be submitted on or before January 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Brent J. Fields,

Secretary.

[FR Doc. 2018–27991 Filed 12–26–18; 8:45 am]

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[14] *See* Securities Exchange Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44).

[15] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84838; File No. SR–OCC–2018–804]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection to Advance Notice, as Modified by Partial Amendment No. 1, Related to The Options Clearing Corporation's Margin Methodology for Incorporating Variations in Implied Volatility

December 19, 2018.

I. Introduction

On October 22, 2018, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–OCC–2018–804 (''Advance Notice'') pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'')[1] and Rule 19b–4(n)(1)(i)[2] under the Securities Exchange Act of 1934 (''Exchange Act'')[3] to propose changes to OCC's model for incorporating variations in implied volatility within OCC's margin methodology, the System for Theoretical Analysis and Numerical Simulations.[4]

On October 30, 2018, OCC filed a partial amendment (''Partial Amendment No. 1'') to modify the Advance Notice.[5] The Advance Notice, as modified by Partial Amendment No. 1, was published for public comment in the **Federal Register** on November 26, 2018,[6] and the Commission received no comments regarding the proposal contained in the Advance Notice.[7] This publication serves as notice of no objection to the Advance Notice.

II. Background

The System for Theoretical Analysis and Numerical Simulations (''STANS'') is OCC's methodology for calculating margin. STANS includes econometric models that incorporate a number of risk factors. OCC defines a risk factor in STANS as a product or attribute whose historical data is used to estimate and simulate the risk for an associated product. The majority of risk factors utilized in STANS are the returns on individual equity securities; however, a number of other risk factors may be considered, including, among other things, returns on implied volatility risk factors.[8]

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78a *et seq.*

[4] *See* Notice of Filing *infra* note 6, at 83 FR 60541.

[5] In Partial Amendment No. 1, OCC corrected an error in Exhibit 5 without changing the substance of the Advance Notice. References to the Advance Notice from this point forward refer to the Advance Notice, as amended by Partial Amendment No. 1.

[6] Securities Exchange Act Release No. 84626 (November 19, 2018), 83 FR 60541 (November 26, 2018) (SR–OCC–2018–804) (''Notice of Filing''). On October 22, 2018, OCC also filed a related proposed rule change (SR–OCC–2018–014) with the Commission pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder, seeking approval of changes to its rules necessary to implement the Advance Notice (''Proposed Rule Change''). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The Proposed Rule Change was published in the **Federal Register** on November 8, 2018. Securities Exchange Act Release No. 84524 (Nov. 2, 2018), 83 FR 55918 (Nov. 8, 2018) (SR–OCC–2018–014).

[7] Since the proposal contained in the Advance Notice was also filed as a proposed rule change, all public comments received on the proposal are considered regardless of whether the comments are submitted on the proposed rule change or the Advance Notice.

[8] In December 2015, the Commission approved a proposed rule change and issued a Notice of No Objection to an advance notice filing by OCC to its modify margin methodology by more broadly incorporating variations in implied volatility within STANS. *See* Securities Exchange Act Release No. 76781 (December 28, 2015), 81 FR 135 (January 4,

Continued

As a general matter, the implied volatility of an option is a measure of the expected future volatility of the option's underlying security at expiration, which is reflected in the price of the option.[9] Changes in implied volatility, therefore, result in changes to an option's value. In effect, the implied volatility is responsible for that portion of the premium that cannot be attributed to the then-current intrinsic value of the option (*i.e.,* the difference between the price of the underlying and the exercise price of the option), discounted to reflect its time value.

STANS includes a model that simulates variations in implied volatility for most of the option contracts that OCC clears (''Implied Volatility Model'').[10] The purpose of OCC's Implied Volatility Model is to ensure that the anticipated cost of liquidating options positions in an account recognizes the possibility that implied volatility could change during the two-business day liquidation time horizon and lead to corresponding changes in the market prices of the options. OCC, in turn, uses such anticipated costs to determine and collect the amount of margin necessary to collateralize the exposure that OCC could face in the event of a Clearing Member default.

One component of the Implied Volatility Model is a forecast of the volatility of implied volatility. In the process of performing backtesting and impact analyses as well as comparing the Implied Volatility Model to industry benchmarks, OCC determined that its process for forecasting the volatility of implied volatility is extremely sensitive to sudden spikes in volatility, which can at times result in over-reactive margin requirements that OCC believes are unreasonable and procyclical.[11] For example, on February 5, 2018, the Cboe Volatility Index (''VIX'') experienced a large amount of volatility.[12] Based on its review and understanding of OCC's analysis, the Commission understands that OCC's Implied Volatility Model forecasted an extreme increase in the volatility of implied volatility in response to the increase in the VIX on February 5, 2018.[13] Specifically, the Implied Volatility Model forecasted a volatility of implied volatility for an at-the-money, one-month tenor SPX position that was approximately 4 times larger than the comparable market index.[14] This forecast caused aggregate margin requirements at OCC to jump more than 80 percent overnight due to the Implied Volatility Model, and margin requirements for certain individual Clearing Members increased by a factor of 10.[15] Due in large part to the over-reaction of the Implied Volatility Model's to the rise in the VIX, a future shock to the VIX during a time of market stress could result in an increase in margin requirements that likely would impose additional stresses on Clearing Members.

The Advance Notice proposes to modify OCC's Implied Volatility Model by introducing an exponentially weighted moving average[16] for the daily forecasted volatility of implied volatility risk factors. Specifically, when forecasting the volatility for each implied volatility risk factor, OCC would use an exponentially weighted moving average of forecasted volatilities over a specified look-back period rather than using unweighted daily forecasted volatilities. The proposal would change the Implied Volatility Model's sensitivity to large, sudden shocks in market volatility when forecasting the volatility of implied volatility. Specifically, the proposal would result in a more measured initial response to such shocks while producing margin requirements that may remain elevated for a longer period of time following a market shock. Based on its analysis of data provided by OCC, the Commission understands that the margin requirements calculated with the current and proposed models would be very similar during less volatile periods, and that the likelihood that OCC would have sufficient margin to cover its exposures under normal market conditions would not decrease under the proposed model.[17] However, the proposed model would present a more commensurate response to the extreme volatility increases in the market.

III. Discussion and Commission Findings

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, the stated purpose of the Clearing Supervision Act is instructive: To mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities (''SIFMUs'') and strengthening the liquidity of SIFMUs.[18]

Section 805(a)(2) of the Clearing Supervision Act[19] authorizes the Commission to prescribe regulations containing risk-management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act[20] provides the following objectives and principles for the Commission's risk-management standards prescribed under Section 805(a):

- To promote robust risk management;
- to promote safety and soundness;
- to reduce systemic risks; and
- to support the stability of the broader financial system.

Section 805(c) provides, in addition, that the Commission's risk-management standards may address such areas as risk-management and default policies and procedures, among others areas.[21]

The Commission has adopted risk-management standards under Section 805(a)(2) of the Clearing Supervision Act and Section 17A of the Exchange Act (the ''Clearing Agency Rules'').[22] The Clearing Agency Rules require, among other things, each covered

2016) (SR–OCC–2015–016) and Securities Exchange Act Release No. 76548 (December 3, 2015), 80 FR 76602 (December 9, 2015) (SR–OCC–2015–804).

[9] Using the Black-Scholes options pricing model, the implied volatility is the standard deviation of the underlying asset price necessary to arrive at the market price of an option of a given strike, time to maturity, underlying asset price and the current risk-free rate.

[10] OCC's Implied Volatility Model excludes: (i) Binary options, (ii) options on commodity futures, (iii) options on U.S. Treasury securities, and (iv) Asians and Cliquets. These products were relatively new products at the time that OCC completed its last implied volatility margin methodology changes, and OCC had *de minimus* open interest in those options. OCC uses its Implied Volatility Model specifically for options that have a residual tenor of less than three years (''Shorter Tenor Options'').

[11] *See* Notice of Filing, 83 FR at 60542.

[12] The VIX is a measure of the implied volatility of the of Standard & Poor's 500 index (''SPX'').

[13] *See* Notice of Filing, 83 FR at 60542.

[14] *See* Notice of Filing, 83 FR at 60542.

[15] *See* Notice of Filing, 83 FR at 60542. For example, the total margin requirements for one Clearing Member would have increased from $120 million on February 2, 2018 to $1.78 billion on February 5, 2018. *See* Notice of Filing, 83 FR at 60542, n. 22.

[16] An exponentially weighted moving average is a statistical method that averages data in a way that gives more weight to the most recent observations.

[17] OCC's backtesting, which the Commission has reviewed and analyzed, demonstrated that coverage levels using the proposed model were substantially similar to the results obtained from the current model. *See* Notice, 83 FR at 60542.

[18] *See* 12 U.S.C. 5461(b).

[19] 12 U.S.C. 5464(a)(2).

[20] 12 U.S.C. 5464(b).

[21] 12 U.S.C. 5464(c).

[22] 17 CFR 240.17Ad–22. *See* Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11). *See also* Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14) (''Covered Clearing Agency Standards''). The Commission established an effective date of December 12, 2016, and a compliance date of April 11, 2017, for the Covered Clearing Agency Standards. OCC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5).

clearing agency to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for its operations and risk-management practices on an ongoing basis.[23] As such, it is appropriate for the Commission to review advance notices against the Clearing Agency Rules and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act. As discussed below, the Commission believes the proposal in the Advance Notice is consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act,[24] and in the Clearing Agency Rules, in particular Rule 17Ad–22(e)(6)(i).[25]

A. Consistency With Section 805(b) of the Clearing Supervision Act

The Commission believes that the proposal contained in the Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act. OCC manages its credit exposure to Clearing Members, in part, through the collection of collateral based on OCC's margin methodology. As noted above, however, the imposition of margin requirements resulting from a model that overreacts to increases in implied volatility may impose stresses on OCC's Clearing Members. Clearing Members, particularly large Clearing Members or their affiliates, are active in various markets. A large, unexpected margin call at OCC could affect a Clearing Member's ability to meet its obligations to other counterparties, including other SIMFUs. As a consequence, the imposition of margin requirements resulting from a model overreaction could have implications for the broader financial system. As discussed below, the Commission believes that the changes to OCC's margin methodology proposed in the Advance Notice could enhance OCC's management of credit risk while reducing potential systemic risk.

First, the proposal would change the Implied Volatility Model's response to sudden, large changes in market volatility. As noted above, the margin requirements produced by the current model appear to be overly responsive to sudden, large shocks. The proposed change would result in a more measured initial response to a sudden, large change in market volatility while maintaining elevated margin requirements following such a shock. Although the initial reduction in sensitivity would result in the collection of less margin than under the current model, backtesting results demonstrate that margin requirements produced under the proposed model would provide as consistent a level of coverage as margin requirements produced under the proposed model. In addition, the proposal would result in margin requirements that remain elevated for a longer period of time following a market shock, which could provide further support for OCC's ability to cover its potential future exposure to risk. Therefore, the Commission believes that the consistent level of coverage, taken together with the potential for extended elevation of margin requirements after a market shock, is consistent with the promotion of both robust risk management and safety and soundness.

Second, the proposal could reduce the likelihood that OCC's margin requirements impose sudden and excessive stress on Clearing Members during times of broader market stress. As described above, the current Implied Volatility Model could result in dramatic increases in Clearing Member margin requirements in response to a sudden, large shock in market volatility. Based on its review of OCC's data comparing margin requirements to market data on February 5, 2018, the Commission understands that the size of such an increase would not necessarily be commensurate with the risk of the Clearing Member's portfolio because, as described above, the volatility of implied volatility forecasted by the current model on that day was 4 times the size of a comparable market index, resulting in margin requirements for some Clearing Members that rose by a factor of 10. Imposing a large, unexpected increase in margin requirements could impose a large, unexpected stress on a Clearing Member during a period of high volatility. The Commission believes that reducing the likelihood of unnecessarily large and unexpected stresses on Clearing Members could help to lessen the risk of Clearing Member defaults. Reducing the risk of Clearing Member defaults could also reduce the likelihood of contagion during times of market stress because Clearing Members, particularly large Clearing Members, tend to be active participants in multiple asset markets. Therefore, the Commission believes that the proposed change is consistent with the reduction of systemic risk and supporting the stability of the broader financial system.

Accordingly, and for the reasons stated, the Commission believes the changes proposed in the Advance Notice are consistent with Section 805(b) of the Clearing Supervision Act.[26]

B. Consistency With Rule 17Ad–22(e)(6) Under the Exchange Act

Rule 17Ad–22(e)(6)(i) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, among other things, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[27]

The proposed change is designed to better align the margin requirements produced by OCC's margin methodology with the level of risk posed by changes in market volatility. The component of the current Implied Volatility Model that forecasts the volatility of implied volatility is very sensitive to sudden, large changes in market volatility, as evidenced by the model's reaction to the large, sudden spike in market volatility observed on February 5, 2018 discussed above which produced dramatic increases in Clearing Member margin requirements. The proposed change to the Implied Volatility Model would reduce the sensitivity of the model to sudden, large changes in market volatility, and, as demonstrated by OCC's backtesting, would be unlikely to reduce the level of coverage.[28]

The Commission believes that revising the Implied Volatility Model could produce margin requirements that are more precise and better reflect the risks and particular attributes of the products cleared by OCC. The Commission further believes that such changes could produce margin levels that are commensurate with the risks of the products being cleared. Accordingly, based on the foregoing, the Commission believes that the proposed change to the Implied Volatility Model is consistent with Exchange Act Rule 17Ad–22(e)(6)(i).[29]

IV. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, that the Commission DOES NOT OBJECT to the Advance Notice (SR–OCC–2018–804) and that

[23] 17 CFR 240.17Ad–22.

[24] 12 U.S.C. 5464(b).

[25] 17 CFR 240.17Ad–22(e)(6)(i).

[26] 12 U.S.C. 5464(b).

[27] 17 CFR 240.17Ad–22(e)(6)(i).

[28] *See supra* note 17.

[29] 17 CFR 240.17Ad–22(e)(6).

OCC is AUTHORIZED to implement the proposed change as of the date of this notice or the date of an order by the Commission approving proposed rule change SR–OCC–2018–014, as modified by Partial Amendment No. 1, whichever is later.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2018–28008 Filed 12–26–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84853; File No. SR–NYSEArca–2018–91]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes Relating to ProShares Ultra Gold, ProShares UltraShort Gold, ProShares Ultra Silver, and ProShares UltraShort Silver

December 19, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 6, 2018, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reflect changes to the underlying benchmark, net asset value calculation times, and creation and redemption order cut-off times applicable to the ProShares Ultra Gold, ProShares UltraShort Gold, ProShares Ultra Silver, and ProShares UltraShort Silver. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission previously approved the listing and trading of the shares (''Shares'') on the Exchange of the following under Commentary .02 to NYSE Arca Rule 8.200–E,[4] which governs the listing and trading of ''Trust Issued Receipts'' (''TIRs'') on the Exchange: [5] ProShares Ultra Gold, ProShares UltraShort Gold, ProShares Ultra Silver, and ProShares UltraShort Silver (each a ''Fund'' and, collectively, the ''Funds'').[6] The Funds are series of ProShares Trust II (''Trust''). The Bank of New York Mellon Corporation is custodian for the Trust. SEI Investments Distribution Co. is the distributor for the Funds.[7] Shares of the Funds are currently listed and trading on the Exchange.

The Exchange is submitting this proposed rule change to reflect a change to the underlying benchmarks, net asset value calculation times, and creation and redemption order cut-off times applicable to the Funds, as described below.

Changes to Underlying Benchmarks

The Ultra Funds seek daily investment results, before fees and expenses, that correspond to two times (2x) the daily performance of their ''Underlying Benchmark'' (as described below) If each such Fund is successful in meeting its investment objective, the value of the Shares of each such Fund, on a given day, before fees and expenses, should gain approximately two times as much on a percentage basis as the level of each such Fund's respective Underlying Benchmark when the price of the Underlying Benchmark rises, and should lose approximately two times as much when such price declines on a given day, before fees and expenses. The Ultra Funds do not seek to achieve their stated objective over a period greater than a single day. A ''single day'' is measured from the time an Ultra Fund calculates its respective NAV to the time of the Ultra Fund's next NAV calculation.

The UltraShort Funds seek daily investment results, before fees and expenses that correspond to two times the inverse (−2x) of the daily performance of their Underlying Benchmark. If each such Fund is successful in meeting its objective, the value of the Shares of each such Fund, on a given day, before fees and expenses, should gain approximately two times as much, on a percentage basis, when the level of each such Fund's respective Underlying Benchmark declines, and should decrease approximately two times as much as the respective Underlying

[4] Commentary .02 to NYSE Arca Rule 8.200–E applies to Trust Issued Receipts that invest in ''Financial Instruments.'' The term ''Financial Instruments,'' as defined in Commentary .02(b)(4) to NYSE Arca Rule 8.200–E, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[5] *See* Securities Exchange Act Release Nos. 58457 (September 3, 2008), (73 FR 52711 (September 10, 2008) (SR–NYSEArca–2008–91) (notice of filing and order granting accelerated approval of proposed rule change regarding listing and trading of shares of 14 funds of the Commodities and Currency Trust (now the ProShares Trust II)); 58162 (July 15, 2008), 73 FR 42391 (July 21, 2008) (SR–NYSEArca–2008–73) (notice of filing and immediate effectiveness of proposed rule change relating to trading of shares of 14 funds of the Commodities and Currency Trust pursuant to unlisted trading privileges) (''Prior NYSE Arca Notice''). *See also* Securities Exchange Act Release Nos. 58161 (July 15, 2008), 73 FR 42380 (July 21, 2008) (SR–Amex–2008–39) (order approving listing and trading on the American Stock Exchange LLC of shares of 14 funds of the Commodities and Currency Trust) (''Prior Amex Order''); 57932 (June 5, 2008), 73 FR 33467 (June 12, 2008) (notice of proposed rule change regarding listing and trading of shares of 14 funds of the Commodities and Currency Trust) (''Prior Amex Notice'' and, together with the Prior Amex Order, the ''Prior Amex Releases'').

[6] The ProShares Ultra Gold and ProShares Ultra Silver are referred to herein as ''Ultra Funds'' and the ProShares UltraShort Gold and ProShares UltraShort Silver are referred to herein as ''UltraShort Funds.''

[7] On October 1, 2018, the Trust filed with the Commission, registration statements pursuant to Rule 424(b)(3) under the Securities Act of 1933 (''Securities Act'') (15 U.S.C. 77a) relating to the Ultra Gold and Ultra Silver Funds (File No. 333–220688) and the UltraShort Silver and UltraShort Gold Funds (File No. 333–223012). The registration statements filed pursuant to Rule 424(b)(3) are collectively referred to herein as the ''Registration Statements.'' The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statements. Share of the Funds are currently listed and traded on the Exchange in compliance with all original and continued listing standards of the Exchange and requirements of the Prior NYSE Arca Order and the Prior Amex Releases.

Benchmark gains when the Underlying Benchmark rises on a given day, before fees and expenses. The UltraShort Funds do not seek to achieve their stated objective over a period greater than a single day. A ''single day'' is measured from the time an UltraShort Fund calculates its respective NAV to the time of the Ultra Fund's next NAV calculation.

With respect to the ProShares Ultra Gold and ProShares UltraShort Gold, the current Underlying Benchmark is the U.S. dollar price of gold bullion as measured by the LBMA Gold Price (formerly the London Gold Fix).[8] With respect to the ProShares Ultra Silver and ProShares UltraShort Silver, the current Underlying Benchmark is the LBMA Silver Price.[9]

Thus, the ProShares Ultra Gold and ProShares UltraShort Gold seek daily investment results, before fees and expenses, that correspond to a multiple (2x) or inverse multiple (−2x), as applicable, of the daily performance of gold bullion as measured by the U.S. dollar fixing price for delivery in London. The ProShares Ultra Silver and the ProShares UltraShort Silver seek daily investment results, before fees and expenses, that correspond to a multiple (2x) or inverse multiple (−2x), as applicable, of the daily performance of silver bullion as measured by the U.S. dollar fixing price for delivery in London. These Funds do not directly or physically hold the underlying gold or silver, as applicable, but instead, seek exposure to gold or silver through the use of ''Financial Instruments'' based on the price of gold or silver, as applicable, to pursue their respective investment objective.[10]

The Prior NYSE Arca Notice and the Prior Amex Releases stated that the Adviser would manage each Fund using a strategy designed to correspond to the performance of its respective Underlying Benchmark. In this proposed rule change, the Exchange proposes to reflect a change to the Underlying Benchmarks applicable to the Funds. The new Underlying Benchmarks will be the Bloomberg Gold Subindex for the ProShares Ultra Gold and the ProShares UltraShort Gold, and the Bloomberg Silver Subindex for the ProShares Ultra Silver and the ProShares UltraShort Silver.[11] Upon implementation of the proposed rule change, the Adviser will manage each of ProShares Ultra Gold and ProShares UltraShort Gold to seek daily investment results, before fees and expenses, that correspond to a multiple (2x) or inverse multiple (−2x), as applicable, of the daily performance of the Bloomberg Gold Subindex. Additionally, the Adviser will manage each of the ProShares Ultra Silver and ProShares UltraShort Silver to seek daily investment results, before fees and expenses, that correspond to a multiple (2x) or inverse multiple (−2x), as applicable, of the daily performance of the Bloomberg Silver Subindex.

The Adviser believes that it is in the best interest of the Funds and their shareholders to replace the Underlying Benchmarks with the Bloomberg Gold Subindex or the Bloomberg Silver Subindex, as applicable, while keeping the Fund's asset exposure and investment strategies similar, and without changing the Fund's investment objective (other than to reflect the change to each Fund's Underlying Benchmark).

The Bloomberg Gold Subindex and the Bloomberg Silver Subindex are subindices of the Bloomberg Commodity Index (''BCOM'') (previously known as the Dow Jones-UBS Commodity Index), which is composed of futures contracts on physical commodities.[12] The Bloomberg Gold Subindex and Bloomberg Silver Subindex consist of COMEX gold futures contracts and COMEX silver futures contracts, respectively. They are not indexes that reflect the ''spot'' price of gold or silver. The Bloomberg Gold Subindex and the Bloomberg Silver Subindex are each a ''rolling index.'' This means the value of the subindex is calculated as if the futures contracts included in the subindex are closed out prior to expiration by making an offsetting sale or purchase of an identical futures contract with a later expiration date. This process is referred to as ''rolling.'' An investor with a rolling futures position is able to avoid delivering (or taking delivery of) underlying physical commodities while maintaining exposure to those commodities. The futures contracts in each subindex are ''rolled'' over a period of five business days in certain months according to a pre-determined schedule, generally beginning on the sixth business day of the month and ending on the tenth business day.

The Exchange notes that the Commission has approved listing and trading on the Exchange of shares of TIRs with benchmarks based on COMEX gold or silver futures prices. For example, the Direxion Daily Gold Bear 1X Shares, Direxion Daily Gold Bull 3X Shares, and Direxion Daily Gold Bear 3X Shares invest in gold futures contracts traded on COMEX and their benchmark is the daily last sale price occurring on or before 4:00 p.m. Eastern Time of a standard gold futures contract for 100 troy ounces of gold.[13] The Direxion Daily Silver Bear 1X Shares, Direxion Daily Silver Bull 3X Shares, and Direxion Daily Silver Bear 3X Shares invest in silver futures contracts traded on COMEX and their benchmark is the daily last sale price occurring on or before 4:00 p.m. Eastern Time of a standard silver futures contract for 5,000 troy ounces of silver.[14]

[8] For a description of the replacement of the LBMA Gold Price for the London Gold Fix, *see* Securities Exchange Act Release No. 74544 (March 19, 2015), 80 FR 15840 (March 25, 2015) (SR–NYSEArca–2015–19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the LBMA Gold Price as a Replacement for the London Gold Fix for Certain Gold Related Exchange Traded Products).

[9] *See* Securities Exchange Act Release No. 81792 (October 2, 2017), 82 FR 46867 (October 6, 2017) (SR–NYSEArca–2017–113) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Reflect a Change to the Administrator for the London Bullion Market Association Silver Price to ICE Benchmark Administration).

[10] *See* note 4, *supra.*

[11] The changes described herein will be effected contingent upon filing of a prospectus supplement or upon effectiveness of the Trust's most recent post-effective amendment to its Registration Statements. *See* note 7, *supra.* The Adviser represents that the Adviser will not implement the changes described herein until the instant proposed rule change is operative.

[12] The Exchange notes that the Commission has previously approved multiple TIRs issued by ProShares Trust II based on sub-indexes within the Dow Jones-AIG Commodity Index (later named the Dow-Jones-UBS Commodity Index, and currently the BCOM). *See* the Prior Amex Releases, note 5, *supra.*

[13] *See* Securities Exchange Act Release Nos. 67882 (September 18, 2012) (SR–NYSEArca–2012–102) (Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of Twelve Funds of the Direxion Shares ETF Trust II under NYSE Arca Equities Rule 8.200) (''Direxion Notice''); 68165 (November 6, 2012) (SR–NYSEArca–2012–102) (Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of Twelve Funds of the Direxion Shares ETF Trust II under NYSE Arca Equities Rule 8.200); 54770 (November 16, 2006) (SR–Amex–2006–76) (Notice of Filing of a Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to the Listing and Trading of the DB Multi-Sector Commodity Trust); and 55029 (December 29, 2006) (SR–Amex–2006–76) (Order Granting Accelerated Approval to Proposed Rule Change as Modified by Amendments No. 1, 2, 3, and 4 Thereto and Notice of Filing of Amendments No. 3 and 4 Relating to the Listing and Trading of the DB Multi-Sector Commodity Trust).

[14] Gold and silver futures contracts traded on COMEX are the global benchmark contracts and most liquid futures contracts in the world for each respective commodity. COMEX is a subsidiary of CME Group, Inc. (''CME''), a member of the Intermarket Surveillance Group (''ISG''). As of August 21, 2018, open interest in gold futures contracts and silver futures contracts traded on the CME was $58 billion and $18 billion, respectively. Gold futures contracts and silver futures contracts traded on CME had an average daily trading volume in 2017 of 290,000 contracts and 91,000 contracts, respectively. The trading hours for the gold futures contracts and silver futures contracts are 6 p.m.–5

Continued

In addition, the Commission has approved listing and trading on the Exchange of shares of the PowerShares DB Gold Fund (now the Invesco DB Gold Fund) and PowerShares DB Silver Fund (now the Invesco DB Silver Fund). The Invesco DB Gold Fund primarily holds futures contracts on the commodities comprising the DBIQ Optimum Yield Gold Index Excess Return (formerly the Deutsche Bank Liquid Commodity Index—Optimum Yield Gold Excess Return). The Invesco DB Silver Fund primarily holds futures contracts on the commodities comprising the DBIQ Optimum Yield Silver Index Excess Return (formerly the Deutsche Bank Liquid Commodity Index—Optimum Yield Silver Excess Return).[15] The gold and silver futures in the indexes underlying the Invesco DB Gold Fund and the Invesco DB Silver Fund, respectively, are traded on the COMEX.

The Adviser represents that the replacement of the current Underlying Benchmarks with the Bloomberg Gold Subindex and the Bloomberg Silver Subindex is in the best interest of each Fund's shareholders. The Funds currently use the LBMA Gold Price or the LBMA Silver Price as their respective Underlying Benchmarks. While these Benchmarks are widely used measures of the spot price of physical gold or silver, as applicable, the Adviser believes that switching Underlying Benchmarks offers several potential benefits. Specifically, the Adviser anticipates that changing to a futures-based gold or silver Benchmark for each Fund could potentially (i) better align each Fund's portfolio holdings (*e.g.,* futures contracts) with its Underlying Benchmark (COMEX gold or silver futures contracts instead of the spot price of physical gold or silver) and reduce tracking error over time, (iii) better align the trading days and hours of each Fund's portfolio investments with its Underlying Benchmark (since the trading hours of COMEX gold and silver futures contracts will more closely align with the hours of the Funds' operation than the timing of the auction process used to determine the LBMA Gold Price and the LBMA Silver Price), and (iv) increase the number of trading counterparties for each Fund, which potentially increases counterparty diversification and helps limit counterparty risk to each Fund. While Commodity-Based Trust Shares holding physical gold or silver utilize the LBMA Gold Price or the LBMA Silver Price as their respective benchmarks,[16] other TIRs, which do not hold physical commodities, have utilized COMEX gold or silver futures prices as benchmarks.[17] The Adviser believes that changing each Fund's Underlying Benchmark to the Bloomberg Gold Subindex and the Bloomberg Silver Subindex will allow each Fund to more efficiently track its Underlying Benchmark, reduce tracking error between each Fund's net asset value (''NAV'') and Underlying Benchmark, and potentially improve performance.[18]

Changes to NAV Calculation Times

The Prior Amex Releases stated that the NAV Calculation Time for ProShares Ultra Gold and ProShares UltraShort Gold is 10:00 a.m., Eastern Time and the NAV Calculation Time for ProShares Ultra Silver and ProShares UltraShort Silver is 7:00 a.m., Eastern Time. The Exchange proposes to reflect a change in the NAV Calculation Times to 1:30 p.m., Eastern Time for the ProShares Ultra Gold and ProShares UltraShort Gold, and to 1:25 p.m., Eastern Time for the ProShares Ultra Silver and ProShares UltraShort Silver. The change in NAV Calculation Time for each Fund aligns the NAV Calculation Time of each Fund with the settlement time of the futures contracts included in each Fund's proposed new Underlying Benchmark. The Exchange notes that, in addition to the Commission's previous approval of the above-referenced NAV Calculation Times for the Funds, the Commission has previously approved listing and trading of TIRs pursuant to Commentary .02 to NYSE Arca Rule 8.200–E for which the NAV calculation time is 2:30 p.m. Eastern Time or earlier.[19]

Changes to Creation and Redemption Order Cut-off Times

The Prior Amex Releases stated that orders to create or redeem Shares of the ProShares Ultra Gold and ProShares UltraShort Gold must be placed by 9:00 a.m., Eastern Time and orders to create or redeem Shares of the ProShares Ultra Silver and ProShares UltraShort Silver must be placed by 6:00 a.m., Eastern Time. The Exchange proposes to reflect a change in the creation and redemption order cutoff times for the Funds to 1:00 p.m., Eastern Time. The Exchange represents that moving the creation and redemption cut-off time will better align the cut-off time with the new NAV times of 1:30 and 1:25, respectively. The Exchange notes that the Commission has previously approved listing and trading of shares of issues of Trust Issued Receipts pursuant to Commentary .02 to NYSE Arca Rule 8.200–E for which the creation and redemption cutoff times are at or earlier than 1:30 p.m., Eastern Time.[20]

p.m. Eastern Time Sunday through Friday on both the CME Globex and CME ClearPort platforms. Daily settlement for gold futures contracts occurs at 1:30 p.m., Eastern time and at 1:25 p.m., Eastern time for silver futures contracts

[15] *See* Securities Exchange Act Release No. 55453(March 13, 2007), 72 FR 13333 (March 21, 2007) (SR–NYSEArca–2006–62) (order approving unlisted trading privileges trading of PowerShares DB Agriculture Fund and other PowerShares commodity-based funds); 58993 (November 21, 2008), 73 FR 72548 (November 28, 2008) (SR–NYSEArca–2008–128) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Listing of PowerShares DB Funds). *See also,* Securities Exchange Act Release Nos. 60819 (October 13, 2009), 74 FR 53528 (October 19, 2009) (SR–NYSEArca–2009–89) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Replacement Indexes for PowerShares DB Commodity Index Tracking Fund and PowerShares DB Agriculture Fund); 79445 (December 1, 2016), 81 FR 88302 (December 7, 2016) (SR–NYSEArca–2016–152) (Notice of Filing and Immediate Effectiveness of Proposal to Change Representation Regarding Investments by PowerShares DB Trust Issued Receipts Listed Under Commentary .02 to NYSE Arca Equities Rule 8.200).

[16] *See, e.g.,* Securities Exchange Act Release Nos. 56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR–NYSEArca–2007–76) (order approving listing on the Exchange of shares of the streetTRACKS Gold Trust; 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40) (notice of filing and order granting accelerated approval of proposed rule change relating to the listing and trading of shares of the ETFS Gold Trust); 71038(December 11, 2013), 78 FR 76367 (December 17, 2013) (notice of filing of proposed rule change to list and trade shares of the Merk Gold Trust) 71378 (January 23, 2014), 79 FR 4786 (January 29, 2014) (SRNYSEArca–2013–137) (order approving proposed rule change to list and trade shares of the Merk Gold Trust).

[17] *See* notes 13 and 15, *supra.*

[18] The Exchange notes that the Commission previously has issued a notice of filing and immediate effectiveness with respect to a change in the benchmark underlying an issue of Commodity-Based Trust Shares listed on the Exchange under Rule 8.201–E from the COMEX settlement price for spot month gold futures to the London PM Fix. See Securities Exchange Act Release No. 63398 (November 30, 2010) (SR–NYSEArca–2010–105) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Calculation of Net Asset Value for the iShares® Gold Trust).

[19] *See, e.g.,* Securities Exchange Act Release No. 81686 (September 22, 2017), 82 FR 45643 (September 29, 2017) (SR–NYSEArca–2017–05) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3 Thereto, to List and Trade Shares of Direxion Daily Crude Oil Bull 3x Shares and Direxion Daily Crude Oil Bear 3x Shares under NYSE Arca Equities Rule 8.200) (stating that each fund will compute its NAV as of 2:30 p.m. Eastern Time, or if the NYSE closes earlier than 2:30 p.m. Eastern Time, each fund will compute its NAV as of the close of trading on the New York Stock Exchange).

[20] *See, e.g.,* Securities Exchange Act Release Nos. 65136 (August 15, 2011), 76 FR 52037 (August 19, 2011) (SR–NYSEArca–2011–24) (Order Approving a Proposed Rule Change to List and Trade Shares ProShares Short DJ–UBS Natural Gas, ProShares Ultra DJ–UBS Natural Gas and ProShares UltraShort DJ–UBS Natural Gas) (stating that an order to create or redeem Shares must be placed by 1:30 p.m. Eastern Time); 81655 (September 19, 2017), 82 FR 44678 (September 25, 2017) (SR–NYSEArca–2016–

The Adviser represents that the Funds will continue to invest in the same assets referenced in the Prior NYSE Arca Notice and the Prior Amex Releases and will remain subject to, and invest each Fund's assets in accordance with all of the other requirements and limitations identified in the Prior NYSE Arca Notice and the Prior Amex Releases. As a condition to continued listing and trading Shares of the Funds on the Exchange, the Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Rule 8.200–E.

Except for the indicated changes to each Fund's Underlying Benchmark, NAV Calculation Time and Creation and Redemption Order Cut-Off Times noted herein, all other facts presented and representations made in the Prior NYSE Arca Notice and the Prior Amex Releases are unchanged.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) [21] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Adviser represents that there is no change to the Funds' investment objective (other than the change to each Fund's Underlying Benchmark) or to the securities or other assets identified in the Prior NYSE Arca Notice and the Prior Amex Releases that the Funds utilize in seeking to achieve their respective investment objectives. The Fund's use of such Financial Instruments will remain subject to all requirements and applicable limitations identified in the Prior NYSE Arca Notice and the Prior Amex Releases. As a condition to the continued listing and trading of the Shares of the Funds on the Exchange, the Funds will continue to comply with all initial and continued listing requirements under NYSE Arca Rule 8.200–E.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that the Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Rule 8.200–E. The proposed rule change will permit the Fund to continue to operate in a manner similar to other issues of TIRs with benchmarks based on gold and silver futures contracts traded on COMEX. The Exchange or the Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, or both, will communicate with CME, as an ISG member, as needed regarding trading in COMEX gold futures and COMEX silver futures, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in such futures from CME. Except for the changes noted above, all other representations made in the Prior NYSE Arca Notice and Prior Amex Releases are unchanged.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The proposed rule change will permit the continued listing on the Exchange of the Funds following implementation of the changes noted above, and which will enhance competition among issues of TIRs based on gold and silver futures.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [22] and Rule 19b–4(f)(6) thereunder.[23] 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [24] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2018–91 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2018–91. 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,

177) (Notice of Filing of Amendment No. 4, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 4, Relating to the Listing and Trading of Shares of the USCF Canadian Crude Oil Index Fund under NYSE Arca Rule 8.200–E). *See also* Amendment No. 4 to SR NYSEArca–2016–177, available at *https://www.sec.gov/comments/sr-nysearca-2016-177/nysearca2016177-2228753-160788.pdf.* (stating that purchase orders and redemption orders must be placed by 10:30 a.m. Eastern Time or the close of regular trading on the NYSE Arca, whichever is earlier.)

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(3)(A)(iii).

[23] 17 CFR 240.19b–4(f)(6).

[24] 15 U.S.C. 78s(b)(2)(B).

Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2018–91 and should be submitted on or before January 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Brent J. Fields,

Secretary.

[FR Doc. 2018–28007 Filed 12–26–18; 8:45 am]

BILLING CODE 8011–01–P

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84684; File No. SR–NASDAQ–2018–098]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate the Exchange's Pricing Schedule

November 29, 2018.

Correction

In notice document 2018–26400 beginning on page 62936 in the issue of Thursday, December 6, 2018, make the following correction:

On page 62938, in the second column, the last line of the first full paragraph ''December 26, 2018'' should read ''December 27, 2018''.

[FR Doc. C1–2018–26400 Filed 12–26–18; 8:45 am]

BILLING CODE 1301–00–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84873; File No. SR–NYSEArca–2018–96]

Self-Regulatory Organizations; NYSE Arca Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Commentary .02 to Rule 6.72–O in Order To Extend the Penny Pilot in Options Classes in Certain Issues Through June 30, 2019

December 19, 2018.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on December 18, 2018, NYSE Arca Inc. (the ''Exchange'' or ''NYSE Arca'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .02 to Rule 6.72–O in order to extend the Penny Pilot in options classes in certain issues (''Pilot Program'') previously approved by the Securities and Exchange Commission (''Commission'') through June 30, 2019. The Pilot Program is currently scheduled to expire on December 31, 2018. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange hereby proposes to amend Commentary .02 to Rule 6.72–O to extend the time period of the Pilot Program, which is currently scheduled to expire on December 31, 2018, through June 30, 2019.[4] The Exchange also proposes that the date to replace issues in the Pilot Program that have been delisted be revised to the second trading day following January 1, 2019.[5] The Exchange believes that extending the Pilot would allow for further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future.

This filing does not propose any substantive changes to the Pilot Program: all classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[6] of the Act, in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

In particular, the proposed rule change, which extends the Penny Pilot Program for six months, allows the Exchange to continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as

[4] *See* Securities Exchange Act Release No. 83512 (June 25, 2018), 83 FR 30793 (June 29, 2018) (SR–NYSEArca–2018–48).

[5] The month immediately preceding a replacement class's addition to the Pilot Program (*i.e.,* December) would not be used for purposes of the analysis for determining the replacement class. Thus, a replacement class to be added on the second trading day following January 1, 2019 would be identified based on The Option Clearing Corporation's trading volume data from June 1, 2018 through November 30, 2018. The Exchange will announce the replacement issues to the Exchange's membership through a Trader Update.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

successful by the other options exchanges participating in it. Accordingly, the Exchange believes that the proposal is consistent with the Act because it would allow the Exchange to extend the Pilot Program prior to its expiration on December 31, 2018. The Exchange notes that this proposal does not propose any new policies or provisions that are unique or unproven, but instead relates to the continuation of an existing program that operates on a pilot basis.

The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

The proposal to extend the Pilot Program is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by allowing the Exchange and the Commission additional time to analyze the impact of the Pilot Program while also allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Pilot Program and a determination of how this Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot Program is an industry-wide initiative supported by all other option exchanges. The Exchange believes that extending the Pilot Program will allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot Program.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) [9] thereunder. 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 after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) [11] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program.[14] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[15]

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–NYSEArca–2018–96 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2018–96. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549–1090 on official business days between the hours of

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *See* Securities Exchange Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44).

[15] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2018–96 and should be submitted on or before January 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Brent J. Fields,

Secretary.

[FR Doc. 2018–27989 Filed 12–26–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84868; File No. SR–CboeEDGX–2018–049]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Adopt Complex Reserve Order Functionality

December 19, 2018.

On November 8, 2018, Cboe EDGX Exchange, Inc. filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt Complex Reserve Order functionality. The proposed rule change was published for comment in the **Federal Register** on November 27, 2018.[3] The Commission has received no comment letters regarding 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 January 11, 2019. 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 February 25, 2019, 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–CboeEDGX–2018–049).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Brent J. Fields,

Secretary.

[FR Doc. 2018–27994 Filed 12–26–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84862; File No. SR–MRX–2018–39]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Makers Trading in Non-Appointed Options Classes

December 19, 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 December 12, 2018, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 805(b) relating to Market Makers [3] trading in non-appointed options classes.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqmrx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to amend Rule 805(b) relating to Market Makers trading in non-appointed options classes.

Rule 805(b) presently governs the submission of orders by Market Makers in non-appointed options classes. Subparagraphs (b)(2) and (b)(3) place limitations on the overall percentage of executions that can occur in the non-appointed options classes. Specifically, subparagraph (b)(2) limits a Competitive Market Maker's (''CMM'') total number of contracts executed in non-appointed options classes to 25% of the CMM's total number of contracts executed in its appointed options classes and with respect to which it was quoting pursuant to Rule 804(e)(1), and subparagraph (b)(3) limits a Primary Market Maker's (''PMM'') total number of contracts executed in non-appointed options classes to 10% of the PMM's total number of contracts executed in its appointed classes.

The Exchange now proposes in subparagraph (b)(3) to increase the overall percentage of executions that

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 84642 (November 21, 2018), 83 FR 60911.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Rule 100(a)(34).

can occur in a PMM's non-appointed options classes from 10% to 25% to align with the CMM allowance as well as other options exchanges, including its affiliated options market, BX Options.[4] The Exchange adopted the 10% volume limitation for PMMs as part of its application to be registered as a national securities exchange, and initially restricted PMMs in this manner because as a nascent exchange, it sought to promote PMM activity in their appointed options classes in order to encourage liquidity on the Exchange. Since then, there has been a proliferation of options classes added to the Exchange for trading, and the Exchange therefore believes that the 10% limitation is restrictive in light of the current environment. The Exchange does not believe that its proposal will adversely impact the quality of the Exchange's market or lead to a material decrease in liquidity. As noted above, other options exchanges are operating today with similar or more generous allowances for its market makers without sacrificing market quality, and the Exchange believes that its proposed increase will likewise not result in a decrease of market quality.[5] Furthermore, Market Makers and in particular, PMMs, will continue to be subject to the highest standard applicable on the Exchange to provide liquidity. For instance as set forth in Rule 804(e)(2), PMMs are held to the highest quoting standards on the Exchange. Specifically, PMMs are required to provide two-sided quotations in 90% of the cumulative number of seconds for which that PMM's appointed options class is open for trading.[6] Furthermore, PMMs are required to quote in certain options series of their appointed classes that are excluded from the quoting requirements of CMMs (*i.e.,* Quarterly Options Series, Adjusted Options Series, and long-term options). In addition, the Exchange can announce a higher percentage than the current 90% quoting requirement if doing so would be in the interest of a fair and orderly market.[7] PMMs are also required to enter quotes in their appointed options classes and participate in the Opening Process.[8] Accordingly, the Exchange believes that the foregoing obligations will continue to ensure that PMMs will provide liquidity in their appointed options classes notwithstanding the proposed increase in the trading allowance in non-appointed classes.

In addition, the Exchange believes that the proposed increase in the overall percentage from 10% to 25% will bring MRX in line with other options exchanges, and permit its Market Makers to effectively compete with market makers on other options exchanges. Moreover, applying requirements that are substantially similar to other options exchanges will remove a significant compliance burden on market makers who provide liquidity across multiple options exchanges.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] 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. In particular, the Exchange believes that the proposed rule change promotes just and equitable principles of trade because it reduces an outdated restriction on PMMs, and simplifies the application of the rule by imposing the same 25% volume limitation on all Market Makers. The purpose of limiting the number of contracts executed in non-appointed classes to a small percentage of contracts executed in appointed classes was to encourage Market Makers to provide liquidity in their appointed classes. As discussed above, the Exchange initially adopted the 10% volume limitation for PMMs because as a nascent exchange, it sought to promote PMM activity in their appointed options classes in order to encourage liquidity on the Exchange. Since then, there has been a proliferation of options classes added to the Exchange for trading, and the Exchange therefore believes that the 10% limitation is restrictive in light of the current environment. Other options exchanges are operating today with similar or more generous allowances for its market makers without sacrificing market quality, and the Exchange therefore believes that the proposed increase will not result in a decrease of quality on its own market.[11] In addition, the Exchange believes that the heightened obligations for PMMs to participate in the Opening Process and provide intra-day quotes will continue to ensure that PMMs provide liquidity in their appointed options classes notwithstanding the proposed increase in the trading allowance in non-appointed classes.[12] As discussed above, the proposed rule change will also conform MRX's Market Maker obligations to the requirements of other options markets, which will promote the application of consistent compliance standards for market makers who provide liquidity across multiple options exchanges.

Furthermore, such volume limitations were traditionally put in place and especially important at ''floor-based'' exchanges, since market makers were limited in the number of classes in which they could physically make markets, and it was in the floor-based exchange's interest that market makers focus their market making abilities on their appointed classes.[13] Although limitations on trading in non-appointed classes may be less important on a fully electronic exchange since electronic quoting and trading systems allow market makers to make markets and provide liquidity in many more options classes than on a floor-based exchange, MRX still believes focusing its Market Makers on trading in their appointed classes is important for providing liquidity in those classes. In this respect, the Exchange believes that its proposal would continue to meet that objective because the proposed limitation for PMMs would still require that a substantial percentage (*i.e.,* 75%) of a PMM's transactions be effected in their appointed classes.

Finally, in determining to revise requirements for its Market Makers, the Exchange is mindful of the balance between the obligations and benefits provided to Market Makers. While the proposal will change obligations currently in place for Market Makers, the Exchange does not believe that these

[4] BX Options Market Makers (including Lead Market Makers) can execute no more than 25% of their total volume outside of their registered options classes. *See* BX Options Rules, Chapter VII, Section 6(e). In addition, CBOE Rule 8.7, Interpretations and Policies .03 provides that 75% of a Market-Maker's total contract volume must be in classes to which the Market-Maker is appointed. Accordingly, only 25% of a CBOE Market-Maker's contract volume can be in non-appointed classes. CBOE Rule 8.7 applies equally to Lead Market-Makers and Designated Primary Market-Makers in the same manner as Market-Makers. The Exchange also notes that NYSE Arca Options does not impose a strict percentage limitation on its market makers for transacting in non-appointed classes. *See* NYSE Arca Options Rules 6.37–O(d) and 6.37B–O.

[5] *Id.*

[6] *See* Rule 804(e)(2).

[7] *See* Rule 804(e)(2). *See also* Securities Exchange Act Release No. 84582 (November 14, 2018), 83 FR 58665 (November 20, 2018) (SR–MRX–2018–34).

[8] *See* Rule 701(c)(3).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* note 4 above.

[12] *See* notes 6–8 above, with accompanying text.

[13] *See e.g.,* Securities Exchange Act Release No. 35786 (May 31, 1995), 60 FR 30122 (June 7, 1995) (SR–Amex–94–51) (order approving proposal by American Stock Exchange, Inc. relating to the in person trading volume requirement for registered options traders).

changes reduce the overall obligations applicable to Market Makers. In this respect, the Exchange still imposes many obligations on Market Makers to maintain a fair and orderly market in their appointed classes, which the Exchange believes eliminates the risk of a material decrease in liquidity.[14] In addition, Market Makers are required to abide by quoting requirements in their appointed options classes in order to maintain the status of a Market Maker, and PMMs in particular are held to the highest quoting standards on the Exchange.[15] As further discussed above, PMMs are also required to enter quotes and participate during the Opening Process, pursuant to Rule 701. Lastly, the Exchange also notes that for non-appointed options classes of Market Makers, Rule 803(d) would continue to prohibit a Market Maker from engaging in transactions for an account in which it has an interest that are disproportionate in relation to, or in derogation of, the performance of its obligations as specified in Rule 803(b) with respect to its appointed options classes. In particular, Market Makers would be prohibited from (1) individually or as a group, intentionally or unintentionally, dominating the market in options contracts of a particular class and (2) effecting purchases or sales on the Exchange except in a reasonable and orderly manner.[16] Accordingly, the proposal supports the quality of the Exchange's markets by helping to ensure that Market Makers and in particular, PMMs, will continue to be obligated to and have incentives to provide liquidity in their appointed classes. Ultimately, the benefit that the proposed rule change confers upon PMMs by increasing the percentage of contracts executed in the PMM's non-appointed classes from 10% to 25% is offset by the PMM's continued responsibilities to provide significant liquidity to the market to the benefit of market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that its proposal will impose an undue burden on intra-market competition because it will align the percentage limitations for both PMMs and CMMs to 25% of their non-appointed classes, and will treat all Market Makers uniformly in this respect. In terms of inter-market competition, the Exchange operates in a highly competitive market in which market participants can send order flow to competing exchanges if they deem trading practices at a particular exchange to be onerous or cumbersome. The proposal to increase the limitation on the percentage of contracts executed in a PMM's non-appointed classes from 10% to 25% will serve to better align the Exchange's requirements with those in place at other options exchanges, which enhances the ability of its Market Makers to effectively compete with market makers on other options exchanges.[17]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[20] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[21] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. MRX has requested that the Commission waive the 30-day operative delay contained in Rule 19b–4(f)(6)(iii). The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The proposal raises no novel issues. As the Exchange notes, other options markets require their market makers to a 25% restriction for trading in non-appointed classes. Further, pursuant to the proposal, PMMs' obligation to their appointed classes would remain unchanged. Accordingly, the Commission waives the operative delay and designates the proposed rule change operative upon filing.[22]

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–MRX–2018–39 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–MRX–2018–39. 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

[14] *See* Rule 803(b)(1)–(4).

[15] *See* notes 6 and 7 above, with accompanying text.

[16] *See* Rule 803(d)(1) and (2).

[17] *See* note 4 above.

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] 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).

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–MRX–2018–39 and should be submitted on or before January 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Brent J. Fields,

Secretary.

[FR Doc. 2018–28000 Filed 12–26–18; 8:45 am]

BILLING CODE 8011–01–P

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84856; File No. SR–NASDAQ–2018–102]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Order Price Protection

December 19, 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 December 7, 2018, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Order Price Protection or ''OPP'' within The Nasdaq Options Market LLC (''NOM'') Rules at Chapter VI, Section 18, entitled, ''Risk Protections.''

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Chapter VI, Section 18, entitled, ''Risk Protections.'' Specifically, the Exchange proposes to amend the Order Price Protection or ''OPP'' functionality at Chapter VI, Section 18(a) to: (i) Propose an alternative method to determine parameters for this risk protection; and (ii) memorialize certain rule text within Chapter VI, Section 18. The Exchage [sic] notes that OPP is intended to prevent erroneous executions of orders on NOM. This proposal seeks to further this objective by introducting [sic] a fixed dollar threshold that in combination with the existing percentage threshold will provide a modified approach to order rejection based on the price of the order.

Background

Today, the OPP feature prevents certain day limit, good til cancelled or immediate or cancel orders at prices outside of certain pre-set limits from being accepted by the System. OPP applies market-wide to all options, but does not apply to market orders or Intermarket Sweep Orders. OPP is operational each trading day after the opening until the close of trading, except during trading halts.[3] The OPP assists Participants in controlling risk by checking each order, before it is accepted into the System, against certain parameters. Today, OPP rejects incoming orders that exceed certain parameters according to the following algorithm:

(i) If the better of the NBBO or the internal market BBO (the ''Reference BBO'') on the contra-side of an incoming order is greater than $1.00, orders with a limit more than 50% through such contra-side Reference BBO will be rejected by the System upon receipt.

(ii) If the Reference BBO on the contra-side of an incoming order is less than or equal to $1.00, orders with a limit more than 100% through such contra-side Reference BBO will be rejected by the System upon receipt.

Today, NOM offers price improving orders[4] to market participants for submitting orders in increments smaller than the minimum price variation (''MPV'') and as small as one cent. Price Improving Orders are displayed on The Options Price Report Authority (''OPRA'') as part of volume at the MPV.

Alternative Method

The Exchange proposes to expand the algorithm for OPP to permit an alternative to the percentage specified within the current rule. The proposal is similar to Nasdaq ISE, LLC's Limit Order Price Protection feature.[5] The Exchange proposes to amend Chapter VI, Section 18(1)(B)(i) to provide that OPP will reject incoming orders that exceed certain parameters according to the following algorithm:

(i) If the better of the NBBO or the internal market BBO (the ''Reference BBO'') on the contra-side of an incoming order is greater than $1.00, orders with a limit more than the greater of the below will cause the order to be rejected by the System upon receipt.

(A) 50% through such contra-side Reference BBO; or

(B) a configurable dollar amount not to exceed $1.00 through such contra-side Reference BBO as specified by the Exchange announced via an Options Trader Alert.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Chapter VI, Section 18(a)(1).

[4] Price Improving Orders are orders to buy or sell an option at a specified price at an increment smaller than the minimum price variation in the security. Price Improving Orders may be entered in increments as small as one cent. Price Improving Orders that are available for display shall be displayed at the minimum price variation in that security and shall be rounded up for sell orders and rounded down for buy orders. *See* NOM Rules at Chapter VI, Section 1(e)(6).

[5] Nasdaq ISE, LLC (''ISE'') provides a Limit Order Price Protection feature at Rule 714(b)(1)(A). This risk protection limits the amount by which incoming limit orders to buy may be priced above the Exchange's best offer and by which incoming limit orders to sell may be priced below the Exchange's best bid. Limit orders that exceed the pricing limit are rejected. The limit is established by the Exchange from time-to-time for orders to buy (sell) as the greater of the Exchange's best offer (bid) plus (minus): (i) An absolute amount not to exceed $2.00, or (ii) a percentage of the Exchange's best bid/offer not to exceed 10%. Limit Order Price Protection shall not apply to the Opening Process or during a trading halt.

The Exchange proposes to amend Chapter VI, Section 18(1)(B)(ii) to provide that OPP will reject incoming orders that exceed certain parameters according to the following algorithm:

(ii) If the Reference BBO on the contra-side of an incoming order is less than or equal to $1.00, orders with a limit more than the greater of the below will cause the order to be rejected by the System upon receipt.

(A) 100% through such contra-side Reference BBO; or

(B) a configurable dollar amount not to exceed $1.00 through such contra-side Reference BBO as specified by the Exchange announced via an Options Trader Alert.

Today, orders are rejected if they exceed the percentage threshold and in some cases the percentages may be too restrictive. The proposed alternative would permit for a range of prices to be executed where the incoming order is up to $1.00 from the Reference BBO. The Exchange believes that utilizing the greater of a fixed dollar amount alternative or percentage would expand the applicability of OPP while still providing a reasonable limit to the range where orders will be accepted. By implementing a functionality which applies the greater of (i) a fixed dollar amount not to exceed $1.00; or (ii) a percentage, the Exchange would ensure that this protection would be able to accommodate all orders based on a determination of how far from the Reference BBO the order is priced. The application of OPP would continue to be market-wide. This proposal permits the Exchange to consider the price of the order to determine the appropriate threshold with which to apply OPP.

The Exchange notes that ISE's Limit Order Price Protection feature combines a percentage and fixed dollar threshold, similar to NOM's proposal. The Exchange notes that certain securities in lower price ranges would not benefit from the application of a percentage as would securities with higher prices. For example, the application of a 50% threshold to a $50 security would provide a rejection if a limit order was priced $75 or greater compared to a 100% threshold for a $0.02 security which would be rejected a limit order priced $0.04 or greater.

Today, the Exchange notes that certain orders, such as the price improving orders noted previously, are rejected because a 100% percentage is applied to the contra-side of an incoming order that is less than $1.00. A rejection occurs in cases where the order is not erroneously priced. Below are some additional examples utilizing the proposed rule:

Example 2: An option priced less than $1.00

For a penny MPV option with a BBO on NOM of $0.01 × $0.02, consider that the configurable dollar amount is set to $0.05.

Current Rule: Reject buy orders of more than $0.04 bid if incoming order was less than $1.00, and it was more than 100% through the contra-side of the Reference BBO.

Proposed Rule: A buy order priced up to $0.07 ($0.02 offer + $0.05 configuration) would not be rejected because a configurable dollar amount from $0.00 to $0.05 would allow the order to be entered into the System for execution.

This order was marketable upon entry and was not priced far from the current bid. The Exchange believes in this example, the order should be permitted to trade instead of being rejected.

Example 3: An option priced greater than $1.00

For a penny MPV option with a BBO on NOM of $1.01 × $1.02, consider that the configurable dollar amount is set to $0.60.

Current Rule: Reject buy orders 50% through $1.02—orders priced greater than $1.53 ($1.02 + $0.51).

Proposed Rule: Reject buy orders priced greater than $1.62–$0.60 through 1.02 (this would be greater than 50% through 1.02).

This order was marketable upon entry and was not priced far from the current bid. The Exchange believes in this example, the order should be permitted to trade instead of being rejected.

Example No. 4: Price Improving Order [6]

Today, assume a NOM Participant enters a $.01 offer in an issue that is a $0.05 MPV.

The NOM Order Book would be $0 × $.01 and would be displayed on OPRA as $0 × $.05.

Current Rule: Reject Buy orders 100% through $0.01—orders priced greater than $0.02 ($0.01 + $0.01)

Proposed Rule: Reject buy orders priced greater than $0.06–$0.05 through $0.01 (this would be greater than 100% through $0.01).

If a buyer submits a $0.05 order, OPP checks the order against the NOM Order Book and assuming a configurable amount of $0.05, this order would not reject the the $.05 bid utilizing the proposed fixed dollar parameter.

The desire for this alternative arose specifically in the case where the contra-side of an incoming order is less than $1.00, but the Exchange believes that an incoming order priced more than $1.00 could also benefit by this alternative method because the fixed amount provides for additional executions in certain situations where a percentage would reject an order which was intentional and not erroneous, as displayed in the examples above. The Exchange specifically selected a limit of $1.00 because within that range, $1.00 from the Reference BBO, applying a percentage may cause the System to reject a greater number of orders than the Exchange intended. Also, the $1.00 equates to 100% through the $1.00 threshold that exists today for OPP. The configurable dollar amount would provide more granularity to the application of OPP to permit a larger range of orders to execute. The Exchange believes that this approach will accomplish the goal of limiting erroneous executions while permitting intentional executions at reasonable prices.

The Exchange would continue to analyze trading behavior and its experience with OPP to determine the configurable amount not to exceed $1.00. The Exchange would post the configurable amount on its website and announce any changes to the configurable amount in an Options Trader Alert. The Exchange notes that it typically has not changed its configurable amounts over the years with respect to its risk protections. The Exchange researches market behavior to determine the amount in setting risk thresholds, in this case for rejection of orders. The Exchange notifies market participants of the thresholds. The Exchange would revisit its proposed OPP threshold if there was a change in behavior of OPP rejections or in response to market participant feedback regarding the behavior of a risk protection.

Memorialization of Rule Text

A prior rule change [7] specified that the Exchange is permitted to temporarily deactivate OPP from time to time on an intraday basis at its discretion if it determined that volatility warranted deactivation. Participants would be notified of intraday OPP deactivation due to volatility and any subsequent intraday reactivation by the Exchange through the issuance of System status messages. The Exchange proposes to memorialize the Exchange's discretion within NOM Rules at Chapter VI, Section 18(a)(1)(A) by adding the following rule text, ''OPP may be

[6] The Exchange notes that this particular scenario is not very frequent, but may occur on NOM because of the price improving order type.

[7] *See* Securities Exchange Act Release No. 64312 (April 20, 2011), 76 FR 23351 (April 26, 2011) (SR–NASDAQ–2011–053) (''2011 Rule Change'').

temporarily deactivated on an intra-day basis at the Exchange's discretion.''

Implementation

The Exchange proposes to implement this rule change prior to March 2019. The Exchange will announce the date of implementation via an Options Traders Alert.

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, by adopting an alternative configurable dollar amount standard, not to exceed $1.00, which would allow NOM to establish appropriate boundaries for rejecting potentially erroneous orders while continuing to allow Participants to access liquidity.

Alternative Method

OPP is intended to prevent orders which were clearly erroneous from executing within the System to the detriment of market participants. OPP was not intended to reject legitimate orders which are otherwise capable of execution at a fair price. The Exchange's proposal would allow the Exchange to establish a fixed dollar amount in addition to a percentage threshold, similar to ISE,[10] which would continue to protect investors and the public interest against erroneous executions while also allowing orders to execute where appropriate at a more granular level where the incoming order is $1.00 from the Reference BBO.

Because today NOM offers price improving orders [11] to market participants for submitting orders in increments smaller than the MPV and as small as one cent, OPP orders which rely on the Reference BBO on the NOM Order Book are rejected because in some cases the price improving order appears greater than than [sic] 100% through the contra-side Reference BBO of $.01.[12] The Exchange believes that it is consistent with the Act in this case because the order was not entered at an erroneous price. The Exchange proposes an alternative to utilize a second method to determine the rejection of orders in addition to the current OPP methodology for rejecting orders. The Exchange believes that by implementing a functionality which applies the greater of (i) a fixed dollar amount not to exceed $1.00; or (ii) a percentage, the Exchange would ensure that this protection would be able to accommodate all orders based on a determination of how far from the Reference BBO the order is priced. The application of OPP would continue to be market-wide.

The Exchange believes that its proposal is consistent with the Act because the fixed amount provides for a larger range of executions within the $1.00 variance which would otherwise be rejected by the application of a percentage which would not capture the potential incremental executions. Orders would be rejected which were intentional and not erroneous. The Exchange specifically selected a limit of $1.00 because within that range, $1.00 from the Reference BBO, applying a percentage may reject a greater number of orders than is intended. The Exchange notes that options which are at or near the money with regard to the strike and the price of the underlying stock are typically priced in a range between $0.0–$2.00.[13] The Exchange would provide market participants with greater flexilibity [sic] to enter orders priced near in-the-money ranges. The Exchange will continue to analyze trading behavior and its experience with OPP to determine the configurable amount not to exceed $1.00. The Exchange would post the configurable amount on its website and announce any changes to the configurable amount in an Options Trader Alert. The configurable dollar amount would provide more granularity to the application of OPP to permit a larger range of orders to execute. The Exchange believes that this approach will accomplish the goal of limiting erroneous executions while permitting intentional executions at reasonable prices.

Memorialization of Rule Text

The Exchange's proposal to memorialize rule text which was described in the 2011 Rule Change [14] relating to discretion to deactivate OPP on an intraday basis would bring greater transparency to the ability of the Exchange to exercise this discretion.

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 proposal does not impose an intra-market burden on competition because this mandatory risk protection applies to all Participants who submit orders into NOM. The Exchange would reject all incoming orders that exceed certain parameters uniformly for all Participants. The proposal does not impose an inter-market burden on competition because today other markets offer similar protections to avoid erroneous executions on their markets.[15]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [16] and subparagraph (f)(6) of Rule 19b–4 thereunder.[17]

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.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *See* note 5 above.

[11] *See* note 4 above.

[12] The Exchange notes that this particular scenario is not very frequent, but may occur on NOM because of the price improving order type.

[13] By way of example, with the current OPP methodology an option priced at $1.90 would be rejected for order priced greater than $2.85. Whereas the threshold would allow an order priced at $2.90 to be submitted to the System for execution.

[14] *See* note 7 above.

[15] *See* ISE 714(b)(1)(A).

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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–2018–102 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–2018–102. 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–2018–102 and should be submitted on or before January 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Brent J. Fields,

Secretary.

[FR Doc. 2018–28002 Filed 12–26–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84869; File No. SR–BOX–2018–38]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To amend Rule 7260 by Extending the Penny Pilot Program Through June 30, 2019

December 19, 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 December 18, 2018, BOX Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the effective time period of the Penny Pilot Program that is currently scheduled to expire on December 31, 2018, until June 30, 2019. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxoptions.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 extend the effective time period of the Penny Pilot Program that is currently scheduled to expire on December 31, 2018, until June 30, 2019.[3] The Penny Pilot Program permits certain classes to be quoted in penny increments. The minimum price variation for all classes included in the Penny Pilot Program, except for PowerShares QQQ Trust (''QQQQ'')®, SPDR S&P 500 Exchange Traded Funds (''SPY''), and iShares Russell 2000 Index Funds (''IWM''), will continue to be $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY, and IWM will continue to be quoted in $0.01 increments for all options series.

The Exchange may replace, on a semi-annual basis, any Pilot Program classes that have been delisted on the second trading day following January 1, 2019. The Exchange notes that the replacement classes will be selected based on trading activity for the six month period beginning June 1, 2018 and ending November 30, 2018 for the January 2019 replacements. The Exchange will employ the same parameters to prospective replacement classes as approved and applicable under the Pilot Program, including excluding high-priced underlying

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[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot Program has been in effect on the Exchange since its inception in May 2012. See Securities Exchange Act Release Nos. 66871 (April 27, 2012), 77 FR 26323 (May 3, 2012) (File No.10–206, In the Matter of the Application of BOX Options Exchange LLC for Registration as a National Securities Exchange Findings, Opinion, and Order of the Commission), 67328 (June 29, 2012), 77 FR 40123 (July 6, 2012) (SR–BOX–2012–007), 68425 (December 13, 2012), 77 FR 75234 (December 19, 2013) (SR–BOX–2012–021), 69789 (June 18, 2013), 78 FR 37854 (June 24, 2013) (SR–BOX–2013–31), 71056 (December 12, 2013), 78 FR 76691 (December 18, 2013) (SR–BOX–2013–56), 72348 (June 9, 2014), 79 FR 33976 (June 13, 2014) (SR–BOX–2014–17), 73822 (December 11, 2014), 79 FR 75606 (December 18, 2014) (SR–BOX–2014–29), 75295 (June 25, 2015), 80 FR 37690 (July 1, 2015)(SR–BOX–2015–23), 78172 (June 28, 2016), 81 FR 43325 (July 1, 2016)(SR–BOX–2016–24), 79429 (November 30, 2016), 81 FR 87991 (December 6, 2016)(SR–BOX–2016–55), 80828 (May 31, 2017), 82 FR 26175 (June 6, 2017) (SR–BOX–2017–18), 82353 (December 19, 2017) 82 FR 61087 (December 26, 2017)(SR–BOX–2017–37), and 83500 (June 22, 2018), 83 FR 30471 (June 28, 2018)(SR–BOX–2018–23). The extension of the effective date and the revision of the date to replace issues that have been delisted are the only changes to the Penny Pilot Program being proposed at this time.

securities. The Exchange will distribute a Regulatory Circular notifying Participants which replacement classes shall be included in the Penny Pilot Program.

BOX is specifically authorized to act jointly with the other options exchanges participating in the Pilot Program in identifying any replacement class.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[4] in general, and Section 6(b)(5) of the Act,[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest.

In particular, the proposed rule change, which extends the Penny Pilot until June 30, 2019 and changes the date for replacing Penny Pilot issues that were delisted to the second trading day following January 1, 2019, will enable public customers and other market participants to express their true prices to buy and sell options for the benefit of all market participants. This is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, this proposal is pro-competitive because it allows Penny Pilot issues to continue trading on the Exchange. Moreover, the Exchange believes that the proposed rule change will allow for further analysis of the Pilot and a determination of how the Pilot should be structured in the future; and will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot is an industry wide initiative supported by all other option exchanges. The Exchange believes that extending the Pilot will allow for continued competition between market participants on the Exchange trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6)[7] thereunder. 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 after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program.[12] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[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–BOX–2018–38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2018–38. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10:00 a.m.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *See* Securities Exchange Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44).

[13] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

and 3:00 p.m., located at 100 F Street NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2018–38 and should be submitted on or before January 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Brent J. Fields,

Secretary.

[FR Doc. 2018–27993 Filed 12–26–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84852; File No. SR–CHX–2018–09]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Decommission the Exchange's Outbound Routing Service and the Sub-Second Non-Displayed Auction Process

December 19, 2018.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 12, 2018, the Chicago Stock Exchange, Inc. (''CHX'' 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the rules of the Exchange (''Rules'') to decommission the Exchange's outbound routing service and the Sub-second Non-displayed Auction Process (''SNAP''). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

2. Background

The Exchange proposes to amend the Rules to decommission the Exchange's outbound routing service[4] and SNAP.[5] Since initial launch of the outbound routing service in May 2015 and SNAP in June 2016, neither product has been frequently or actively utilized by Participants.[6] Accordingly, to streamline the Exchange's product offerings and to reallocate Exchange resources to other initiatives and obligations, the Exchange proposes to decommission the outbound routing service and SNAP as of *December 31, 2018* (''Operative Date'').

On the Operative Date, the Exchange's outbound routing broker-dealer, CHXBD, LLC (''CHXBD''), will cease business operations and all inbound orders received by the Exchange will be handled Do Not Route.[7] Specifically, to the extent an inbound order would trade-through a protected quotation of an away market in violation of Rule 611 of Regulation NMS[8] or impermissibly lock or cross a protected quotation of an away market in violation of Rule 610(d) of Regulation NMS,[9] the order will either be cancelled back to the order sender or price slid to a permissible price if it is marked CHX Only.[10]

With respect to SNAP, pursuant to Article 20, Rule 4(b), the Exchange deactivated the Start SNAP,[11] Cancel On SNAP,[12] and SNAP Auction Only Order (''SNAP AOO'')[13] order modifiers as of August 16, 2018. As SNAP Cycles[14] can only be initiated upon receipt of a valid Start SNAP order or pursuant to the Exchange's *pro forma* review of the SNAP AOO queue,[15] the Exchange does not currently conduct any SNAP auctions. Therefore, elimination of the SNAP-related Rules will have no impact on the current operation of the Matching System.[16]

3. Proposed Rule Change

To effect the decommissioning of the outbound routing service and SNAP, the Exchange proposes to amend the Rules as follows:

a. Amendments to Article 1

Current Article 1, Rule 1(oo) defines the term ''Routable Order,'' which are the only orders that may be routed away pursuant to the outbound routing service. The Exchange proposes to amend Article 1, Rule 1(oo) to eliminate ''Routable Order'' as a defined term and to insert the term ''Reserved'' in its place.

Current Article 1, Rule 1(rr) defines the term ''SNAP Price,'' which is the single price at which an order will be executed during a SNAP Cycle, and current Article 1, Rule 1(ss) defines ''SNAP Eligible Orders,'' which are specific orders that are eligible for participation in a SNAP Cycle. The Exchange proposes to amend these Rules to eliminate SNAP Price and SNAP Eligible Orders as defined terms and to insert the term ''Reserved'' in their place.

Current Article 1, Rule 2(a) provides that the general order types described thereunder shall be accepted by the Matching System, subject to the requirements of Article 20, Rule 4. Because the decommissioning of the outbound routing service would result in all orders being non-routable, the

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See generally* CHX Article 19.

[5] *See* CHX Article 18, Rules 1 and 1A. The Exchange will submit a separate Rule 19b–4 filing to eliminate fees and credits associated with the outbound routing service and SNAP.

[6] *See* CHX Article 1, Rule 1(s). From January 1, 2018 through November 30, 2018, the Exchange routed away a total of 634 orders and executed 178,682 away shares pursuant to the outbound routing service. Moreover, a total of 60 SNAP auctions that resulted in order executions were initiated since June 2016, 16 of which occurred in 2018.

[7] *See* CHX Article 1, Rule 2(b)(3)(A).

[8] 17 CFR 242.611.

[9] 17 CFR 242.610(d).

[10] *See* CHX Article 1, Rule 2(b)(1)(C); *see also* amended CHX Article 20, Rules 5 and 6.

[11] *See* CHX Article 1, Rule 2(h)(1).

[12] *See* CHX Article 1, Rule 2(h)(2).

[13] *See* CHX Article 1, Rule 2(h)(3).

[14] *See* CHX Article 1, Rule 1(b).

[15] *See* CHX Article 18, Rules 1A(a) and (b).

[16] The Matching System is a ''Trading Facility'' of the Exchange as defined under CHX Article 1, Rule 1(z).

Exchange proposes to amend Rule 2(a) to provide that all orders received by the Matching System would be deemed to have been received ''Do Not Route,'' as defined under Article 1, Rule 2(b)(3)(A), which cannot be overridden by the order sender. Because all orders received by the Exchange would be handled ''Do Not Route,'' the Exchange proposes to delete repetitive text under Article 1, Rules 2(b)(1)(C), 2(b)(1)(D), 2(b)(3)(B), 2(d)(2), and 2(d)(4).

Current Article 1, Rule 2(h) defines the three order modifiers specific to SNAP: Start SNAP, under paragraph (h)(1); Cancel On SNAP, under paragraph (h)(2); and SNAP AOO, under paragraph (h)(3). The Exchange proposes to eliminate Start SNAP, Cancel On SNAP, and SNAP AOO as defined terms and delete Rule 2(h) in its entirety. Elimination of these order modifiers would have no impact on trading during the Open Trading State,[17] as they are only valid in the context of SNAP Cycles.

b. Amendments to Article 18

Current Article 18 (Auctions) includes Rule 1, which describes the SNAP Cycle, and Rule 1A, which describes how a SNAP Cycle is initiated and the process by which a SNAP Cycle is initiated by the Exchange. In light of the proposed decommissioning of SNAP, the Exchange proposes to delete Rules 1 and 1A in their entirety. Because the Exchange does not currently offer any other auction products, the Exchange proposes to replace the term ''Auctions'' in the heading to Article 18 with the term ''Reserved.''

c. Amendments to Article 19

Current Article 19 (Operation of the CHX Routing Services) describes the CHX Routing Services, which includes both outbound and inbound order routing. Specifically, Rule 1 (CHX Routing Services) provides a summary of the outbound routing function, as well as limitation of liability and firm order provisions. Rule 2 (Routing Broker) describes the functions and obligations of CHXBD as outbound router under paragraph (a) and Archipelago Securities LLC (''Arca Securities'') as inbound router to the Exchange from NYSE Arca, Inc. (''NYSE Arca''), NYSE American, LLC (''NYSE American''), New York Stock Exchange, LLC (''NYSE''), and NYSE National, Inc. (''NYSE National,'' and with the Exchange, NYSE Arca, NYSE American, NYSE, and NYSE National, the ''NYSE Group Exchanges'') under paragraph (b). Rule 3 (Routing Events) describes the circumstances under which Routable Orders are routed away from the Exchange.

Given that the Exchange is proposing to decommission outbound routing only and thereby maintain the inbound routing function, the Exchange proposes to delete Rules 1(a), 1(c), and 3, and all language under Rule 2(a) (replacing the deleted text with the term ''Reserved''), but to maintain Rules 1(b) (as amended Rule 1) and 2(b). Specifically, current Rule 2(b) describes the inbound routing function and current Rule 1(b) (amended Rule 1) provides that use of the CHX Routing Services (*i.e.,* the inbound routing function) is optional and subject to the Exchange's limitation of liability under Article 3, Rule 19.

With respect to the proposed deletion of current Article 19, Rule 2(a)(7) related to the CHXBD Error Account, the Exchange notes that since the outbound routing service will be decommissioned, the Exchange will not be at risk of having to liquidate unpaired trade positions, as such positions would only result from issues related to routed orders. However, even if unpaired trade positions were to result from executions within the Matching System, the Exchange would be permitted to nullify such transactions pursuant to Article 20, Rules 10(f) and (g), and would rely on the limitation on liability provisions under Article 3, Rule 19. Therefore, the CHXBD Error Account will not be required to address unpaired trade positions.

The Exchange notes that current Rules 3(c) and 3(d) refer to Article 20, Rules 8(b)(7), 8(f), and 12(b), all of which the Exchange proposes to delete, as described below.

d. Amendments to Article 20

Current Article 20, Rule 5 (Prevention of Trade-Throughs) describes the handling of inbound orders whose immediate execution would be improper under Rule 611 of Regulation NMS[18] for Routable Orders under Rule 5(a)(1) and non-Routable Orders under Rule 5(a)(2). The Exchange proposes to delete language under current Rule 5(a)(1) and insert the term ''Reserved.'' Also, since all inbound orders received by the Matching System would be deemed received as Do Not Route, pursuant to amended Article 1, Rule 2(a), the Exchange proposes to amend current Rule 5(a)(2) to delete as repetitive the phrase ''and the order cannot be routed away.'' Therefore, amended Rule 5(a)(2) would provide that if execution of all or part of an inbound order would cause an improper trade-through, the order shall be automatically cancelled; provided, however, that such an order marked CHX Only may be subject to the CHX Only Price Sliding Processes, detailed under Article 1, Rule 2(b)(1)(C) and not automatically cancelled.

Current Article 20, Rule 6 (Locked and Crossed Markets) describes the handling of inbound orders whose immediate display would be improper under Rule 610(d) of Regulation NMS[19] for Routable Orders under Rule 6(d)(1) and non-Routable Orders under Rule 6(d)(2). The Exchange proposes to delete language under current Rule 6(d)(1) and insert the term ''Reserved.'' Also, since all inbound orders received by the Matching System will be deemed received as Do Not Route, pursuant to amended Article 1, Rule 2(a), the Exchange proposes to amend current Rule 6(d)(2) to delete as repetitive the phrase ''and the order cannot be routed away.'' Therefore, amended Rule 6(d)(2) provides that if the display of an order would impermissibly lock or cross a protected quotation of an external market, that order shall be automatically cancelled; provided, however, that such an order marked CHX Only may be subject to the CHX Only Price Sliding Processes, detailed under Article 1, Rule 2(b)(1)(C) and not automatically cancelled.

Current Article 20, Rule 8(a) generally provides that Participants may route orders to the Matching System through any communications line approved by the Exchange but may only route orders away from the Matching System by utilizing the CHX Routing Services, pursuant to Article 19. The Exchange proposes to amend Rule 8(a) to delete language related to routing orders away from the Matching System.

Current Article 20, Rule 8(b)(7) describes how the unexecuted remainder of routed orders returned to the Matching System are ranked on the CHX book. In light of the proposed decommissioning of the outbound routing service, the Matching System will not receive any unexecuted remainders of orders routed away from the Matching System, and therefore, the Exchange proposes to delete Rule 8(b)(7) in its entirety.

Current Article 20, Rule 8(d)(3) describes how Odd Lot[20] orders and unexecuted Odd Lot remainders of routed orders are handled by the Matching System. The Exchange proposes to amend Rule 8(d)(3) to eliminate language relating to routing

[17] *See* CHX Article 1, Rule 1(qq) defining ''Open Trading State.''

[18] 17 CFR 242.611.

[19] 17 CFR 242.610(d).

[20] *See* CHX Article 1, Rule 2(f)(2).

away orders. Accordingly, amended Rule 8(d)(3) provides that an Odd Lot order or unexecuted Odd Lot remainders shall be posted to, remain in, or be cancelled from the Matching System according to the attached order modifiers.

Current Article 20, Rule 8(d)(4) (Rule 201 of Regulation SHO [21]) describes how orders subject to the short sale price test restriction will be handled during the Open Trading State and transition to the Open Trading State from a SNAP Cycle, under subparagraph (A), and during a SNAP Cycle, under subparagraph (B). The Exchange proposes to delete reference to the stage five Transition to the Open Trading State under subparagraph (A) and to delete subparagraph (B) in its entirety as it describes the handling of orders subject to the short sale price test restriction during a SNAP Cycle. Moreover, the Exchange proposes to amend subparagraph (A)(iv) to omit reference to the routing away of Sell Short orders. Accordingly, amended subparagraph (A)(iv) will provide that a Sell Short order, other than a CHX Only order, will be cancelled back to the order sender if, based on Rule 201 of Regulation SHO,[22] such order is not executable or cannot be posted to the Matching System.

Current Article 20, Rule 8(e) describes the execution of certain orders, order types, and auctions. The Exchange proposes to amend Rule 8(e) to delete reference to ''auctions'' in the header and to delete the language under current Rule 8(e)(2) related to the execution of orders during a SNAP Cycle, inserting the term ''Reserved'' in its place.

Current Article 20, Rule 8(f) describes how orders cancellation messages submitted by Participants are handled and Rule 8(f)(2), in particular, describes how cancel messages received by the Exchange for routed orders are handled. The Exchange proposes to delete Rule 8(f)(2) in its entirety.

Current Article 20, Rule 12 (Order Cancellation/Release by the Exchange) describes the circumstances under which the Exchange may cancel or release orders. Specifically, Rule 12(a) permits the Exchange or CHXBD to cancel orders it deems necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange, CHXBD, a non-affiliated third-party broker, or another trading center to which an order was routed. Rule 12(a) also requires the Exchange or CHXBD to provide notice of the cancellation to affected Participants as soon as practicable. In addition, Rule 12(b) permits the Exchange to release orders being held on the Exchange awaiting another trading center execution as it deems necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange, CHXBD, a non-affiliated third-party broker, or another Trading Center to which an order has been routed. Given that the proposed decommissioning of the outbound routing service will not require the Exchange to cancel or release orders that have been routed away from the Exchange, the Exchange proposes to amend the header to Rule 12 to read ''Order Cancellation by the Exchange,'' amend Rule 12(a) to limit its scope to technical or systems issues that occur at the Exchange only, and to delete Rule 12(b) in its entirety.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[23] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the 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 proposal to amend the Rules to decommission the Exchange's outbound routing service and SNAP will permit the Exchange to reallocate resources currently used to maintain the infrequently utilized [24] outbound routing service and SNAP to the development of other business initiatives and to further support the Exchange's regulatory obligations. In addition, the Exchange notes that the decommissioning of the outbound routing service will result in all inbound orders received by the Exchange being handled Do Not Route and therefore subject to the Exchange's current order processing procedures and rules for non-routable orders, which will ensure that the Matching System continues to be reasonably designed to comply with the requirements of Rule 201 of Regulation SHO [25] and Rules 610(d) [26] and 611 [27] of Regulation NMS. Also, the Exchange is not required by rule or regulation to provide outbound routing services and Participants will continue to be able to route orders to away markets either directly or through another routing service. Therefore, the Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system in furtherance of Section 6(b)(5) of the Exchange Act.[28]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. Specifically, the proposed rule change will result in the decommissioning of certain Exchange products that have not been frequently or actively utilized by Participants. Therefore, the Exchange submits that the proposal 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [29] and Rule 19b–4(f)(6) thereunder.[30] 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [31] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[32] the Commission may designate a shorter time if such action is consistent with the protection

[21] 17 CFR 242.201.

[22] 17 CFR 242.201.

[23] 15 U.S.C. 78f(b)(5).

[24] *See supra* note 6.

[25] 17 CFR 242.201.

[26] 17 CFR 242.610(d).

[27] 17 CFR 242.611.

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78s(b)(3)(A)(iii).

[30] 17 CFR 240.19b–4(f)(6).

[31] 17 CFR 240.19b–4(f)(6).

[32] 17 CFR 240.19b–4(f)(6)(iii).

of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative on December 31, 2018 to coincide with the termination of its clearing agreement with a third-party routing broker-dealer at the completion of calendar year 2018. According to CHX, waiver of the operative delay would provide cost savings that would permit the Exchange to allocate those resources to developing new business initiatives or further supporting its regulatory obligations. The Exchange also notes that the neither outbound router nor SNAP are utilized frequently.[33] The Commission believes that a partial waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposal operative on December 31, 2018.[34]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[35] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CHX–2018–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2018–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2018–09 and should be submitted on or before January 17, 2019.[36]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2018–27986 Filed 12–26–18; 8:45 am]

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[33] *See supra* note 6.

[34] 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).

[35] 15 U.S.C. 78s(b)(2)(B).

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84867; File No. SR–C2–2018–022]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Adopt Complex Reserve Order Functionality

December 19, 2018.

On November 8, 2018, Cboe C2 Exchange, Inc. filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt Complex Reserve Order functionality. The proposed rule change was published for comment in the **Federal Register** on November 27, 2018.[3] The Commission has received no comment letters regarding 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 January 11, 2019. 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 February 25, 2019, 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–C2–2018–022).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Brent J. Fields,

Secretary.

[FR Doc. 2018–27996 Filed 12–26–18; 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. 84643 (November 21, 2018), 83 FR 60916.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33331; 812–14958]

Timothy Plan and Timothy Partners, Ltd.

December 19, 2018.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

SUMMARY: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) index-based series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds; (f) certain Funds (''Feeder Funds'') to create and redeem Creation Units in-kind in a master-feeder structure; and (g) certain Funds to issue Shares in less than Creation Unit size to investors participating in a distribution reinvestment program.

Applicants: Timothy Plan (the ''Trust''), a Delaware statutory trust, which is registered under the Act as an open-end management investment company with multiple series, and Timothy Partners, Ltd. (the ''Initial Adviser''), a California Corporation registered as an investment adviser under the Investment Advisers Act of 1940.

Filing Dates: The application was filed on October 1, 2018, and amended on December 12, 2018 and December 18, 2018.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 14, 2019, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants, 1055 Maitland Center Commons, Maitland, Florida 32751.

FOR FURTHER INFORMATION CONTACT: Jill Corrigan, Senior Counsel, at (202) 551–8929, or Parisa Haghshenas, Branch Chief, at (202) 551–6723 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as index exchange traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units (other than pursuant to a distribution reinvestment program, as described in the application). All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant,'' which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond closely to the performance of an Underlying Index. In the case of Self-Indexing Funds, an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of the Trust or a Fund, of the Adviser, of any sub-adviser to or promoter of a Fund, or of the Distributor will compile, create, sponsor or maintain the Underlying Index.[2]

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis, or issued in less than Creation Unit size to investors participating in a distribution reinvestment program. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units (other than pursuant to a dividend reinvestment program).

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will

[1] Applicants request that the order apply to the Initial Fund and any additional series of the Trust, and any other existing or future open-end management investment company or existing or future series thereof (each, included in the term ''Fund''), each of which will operate as an ETF, and their respective existing or future master funds, and will track a specified index comprised of domestic and/or foreign equity securities and/or domestic and/or foreign fixed income securities (each, an ''Underlying Index''). Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each of the foregoing and any successor thereto, an ''Adviser'') and (b) comply with the terms and conditions of the application. For purposes of the requested order, a ''successor'' is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Each Self-Indexing Fund will post on its website the identities and quantities of the investment positions that will form the basis for the Fund's calculation of its NAV at the end of the day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Funds.

take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation Units in kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions, and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[3] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

[3] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

For the Commission, by the Division of Investment Management, under delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2018–27995 Filed 12–26–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84865; File No. SR–PEARL–2018–26]

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX PEARL, LLC To Amend Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments To Extend the Penny Pilot Program

December 19, 2018.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2018, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 is filing a proposal to amend Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments, Interpretations and Policies .01, to extend the pilot program for the quoting and trading of certain options in pennies.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 a participant in an industry-wide pilot program that provides for the quoting and trading of certain option classes in penny increments (the ''Penny Pilot Program'' or ''Program''). The Penny Pilot Program allows the quoting and trading of certain option classes in minimum increments of $0.01 for all series in such option classes with a price of less than $3.00; and in minimum increments of $0.05 for all series in such option classes with a price of $3.00 or higher. Options overlying the PowerShares QQQ™ (''QQQ''), SPDR® S&P 500® ETF (''SPY''), and iShares® Russell 2000 ETF (''IWM''), however, are quoted and traded in minimum increments of $0.01 for all series regardless of the price. The Penny Pilot Program was initiated at the then existing option exchanges in January 2007 [3] and currently includes more than 300 of the most active option classes. The Penny Pilot Program is currently scheduled to expire on December 31, 2018.[4] The purpose of the proposed rule change is to extend the Penny Pilot Program in its current format through June 30, 2019.

In addition to the extension of the Penny Pilot Program through June 30, 2019, the Exchange proposes to extend one other date in the Rule. Currently, Interpretations and Policies .01 states that the Exchange will replace any Penny Pilot issues that have been delisted with the next most actively traded multiply listed option classes that are not yet included in the Penny Pilot Program, and that the replacement issues will be selected based on trading activity in the previous six months. Such option classes will be added to the Penny Pilot Program on the second trading day following July 1, 2018.[5] Because this date has expired and the Exchange intends to continue this practice for the duration of the Penny Pilot Program, the Exchange is proposing to amend the Rule to reflect that such option classes will be added to the Penny Pilot Program on the second trading day following January 1, 2019.

The purpose of this provision is to reflect the new date on which replacement issues may be added to the Penny Pilot Program.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act [6] in general, and furthers the objectives of Section 6(b)(5) of the Act [7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

In particular, the proposed rule change, which extends the Penny Pilot Program for six months, allows the Exchange to continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Penny Pilot Program and a determination of how the Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace, facilitating investor protection, and fostering a competitive environment. In addition, consistent with previous practices, the Exchange believes the other options exchanges will be filing similar extensions of the Penny Pilot Program.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) [9] thereunder. 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 after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) [11] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion

[3] *See* Securities Exchange Act Release Nos. 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR–CBOE–2006–92); 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR–ISE–2006–62); 54886 (December 6, 2006), 71 FR 74979 (December 13, 2006) (SR–Phlx–2006–74); 54590 (October 12, 2006), 71 FR 61525 (October 18, 2006) (SR–NYSEArca–2006–73); and 54741 (November 9, 2006), 71 FR 67176 (November 20, 2006) (SR–Amex–2006–106).

[4] *See* Securities Exchange Act Release No. 83517 (June 25, 2018), 83 FR 30792 (June 29, 2018) (SR–PEARL–2018–14) (extending the Penny Pilot Program from June 30, 2018 to December 31, 2018).

[5] The month immediately preceding a replacement class's addition to the Pilot Program (*i.e.,* December) is not used for purposes of the six-month analysis. For example, a replacement added on the second trading day following January 1, 2019, will be identified based on trading activity from June 1, 2018, through November 30, 2018.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

of the Pilot Program.[14] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[15]

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–PEARL–2018–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2018–26. 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 20549–1090, 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–PEARL–2018–26 and should be submitted on or before January 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Brent J. Fields,

Secretary.

[FR Doc. 2018–27997 Filed 12–26–18; 8:45 am]

BILLING CODE 8011–01–P

[14] *See* Securities Exchange Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44).

[15] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84872; File No. SR–NYSEArca–2018–92]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Reflecting Changes to Certain Representations Relating to the Horizons S&P 500 Covered Call ETF

December 19, 2018.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 6, 2018, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reflect changes to certain representations made in the proposed rule changes previously filed with the Commission pursuant to Rule 19b–4 relating to the Horizons S&P 500 Covered Call ETF (the ''Target Fund''). Shares of the Target Fund are currently listed and traded on the Exchange under NYSE Arca Rule 5.2–E(j)(3). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved the listing and trading on the Exchange of shares (''Shares'') of the Target Fund, under NYSE Arca Rule 5.2–E(j)(3) (formerly NYSE Arca Equities Rule 5.2(j)(3)), which governs the listing and trading of Investment Company Units.[4] The Target Fund's Shares are currently listed and traded on the Exchange under NYSE Arca Rule 5.2–E(j)(3).[5] The Target

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] An Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). *See* NYSE Arca Rule 5.2–E(j)(3)(A).

[5] The Commission issued notice of a proposed rule change to permit listing and trading of Shares of the Target Fund in Securities Exchange Act Release Nos. 68351 (December 4, 2012), 77 FR 73500 (December 10, 2012) (SR–NYSEArca–2012–131) (Notice of Filing of Proposed Rule Change Relating to Listing and Trading of Shares of the Horizons S&P 500 Covered Call ETF, Horizons S&P Financial Select Sector Covered Call ETF, and Horizons S&P Energy Select Sector Covered Call ETF under NYSE Arca Equities Rule 5.2(j)(3)) (''Prior Notice''); 68708 (January 23, 2013), 78 FR 6161 (January 29, 2013) (SR–NYSEArca–2012–131) (Order Approving Proposed Rule Change Relating to Listing and Trading of Shares of the Horizons S&P 500 Covered Call ETF, Horizons S&P Financial Select Sector Covered Call ETF, and Horizons S&P

Continued

Fund is a series of the Horizons ETF Trust I (''Trust'').[6]

Global X Funds has filed a combined prospectus and proxy statement (the ''Proxy Statement'') with the Commission on Form N–14 describing a ''Plan of Reorganization and Termination'' pursuant to which, following approval of the Target Fund's shareholders, all or substantially all of the assets and all of the stated liabilities included in the financial statements of the Target Fund would be transferred to a corresponding, newly-formed fund of Global X Funds, described below. The Global X S&P 500® Covered Call ETF (the ''Acquiring Fund'') was established solely for the purpose of acquiring the assets and assuming the liabilities of the Target Fund and continuing the Target Fund's business. If shareholders of the Target Fund approve the Plan of Reorganization and Termination, the Target Fund will be reorganized into the Acquiring Fund (the ''Reorganization''), and shareholders will receive shares of the Acquiring Fund of the same number and with the same aggregate net asset value as the Target Fund immediately prior to the Reorganization in complete liquidation and dissolution of the Target Fund, and shareholders of the Target Fund would become shareholders of the Acquiring Fund. According to the Proxy Statement, the investment objective of the Acquiring Fund will be the same as that of the Target Fund following implementation of the Plan of Reorganization and Termination.[7] Following shareholder approval and closing of the Reorganization, shareholders will receive shares of the Acquiring Fund of the same number and with the same aggregate net asset value as the Target Fund immediately prior to the Reorganization in complete liquidation and dissolution of the Target Fund, and shareholders of the Target Fund would become shareholders of the Acquiring Fund.

In this proposed rule change, the Exchange proposes to reflect a change to certain representations made in the Prior Releases, as described above,[8] which changes would be implemented as a result of the Reorganization.[9]

Horizons S&P 500 Covered Call ETF [10]

The Prior Releases stated the name of the Target Fund as Horizons S&P 500 Covered Call ETF. Following the Reorganization, the name of the Acquiring Fund will be Global X S&P 500® Covered Call ETF.

The Target Fund is currently a series of the Horizons ETF Trust I.[11] Following the Reorganization, the Acquiring Fund will be a series of Global X Funds. The Target Fund's investment adviser is Horizons ETFs Management (US) LLC.[12] Following the Reorganization, the Acquiring Fund's investment adviser will be Global X Management Company LLC.[13]

The Target Fund's current principal underwriter and distributor is Foreside Fund Services, LLC. Following the Reorganization, the Acquiring Fund's principal underwriter and distributor will be SEI Investments Distribution Co.

The Target Fund's current transfer agent and administrator is U.S. Bancorp Fund Services, LLC. Following the Reorganization, the Acquiring Fund's administrator will be Global X Management Company LLC, the Acquiring Fund's sub-administrator will be SEI Investments Global Funds Services, and the Acquiring Fund's transfer agent will be Brown Brothers Harriman & Co.[14] The Target Fund's current custodian is U.S. Bank, N.A. Following the Reorganization, the Acquiring Fund's custodian will be Brown Brothers Harriman & Co.[15] The Second Prior Release stated that the Bank of New York Mellon serves as sub-custodian for the Target Fund. Following the Reorganization, the Acquiring Fund would not have a sub-custodian.

The Prior Notice stated that all orders to purchase or redeem Shares directly from the Target Fund must be placed for

Energy Select Sector Covered Call ETF under NYSE Arca Equities Rule 5.2(j)(3)) (''Prior Order'' and, together with the Prior Notice, the ''Prior Release''). *See also,* Securities Exchange Act Release No. 82190 (November 30, 2017), 82 FR 57635 (December 6, 2017) (SR–NYSEArca–2017–123) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reflect a Change to the Investment Objective and the Underlying Index for the Horizons S&P 500 Covered Call ETF) (''Second Prior Release'' and, together with the ''Prior Release'', ''Prior Releases'').

[6] The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act''). On September 25, 2017, the Trust filed with the Commission an amendment to its Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''1933 Act''), and under the 1940 Act relating to the Target Fund (File Nos. 333–183155 and 811–22732) (''Registration Statement'').

[7] *See* registration statement on Form N–14 under the 1933 Act, dated October 3, 2018 (File No. 333–227685).

[8] *See* note 5, *supra.*

[9] The Target Fund's investment adviser, Horizons ETFs Management (US) LLC, represents that it will manage the Target Fund in the manner described in the Prior Releases for the Target Fund as referenced in note 5, *supra,* and the changes described herein will not be implemented until this proposed rule change is operative.

[10] On October 19, 2018, Global X Funds filed with the Commission a post-effective amendment to its registration statement on Form N–1A under the 1933 Act and under the 1940 Act relating to the Acquiring Fund (File Nos. 333–151713 and 811–22209). The October 19, 2018 filing, which became effective on October 20, 2018 creates a new entity to serve as the vehicle into which the Target Fund will be reorganized through the Plan of Reorganization and Termination contained in the Proxy Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Global X Funds under the 1940 Act. *See* Investment Company Act Release No. 29852 (October 28, 2011) (File No. 812–13830).

[11] The Prior Notice stated that the Shares of the Target Fund are offered by the Exchange Traded Concepts Trust II. In the Second Prior Release, the Trust was identified as Horizons ETF Trust I.

[12] The Prior Notice identified the Target Fund's adviser as Exchange Traded Concepts, LLC. In the Second Prior Release, the Target Fund's adviser was identified as Horizons ETFs Management (US) LLC.

[13] Global X Management Company LLC is not registered as a broker-dealer but is affiliated with broker-dealers. Global X Management Company LLC has implemented and will maintain a fire wall with respect to its affiliated broker-dealers regarding access to information concerning the composition and/or changes to the Acquiring Fund's portfolio. In the event (a) Global X Management Company LLC becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Acquiring Fund's portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. In addition, personnel who make decisions on the Acquiring Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Acquiring Fund's portfolio.

An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, with respect to the Acquiring Fund, Global X Management Company LLC, as adviser, and its related personnel, are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[14] The Prior Notice identified the Target Fund's transfer agent and administrator as Citi Fund Services Ohio, Inc. In the Second Prior Release, the Target Fund's transfer agent and administrator were identified as U.S. Bancorp Fund Services, LLC.

[15] The Prior Notice identified the Target Fund's custodian as Citibank, N.A. In the Second Prior Release, the Target Fund's custodian was identified as U.S. Bank, N.A.

one or more Creation Units by 4:00 p.m., Eastern time (''E.T.'') in the manner set forth in the relevant participant agreement and/or applicable order form. The Exchange proposes that, following the Reorganization, all orders to purchase or redeem Shares directly from the Acquiring Fund must be placed for one or more Creation Units by 3:00 p.m., E.T. Because the Acquiring Fund's investments in options contracts cannot be delivered in-kind as Deposit Securities (as defined below), the Acquiring Fund must directly enter into or close such options contracts in connection with any Shares purchased or redeemed directly from the Acquiring Fund.[16] A cut-off time prior to 4:00 p.m., E.T., when the Acquiring Fund's net asset value will be calculated, would ensure that the Acquiring Fund would be notified of any such purchase or redemption activity with sufficient time to enter into or close options positions at the same time as the determination of the Acquiring Fund's net asset value and prior to the close of the options market at 4:15 p.m., E.T. The Exchange notes that the Commission has previously approved Exchange listing and trading of issues of Managed Fund Shares under NYSE Arca Rule 8.600–E for which the cut-off time for placing orders to create or redeem is 3:00 p.m., E.T.[17]

The Target Fund's current website is *us.horizonsetfs.com.* Following implementation of the Reorganization, the Acquiring Fund's website will be *www.globalxfunds.com.*

The investment objective of the Acquiring Fund will remain unchanged from that of the Target Fund. In addition, the Index underlying the Acquiring Fund meets and will continue to meet the representations regarding the Index as described in the Prior Releases.[18] Except for the changes noted above, all other representations made in the Prior Releases remain unchanged.[19] Global X Management Company LLC represents that the Target Fund and Acquiring Fund will satisfy all applicable requirements of the 1940 Act and 1933 Act in connection with the Reorganization.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[20] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, and is designed to promote just and equitable principles of trade and to protect investors and the public interest.

Global X Funds has filed the Proxy Statement describing the Reorganization pursuant to which, following approval of the Target Fund's shareholders, all or substantially all of the assets and all of the stated liabilities included in the financial statements of the Target Fund would be transferred to a corresponding, newly-formed fund of Global X Funds. This filing proposes to reflect organizational and administrative changes that would be implemented as a result of the Reorganization. As noted above, Global X Management Company LLC is not registered as a broker-dealer but is affiliated with broker-dealers. Global X Management Company LLC has implemented and will maintain a fire wall with respect to its affiliated broker-dealers regarding access to information concerning the composition and/or changes to the Acquiring Fund's portfolio. In the event (a) Global X Management Company LLC becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. According to the Proxy Statement, the investment objective of the Acquiring Fund will be the same as the investment objective of the Target Fund following implementation of the Reorganization. With respect to the proposal that orders to purchase or redeem Shares directly from the Acquiring Fund must be placed for one or more Creation Units by 3:00 p.m., E.T., a cut-off time prior to 4:00 p.m., E.T., when the Acquiring Fund's net asset value will be calculated, would ensure that the Acquiring Fund would be notified of any such purchase or redemption activity with sufficient time to enter into or close options positions at the same time as the determination of the Acquiring Fund's net asset value and prior to the close of the options market at 4:15 p.m., E.T. The Exchange notes that the Commission has previously approved Exchange listing and trading of issues of Managed Fund Shares under NYSE Arca Rule 8.600–E for which the cut-off time for placing orders to create or redeem is 3:00 p.m., E.T.[21] The Exchange believes the proposed changes will not adversely impact investors or Exchange trading. In addition, the Index underlying the Acquiring Fund meets and will continue to meet the representations regarding the Index as described in the Prior Releases.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change will enhance competition and benefit investors and the marketplace by permitting continued listing and trading of Shares of the Acquiring Fund following implementation of the changes described above that would follow the Reorganization, which changes would not impact the investment objective of the Acquiring Fund or the Target Fund.

[16] As stated in the Prior Notice, the consideration for purchase of a Creation Unit of the Target Fund generally consists of the in-kind deposit of a designated portfolio of securities (''Deposit Securities'') per each Creation Unit, constituting a substantial replication, or a portfolio sampling representation, of the securities included in the Target Fund's underlying Index, together with the deposit of a specified cash payment. The consideration for redemption of a Creation Unit of the Target Fund generally consists of Deposit Securities together with a Cash Component.

[17] *See, e.g.,* Securities Exchange Act Release Nos. 73716 (December 2, 2014), 79 FR 72723 (December 8, 2014) (SR–NYSEArca–2014–134) (Notice of Filing of Proposed Rule Change Relating to Listing and Trading the following Series of IndexIQ Active ETF Trust under NYSE Arca Equities Rule 8.600: IQ Wilshire Alternative Strategies ETF); 71894 (April 7, 2014), 79 FR 20273 (April 11, 2014) (SR–NYSEArca–2014–30) (Notice of Filing of Proposed Rule Change Relating to Listing and Trading Shares of Hull Tactical US ETF under NYSE Arca Equities Rule 8.600).

[18] As stated in the Second Prior Release, S&P Dow Jones Indices LLC is the ''Index Provider'' for the Index and is unaffiliated with the Target Fund or Horizons ETFs Management (US) LLC, the adviser for the Target Fund. Following the Reorganization, the Index Provider will be unaffiliated with the Acquiring Fund or Global X Management Company LLC. The Index Provider is not a broker-dealer and is not affiliated with a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index.

[19] *See* note 5, *supra.* All terms referenced but not defined herein are defined in the Prior Releases.

[20] 15 U.S.C. 78f (b)(5).

[21] *See* note 17, *supra.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [22] and Rule 19b–4(f)(6) thereunder.[23]

A proposed rule change filed under Rule 19b–4(f)(6) [24] normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [25] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Commission notes that the Exchange's proposal would make organizational and administrative changes that would be implemented as a result of the Reorganization, as well as reflect a change in the cut-off time for orders to create or redeem Shares. The Commission believes that waiver of the 30-day operative delay would permit continued listing and trading of the Shares of the Acquiring Fund on the Exchange upon shareholder approval of the Reorganization.[26] For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2018–92 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca-2018–92. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2018–92 and should be submitted on or before January 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Brent J. Fields,

Secretary.

[FR Doc. 2018–27990 Filed 12–26–18; 8:45 am]

BILLING CODE 8011–01–P

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided 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.

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] The Commission notes that, according to the Exchange, the Target Fund and the Acquiring Fund will satisfy all applicable requirements of the 1940 Act and the 1933 Act in connection with the Reorganization.

[27] 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).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84874; File No. SR–NYSEArca–2018–80]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule in Conjunction With Relocating the Trading Floor to a New Trading Facility

December 19, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 18, 2018, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (''Fee Schedule'') in conjunction with relocating the Trading Floor to a new trading facility. The Exchange proposes to implement the fee change effective

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

the first day of the month following the move. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Fee Schedule in conjunction with the Exchange relocating its Trading Floor to a new trading facility that will be in a different physical location than the current Trading Floor. The Exchange is moving into a new, state-of-the-art Trading Floor that has been built out to reflect today's market that is heavily reliant on technology and electronic trading. As such, the Exchange proposes to modify certain Trading Floor and Equipment fees in connection with the move (the ''Floor Fees''). The Exchange proposes that the Floor Fees would be implemented on the first day of the month following the completion of the move, which is anticipated to occur on or about mid-March 2019. The Exchange is filing the proposed Floor Fees in advance of the move to provide guidance to floor OTP Holders and OTP Firms (collectively, ''OTPs'') in planning for and determining their commercial needs to operate on the new Trading Floor.

First, the Exchange proposes to revise the Fee Schedule regarding Floor Broker equipment fees. The Exchange proposes to delete reference to ''Floor Broker Order Capture Devices,'' which refer to Exchange-provided hardware that Floor Brokers may use on the Trading Floor. Currently, not all Floor Brokers use the Exchange-provided devices, as some firms have chosen to use their own computers, *i.e.,* firm-provided devices. Regardless of whether a Floor Broker uses an Exchange-provided or firm-provided device, Floor Brokers access the Exchange using the same software on such devices. On the new Trading Floor, Floor Broker firms will use their own devices that they will purchase or have already purchased themselves. Because the Exchange will no longer provide this hardware device to Floor Brokers, the Exchange proposes to delete reference to the associated fee for such devices from the Fee Schedule. Given the removal of reference to the Floor Broker Order Capture Device, the Exchange proposes to remove reference to the ''Pass Through'' market data fees associated with such devices. The Exchange proposes that market data fees incurred by Floor Brokers will continue to be passed through as they are today, only now these fees will be addressed under the existing line item for ''Wire Services,'' which modification would streamline the Fee Schedule.

The Exchange also proposes to delete an obsolete reference to the ''Trade Match Terminal Fee,'' which refers to a fee that is no longer charged (or incurred) because, as a result of advances in technology, a separate ''terminal'' is no longer needed to transmit information to clearing. The Exchange notes that this deletion is a ''clean up'' change and (unlike the balance of the changes) is not tied to the relocation. Finally, given the relocation, the Exchange proposes to delete as obsolete reference to the ''Vendor Equipment Room Cabinet Fee,'' which refers to charges for equipment stored in a room adjacent to the current Trading Floor, which will not exist on the new Trading Floor.

Next, the Exchange proposes to modify the way it charges for Floor space utilized by Floor Brokers and Market Makers to reflect the business needs and preferences of these market participants. Floor Brokers utilize their Floor space (''Floor Booth'') akin to private office space where employees of the same firm communicate with customers, receive orders, and coordinate covering the Floor to announce such orders at designated Trading Crowds. Currently, Floor Brokers may combine multiple, contiguous ''Booths'' into a single office space. By contrast, Market Makers operate at the point of sale, which necessitates that their Floor space (each, a ''Podium'') be integrated in designated Trading Crowd locations. Because Market Maker Podia are integrated in the Trading Crowd, the more physical space occupied by a single Market Making firm (*i.e.,* multiple Podia) in a given Trading Crowd means less physical space for other Market Makers to participate in the same Crowd. Thus, the Exchange proposes to revise its Fee Schedule to charge participants in a manner that reflects this reality and to encourage the efficient use of space by these participants.

The Exchange currently charges each Floor Broker $350 per Floor Booth and (as noted above) firms may opt to pay for and combine several Booths into a single Floor space. On the new Trading Floor, the Exchange proposes to enable Floor Brokers to specify the amount of space needed for their business and to charge for the amount utilized (at a monthly rate of $80 per linear foot). The Exchange believes this pricing would offer flexibility to Floor Broker firms to customize the precise amount of work space needed. The Exchange proposes to modify the Fee Schedule to reflect this new Floor Booth pricing method.

Further, the Exchange proposes to modify the way it charges for Floor space utilized by Market Makers. Currently, the Exchange charges $90 per month per Market Maker Podium, but the size of a ''Podium'' is not standardized and Market Makers have not been restricted in the amount of space that they use. Also, the Podium fee currently covers only the desk space utilized. Market Makers currently supply their own furniture and equipment, including monitors and there is no uniformity in size or number of the monitors utilized. In the new location, the Exchange proposes to offer workspaces that more efficiently serve Floor participants. To that end, on the new Trading Floor, the Market Maker Podia available in each Trading Crowd are designed to accommodate all Market Makers that want to join that Trading Crowd. As proposed, each Podium will come equipped with a desk, chair, computer keyboard and mouse, as well as four standard monitors (including set up/mounting apparatus to support the same).

The Exchange proposes to implement fees that align with the standardized podia that will be available on the new Trading Floor. The proposed fee structure is designed to encourage the efficient use and allocation of space to Market Makers conducting business on the Trading Floor. Further, to reduce the potential for a single Market Making firm to use more podia space than needed in a Trading Crowd, the Exchange proposes to scale the per Podium fees as follows:

First Podium: $200 per month;

Second Podium: $400 per month;

Third Podium: $800 each per month; and

Fourth Podium: $1,600 each per month.

As proposed, on the new Trading Floor, only Market Makers with an active OTP will be assigned a Market Maker podium in a Trading Crowd (*i.e.,* Market Makers that have only a Reserve OTP are ineligible for podia). Market Makers with an active OTP utilize the Podia to manage their electronic quotes as well as to maintain a presence in the Trading Crowd to respond to a call for a market. Because Reserve OTPs are not active on a trading permit, they cannot respond to a call for market, and therefore do not need to be present in the Trading Crowd.

As noted above, each Podium comes equipped with four standard monitors (included in the cost), but Market Makers may request up to two additional monitors per stand-alone Podium for a monthly surcharge of $100.[4] In addition, Market Makers will have the option to upgrade the standard-size monitors (provided by the Exchange) to a large or extra-large monitor for a one-time surcharge of $200 or $300, respectively. In addition, to prevent Market Makers from monopolizing Trading Floor space, the number of podia and monitors will be limited. As proposed, each OTP acting as a Market Maker on the Trading Floor may utilize no more than four podia and each such OTP in a given Trading Crowd may utilize no more than two podia, or eight monitors.

The proposed cost structure is designed to provide some flexibility for Market Makers to set up their Floor space consistent with their own business model, while encouraging the fair and efficient use of space. Specifically, the proposed cost structure allows a Market Maker to utilize only one Podium but to pay for additional monitors as opposed to paying for two Podia with the standard monitor configuration. For example, as proposed, it would cost $600 for two Podia, each equipped with four monitors (for a total of eight monitors) whereas it would cost $300 for one Podium that is configured to include six monitors (*i.e.,* $200 for first podium plus $100 surcharge for two additional monitors).

Further, the Exchange anticipates that, with the new standardized work space, some OTPs may require modification to a Floor Booth or Podium to accommodate firm-specific needs. Such modifications or alterations may be made upon prior approval by Exchange facilities staff. The Exchange proposes that the OTP be responsible for all related costs for such modifications or alterations, including the costs for Exchange staff prior approval and for restoration to standard configuration upon vacating or relocating (elsewhere on the Floor) the affected Floor Booth or Podium. The Exchange proposes that Exchange staff time associated with such modifications or alterations be charged at a rate of $200 per hour. The Exchange believes these proposed charges, including for staff time, further encourage the deliberate and efficient use of Exchange facilities and resources. These proposed charges are also intended to take into consideration that the alterations or modifications may require lengthy and expensive supervision of code or structural approvals by experienced Exchange staff.

Regarding telephone service, the Exchange proposes to continue to charge $14 per month, per telephone line utilized by each Floor participant, which can be used to send facsimiles only. However, the Exchange will no longer be providing telephones for Floor organizations and therefore proposes to remove these fees from the Fee Schedule as obsolete. Instead, Floor participants that would like to have landline telephone service have the option to subscribe directly with the Exchange's exclusive service provider.

Finally, to protect the integrity of Exchange systems and networks, the Exchange proposes to be the sole internet Service Provider (''ISP'') permitted on Exchange premises. As such, the Exchange proposes a new monthly ISP Connection Fee of $150 per connection, capped at $750 per month. Thus, an OTP that utilizes more than five will still only be charged $750 per month. The ISP connections may be used for either data or for voice-over-internet-protocol (''VOIP'') connections.

2. Statutory Basis

The Exchange believes that the proposed fee change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the Exchange believes that all market participants will benefit from the relocation to the new Trading Floor because it will be a state-of-the-art trading facility that has been built out to reflect today's market that is heavily reliant on technology and electronic trading.

The Exchange also believes that the proposed fee change is consistent with Section 6(b)(4) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange believes the proposal to modify Floor Fees in connection with the Exchange moving the Trading Floor to a new location is reasonable, equitable and not unfairly discriminatory for the following reasons. First, the Exchange is relocating its Trading Floor to a new, state-of-the-art trading Floor that has been built out to reflect today's market that is heavily reliant on technology and electronic trading. The proposed fee changes are designed to enable the Exchange to align its Floor Fees with the cost of the new Trading Floor, including the costs of transferring operations and technology to the new location and ongoing support for the new technology underlying the new Trading Floor.

Second, the proposed Floor Fees are designed to reflect the business practices and needs of Floor Participants, while encouraging efficient use of space by all. Floor Brokers utilize Floor Booths as private office space, out of which they communicate with customers, take orders, and coordinate covering the Floor to announce such orders at assigned Trading Crowds. Market Makers operate out of their Podia at the point of sale and occupy space within the Trading Crowd. Thus, the Exchange believes the proposed distinctions in how it proposes to charge Floor Brokers and Market Makers for space utilized is reasonable and equitable because it is designed to reflect the differing businesses of these participants while offering such participants some flexibility in setting up their Floor space consistent with their particular business models/

[4] The Exchange will only allow the additional monitors if the Market Maker does not have a second (or third, etc.) Podium adjacent to its first Podium. This is to avoid too many monitors in one area that may obstruct Floor participants' line of sight.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(4).

commercial preference. For example, OTPs acting as Market Makers are not required to upgrade their equipment (or modify their work space), but the Exchange is providing that option as an accommodation. Further, the proposed Floor Fees are not unfairly discriminatory, as they are applied equally to all similarly situated Floor market participants.

The proposal to limit Market Maker Podia use to Market Makers with an active OTP is likewise reasonable, equitable and not unfairly discriminatory because such participants utilize the Podia to manage their electronic quotes as well as to maintain a presence in the Trading Crowd to respond to a call for a market. Reserve OTPs are not unfairly burdened by this restriction because such OTPs are not active on a trading permit, cannot respond to a call for market, and therefore do not need to be present in the Trading Crowd. Given these distinctions the Exchange believes this limitation represents a fair and efficient use of Exchange resources.

The Exchange believes the proposal to charge for staff time to supervise modifications or alterations to Floor Booths or Podia is reasonable, equitable and not unfairly discriminatory because it is designed to encourage the deliberate and efficient use of Exchange facilities and resources by all Floor participants. These proposed charges are designed to take into consideration that the alterations or modifications may require lengthy and expensive supervision of code or structural approvals by experienced Exchange staff.

The Exchange believes the proposed ISP Connection fee, and the applicable fee cap, is reasonable, equitable and not unfairly discriminatory as the fee is consistent with charges for similar services on other options exchanges. For example, NYSE American Options charges (''NYSE American'') a monthly Transport Charge of $150 (the same as the proposed ISP Connection fee), capped at $500 per Floor Broker organization (slightly lower than the proposed $750 cap).[8] The Exchange believes it is reasonable to charge a slightly higher fee for these costs than is charged on NYSE American to account for the cost of the new Trading Floor, including the costs of transferring operations and technology to the new location and ongoing support for the new technology underlying the new Trading Floor.

The Exchange also believes the proposed Floor Fees are reasonable and equitable because OTPs choose whether to participate on the Exchange solely through electronic means, or with a presence on the Trading Floor. The proposed Floor Fees are designed to encourage participants to conduct business on the Trading Floor, which may be on behalf of any market participant. In addition, orders brought to the Trading Floor benefit all market participants by providing more trading opportunities, which attracts Market Makers, Customers and other participants. An increase in activity, in turn, facilitates tighter spreads, which may result in a corresponding increase in order flow from all market participants.

To the extent that the Exchange will no longer be offering certain equipment or services, the removal of such fees from the Fee Schedule is reasonable as it would add clarity and transparency to the Fee Schedule to the benefit of all participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[9] the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed Floor Fees are designed to address the relocation of the Exchange Trading Floor, not to address any competitive issues. The Exchange believes that the proposed fees will encourage fair and efficient use of the new Trading Floor space. If this result is achieved, the proposed fees may increase both inter-market and intra-market competition by incenting off-Floor participants to direct their orders to the Exchange, which would enhance the quality of quoting and may increase the volume of contracts traded on the Exchange.

The Exchange does not believe that the proposed change will impair the ability of any market participants or competing order execution venues to maintain their competitive standing in the financial markets. Further, the proposed Floor Fees would be applied to all similarly situated participants (*i.e.,* Floor Brokers and on-floor Market Makers), and, as such, the proposed change would not impose a disparate burden on competition either among or between classes of market participants. Further, the proposal to limit Market Maker podia use to Market Makers with an active OTP is likewise reasonable, equitable and not unfairly discriminatory because such participants utilize the podia to manage their electronic quotes as well as to maintain a presence in the Trading Crowd to respond to a call for a market. Reserve OTPs are not unfairly burdened by this restriction because such OTPs are not active on a trading permit, cannot respond to a call for market, and therefore do not need to be present in the Trading Crowd. Given these distinctions the Exchange believes this limitation represents a fair and efficient use of Exchange resources.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

[8] *See* NYSE American Options fee schedule, Section IV, Monthly Floor Communication, Connectivity, Equipment and Booth or Podia Fees, *available at: https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf.*

[9] 15 U.S.C. 78f(b)(8).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] [sic] 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.

under Section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–2018–80 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2018–80. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2018–80 and should be submitted on or before January 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Brent J. Fields,

Secretary.

[FR Doc. 2018–27988 Filed 12–26–18; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84854; File No. SR–NYSE–2018–61]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Section 902.02 of the NYSE Listed Company Manual To Modify the Investment Management Entity Group Fee Discount

December 19, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 7, 2018, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 902.02 of the NYSE Listed Company Manual (the ''Manual'') to modify the Investment Management Entity Group Fee Discount. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 902.02 of the Manual provides for a fee discount applicable only to an Investment Management Entity [4] and its Eligible Portfolio Companies [5] (the ''Investment Management Entity Group Fee Discount''). The Investment Management Entity Group Fee Discount is subject to a maximum aggregate discount of $500,000 in any given year (the ''Maximum Discount'') distributed among the Investment Management Entity and each of its Eligible Portfolio Companies in proportion to their respective eligible fee obligations in such year.[6] In addition to benefiting from the Investment Management Entity Group Fee Discount, the Investment Management Entity and each of the Eligible Portfolio Companies continue to have fees capped by the applicable company's individual Total Maximum Fee of $500,000.

Currently, the Investment Management Entity Group Fee Discount is as follows:

- A 30% discount on all eligible fees of an Investment Management Entity and each of its Eligible Portfolio Companies in any year in which the Investment Management Entity has two Eligible Portfolio Companies, subject to the Maximum Discount.
- a 50% discount on all eligible fees of an Investment Management Entity and each of its Eligible Portfolio Companies in any year in which the Investment Management Entity has three or more Eligible Portfolio Companies, subject to the Maximum Discount.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] An Investment Management Entity is a listed company that manages private investment vehicles not registered under the Investment Company Act.

[5] An ''Eligible Portfolio Company'' of an Investment Management Entity is a company in which the Investment Management Entity has owned at least 20% of the common stock on a continuous basis since prior to that company's initial listing.

[6] The current rule provides that, for years prior to calendar 2019, the Investment Management Entity Group Fee Discount is based on both annual and listing fees paid in the applicable year and, for calendar 2019 and subsequent years, the discount is based only on annual fees.

The Exchange proposes to modify the Investment Management Entity Group Fee Discount effective January 1, 2019. For calendar 2019 and all calendar years thereafter, the Investment Management Entity Group Fee Discount will be a 50% discount on all annual fees of an Investment Management Entity and each of its Eligible Portfolio Companies in any year in which the Investment Management Entity has one or more Eligible Portfolio Companies, subject to the Maximum Discount.

The Exchange established the Investment Management Entity Group Fee Discount [7] because, in the Exchange's experience, an Investment Management Entity puts high-quality and experienced management teams in place at its portfolio companies prior to listing and the Investment Management Entity continues to provide significant support to those companies after listing. Consequently, those companies require lower levels of support from the NYSE's business and Regulation groups to assist them in navigating the initial and continued listing process and the Exchange devotes significantly smaller staff resources to those companies on average than to the typical newly-listed company that is not controlled prior to listing by an Investment Management Entity. The Exchange believed that it was reasonable to share some of the cost savings derived from its relationship with an Investment Management Entity with the Investment Management Entity and its listed portfolio companies.

The Exchange now believes that it is appropriate to adjust the discount by providing it where there is a single listed portfolio company and to provide the discount at a fixed 50% level (rather than the current 30% and 50% tiers based on the number of Eligible Portfolio Companies), because the Exchange has observed that the reduction in work load and expense it experiences due to the relationship of an Eligible Portfolio Company to the Investment Management Entity are proportionally the same with respect to each Eligible Portfolio Company regardless of how many other Eligible Portfolio Companies there may be. Accordingly, the Exchange believes it is reasonable to provide a single tier discount without regard to the number of Eligible Portfolio Companies an Investment Management Entity may have. The Exchange also notes that the proposed amendment is substantially similar to a fee discount provided by NASDAQ [8] and therefore will enable the Exchange to better compete for the listing of eligible companies.

The Exchange does not expect the reduction in revenues associated with the proposed fee change to be substantial or to have any effect on its ability to appropriately fund its regulatory program.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(4) [10] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend the Investment Management Entity Group Discount as set forth in this proposal, as the amended discount provision better reflects the benefits the Exchange derives from the relationship between and Investment Management Entity and its Eligible Portfolio Companies, as described in more detail above.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to ensure that the fees charged by the Exchange accurately reflect the services provided and benefits realized by listed companies. The market for listing services is extremely competitive. Each listing exchange has a different fee schedule that applies to issuers seeking to list securities on its exchange. Issuers have the option to list their securities on these alternative venues based on the fees charged and the value provided by each listing. Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed fee changes impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [12] of the Act and subparagraph (f)(2) of Rule 19b–4 [13] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [14] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2018–61 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.

[7] *See* Securities Exchange Act Release No. 79582 (December 16, 2016), 81 FR 93976 (December 22, 2016) (SR–NYSE–2016–70).

[8] *See* Note 14 *infra.* [sic]

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR–NYSE–2018–61. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2018–61 and should be submitted on or before January 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Brent J. Fields,

Secretary.

[FR Doc. 2018–28006 Filed 12–26–18; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84857; File No. SR–NYSEARCA–2018–97]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change of Amendments to Delete References to the Term "Allied Person" From Exchange Rules

December 19, 2018.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19bd–4 thereunder,[3] notice is hereby given that, on December 18, 2018, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes amendments to delete references to the term ''allied person'' from Exchange rules. The proposed rule change is intended to harmonize Exchange rules with the rules of the Exchange's affiliates and the Financial Regulatory Authority, Inc. (''FINRA'') and thus promote consistency within the securities industry. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to delete the term ''allied person'' from its rules. The ''allied person'' designation is a regulatory category based on a person's control of an OTP Firm or ETP Holder.[4] The Exchange's affiliate New York Stock Exchange LLC (the ''NYSE'') no longer has allied members.[5] More recently, another affiliate of the Exchange, NYSE American LLC (''NYSE American''), deleted the term ''allied member'' from its rules.[6] FINRA has also deleted the term from its Incorporated NYSE Rules.[7] In order to harmonize with the rules of the NYSE, NYSE American and FINRA, the Exchange accordingly proposes to delete reference to ''allied person'' from the following Exchange rules: Rule 1.1(c), Rule 1.1(qq), Rule 1.1(aaa), Rule 2.14, Rule 2.21, Rule 2.23, Commentary .01, Rule 2.24, Commentary .01, Rule 3.2, Rule 4.2–O(a), Rule 4.2–O(b), Rule 4.2–O(e), Rule 4.2–O(g), Rule 4.2–O(h), Rule 4.16–O(b), Rule 4.16–O(c), Rule 4.16–O(d), Rule 6.2–O, Rule 9.1–O(c), Rule 9.2–O(c), Commentary .01, Rule 9.3–O(b), Rule 9.6–O(a), Rule 4.3–E(a), Rule 4.3–E(b), Rule 4.3–E(e), Rule 4.3–E(h), Rule 4.3–E(i), Rule 4.15–E(b), Rule 4.15–E(c), Rule 4.15–E(d), Rule 7.3–E, Rule 9.1–E(c), Rule 9.2–E(c), Commentary .01, Rule 9.3–E(b) and Rule 9.6–E(a). The Exchange also proposes to delete Rule 1.1(b), which defines the term allied person, in its entirety.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[8] in general, and furthers the objectives of Section 6(b)(5),[9] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change will harmonize its rules with NYSE, NYSE American and FINRA rules, thus assisting ETP Holders, OTP Holders and OTP Firms in complying with those rules and thereby enhancing regulatory efficiency. In addition, the Exchange believes that providing greater harmonization between the Exchange and NYSE, NYSE American and FINRA rules would result

[4] *See* current Rule 1.1(b), defining Allied Person.

[5] *See* Securities Exchange Act Release No. 58549 (September 15, 2008), 73 FR 54444 (September 19, 2008) (SR–NYSE–2008–80) (Notice).

[6] *See* Securities Exchange Act Release No. 84724 (December 6, 2018), 83 FR 63960 (December 12, 2018) (SR–NYSEAmer–2018–54) (Notice).

[7] *See* Securities Exchange Act Release No. 58533 (September 12, 2008), 73 FR 54652 (September 22, 2008) (SR–FINRA–2008–036) (Order).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

in less burdensome and more efficient regulatory compliance for ETP Holders, OTP Holders and OTP Firms that are subject to regulatory examination and oversight, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, consistent with the objectives of Section 6(b)(5) of the Act. Additionally, the Exchange believes that deletion of the term ''allied person'' is consistent with the Act because the Exchange no longer recognizes allied person as a registration category and no ETP Holder, OTP Holder or OTP Firm is currently registered as an allied person. Accordingly, deletion of the term from the Exchange's rules will provide clarity and remove any potential confusion among potential ETP Holders, OTP Holders or OTP Firms as to the category of memberships and registration requirements on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments are intended to promote clarity to the Exchange's rules applicable to ETP Holders, OTP Holders and OTP Firms and their registered personnel. Further, the proposed changes would apply to all ETP Holders, OTP Holders and OTP Firms in the same manner and therefore would not impose any unnecessary intramarket burdens.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19bd–4(f)(6)(iii) thereunder.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2018–97 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2018–97. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2018–97 and should be submitted on or before January 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Brent J. Fields,

Secretary.

[FR Doc. 2018–28004 Filed 12–26–18; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84683; File No. SR–CboeEDGA–2018–019]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Eliminate the Liquidity Swap Component of the Discretionary Range Instruction

November 29, 2018.

Correction

In notice document 2018–26399 beginning on page 62933 in the issue of Thursday, December 6, 2018, make the following correction:

On page 62936, in the second column, the last line of the first full paragraph ''December 26, 2018'' should read ''December 27, 2018''.

[FR Doc. C1–2018–26399 Filed 12–26–18; 8:45 am]

BILLING CODE 1301–00–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84859; File No. SR–ISE–2018–98]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Makers Trading in Non-Appointed Options Classes

December 19, 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 December 12, 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 amend Rule 805(b) relating to Market Makers [3] trading in non-appointed options classes.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Rule 100(a)(32).

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 805(b) relating to Market Makers trading in non-appointed options classes.

Rule 805(b) presently governs the submission of orders by Market Makers in non-appointed options classes. Subparagraphs (b)(2) and (b)(3) place limitations on the overall percentage of executions that can occur in the non-appointed options classes. Specifically, subparagraph (b)(2) limits a Competitive Market Maker's (''CMM'') total number of contracts executed in non-appointed options classes to 25% of the CMM's total number of contracts executed in its appointed options classes and with respect to which it was quoting pursuant to Rule 804(e)(1), and subparagraph (b)(3) limits a Primary Market Maker's (''PMM'') total number of contracts executed in non-appointed options classes to 10% of the PMM's total number of contracts executed in its appointed classes.

The Exchange now proposes in subparagraph (b)(3) to increase the overall percentage of executions that can occur in a PMM's non-appointed options classes from 10% to 25% to align with the CMM allowance as well as other options exchanges, including its affiliated options market, BX Options.[4] The Exchange adopted the 10% volume limitation for PMMs as part of its application to be registered as a national securities exchange, and initially restricted PMMs in this manner because as a nascent exchange, it sought to promote PMM activity in their appointed options classes in order to encourage liquidity on the Exchange. Since then, there has been a proliferation of options classes added to the Exchange for trading, and the Exchange therefore believes that the 10% limitation is restrictive in light of the current environment. The Exchange does not believe that its proposal will adversely impact the quality of the Exchange's market or lead to a material decrease in liquidity. As noted above, other options exchanges are operating today with similar or more generous allowances for its market makers without sacrificing market quality, and the Exchange believes that its proposed increase will likewise not result in a decrease of market quality.[5] Furthermore, Market Makers and in particular, PMMs, will continue to be subject to the highest standard applicable on the Exchange to provide liquidity. For instance as set forth in Rule 804(e)(2), PMMs are held to the highest quoting standards on the Exchange. Specifically, PMMs are required to provide two-sided quotations in 90% of the cumulative number of seconds for which that PMM's appointed options class is open for trading.[6] Furthermore, PMMs are required to quote in certain options series of their appointed classes that are excluded from the quoting requirements of CMMs (*i.e.,* Quarterly Options Series, Adjusted Options Series, and long-term options). In addition, the Exchange can announce a higher percentage than the current 90% quoting requirement if doing so would be in the interest of a fair and orderly market.[7] PMMs are also required to enter quotes in their appointed options classes and participate in the Opening Process.[8] Accordingly, the Exchange believes that the foregoing obligations will continue to ensure that PMMs will provide liquidity in their appointed options classes notwithstanding the proposed increase in the trading allowance in non-appointed classes.

In addition, the Exchange believes that the proposed increase in the overall percentage from 10% to 25% will bring ISE in line with other options exchanges, and permit its Market Makers to effectively compete with market makers on other options exchanges. Moreover, applying requirements that are substantially similar to other options exchanges will remove a significant compliance burden on market makers who provide liquidity across multiple options exchanges.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the

[4] BX Options Market Makers (including Lead Market Makers) can execute no more than 25% of their total volume outside of their registered options classes. *See* BX Options Rules, Chapter VII, Section 6(e). In addition, CBOE Rule 8.7, Interpretations and Policies .03 provides that 75% of a Market-Maker's total contract volume must be in classes to which the Market-Maker is appointed. Accordingly, only 25% of a CBOE Market-Maker's contract volume can be in non-appointed classes. CBOE Rule 8.7 applies equally to Lead Market-Makers and Designated Primary Market-Makers in the same manner as Market-Makers. The Exchange also notes that NYSE Arca Options does not impose a strict percentage limitation on its market makers for transacting in non-appointed classes. *See* NYSE Arca Options Rules 6.37–O(d) and 6.37B–O.

[5] *Id.*

[6] *See* Rule 804(e)(2).

[7] *See* Rule 804(e)(2). *See also* Securities Exchange Act Release No. 84580 (November 14, 2018), 83 FR 58649 (November 20, 2018) (SR–ISE–2018–90).

[8] *See* Rule 701(c)(3).

[9] 15 U.S.C. 78f(b).

objectives of Section 6(b)(5) of the Act,[10] 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. In particular, the Exchange believes that the proposed rule change promotes just and equitable principles of trade because it reduces an outdated restriction on PMMs, and simplifies the application of the rule by imposing the same 25% volume limitation on all Market Makers. The purpose of limiting the number of contracts executed in non-appointed classes to a small percentage of contracts executed in appointed classes was to encourage Market Makers to provide liquidity in their appointed classes. As discussed above, the Exchange initially adopted the 10% volume limitation for PMMs because as a nascent exchange, it sought to promote PMM activity in their appointed options classes in order to encourage liquidity on the Exchange. Since then, there has been a proliferation of options classes added to the Exchange for trading, and the Exchange therefore believes that the 10% limitation is restrictive in light of the current environment. Other options exchanges are operating today with similar or more generous allowances for its market makers without sacrificing market quality, and the Exchange therefore believes that the proposed increase will not result in a decrease of quality on its own market.[11] In addition, the Exchange believes that the heightened obligations for PMMs to participate in the Opening Process and provide intra-day quotes will continue to ensure that PMMs provide liquidity in their appointed options classes notwithstanding the proposed increase in the trading allowance in non-appointed classes.[12] As discussed above, the proposed rule change will also conform ISE's Market Maker obligations to the requirements of other options markets, which will promote the application of consistent compliance standards for market makers who provide liquidity across multiple options exchanges.

Furthermore, such volume limitations were traditionally put in place and especially important at ''floor-based'' exchanges, since market makers were limited in the number of classes in which they could physically make markets, and it was in the floor-based exchange's interest that market makers focus their market making abilities on their appointed classes.[13] Although limitations on trading in non-appointed classes may be less important on a fully electronic exchange since electronic quoting and trading systems allow market makers to make markets and provide liquidity in many more options classes than on a floor-based exchange, ISE still believes focusing its Market Makers on trading in their appointed classes is important for providing liquidity in those classes. In this respect, the Exchange believes that its proposal would continue to meet that objective because the proposed limitation for PMMs would still require that a substantial percentage (*i.e.,* 75%) of a PMM's transactions be effected in their appointed classes.

Finally, in determining to revise requirements for its Market Makers, the Exchange is mindful of the balance between the obligations and benefits provided to Market Makers. While the proposal will change obligations currently in place for Market Makers, the Exchange does not believe that these changes reduce the overall obligations applicable to Market Makers. In this respect, the Exchange still imposes many obligations on Market Makers to maintain a fair and orderly market in their appointed classes, which the Exchange believes eliminates the risk of a material decrease in liquidity.[14] In addition, Market Makers are required to abide by quoting requirements in their appointed options classes in order to maintain the status of a Market Maker, and PMMs in particular are held to the highest quoting standards on the Exchange.[15] As further discussed above, PMMs are also required to enter quotes and participate during the Opening Process, pursuant to Rule 701. Lastly, the Exchange also notes that for non-appointed options classes of Market Makers, Rule 803(d) would continue to prohibit a Market Maker from engaging in transactions for an account in which it has an interest that are disproportionate in relation to, or in derogation of, the performance of its obligations as specified in Rule 803(b) with respect to its appointed options classes. In particular, Market Makers would be prohibited from (1) individually or as a group, intentionally or unintentionally, dominating the market in options contracts of a particular class and (2) effecting purchases or sales on the Exchange except in a reasonable and orderly manner.[16] Accordingly, the proposal supports the quality of the Exchange's markets by helping to ensure that Market Makers and in particular, PMMs, will continue to be obligated to and have incentives to provide liquidity in their appointed classes. Ultimately, the benefit that the proposed rule change confers upon PMMs by increasing the percentage of contracts executed in the PMM's non-appointed classes from 10% to 25% is offset by the PMM's continued responsibilities to provide significant liquidity to the market to the benefit of market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that its proposal will impose an undue burden on intra-market competition because it will align the percentage limitations for both PMMs and CMMs to 25% of their non-appointed classes, and will treat all Market Makers uniformly in this respect. In terms of inter-market competition, the Exchange operates in a highly competitive market in which market participants can send order flow to competing exchanges if they deem trading practices at a particular exchange to be onerous or cumbersome. The proposal to increase the limitation on the percentage of contracts executed in a PMM's non-appointed classes from 10% to 25% will serve to better align the Exchange's requirements with those in place at other options exchanges, which enhances the ability of its Market Makers to effectively compete with market makers on other options exchanges.[17]

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

[10] 15 U.S.C. 78f(b)(5).

[11] *See* note 4 above.

[12] *See* notes 6 − 8 above, with accompanying text.

[13] *See e.g.,* Securities Exchange Act Release No. 35786 (May 31, 1995), 60 FR 30122 (June 7, 1995) (SR–Amex–94–51) (order approving proposal by American Stock Exchange, Inc. relating to the in person trading volume requirement for registered options traders).

[14] *See* Rule 803(b)(1)—(4).

[15] *See* notes 6 and 7 above, with accompanying text.

[16] *See* Rule 803(d)(1) and (2).

[17] *See* note 4 above.

the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[20] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[21] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. ISE has requested that the Commission waive the 30-day operative delay contained in Rule 19b–4(f)(6)(iii). The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The proposal raises no novel issues. As the Exchange notes, other options markets require their market makers to a 25% restriction for trading in non-appointed classes. Further, pursuant to the proposal, PMMs' obligation to their appointed classes would remain unchanged. Accordingly, the Commission waives the operative delay and designates the proposed rule change operative upon filing.[22]

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–ISE–2018–98 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–2018–98. 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–2018–98 and should be submitted on or before January 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Brent J. Fields,

Secretary.

[FR Doc. 2018–28003 Filed 12–26–18; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] 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).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84855; File No. SR–FINRA–2018–041]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Technical Revisions and One Minor Correction to the Supplemental Statement of Income Required To Be Filed Pursuant to FINRA Rule 4524 (Supplemental FOCUS Information)

December 19, 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 December 12, 2018, 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 and II 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 a rule change to make technical revisions and one minor correction to the Supplemental Statement of Income (''SSOI'') required to be filed pursuant to FINRA Rule 4524 (Supplemental FOCUS Information). The technical revisions would conform the SSOI with amendments to SEC Form X–17A–5 (the ''FOCUS Report'') that the SEC has adopted.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

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

FINRA Rule 4524 (Supplemental FOCUS Information) requires each member, as FINRA shall designate, to file such additional financial or operational schedules or reports as FINRA may deem necessary or appropriate for the protection of investors or in the public interest as a supplement to filing FOCUS reports. FINRA implemented the SSOI pursuant to Rule 4524 in 2012.[4]

On August 17, 2018, the SEC adopted amendments that simplify and update, among other rules and forms, certain of the FOCUS reporting requirements for brokers and dealers and make changes to the annual audit requirements.[5] The SEC's amendments update Parts II, IIA, and IIB of the FOCUS Report to reflect updated U.S. Generally Accepted Accounting Principles (''U.S. GAAP'') requirements.[6] More specifically, the amendments revise the Statement of Financial Condition and the Statement of Income in the FOCUS Reports to include new line items added for the reporting of comprehensive income or loss, including other comprehensive income and accumulated other comprehensive income or loss. The amendments update line items to eliminate references to extraordinary gains or losses and the cumulative effect of changes in accounting principles.

FINRA is proposing technical revisions that would conform the SSOI with the SEC's amendments to the FOCUS Report. FINRA believes that conforming the SSOI with the FOCUS Report is consistent with the Commission's goal of eliminating redundant, duplicative, overlapping, outdated, or superseded requirements,[7] without significantly altering the information available to regulators. Because the SSOI is intended to provide more detailed information about a member's revenues and expenses reported on the FOCUS Report, making the two forms consistent would enable members to file the same information on both forms with respect to comprehensive income, extraordinary items, and the effect of changes in accounting principles. As such, the proposed revisions should create clarity and reduce burdens for members, thereby assisting members in their financial reporting obligations and facilitating investor protection. Specifically, FINRA proposes to make the following changes to the SSOI:[8]

- Delete SSOI line 14224 (''Extraordinary gains (losses)'') and SSOI line 14225 (''Cumulative effect of changes in accounting principles'') to conform with the elimination of references to extraordinary gains or losses and to the cumulative effect of changes in accounting principles in the FOCUS Report;
- delete the phrase ''and extraordinary item'' from SSOI line 14230 (''Net income (loss) after Federal income taxes and extraordinary item''), again to conform with the elimination of references to extraordinary gains or losses in the FOCUS Report;
- add new SSOI line 14226 (''Other comprehensive income (loss)'') and new SSOI line 14228 (''Comprehensive income (loss)'') to conform with the addition of correspondingly titled new lines in the FOCUS Report;
- amend the title of Section 19 of the SSOI, and the associated header that precedes Section 19, to read ''Net Income/Comprehensive Income'' to conform with and correspond to the reporting of comprehensive income in the FOCUS Report; and
- amend the General Instructions and the Specific Instructions to the SSOI to conform with the above deletions, additions and amendments, as appropriate, with respect to SSOI lines 14224, 14225, 14226, 14228 and 14230, and the header to and title of Section 19.

In addition, FINRA proposes to make a minor correction to Section 3 (Revenue from Sale of Insurance Based Products) under the Specific Instructions to the SSOI.[9]

FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing that the implementation date of the proposed rule change will be March 31, 2019, for SSOI filings that report on the period January 1 through March 31, 2019, and are due by April 26, 2019. Thus, all SSOIs filed on or after March 31, 2019 would reflect the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] 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 would further the purposes of the Act because, as discussed in Section II.A.1. of this filing, consistent with the Commission's goal of eliminating redundant, duplicative, overlapping, outdated, or superseded requirements, without significantly altering the information available to regulators, the proposed rule change, by conforming the SSOI with the FOCUS Report, would create clarity and reduce burdens for members, thereby assisting members in their financial reporting obligations and facilitating investor protection.

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

[4] *See Regulatory Notice* 12–11 (Supplemental FOCUS Information) (February 2012) (announcing the SEC's approval of Rule 4524 and the SSOI). *See also* Securities Exchange Act Release No. 66364 (February 9, 2012), 77 FR 8938 (February 15, 2012) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, Adopting FINRA Rule 4524 (Supplemental FOCUS Information) and Proposed Supplementary Schedule to the Statement of Income (Loss) Page of FOCUS Reports; File No. SR–FINRA–2011–064) and Securities Exchange Act Release No. 67257 (June 26, 2012), 77 FR 39313 (July 2, 2012) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Non-Substantive Technical Changes to the Supplemental Statement of Income Required To Be Filed Pursuant to FINRA Rule 4524 (Supplemental FOCUS Information); File No. SR–FINRA–2012–033).

[5] *See* Securities Exchange Act Release No. 83875 (August 17, 2018), 83 FR 50148 (October 4, 2018) (Final Rule: Disclosure Update and Simplification) (the SEC's Adopting Release). To facilitate members in their financial reporting obligations, FINRA issued *Regulatory Notice* 18–38 to announce updates to the FINRA eFOCUS System designed to correspond with the new FOCUS requirements and to inform members of the effective date of the new requirements pursuant to specified relief granted by the staff of the SEC Division of Trading and Markets. *See Regulatory Notice* 18–38 (Financial Reporting Requirements) (November 2018); *see also* letter from Michael A. Macchiaroli, Associate Director, Division of Trading and Markets, SEC, to Ann Duguid, Senior Director, FINRA, dated (October 29, 2018).

[6] *See,* for example, the SEC's Adopting Release at 83 FR 50179, 50182 and 50183.

[7] *See* the SEC's Adopting Release at 83 FR 50150. *See also* Section 72002 of the Fixing America's Surface Transportation Act, Public Law 114–94, 29 Stat. 1312 (2015) (mandating that the SEC revise Regulation S–K to eliminate provisions that are duplicative, overlapping, outdated, or unnecessary).

[8] The SSOI as amended pursuant to the proposed rule change is included as Exhibit 3 to this filing.

[9] Specifically, FINRA proposes to delete the extra period that appears at the end of the instructions to Line 11022 (Aggregate amount if less than the greater of $5,000 or 5% of Total Revenue).

[10] 15 U.S.C. 78*o*–3(b)(6).

believes that, by conforming the SSOI with the FOCUS Report, the proposed rule change is consistent with the Commission's goal of eliminating redundant, duplicative, overlapping, outdated, or superseded requirements and does not significantly alter the information available to regulators. As such, FINRA believes the proposed rule change will create clarity and reduce burdens for members, thereby reducing burdens on the marketplace and facilitating investor protection.

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 [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [13] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that FINRA may implement the proposed rule change to more closely coincide with the effective date of the Commission's amendments to the FOCUS Report. The Commission does not believe that the proposed change presents any new or novel issues, and that making the SSOI consistent with the FOCUS Report will reduce burdens for FINRA members by enabling them to file the same information on both forms with respect to comprehensive income, extraordinary items, and the effect of changes in accounting principles, thereby assisting members in their financial reporting obligations and facilitating investor protection. Accordingly, waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[15]

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–2018–041 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2018–041. 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–2018–041 and should be submitted on or before January 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Brent J. Fields,

Secretary.

[FR Doc. 2018–28005 Filed 12–26–18; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] 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).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84866; File No. SR–CHX–2018–08]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Article 14 of the Rules of the Exchange Related to Arbitration Proceedings

December 19, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19bd–4 thereunder,[3] notice is hereby given that, on December 7, 2018, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article 14 of the rules of the Exchange (''Rules'') to adopt arbitration provisions that are substantively similar to Rule 12 of the rules of NYSE National, Inc. (''NYSE National''), a national securities

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

exchange and affiliate of CHX, and Rule 12.110 of the rules of the Investors Exchange LLC (''IEX''). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

(1) Background

The Exchange and its direct parent, CHX Holdings, Inc., were recently acquired by NYSE Group, Inc.[4] As a result of its acquisition, the Exchange became part of a corporate family including five separate registered national securities exchanges.[5] Following the acquisition, the Exchange has continued to operate as a separate self-regulatory organization and continues to have rules, membership rosters and listings distinct from the rules, membership rosters and listings of the other NYSE Group Exchanges.

As part of its ongoing post-acquisition transition, the Exchange anticipates shortly entering into a Regulatory Services Agreement (''RSA'') with the Financial Industry Regulatory Authority (''FINRA'') pursuant to which FINRA will perform certain regulatory functions of the Exchange on behalf of the Exchange, such as conducting arbitration proceedings.

To facilitate implementation of the RSA between the Exchange and FINRA, the Exchange proposes to amend its current rules related to arbitration proceedings under Article 14 to incorporate FINRA arbitration rules by reference.[6] Accordingly, the Exchange proposes to amend current Article 14 to be substantively similar to NYSE National Rule 12, as described below.

(2) Proposed Rule Change

Current Article 14 (Arbitration) provides rules related to the Exchange's arbitration program.[7] Specifically, current Article 14, Rule 1 (Arbitration of Participant Controversies) includes general provisions on the arbitration program, including the jurisdiction, how the arbitration panel is to be selected and the effect of any decision of the arbitration panel. Current Article 14, Rule 2 (Arbitration Rules) includes arbitration procedure requirements and the schedule of arbitration related fees.

Proposed Article 14, Rule 1(a) would be renamed ''Arbitration'' and incorporate by reference the Rule 12000 Series and the Rule 13000 Series of the FINRA Manual (Code of Arbitration Procedure for Customer Disputes and Code of Arbitration Procedure for Industry Disputes) (the ''FINRA Codes of Arbitration''). As proposed, definitions in the FINRA Codes of Arbitration would have the same meaning as that prescribed therein, and procedures contained in the FINRA Codes of Arbitration would have the same application as towards Exchange arbitrations.

Proposed Rule 1(b) would set forth jurisdiction and would provide that any dispute, claim, or controversy arising out of or in connection with the business of any Participant, or arising out of the employment or termination of employment of associated person(s) with any Participant may be arbitrated under this proposed Rule except that: (1) A dispute, claim, or controversy alleging employment discrimination (including a sexual harassment claim) in violation of a statute may only be arbitrated if the parties have agreed to arbitrate it after the dispute arose; and (2) any type of dispute, claim, or controversy that is not permitted to be arbitrated under the FINRA Codes of Arbitration (such as class action claims) shall not be eligible for arbitration under this proposed Rule.

Proposed Rule 1(c) would provide that the requirements of FINRA Rule 2268, which would be incorporated by reference, would apply to predispute arbitration agreements between Participants and their customers.

Proposed Rule 1(d) would provide that if any matter comes to the attention of an arbitrator during and in connection with the arbitrator's participation in a proceeding, either from the record of the proceeding or from material or communications related to the proceeding, that the arbitrator has reason to believe may constitute a violation of the Exchange's Rules or the federal securities laws, the arbitrator may initiate a referral of the matter to the Exchange for disciplinary investigation; provided, however, that any such referral should only be initiated by an arbitrator after the matter before him has been settled or otherwise disposed of, or after an award finally disposing of the matter has been rendered pursuant to Rule 12904 or 13904 (as applicable) of the FINRA Codes of Arbitration.

Proposed Rule 1(e) would provide that any Participant, or person associated with a Participant, who fails to honor an award of arbitrators appointed in accordance with this proposed Rule shall be subject to disciplinary proceedings in accordance with Article 12 (Disciplinary Matters and Trial Proceedings).

Finally, proposed Rule 1(f) would provide that the submission of any matter to arbitration under this proposed Rule shall in no way limit or preclude any right, action or determination by the Exchange which it would otherwise be authorized to adopt, administer or enforce.

Proposed Article 14, Rules 1(a)–(c), (e) and (f) are based on NYSE National Rules 12(a)–(c), (e) and (f), and proposed Article 14, Rules 1(a)–(f) are based on IEX Rules 12.110(a)–(f), with non-substantive differences to use Exchange terminology.

Because proposed Article 14, Rule 1 would set forth the Exchange's rules relating to arbitration, the Exchange proposes to delete the current rules under Article 14 in their entirety.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

[4] *See* Exchange Act Release No. 83635 (July 13, 2018), 83 FR 34182 (July 19, 2018) (SR–CHX–2018–004); *see also* Exchange Act Release No. 83303 (May 22, 2018), 83 FR 24517 (May 29, 2018) (SR–CHX–2018–004).

[5] The Exchange has four registered national securities exchange affiliates: New York Stock Exchange LLC (''NYSE''), NYSE Arca, Inc. (''NYSE Arca''), NYSE National and NYSE America LLC (''NYSE American'' and together with the Exchange, NYSE, NYSE Arca, and NYSE National, the ''NYSE Group Exchanges'').

[6] The Exchange proposes to file a request that the Commission exercise its authority under Section 36 of the Act and Rule 0–12 thereunder and grant the Exchange an exemption from the rule filing requirements of Section 19(b) of the Act for changes to Exchange rules that will be effected solely by virtue of changes to FINRA rules—including FINRA rules designated as NASD rules—that are cross-referenced in those Exchange rules. This application would address all FINRA rules that the Exchange proposes to cross reference.

[7] As of the time of this filing, there are no ongoing arbitration proceedings pursuant to current Article 14 nor has the Exchange been notified by any person of an intent to begin arbitration proceedings pursuant to current Article 14.

Section 6(b)(5) of the Exchange Act,[8] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the 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 proposed Article 14, Rule 1 relating to arbitration would remove impediments to and perfect the mechanisms of a free and open market and a national market system because it would update the Exchange's rules governing arbitration to reflect that any such arbitrations would be processed by FINRA pursuant to the FINRA Codes of Arbitration. The proposed rule is not novel as it is based on NYSE National Rule 12 and IEX Rule 12.110. The Exchange believes the proposed rule change fosters uniformity and consistency in arbitration proceedings and, as a result, would enhance the administration and operation of the arbitration process, thereby protecting investors and the public interest. The proposed rule change would therefore promote consistency among the Exchange and other SROs, such as NYSE National and IEX, and make its rules easier to navigate for the public, the Commission, and members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with the Exchange's arbitration program.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[11] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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–CHX–2018–08 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–CHX–2018–08. This file number should be included in 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 will also be available for inspection and copying at the Exchange's principal office and on its internet website at *www.nyse.com.* 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–CHX–2018–08 and should be submitted on or before January 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Brent J. Fields,

Secretary.

[FR Doc. 2018–27987 Filed 12–26–18; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(2)(B).

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 10632]

Determination by the Secretary of State Relating to Iran Sanctions

The Secretary of State determined on November 3, 2018, pursuant to Section 1245(d)(4)(D) of the National Defense Authorization Act for Fiscal Year 2012 (NDAA), (Pub. L. 112–81), as amended, that as of November 3, 2018, each of the following jurisdictions have significantly reduced the volume of their crude oil purchases from Iran: China, Greece, India, Italy, Japan, South Korea, Taiwan, and Turkey.

Kent D. Logsdon,

Principal Deputy Assistant Secretary, Bureau of Energy Resources, U.S. Department of State.

[FR Doc. 2018–28093 Filed 12–26–18; 8:45 am]

BILLING CODE 4710–AE–P

DEPARTMENT OF STATE

[Public Notice: 10643]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: "Faith and Empire: Art and Politics in Tibetan Buddhism" Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Faith and Empire: Art and Politics in Tibetan Buddhism,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Rubin Museum of Art, New York, New York, from on or about February 1, 2019, until on or about July 15, 2019, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 236–21 of December 14, 2018.

Jennifer Z. Galt,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 2018–27946 Filed 12–26–18; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36260]

Gateway Industrial Railroad, LLC—Acquisition and Operation Exemption—Avatar Corporation

Gateway Industrial Railway, LLC (GIRR), a noncarrier, has filed a verified notice of exemption [1] under 49 CFR 1150.31 to acquire and operate by agreement with Avatar Corporation approximately 2,400 feet (0.46 mile) of existing railroad right-of-way and trackage and transloading facilities in University Park, Ill. (the trackage).

According to GIRR, there are no mileposts associated with the trackage. GIRR states that the trackage is used to interchange with Canadian National Railroad. GIRR further states that Avatar Corporation ships outbound shipments via truck and rail, and that it is anticipated that GIRR will service nearby companies.

GIRR asserts that, because the trackage in question will constitute its entire line of railroad, this trackage is a line of railroad under 49 U.S.C. 10901, rather than spur, switching, or side tracks under 49 U.S.C. 10906.[2]

GIRR certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million.

GIRR states that the transaction is scheduled to be consummated on or before December 14, 2018. However, the earliest this transaction may be consummated is January 10, 2019, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than January 3, 2019 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. 36260, must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on David C. Dillon, Dillon & Nash, Ltd., 3100 Dundee Road, Suite 508, Northbrook, IL 60062.

According to GIRR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: December 20, 2018.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2018–28045 Filed 12–26–18; 8:45 am]

BILLING CODE 4915–01–P

[1] GIRR supplemented its verified notice of exemption on December 18, 2018.

[2] *See Effingham R.R.—Pet. for Declaratory Order—Constr. at Effingham, Ill.,* NOR 41986 et al. (STB served Sept. 18, 1998), *aff'd sub nom. United Transp. Union-Ill. Legislative Bd.* v. *STB,* 183 F.3d 606 (7th Cir. 1999).

SUSQUEHANNA RIVER BASIN COMMISSION

Actions Taken at December 6, 2018, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: As part of its regular business meeting held on December 6, 2018, in Harrisburg, Pennsylvania, the Commission approved or tabled the applications of certain water resources projects, and took additional actions, as set forth in the **SUPPLEMENTARY INFORMATION** below.

DATES: December 6, 2018.

ADDRESSES: Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Ava Stoops, Administrative Specialist, telephone: 717–238–0423; fax: 717–238–2436; *srbc@srbc.net.* Regular mail inquiries may be sent to the above address. See also Commission website at *www.srbc.net.*

SUPPLEMENTARY INFORMATION: In addition to the actions taken on projects identified in the summary above and the listings below, the following items were also presented or acted upon at the business meeting: (1) Adopting the independent financial audit report for fiscal year 2018; (2) approval of several grant agreements; (3) adoption of a resolution urging President Trump and the United States Congress to provide full funding for the national Groundwater and Streamflow Information Program, thereby supporting the Susquehanna Flood Forecast & Warning System; (4) adopting a resolution approving a consumptive use mitigation project located in Lancaster County, Pa. and approving the signing of a water supply agreement with the Lancaster County Solid Waste Management Authority; (5) adopting a resolution deferring updates to the *Comprehensive Plan for the Water Resources of the Susquehanna River Basin* until 2021; (6) approving a request for waiver of 18 CFR 806.31, and (7) approving a settlement with EQT Production Company for $120,000.

Project Applications Approved

The Commission approved the following project applications:

1. Project Sponsor and Facility: City of Aberdeen, Harford County, Md. Modification to extend the approval term of the surface water withdrawal approval (Docket No. 20021210) to be coterminous with a revised Maryland Department of the Environment State Water Appropriation and Use Permit for the Aberdeen Proving Ground-Aberdeen Area.

2. Project Sponsor and Facility: City of Aberdeen, Harford County, Md. Modification to extend the approval term of the consumptive use approval (Docket No. 20021210) to be coterminous with a revised Maryland Department of the Environment State Water Appropriation and Use Permit for the Aberdeen Proving Ground-Aberdeen Area.

3. Project Sponsor and Facility: Adams & Hollenbeck Waterworks, LLC (Salt Lick Creek), New Milford Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 0.720 mgd (peak day) (Docket No. 20141209).

4. Project Sponsor and Facility: ARD Operating, LLC (Pine Creek), Watson Township, Lycoming County, Pa. Application for renewal of surface water withdrawal of up to 0.720 mgd (peak day) (Docket No. 20141201).

5. Project Sponsor and Facility: Bloomfield Borough Water Authority, Bloomfield Borough, Perry County, Pa. Application for groundwater withdrawal of up to 0.055 mgd (30-day average) from Perry Village Well 2.

6. Project Sponsor and Facility: Denver Borough Authority, Denver Borough, Lancaster County, Pa. Application for renewal of groundwater withdrawal of up to 0.098 mgd (30-day average) from Well 2 (Docket No. 19890104).

7. Project Sponsor and Facility: Denver Borough Authority, Denver Borough, Lancaster County, Pa. Application for renewal of groundwater withdrawal of up to 0.092 mgd (30-day average) from Well 3 (Docket No. 19890104).

8. Project Sponsor and Facility: East Cocalico Township Authority, East Cocalico Township, Lancaster County, Pa. Application for renewal of groundwater withdrawal of up to 0.045 mgd (30-day average) from Well 10 (Docket No. 19890101).

9. Project Sponsor and Facility: East Cocalico Township Authority, East Cocalico Township, Lancaster County, Pa. Application for renewal of groundwater withdrawal of up to 0.059 mgd (30-day average) from Well 9 (Docket No. 19890101).

10. Project Sponsor and Facility: Eclipse Resources–PA, LP (Pine Creek), Gaines Township, Tioga County, Pa. Application for surface water withdrawal of up to 3.000 mgd (peak day).

11. Project Sponsor and Facility: Masonic Village at Elizabethtown, West Donegal Township, Lancaster County, Pa. Modification to increase consumptive use by an additional 0.055 mgd (peak day), for a total consumptive use of up to 0.230 mgd (peak day) (Docket No. 20030811).

12. Project Sponsor and Facility: Repsol Oil & Gas USA, LLC (Seeley Creek), Wells Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 0.750 mgd (peak day) (Docket No. 20141212).

13. Project Sponsor and Facility: Repsol Oil & Gas USA, LLC (Wyalusing Creek), Stevens Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 1.500 mgd (peak day) (Docket No. 20141213).

14. Project Sponsor and Facility: Schuylkill Energy Resources, Inc., Mahanoy Township, Schuylkill County, Pa. Application for renewal of groundwater withdrawal of up to 5.000 mgd (30-day average) from Maple Hill Mine Shaft Well (Docket No. 19870101).

15. Project Sponsor and Facility: Schuylkill Energy Resources, Inc., Mahanoy Township, Schuylkill County, Pa. Application for renewal of consumptive use of up to 2.550 mgd (peak day) (Docket No. 19870101).

16. Project Sponsor and Facility: SWEPI LP (Cowanesque River), Nelson Township, Tioga County, Pa. Application for renewal of surface water withdrawal of up to 0.533 mgd (peak day) (Docket No. 20141211).

17. Project Sponsor and Facility: Tenaska Resources, LLC (Cowanesque River), Westfield Township, Tioga County, Pa. Application for renewal of surface water withdrawal of up to 0.400 mgd (peak day) (Docket No. 20141214).

Project Applications Tabled

The Commission tabled action on the following project applications:

1. Project Sponsor: Aqua Pennsylvania, Inc. Project Facility: Beech Mountain System, Butler Township, Luzerne County, Pa. Application for groundwater withdrawal of up to 0.144 mgd (30-day average) from Beech Mountain Well 1.

2. Project Sponsor: Aqua Pennsylvania, Inc. Project Facility: Beech Mountain System, Butler Township, Luzerne County, Pa. Application for groundwater withdrawal of up to 0.144 mgd (30-day average) from Beech Mountain Well 2.

3. Project Sponsor: Aqua Pennsylvania, Inc. Project Facility: Beech Mountain System, Butler Township, Luzerne County, Pa. Application for groundwater withdrawal of up to 0.124 mgd (30-day average) from Beech Mountain Well 3.

Project Involving a Diversion

The Commission approved the following project application involving a diversion:

1. Project Sponsor and Facility: City of Aberdeen, Harford County, Md. Modification to extend the approval term of the out-of-basin diversion approval (Docket No. 20021210) to be coterminous with a revised Maryland Department of the Environment State Water Appropriation and Use Permit for the Aberdeen Proving Ground-Aberdeen Area.

Commission-Initiated Project Approval Modifications

The Commission approved the following project approval modifications:

1. Project Sponsor and Facility: Fox Hill Country Club, Exeter Borough, Luzerne County, Pa. Conforming the grandfathering amount with the forthcoming determination for a groundwater withdrawal of up to 0.125 mgd (30-day average) from the Halfway House Well (Docket No. 20020605).

2. Project Sponsor and Facility: Norwich Pharmaceuticals, Inc., Town of North Norwich, Chenango County, N.Y. Conforming the grandfathering amount with the forthcoming determination for groundwater withdrawals of up to 0.106 mgd (30-day average) from Well 1 and up to 0.082 mgd (30-day average) from Well 2 (Docket No. 20050902).

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: December 19, 2018.

Jason E. Oyler,

Acting Secretary to the Commission.

[FR Doc. 2018–27930 Filed 12–26–18; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2018–91]

Petition for Exemption; Summary of Petition Received; Department of the Air Force

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before January 16, 2019.

ADDRESSES: Send comments identified by docket number FAA–2018–0968 using any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Keira Jones, (202) 267–9677, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 19, 2018.

Brandon Roberts,

Deputy Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2018–0968.

Petitioner: Department of the Air Force.

Section(s) of 14 CFR Affected: § 61.23(b)(9)(i).

Description of Relief Sought: The petitioner seeks an exemption from § 61.23(b)(9)(i) to allow international military students conducting flight training sponsored by the Department of Defense (DoD) to use their DoD Initial Flying Class I flight physical in lieu of an FAA Class III flight physical, which is typically allowed only for U.S. Armed Forces. The petitioner notes that the Air Force Security Assistance Training Squadron seeks this relief in order to coordinate International Military Students' (IMS) attendance in training in civilian aircraft in the United States. IMS trainees receive the same DoD Class 1 flight physical as U.S. Armed Forces pilots.

[FR Doc. 2018–28099 Filed 12–26–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2018–86]

Petition for Exemption; Summary of Petition Received; Southwest Airlines Company

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before January 16, 2019.

ADDRESSES: Send comments identified by docket number FAA–2017–1007 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Keira Jones (202) 267–9677, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 20, 2018.

Brandon Roberts,

Deputy Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2017–1007.

Petitioner: Southwest Airlines Company.

Section(s) of 14 CFR Affected: § 121.139(a).

Description of Relief Sought: Southwest petitioned the FAA for an exemption from § 121.139(a) to the extent necessary to allow SWA to conduct supplemental operations without carrying parts of its manual that are not required or utilized by essential flight or cabin crews.

[FR Doc. 2018–28102 Filed 12–26–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Public Workshops for the Draft Written Re-Evaluation of the O'Hare Modernization Environmental Impact Statement for the Interim Fly Quiet Runway Rotation Plan

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Public Workshops for the Draft Written Re-Evaluation of the O'Hare Modernization Environmental Impact Statement for the Interim Fly Quiet Runway Rotation Plan.

SUMMARY: The Federal Aviation Administration (FAA) announces its intent to host Public Workshops for the Draft Written Re-Evaluation of the O'Hare Modernization Environmental Impact Statement (Draft Re-Evaluation) for the Interim Fly Quiet Runway Rotation Plan for Chicago O'Hare International Airport, Chicago, Illinois.

The Draft Re-Evaluation will identify the potential environmental impacts associated with the Proposed Interim Fly Quiet at O'Hare International Airport pursuant to the National Environmental Policy Act.

The FAA will host Public Workshops on the Draft Re-Evaluation. The Public Workshops on the Draft Re-Evaluation will be held on the following dates: Monday, February 4, 2019, at Belvedere Events and Banquets, 1170 West Devon Avenue, Elk Grove Village, Illinois 60007; Tuesday, February 5, 2019, at White Eagle Banquets, 6839 North Milwaukee Avenue, Niles, Illinois 60714; Wednesday, February 6, 2019, at Hanging Gardens Banquet Rooms, 8301 West Belmont Avenue, River Grove, Illinois 60171; and Thursday, February 7, 2019, at The Diplomat West, 681 West North Avenue, Elmhurst, Illinois 60126. Each Public Workshop will start at 2 p.m. (Central Standard Time), and registration to participate in the Public Workshops will conclude by 8 p.m. (Central Standard Time).

Representatives of FAA and its consultants will be available to provide information about the Draft Re-Evaluation. Spanish language translators will be available at the Public Workshops. If you need the assistance of a translator, other than Spanish, please call Ms. Amy Hanson at (847) 294–7354 by January 18, 2019.

The Draft Re-Evaluation will be available for review on line at (*http://www.faa.gov/airports/airport_evelopment/omp/ifq_re_eval/*) and at libraries around O'Hare International Airport. The FAA will issue a separate notice at the time the Draft Re-Evaluation is available.

Issued in Des Plaines, IL December 13, 2018.

Deb Bartell,

Manager, Chicago Airports District Office.

[FR Doc. 2018–28115 Filed 12–26–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2018–92]

Petition for Exemption; Summary of Petition Received; The Boeing Company

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before January 16, 2019.

ADDRESSES: Send comments identified by docket number FAA–2018–0839 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Keira Jones (202) 267–6109, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 19, 2018.

Brandon Roberts,

Deputy Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2018–0839.

Petitioner: The Boeing Company.

Section(s) of 14 CFR Affected: §§ 21.191(a) and (b).

Description of Relief Sought: The Boeing Company (Boeing) petitions for the purposes of Exemption from §§ 21.191(a) & (b) to allow Boeing to conduct and accept production flight test aspects while operating under experimental purpose. The production flight test profile upon successful completion is accepted by the Boeing engineering test pilot in command if the test conditions are satisfied.

[FR Doc. 2018–28100 Filed 12–26–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0073]

Agency Information Collection Activities; Revision of a Currently-Approved Information Collection Request: Annual Report of Class I and Class II Motor Carriers of Property

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995,

FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The FMCSA requests approval to revise and extend the, ''*Annual Report of Class I and Class II Motor Carriers of Property*'' ICR, OMB Control No. 2126–0032. This ICR is necessary to ensure that motor carriers comply with FMCSA's financial and operating statistics requirements at chapter III of title 49 CFR part 369 titled, ''*Reports of Motor Carriers.*'' This ICR is being revised to incorporate the OMB approved ''Annual Report of Class I Motor Carriers of Passengers'' ICR, OMB Control No. 2126–0031, for use of the MP–1 form, the ''Annual Report Form (Motor Carriers of Passengers),'' which resulted in only two respondents and one burden hour per year. Through the proposed merger of the two ICRs, FMCSA would rename the OMB Control No. 2126–0032 ICR as the ''Annual Report of Class I and Class II For-Hire Motor Carriers'' ICR. Such a merger with the new title will clarify that the combined ICR addresses both for-hire property and passenger carriers, but not private motor carriers. Additionally, after the merger of the ICRs, FMCSA intends to request withdrawal of the previously approved ''Annual Report of Class I Motor Carriers of Passengers'' ICR, OMB Control No. 2126–0031.

DATES: Please send your comments by January 28, 2019. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2018–0073. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Secrist, Office of Registration and Safety Information, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Telephone: 202–385–2367; email *jeff.secrist@dot.gov*.

SUPPLEMENTARY INFORMATION:

Title: Annual Report of Class I and Class II Motor Carriers of Property

OMB Control Number: 2126–0032.

Type of Request: Revision of a currently-approved information collection.

Respondents: Class I and Class II Motor Carriers of Property, Passengers, and Household Goods.

Estimated Number of Respondents: 98.

Estimated Time per Response: 9 hours.

Expiration Date: December 31, 2018.

Frequency of Response: Annually.

Estimated Total Annual Burden: 865 hours [96 respondents × 9 hours to complete form M–1 + 2 respondents × 0.3 = 0.6 rounded to 1 hour to complete form MP–1].

Background: Section 14123 of title 49 of the United States Code (U.S.C.) requires certain for-hire motor carriers of property, passengers, and household goods to file annual financial reports. The annual reporting program was implemented on December 24, 1938 (3 FR 3158), and it was subsequently transferred from the Interstate Commerce Commission (ICC) to the U.S. Department of Transportation's (DOT) Bureau of Transportation Statistics (BTS) on January 1, 1996. The Secretary of DOT delegated to BTS the responsibility for the program on December 17, 1996 (61 FR 68162). Annual financial reports are filed on Form M (for-hire property carriers, including household goods carriers) and Form MP–1 (for-hire passenger carriers). Responsibility for collection of the reports was transferred from BTS to FMCSA on August 17, 2004 (69 FR 51009), and the regulations were redesignated as 49 CFR part 369 on August 10, 2006 (71 FR 45740). FMCSA has continued to collect carriers' annual reports and to furnish copies of the reports requested under the Freedom of information Act. For-hire motor carriers (including interstate and intrastate) subject to the Federal Motor Carrier Safety Regulations are classified on the basis of their gross carrier operating revenues.[1]

Under the Financial and Operating Statistics (F&OS) program, FMCSA collects from Class I and Class II for-hire motor carriers balance sheet and income statement data along with information on safety needs, tonnage, mileage, employees, transportation equipment, and other related data. FMCSA may also ask carriers to respond to surveys concerning their operations. The data and information collected would be made publicly available and used by FMCSA to determine a motor carrier's compliance with the F&OS program requirements prescribed at chapter III of title of 49 CFR part 369. FMCSA has created electronic forms that may be prepared, signed electronically, and submitted to FMCSA via *https://ask.fmcsa.dot.gov/app/ask/* in accordance with the Agency's April 28, 2014 (79 FR 23306), rulemaking in RIN 2126–AB47, Electronic Signatures and Documents.

On April 24, 2018 (83 FR 17894), FMCSA published a notice in the **Federal Register** with a 60-day public comment period to announce this proposed information collection request. The agency received no comments in response to this notice.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87 on: December 20, 2018.

G. Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2018–28173 Filed 12–26–18; 8:45 am]

BILLING CODE 4910–EX–P

[1] For purposes of the Financial and Operating Statistics (F&OS) program, carriers are classified into the following three groups: (1) Class I carriers are those having annual carrier operating revenues (including interstate and intrastate) of $10 million or more after applying the revenue deflator formula as set forth in Note A of 49 CFR 369.2; and (2) Class II carriers are those having annual carrier operating revenues (including interstate and intrastate) of at least $3 million, but less than $10 million after applying the revenue deflator formula as set forth in 49 CFR 369.2.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0287]

Agency Information Collection Activities; Revision of an Approved Information Collection: Electronic Logging Device (ELD) Vendor Registration

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Federal Motor Carrier Safety Administration (FMCSA) announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. FMCSA requests approval to renew an ICR titled, ''Electronic Logging Device (ELD) Vendor Registration.'' This ICR is necessary for ELD vendors to register their ELDs with the Agency.

DATES: Please send your comments by January 28, 2019. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2018–0287. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mike Huntley, Vehicle and Roadside Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, 6th Floor, West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Telephone: 202–366–9209; Email Address: *michael.huntley@dot.gov.* Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Title: Electronic Logging Device (ELD) Vendor Registration.

OMB Control Number: 2126–0062.

Type of Request: Renewal of a currently approved information collection.

Respondents: ELD vendors.

Estimated Number of Respondents: 224.

Estimated Time per Response: 15 minutes.

Expiration Date: December 31, 2018.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 336 hours [224 respondents × 2 devices per respondent × 3 updates per device × 15 minutes per response].

Background

On December 16, 2015, FMCSA published a final rule titled ''Electronic Logging Devices and Hours of Service Supporting Documents,'' (80 FR 78292) that established minimum performance and design standards for hours-of-service (HOS) ELDs; requirements for the mandatory use of these devices by drivers currently required to prepare HOS records of duty status (RODS); requirements concerning HOS supporting documents; and measures to address concerns about harassment resulting from the mandatory use of ELDs.

To ensure consistency among ELD vendors and devices, detailed functional specifications were published as part of the December 2015 final rule. Each ELD vendor developing an ELD technology must register online at a secure FMCSA website where the ELD provider can securely certify that its ELD is compliant with the functional specifications. Each ELD vendor must certify that each ELD model and version has been sufficiently tested to meet the functional requirements in the rule under the conditions in which the ELD would be used.

ELD vendors must self-certify and register their devices with FMCSA online via Form MCSA–5893, ''Electronic Logging Device (ELD) Vendor Registration and Certification.'' FMCSA expects 100% of respondents to submit their information electronically. Once completed, FMCSA issues a unique identification number that the ELD vendor will embed in their device(s). FMCSA maintains a list on its website of the current ELD vendors and devices that have been certified (by the vendors) to meet the functional specifications. The information is necessary for fleets and drivers to easily find a compliant ELD for their use in complying with the FMCSA regulation requiring the use of ELDs.

On September 17, 2018, FMCSA published a notice in the **Federal Register** with a 60-day public comment period to announce this request to renew the information collection (83 FR 46997). The Agency received two comments in response to the notice.

One commenter noted general support for the ELD registration requirements. The second commenter, Garmin International, Inc., requested that FMCSA: (1) Include the data transfer methods supported by each ELD in the Agency's online list of current ELD vendors and devices that have been certified (by the vendors) to meet the functional specifications; and (2) refer inspectors to the Agency's online list for information regarding data transfer methods supported by ELDs and the latest compliant software versions. While neither of these impact the information collection, FMCSA notes that: (1) The Agency is in the process of updating the list of certified ELDs on its website to include supported data transfer methods; and (2) the Agency provides extensive training and outreach to its enforcement partners regarding the online list of current ELD vendors and devices that have been certified to meet the functional specifications, including the compliant software version of each device.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87 on: December 20, 2018.

Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2018–28172 Filed 12–26–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0185]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel JULIANA III (32′ Stern Picker); 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 requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. 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 January 28, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number

MARAD–2018–0185 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2018–0185 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2018–0185, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

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 JULIANA III is:

—*Intended Commercial Use of Vessel:* ''This vessel is also used to provide commercial maritime transportation for Maritime Pilots and to taxi passengers from larger vessels to the shore.''

—*Including Base of Operations:* ''Norton Sound, in the Bering Sea: from Port Clarence to the North, to Cape Romanzoff to the South; from Koyuk to the East, to St. Lawrence Island to the West. '' (Base of Operations: Port of Nome, Alaska).

—*Vessel Length and Type:* 32′ aluminum stern picker.

The complete application is available for review identified in the DOT docket as MARAD–2018–0185 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 vessel name, 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.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2018–0185 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* 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: December 20, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–28032 Filed 12–26–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2018–0215]

Privacy Act of 1974; Department of Transportation (DOT), Federal Aviation Administration, (DOT/FAA) 833 Quarters Management Information System (QMIS) System of Records

AGENCY: Office of the Departmental Chief Information Officer, Office of the Secretary of Transportation, DOT.

ACTION: Rescindment of a System of Records Notice.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Transportation is proposing to retire a Department of Transportation system of records titled, 'Department of Transportation/Federal Aviation Administration (DOT/FAA) 833 Quarters Management Information System (QMIS) System of Records,' which covered employees occupying FAA owned or leased housing. The FAA uses the DOI iQMS to support business activities formerly managed in QMIS. See (*https://www.doi.gov/sites/doi.gov/files/uploads/iqmis_pia_final_06.13.2018.pdf*). iQMIS is not a system of records because records cannot be retrieved by an individual's name or other unique identifier. Users retrieve records by housing installation name and housing unit number. Rent collected from the employee/tenant through payroll deduction actions are processed through the DOI's Federal

Personnel and Payroll System (FPPS) which is a federal shared service system. DOT records in FPPS are maintained under the DOT/ALL 19—Federal Personnel and Payroll System (FPPS)—73 FR 66285—November 7, 2008.

DATES: The FAA stopped operating the QMIS system in 2013.

ADDRESSES: You may submit comments, identified by docket number DOT–OST–2018–0215 by any of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.

Fax: (202) 493–2251.

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

FOR FURTHER INFORMATION CONTACT: For questions, please contact: Claire W. Barrett, Departmental Chief Privacy Officer, Privacy Office, Department of Transportation, Washington, DC 20590; *privacy@dot.gov*; or 202.527.3284.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Transportation (DOT)/Federal Aviation Administration (FAA) proposes to retire DOT system of records titled, ''Department of Transportation/Federal Aviation Administration (DOT/FAA) 833 Quarters Management Information System.'' Covered individuals in the system of records were; employees occupying FAA owned or leased housing and employees and agencies that lease FAA housing in Alaska. Records were used to establish regional rental rates for quarters; maintain status of housing; and maintain up-to-date list of persons. Additionally, records were used to establish and terminate payroll deductions for collection of housing occupying FAA units rent through request to the appropriate payroll office. Records for this system were destroyed in accordance with GRS 15, Housing Records. Records from the FAA's QMIS were not transferred to DOI. Eliminating this system of records notice will have no adverse impact on individuals, but will promote the overall streamlining and management of DOT Privacy Act systems of records.

System Name and Number: Department of Transportation (DOT/FAA) 833 Quarters Management Information System.

History: The full notice was published in the **Federal Register** on April 11, 2000 (65 FR 19525).

Issued in Washington, DC, on December 20, 2018.

Claire W. Barrett,

Departmental Chief Privacy Officer.

[FR Doc. 2018–28061 Filed 12–26–18; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On December 19, 2018 OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. BOYARKIN, Victor Alekseyevich (Cyrillic: БОЯРКИН, Виктор Алексеевич) (a.k.a. BOYARKIN, V.A. (Cyrillic: БОЯРКИН, В.А.); a.k.a. BOYARKIN, Victor; a.k.a. BOYARKIN, Victor Alekseevich; a.k.a. BOYARKIN, Viktor), #189, 20, BLD1, Generala Beloborodova, Moscow, Federal District 125222, Russia; DOB 12 Oct 1958; POB Meschovsk, Russia; nationality Russia; citizen Russia; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; Passport 200042334 (Russia); alt. Passport 642348547 (Russia) (individual) [UKRAINE–EO13661] [UKRAINE–EO13662] (Linked To: DERIPASKA, Oleg Vladimirovich).

Designated pursuant to section 1(a)(ii)(C)(2) of Executive Order 13661 of March 16, 2014, ''Blocking Property of Additional Persons Contributing to the Situation in Ukraine'' (E.O. 13661) for having acted or purported to act for or on behalf of, directly or indirectly, Oleg DERIPASKA, a person whose property and interests in property are blocked pursuant to E.O. 13661.

Designated pursuant to section 1(a)(iii) of Executive Order 13662 of March 20, 2014, ''Blocking Property of Additional Persons Contributing to the Situation in Ukraine'' (E.O. 13662) for having acted or purported to act for or on behalf of, directly or indirectly, Oleg DERIPASKA, a person whose property and interests in property are blocked pursuant to E.O. 13662.

2. CHEPIGA, Anatoliy Vladimirovich (a.k.a. BOSHIROV, Ruslan), Moscow, Russia; DOB 05 Apr 1979; alt. DOB 12 Apr 1978; POB Nikolaevka, Amur Oblast, Russia; alt. POB Dushanbe, Tajikistan; nationality Russia; Gender Male (individual) [CAATSA—RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).

Designated pursuant to section 224(a)(1)(B) of the Countering America's Adversaries Through Sanctions Act, Public Law 115–44, (CAATSA), for acting or purporting to act for or on behalf of, directly or indirectly, the MAIN INTELLIGENCE DIRECTORATE, an entity whose property and interests in property are blocked pursuant to 224(a)(1)(A) of CAATSA.

3. MISHKIN, Alexander Yevgeniyevich (a.k.a. PETROV, Alexander), Moscow, Russia; DOB 13 Jul 1979; POB Loyga, Russia; alt. POB Kotlas, Russia; nationality Russia; Gender Male (individual) [CAATSA—RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).

Designated pursuant to section 224(a)(1)(B) of CAATSA, for acting or purporting to act for or on behalf of, directly or indirectly, the MAIN INTELLIGENCE DIRECTORATE, an entity whose property and interests in property are blocked pursuant to 224(a)(1)(A) of CAATSA.

4. ANTONOV, Boris Alekseyevich, Russia; DOB 19 Dec 1980; nationality Russia; Gender Male (individual) [CAATSA—RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).

Designated pursuant to section 224(a)(1)(A) of CAATSA, for knowingly engaging in significant activities undermining cybersecurity against any person, including a democratic institution, or government on behalf of the Government of the Russian Federation.

Also designated pursuant to section 224(a)(1)(B) of CAATSA, for acting or purporting to act for or on behalf of, directly or indirectly, the MAIN INTELLIGENCE DIRECTORATE, an entity whose property and interests in property are blocked pursuant to 224(a)(1)(A) of CAATSA.

5. KOVALEV, Anatoliy Sergeyevich, Russia; DOB 02 Aug 1991; nationality Russia; Gender Male (individual) [CAATSA–RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).

Designated pursuant to section 224(a)(1)(A) of CAATSA, for knowingly engaging in significant activities undermining cybersecurity against any person, including a democratic institution, or government on behalf of the Government of the Russian Federation.

Also designated pursuant to section 224(a)(1)(B) of CAATSA, for acting or purporting to act for or on behalf of, directly or indirectly, the MAIN INTELLIGENCE DIRECTORATE, an entity whose property and interests in property are blocked pursuant to 224(a)(1)(A) of CAATSA.

6. KOZACHEK, Nikolay Yuryevich, Russia; DOB 29 Jul 1989; nationality Russia; Gender Male (individual) [CAATSA–RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).

Designated pursuant to section 224(a)(1)(A) of CAATSA, for knowingly engaging in significant activities undermining cybersecurity against any person, including a democratic institution, or government on behalf of the Government of the Russian Federation.

Also designated pursuant to section 224(a)(1)(B) of CAATSA, for acting or purporting to act for or on behalf of, directly or indirectly, the MAIN INTELLIGENCE DIRECTORATE, an entity whose property and interests in property are blocked pursuant to 224(a)(1)(A) of CAATSA.

7. LUKASHEV, Aleksey Viktorovich, Russia; DOB 07 Nov 1990; nationality Russia; Gender Male (individual) [CAATSA–RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).

Designated pursuant to section 224(a)(1)(A) of CAATSA, for knowingly engaging in significant activities undermining cybersecurity against any person, including a democratic institution, or government on behalf of the Government of the Russian Federation.

Also designated pursuant to section 224(a)(1)(B) of CAATSA, for acting or purporting to act for or on behalf of, directly or indirectly, the MAIN INTELLIGENCE DIRECTORATE, an entity whose property and interests in property are blocked pursuant to 224(a)(1)(A) of CAATSA.

8. MALYSHEV, Artem Andreyevich, Russia; DOB 02 Feb 1988; nationality Russia; Gender Male (individual) [CAATSA–RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).

Designated pursuant to section 224(a)(1)(A) of CAATSA, for knowingly engaging in significant activities undermining cybersecurity against any person, including a democratic institution, or government on behalf of the Government of the Russian Federation.

Also designated pursuant to section 224(a)(1)(B) of CAATSA, for acting or purporting to act for or on behalf of, directly or indirectly, the MAIN INTELLIGENCE DIRECTORATE, an entity whose property and interests in property are blocked pursuant to 224(a)(1)(A) of CAATSA.

9. MININ, Alexey Valerevich, Russia; DOB 27 May 1972; nationality Russia; Gender Male; Passport 120017582 (individual) [CAATSA–RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).

Designated pursuant to section 224(a)(1)(A) of CAATSA, for knowingly engaging in significant activities undermining cybersecurity against any person, including a democratic institution, or government on behalf of the Government of the Russian Federation.

Also designated pursuant to section 224(a)(1)(B) of CAATSA, for acting or purporting to act for or on behalf of, directly or indirectly, the MAIN INTELLIGENCE DIRECTORATE, an entity whose property and interests in property are blocked pursuant to 224(a)(1)(A) of CAATSA.

10. MORENETS, Aleksei Sergeyevich, Russia; DOB 31 Jul 1977; nationality Russia; Gender Male; Passport 100135556 (individual) [CAATSA–RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).

Designated pursuant to section 224(a)(1)(A) of CAATSA, for knowingly engaging in significant activities undermining cybersecurity against any person, including a democratic institution, or government on behalf of the Government of the Russian Federation.

Also designated pursuant to section 224(a)(1)(B) of CAATSA, for acting or purporting to act for or on behalf of, directly or indirectly, the MAIN INTELLIGENCE DIRECTORATE, an entity whose property and interests in property are blocked pursuant to 224(a)(1)(A) of CAATSA.

11. NETYKSHO, Viktor Borisovich, Russia; DOB 08 Sep 1966; nationality Russia; Gender Male (individual) [CAATSA–RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).

Designated pursuant to section 224(a)(1)(A) of CAATSA, for knowingly engaging in significant activities undermining cybersecurity against any person, including a democratic institution, or government on behalf of the Government of the Russian Federation.

Also designated pursuant to section 224(a)(1)(B) of CAATSA, for acting or purporting to act for or on behalf of, directly or indirectly, the MAIN INTELLIGENCE DIRECTORATE, an entity whose property and interests in property are blocked pursuant to 224(a)(1)(A) of CAATSA.

12. OSADCHUK, Aleksandr Vladimirovich, Russia; DOB 17 Nov 1962; nationality Russia; Gender Male (individual) [CAATSA–RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).

Designated pursuant to section 224(a)(1)(A) of CAATSA, for knowingly engaging in significant activities undermining cybersecurity against any person, including a democratic institution, or government on behalf of the Government of the Russian Federation.

Also designated pursuant to section 224(a)(1)(B) of CAATSA, for acting or purporting to act for or on behalf of, directly or indirectly, the MAIN INTELLIGENCE DIRECTORATE, an entity whose property and interests in property are blocked pursuant to 224(a)(1)(A) of CAATSA.

13. POTEMKIN, Aleksey Aleksandrovich, Russia; DOB 20 Mar 1983; nationality Russia; Gender Male (individual) [CAATSA–RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).

Designated pursuant to section 224(a)(1)(A) of CAATSA, for knowingly engaging in significant activities undermining cybersecurity against any person, including a democratic institution, or government on behalf of the Government of the Russian Federation.

Also designated pursuant to section 224(a)(1)(B) of CAATSA, for acting or purporting to act for or on behalf of, directly or indirectly, the MAIN INTELLIGENCE DIRECTORATE, an entity whose property and interests in property are blocked pursuant to 224(a)(1)(A) of CAATSA.

14. SEREBRIAKOV, Evgenii Mikhaylovich, Russia; DOB 26 Jul 1981; nationality Russia; Gender Male; Passport 100135555 (individual) [CAATSA–RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).

Designated pursuant to section 224(a)(1)(A) of CAATSA, for knowingly engaging in significant activities undermining cybersecurity against any person, including a democratic institution, or government on behalf of the Government of the Russian Federation.

Also designated pursuant to section 224(a)(1)(B) of CAATSA, for acting or purporting to act for or on behalf of, directly or indirectly, the MAIN INTELLIGENCE DIRECTORATE, an entity whose property and interests in property are blocked pursuant to 224(a)(1)(A) of CAATSA.

15. SOTNIKOV, Oleg Mikhaylovich, Russia; DOB 24 Aug 1972; nationality Russia; Gender Male; Passport 120018866 (individual) [CAATSA–RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).

Designated pursuant to section 224(a)(1)(A) of CAATSA, for knowingly engaging in significant activities undermining cybersecurity against any person, including a democratic institution, or government on behalf of the Government of the Russian Federation.

Also designated pursuant to section 224(a)(1)(B) of CAATSA, for acting or purporting to act for or on behalf of, directly or indirectly, the MAIN INTELLIGENCE DIRECTORATE, an entity whose property and interests in property are blocked pursuant to 224(a)(1)(A) of CAATSA.

16. YERMAKOV, Ivan Sergeyevich, Russia; DOB 10 Apr 1986; nationality Russia; Gender Male (individual) [CAATSA–RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).

Designated pursuant to section 224(a)(1)(A) of CAATSA, for knowingly engaging in significant activities undermining cybersecurity against any person, including a democratic institution, or government on behalf of the Government of the Russian Federation.

Also designated pursuant to section 224(a)(1)(B) of CAATSA, for acting or purporting to act for or on behalf of, directly or indirectly, the MAIN INTELLIGENCE DIRECTORATE, an entity whose property and interests in property are blocked pursuant to 224(a)(1)(A) of CAATSA.

17. KHUSYAYNOVA, Elena Alekseevna, St. Petersburg, Russia; DOB 17 Feb 1974; Gender Female; Passport 639092215 (Russia) (individual) [CYBER2] (Linked To: LIMITED LIABILITY COMPANY CONCORD MANAGEMENT AND CONSULTING).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13694 of April 1, 2015, ''Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities'', as amended by Executive Order 13757 of December 28, 2016, ''Taking Additional Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities'' (E.O. 13694, as amended) for having acted or purported to act for or on behalf of LIMITED LIABILITY COMPANY CONCORD MANAGEMENT AND CONSULTING, an entity whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Also designated pursuant to section 1(a)(iii)(C) of E.O. 13694, as amended, for having acted or purported to act for or on behalf of CONCORD CATERING, an entity whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

18. MALKEVICH, Alexander Aleksandrovich, St. Petersburg, Russia; DOB 14 Jun 1975; POB Leningrad, Russia; Gender Male; Passport 717637093 (Russia); National ID No. 781005202108 (individual) [CYBER2] (Linked To: USA REALLY).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13694, as amended, for having acted or purported to act for or on behalf of USA REALLY, an entity whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Entities

1. ECONOMY TODAY LLC (a.k.a. EKONOMIKA SEGODNYA), d. 19 Litera A. Pom. 423, Ul. Zhukova, St. Petersburg, Russia [CYBER2] (Linked To: LIMITED LIABILITY COMPANY CONCORD MANAGEMENT AND CONSULTING).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13694, as amended, for being owned or controlled by, and for having acted or purported to act for or on behalf of LIMITED LIABILITY COMPANY CONCORD MANAGEMENT AND CONSULTING, an entity whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Also designated pursuant to section 1(a)(iii)(C) of E.O. 13694, as amended, for being owned or controlled by, and for having acted or purported to act for or on behalf of CONCORD CATERING, an entity whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

2. FEDERAL NEWS AGENCY LLC (a.k.a. FEDERALNOE AGENTSTVO NOVOSTEI OOO), d. 18 litera A. pom. 2–N, UL. Vsevoloda Vishnevskogo, St. Petersburg, Russia; Moscow, Russia [CYBER2] (Linked To: LIMITED LIABILITY COMPANY CONCORD MANAGEMENT AND CONSULTING).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13694, as amended, for being owned or controlled by, and for having acted or purported to act for or on behalf of LIMITED LIABILITY COMPANY CONCORD MANAGEMENT AND CONSULTING, an entity whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Also designated pursuant to section 1(a)(iii)(C) of E.O. 13694, as amended, for being owned or controlled by and for having acted or purported to act for or on behalf of CONCORD CATERING, an entity whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

3. NEVSKIY NEWS LLC (a.k.a. NEVNOV; a.k.a. NEVSKIYE NOVOSTI), d. 11 korp. 2 pom. 327–N, ul. Staroderevenskaya, St. Petersburg, Russia [CYBER2] (Linked To: LIMITED LIABILITY COMPANY CONCORD MANAGEMENT AND CONSULTING).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13694, as amended, for being owned or controlled by, and for having acted or purported to act for or on behalf of LIMITED LIABILITY COMPANY CONCORD MANAGEMENT AND CONSULTING, an entity whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Also designated pursuant to section 1(a)(iii)(C) of E.O. 13694, as amended, for being owned or controlled by, and for having acted or purported to act for or on behalf of CONCORD CATERING, an entity whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

4. USA REALLY, St. Petersburg, Russia; Moscow, Russia; website

www.usareally.com [CYBER2] (Linked To: FEDERAL NEWS AGENCY LLC).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13694, as amended, for being owned or controlled by, and for having acted or purported to act for or on behalf of the FEDERAL NEWS AGENCY LLC, an entity whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Dated: December 19, 2018.

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2018–27963 Filed 12–26–18; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that a virtual meeting of the Geriatrics and Gerontology Advisory Committee will be held on January 29, 2019, at 10:00 a.m.–11:30 a.m. EST. The dial in number is 1–800–767–1750 with access code 78128#. This meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of VA and the Under Secretary for Health on all matters pertaining to geriatrics and gerontology. The Committee assesses the capability of VA health care facilities and programs to meet the medical, psychological, and social needs of older Veterans and evaluates VA programs designated as Geriatric Research, Education, and Clinical Centers.

The meeting will feature presentations and discussions on VA's geriatrics and extended care programs, aging research activities, updates on VA's employee staff working in the area of geriatrics (to include training, recruitment and retention approaches), Veterans Health Administration (VHA) strategic planning activities in geriatrics and extended care, recent VHA efforts regarding dementia and program advances in palliative care, and performance and oversight of VA Geriatric Research, Education, and Clinical Centers.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties should provide written comments for review by the Committee to Mrs. Alejandra Paulovich, Program Analyst, Geriatrics and Extended Care (10NC4), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, via email at *Alejandra.Paulovich@va.gov* or by phone at (202) 461–6016.

Dated: December 19, 2018.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2018–28009 Filed 12–26–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0353]

Agency Information Collection Activity: Certification of Lessons Completed

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 28, 2019.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0353 in any correspondence.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Office of Enterprise Record Service (005R1B), Department of Veterans Affairs, 811 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354 or email *Danny.Green2@va.gov.* Please refer to ''OMB Control No. 2900–0353.''

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–3521, 38 U.S.C. 3032(d), 3034, 3241, 3323, 3474, 3481, 3484, 3534(b), 3680(b), 3684, 3686(a), and 10 U.S.C. 16131(e), 16136(b), chapter 31, section 510 and chapter 1607; 38 CFR 21.4203(e), 21.4206, 21.5200(d) & (g), 21.7140(c)(3), 21.7159, 21.7640(a)(4), 21.7659, and 21.9720.

Title: Certification of Lessons Completed VA Form 22–6553(b) and (b–1).

OMB Control Number: 2900–0353.

Type of Review: Extension of a currently approved collection.

Abstract: The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 21, 2018, at Vol. 83, FR No. 98, page 23530–23531.

Affected Public: Individuals and Households.

Estimated Annual Burden: 112 hours.

Estimated Average Burden per Respondent 10 minutes.

Frequency of Response: Three Annually.

Estimated Number of Respondents: 224.

By direction of the Secretary.

Danny S. Green,

Interim Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–28083 Filed 12–26–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board; Notice of Meetings Amended

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the subcommittees of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board (JBL/CS SMRB) will meet from 8 a.m. to 5 p.m. on the dates indicated below (unless otherwise listed):

Subcommittee	Date	Location
Pulmonary Medicine	November 14, 2018	20 F Conference Center.
Surgery	November 14, 2018	20 F Conference Center.

Subcommittee	Date	Location
Oncology-B	November 14, 2018	Phoenix Park Hotel.
Infectious Diseases-B	November 15, 2018	20 F Conference Center.
Oncology-A/D	November 15, 2018	20 F Conference Center.
Hematology	November 16, 2018	20 F Conference Center.
Oncology-C	November 16, 2018	20 F Conference Center.
Cellular & Molecular Medicine	November 19, 2018	* VA Central Office.
Nephrology	November 27, 2018	20 F Conference Center.
Oncology-E	November 27, 2018	* VA Central Office.
Immunology & Dermatology-A	November 28, 2018	20 F Conference Center.
Infectious Diseases-A	November 28, 2018	* VA Central Office.
Mental Health & Behavioral Sciences-B	November 28, 2018	20 F Conference Center.
Neurobiology-C	November 28, 2018	20 F Conference Center.
Endocrinology-A	November 29, 2018	20 F Conference Center.
Neurobiology-E	November 30, 2018	20 F Conference Center.
Cardiovascular Studies-A	December 3, 2018	Phoenix Park Hotel.
Endocrinology-B	December 3, 2018	20 F Conference Center.
Neurobiology-B	December 3, 2018	20 F Conference Center.
Mental Health & Behavioral Sciences-A	December 4, 2018	* VA Central Office.
Special Emphasis Panel on Million Veteran Prog Proj	December 4, 2018	* VA Central Office.
Neurobiology-F	December 5, 2018	* VA Central Office.
Cardiovascular Studies-B	December 6, 2018	20 F Conference Center.
Epidemiology	December 6, 2018	Phoenix Park Hotel.
Gastroenterology	December 6, 2018	20 F Conference Center.
Neurobiology-A	December 7, 2018	20 F Conference Center.
Neurobiology-D	December 7, 2018	20 F Conference Center.
Gulf War Research	December 7, 2018	Phoenix Park Hotel.
Special Panel for Sheep Review	December 11, 2018	* VA Central Office.
Eligibility	January 18, 2018	20 F Conference Center.
Special Emphasis Panel on Clinical Studies	January 31, 2018	* VA Central Office.

The addresses of the meeting sites are:
20 F Conference Center, 20 F Street NW, Washington, DC.
Phoenix Park Hotel, 520 North Capitol Street NW, Washington, DC.
VA Central Office, 1100 First Street NE, Suite 600, Washington, DC.
* Teleconference.

The purpose of the subcommittees is to provide advice on the scientific quality, budget, safety and mission relevance of investigator-initiated research proposals submitted for VA merit review evaluation. Proposals submitted for review include various medical specialties within the general areas of biomedical, behavioral and clinical science research.

These subcommittee meetings will be closed to the public for the review, discussion, and evaluation of initial and renewal research proposals, which involve reference to staff and consultant critiques of research proposals. Discussions will deal with scientific merit of each proposal and qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research proposals. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing the subcommittee meetings is in accordance with Title 5 U.S.C. 552b(c)(6) and (9)(B).

Those who would like to obtain a copy of the minutes from the closed subcommittee meetings and rosters of the subcommittee members should contact Holly Krull, Ph.D., Manager, Merit Review Program (10P9B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, at (202) 632–8522 or email at *holly.krull@va.gov.*

Dated: December 20, 2018.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2018–28060 Filed 12–26–18; 8:45 am]

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FEDERAL REGISTER

Vol. 83 Thursday,

No. 247 December 27, 2018

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 218

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Navy Training and Testing Activities in the Hawaii-Southern California Training and Testing Study Area; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[Docket No. 170918908–8999–02]

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: Final rule; notification of issuance of Letters of Authorization.

SUMMARY: NMFS, upon request from the U.S. Navy (Navy) issues these regulations pursuant to the Marine Mammal Protection Act (MMPA) to govern the taking of marine mammals incidental to the training and testing activities conducted in the Hawaii-Southern California Training and Testing (HSTT) Study Area over the course of five years beginning in December 2018. These regulations, which allow for the issuance of Letters of Authorization (LOA) for the incidental take of marine mammals during the described activities and timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, and establish requirements pertaining to the monitoring and reporting of such taking.

DATES: Effective from December 21, 2018 through December 20, 2023.

ADDRESSES: A copy of the Navy's 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 below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Stephanie Egger, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Purpose of Regulatory Action

These regulations, issued under the authority of the MMPA (16 U.S.C. 1361 *et seq.*), establish a framework for authorizing the take of marine mammals incidental to the Navy's training and testing activities (categorized as military readiness activities) from the use of sonar and other transducers, in-water detonations, air guns, impact pile driving/vibratory extraction, and potential vessel strikes based on Navy movement throughout the HSTT Study Area. 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 Southern California (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.

We received an application from the Navy requesting five-year regulations and authorizations to incidentally take individuals of multiple species and stocks of marine mammals (''Navy's rulemaking/LOA application'' or ''Navy's application''). Take is anticipated to occur by Level A and Level B harassment as well as a very small number of serious injuries or mortalities incidental to the Navy's training and testing activities.

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs 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, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity, as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I, provide the legal basis for issuing this final rule and the subsequent LOAs. As directed by this legal authority, this final rule contains mitigation, monitoring, and reporting requirements.

Summary of Major Provisions Within the Final Rule

Following is a summary of the major provisions of this final rule regarding the Navy's activities. Major provisions include, but are not limited to:

- The use of defined powerdown and shutdown zones (based on activity);
- Measures to reduce or eliminate the likelihood of ship strikes;
- Activity limitations in certain areas and times that are biologically important (*i.e.,* for foraging, migration, reproduction) for marine mammals;
- Implementation of a Notification and Reporting Plan (for dead, live stranded, or marine mammals struck by a vessel); and
- Implementation of a robust monitoring plan to improve our understanding of the environmental effects resulting from the Navy training and testing activities.

Additionally, the rule includes an adaptive management component that allows for timely modification of mitigation or monitoring measures based on new information, when appropriate.

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, other means of effecting the least practicable adverse impact on the species or stocks and their habitat, and requirements pertaining to monitoring and reporting of such takings are set forth. The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

[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. The 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.

The National Defense Authorization Act of 2004 (2004 NDAA) (Pub. L. 108–136) amended section 101(a)(5) of the MMPA to remove the ''small numbers'' and ''specified geographical region'' provisions indicated above for ''military readiness activities'' and amended the definition of ''harassment'' as it applies to military readiness activities, along with certain research activities. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

More recently, the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (2019 NDAA) (Pub. L. 115–232) amended the MMPA to allow incidental take rules for military readiness activities to be issued for up to seven years. That recent amendment of the MMPA does not affect this final rule, however, because both the Navy's application and NMFS' proposed incidental take rule preceded passage of the 2019 NDAA and contemplated authorization for five years.

Summary and Background of Request

On September 13, 2017, NMFS received an application from the Navy for authorization to take marine mammals 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. In addition, the Navy requested incidental take authorization by serious injury or mortality for a combined ten takes of two marine mammal species from explosives and for up to three takes of large whales from vessel strikes over the five-year period. On October 13, 2017, the Navy sent an amendment to its application and the application was found to be adequate and complete. On October 20, 2017 (82 FR 48801), we published a notice of receipt of application (NOR) in the **Federal Register**, requesting comments and information related to the Navy's request for 30 days. On June 26, 2018, we published a notice of the proposed rulemaking (83 FR 29872) and requested comments and information related to the Navy's request for 45 days. Comments received during the NOR and the proposed rulemaking comment periods are addressed in this final rule. See further details addressing comments received in the *Comments and Responses* section.

On September 10, 2018, and October 26, 2018, Navy provided NMFS with memoranda revising the estimated takes by serious injury or mortality included in the Navy's rulemaking/LOA application for ship strike. The Navy's request for takes by serious injury or mortality of three large whales over the course of five years remains unchanged. However, specifically, after further analysis and discussion with NMFS, the Navy modified their request for takes from particular stocks in the following ways:

- Humpback whales (California, Oregon, Washington (CA/OR/WA) stock):
  - Reduced request for take from two to one individual.
  - Removed the authorization request for individuals that also are part of the Central America Distinct Population Segment (DPS) recognized under the Endangered Species Act (ESA). Both the Central America DPS and Mexico DPS overlap with the CA/OR/WA stock, but from this stock, only a humpback whale from the Mexico DPS is expected to be taken by serious injury or mortality. These individuals, that are part of both the CA/OR/WA stock and the Mexico DPS, will be referred to as ''humpback whales (CA/OR/WA stock, Mexico DPS)'' henceforth.
- Sperm whale (Hawaii or CA/OR/WA stock):
  - Original authorization request for take was for two total from any stock; reduced request for take to one individual.
  - Removed request for individuals from the CA/OR/WA stock, *i.e.,* only an individual from the Hawaii stock is requested.
- Bryde's whale (Eastern Tropical Pacific stock or Hawaii stock)—Reduced request for take from one individual to zero.
- Minke whale (Hawaii stock)—Reduced request for take from one individual to zero.
- Sei whale (Hawaii stock and Eastern North Pacific stock)—Reduced request for take from one individual to zero.

NMFS concurs that it is reasonably likely that these lethal takes could occur. The information and assessment that supports this change is included in the *Estimated Take of Marine Mammals* section.

The Navy requested two five-year LOAs, one for training activities and one for testing activities to be conducted within the HSTT Study Area. 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 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.

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 regulations and associated LOAs: 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). Also, ship strike by Navy vessels is addressed and covered, as appropriate.

This will be NMFS' third in a series of rulemakings for testing and training activities in the HSTT Study Area. Hawaii and Southern California were separate in the initial rulemaking period, and the first two rules were effective from January 5, 2009, through January 5, 2014 (74 FR 1456; January 12, 2009), and January 14, 2009, through January 14, 2014 (74 FR 3882; January 21, 2009), respectively. The rulemaking for the second five-year period, which combined Hawaii and Southern California, was in effect from December 24, 2013, through December 24, 2018 (78 FR 78106; December 24, 2013), as modified by the terms of a stipulated settlement agreement and order issued by the United States District Court for the District of Hawaii on September 14, 2015. The new regulations described here will be valid for five years, from December 21, 2018, though December 20, 2023.

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 plans to conduct training and testing activities within the HSTT Study Area. The Navy has been conducting similar military readiness activities in the HSTT 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 influenced 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 rule account for fluctuations in training and testing in order to meet evolving or emergent military readiness requirements.

These regulations cover training and testing activities that would occur for a five-year period following the expiration of the current MMPA authorization for the HSTT Study Area, which expires on December 24, 2018.

Description of the Specified Activity

Additional detail regarding the specified activity was provided in our **Federal Register** notice of proposed rulemaking (83 FR 29872; June 26, 2018); please see that notice of proposed rulemaking or the Navy's application for more information. Since the proposed rule, NMFS and the Navy have reached agreement on additional mitigation measures which are summarized below and discussed in greater detail in the *Mitigation Measures* section of this rule.

The Navy will implement pre- and post-event observation of the mitigation zone for all in-water explosive event mitigation measures in the HSTT Study Area. The Navy expanded their mitigation areas to include the sections of the Santa Monica Bay to Long Beach and San Nicolas Island biologically important areas (BIAs) that overlap the HSTT Study Area. These areas are referred to as the Santa Monica/Long Beach and San Nicolas Island Mitigation Areas and explosive use is limited in these areas as described in the *Mitigation Measures* section. Further, the Navy will limit surface ship sonar such that it will not exceed 200 hours from June through October cumulatively within the San Diego Arc, San Nicolas Island, and Santa Monica/Long Beach, Mitigation Areas. The Navy will also add a year-round limitation on explosives to the 4-Islands Region Mitigation Area, which includes a portion of the false killer whale (Main Hawaiian Island insular stock) BIA north of Maui and Molokai in the HSTT Study Area. The Navy has agreed to issue notification messages to increase operator awareness of the presence of marine mammals. The Navy will review WhaleWatch, a program coordinated by NMFS' West Coast Region as an additional information source to inform the drafting of the seasonal awareness message to alert vessels in the area to the possible presence of concentrations of large whales, including blue, gray, and fin whales in SOCAL.

In coordination with NMFS, the Navy has also revised its estimate of and request for serious injury or mortality takes of large whales from ship strikes, as described immediately above in the *Summary and Background of Request* section. The detailed rationale for this change is provided in the *Estimated Take of Marine Mammals* section.

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 these regulations are summarized below.

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 FEIS/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 FEIS/OEIS and the Navy's rulemaking/LOA application (documents available at *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities*). In its assessment, the Navy concluded that sonar and other transducers, in-water detonations, 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. Therefore, the 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).

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 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 these regulations. Additional detail regarding the training activities was provided in our **Federal Register** notice of proposed rulemaking (83 FR 29872; June 26, 2018); please see that notice of proposed rulemaking or the Navy's application for more information.

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. Additional detail regarding the testing activities was provided in our **Federal Register** notice of proposed rulemaking (83 FR 29872; June 26, 2018); please see that notice of proposed rulemaking or the Navy's application for more information.

Dates and Duration

The specified activities may occur at any time during the five-year period of validity of the regulations. Planned number and duration of training and testing activities are shown in the Planned Activities section (Tables 4 through 7).

Specific Geographic Area

The Navy's HSTT Study Area 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 (PMSR). 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.

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. The following subsections describe the acoustic and explosive stressors for biological resources within the HSTT Study Area. 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. Stressor/resource interactions that were determined to have de minimus or no impacts (*i.e.,* vessel, aircraft, or weapons noise) were not carried forward for analysis in the Navy's rulemaking/LOA application. NMFS 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 analyzed separately from other acoustic sources due to their unique characteristics. 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, were 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 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.

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 sonar used to find and track 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.

Additional detail regarding sound sources and platforms and categories of acoustic stressors was provided in our **Federal Register** notice of proposed rulemaking (83 FR 29872; June 26, 2018); please see that notice of proposed rulemaking or the Navy's application for more information.

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 (SPL) 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 IN THE HSTT STUDY AREA

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.
	MF2	Hull-mounted surface ship sonars (*e.g.,* AN/SQS–56).
	MF3	Hull-mounted submarine sonars (*e.g.,* AN/BQQ–10).
	MF4	Helicopter-deployed dipping sonars (*e.g.,* AN/AQS–13).
	MF5	Active acoustic sonobuoys (*e.g.,* DICASS).
	MF6	Active underwater sound signal devices (*e.g.,* MK84).
	MF8	Active sources (greater than 200 dB) not otherwise binned.
	MF9	Active sources (equal to 180 dB and up to 200 dB) not otherwise binned.
	MF10	Active sources (greater than 160 dB, but less than 180 dB) not otherwise binned.
	MF11	Hull-mounted surface ship sonars with an active duty cycle greater than 80%.
	MF12	Towed array surface ship sonars with an active duty cycle greater than 80%.
	MF13	MF sonar sources.
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).
	HF2	HF Marine Mammal Monitoring System.
	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).
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.
	FLS3	VHF 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.	BB4	LF to MF oceanographic source.
	BB7	LF oceanographic source.
	BB9	MF optoacoustic 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

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 (SPL rms) and peak pressure (SPL peak) at a distance 1 meter (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.

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. The source levels of the noise produced by impact pile driving and vibratory pile removal from an actual ELCAS impact pile driving and vibratory removal are shown in Table 2.

TABLE 2—ELEVATED CAUSEWAY SYSTEM PILE DRIVING AND REMOVAL UNDERWATER SOUND LEVELS IN THE HSTT STUDY AREA

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 μPa^2s SEL (single strike).
24-in. Steel Pipe Pile	Vibratory [2]	146 dB re 1 μPa SPL rms, 145 dB re 1 μPa^2s 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.

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.

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 FEIS/OEIS. Additional detail regarding explosive stressors was provided in our **Federal Register** notice of proposed rulemaking (83 FR 29872; June 26, 2018); please see that notice of proposed rulemaking or the Navy's application for more information.

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 would occur in the water column; mines and demolition charges would 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 nautical miles (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. Explosives detonated in water are binned by net explosive weight. The bins of explosives that are for use in the HSTT Study Area are shown in Table 3 below.

TABLE 3—EXPLOSIVES ANALYZED IN THE HSTT STUDY AREA

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	Multiple Mat Weave charges.

[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 coves without regular marine mammal occurrence. These are not single charges, but multiple smaller charges detonated simultaneously or within a short time period.

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. In contrast, 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 far exceed the zone where fragments could injure or kill an animal, the thresholds are assumed to encompass risk due to fragmentation.

Other Stressor—Vessel Strike

Vessel strikes are not specific to any particular training or testing activity, but rather a potential, limited, sporadic, and incidental result of Navy vessel movement within the HSTT Study Area. Navy vessels transit at speeds that are optimal for fuel conservation or to meet training and testing requirements. Should a vessel strike occur, it would likely result in incidental take from serious injury and/or mortality and, accordingly, for the purposes of the analysis we assume that any authorized ship strike would result in serious injury or mortality. Information on Navy vessel movements is provided in the *Planned Activities* section. Additional detail on vessel strike was provided in our **Federal Register** notice of proposed rulemaking (83 FR 29872; June 26, 2018); please see that notice of proposed rulemaking or the Navy's application for more information. Additionally, as referenced above and described in more detail in the *Estimated Take of Marine Mammals* section, on September 10, 2018, and October 26, 2018, the Navy provided additional information withdrawing and reducing certain species from their request for serious injury or mortality takes from vessel strike with explanation supporting the Navy's change in requested take.

Planned Activities

Planned Training Activities

The training activities that the Navy plans 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 these regulations, description of the activity, sound source bin, the number of planned activities, and the locations of those activities in the HSTT Study Area. For further information regarding the primary platform used (*e.g.,* ship or aircraft type) see Appendix A (Navy Activity Descriptions) of the HSTT FEIS/OEIS.

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Table 4. Training activities analyzed in the HSTT Study Area.

Stressor Category	*Activity Name*	*Description*	*Source Bin* [1]	*Location*[2]	*Annual # of Activities*[3]	*5-Year # of Activities*	*Duration per Activity*
Major Training Exercises – Large Integrated Anti-Submarine Warfare							
Acoustic	Composite Training Unit Exercise	Aircraft carrier and associated aircraft integrate with surface and submarine units in a challenging multi-threat operational environment in order to certify them for deployment. Only the anti-submarine warfare portion of Composite Training Unit Exercise is included in this activity; other training objectives are met via unit level training	ASW1 ASW2 ASW3 ASW4 ASW5 HF1 LF6 MF1 MF3 MF4 MF5 MF11 MF12	SOCAL, PMSR[4]	2-3	12	21 days
Acoustic	Rim of the Pacific Exercise [5]	Biennial multinational training exercise in which navies from Pacific Rim nations and others conduct training throughout the Hawaiian Islands in a number of warfare areas. 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 SOCAL, PMSR	0-1 0-1	2 2	30 days
Major Training Exercises – Medium Integrated Anti-Submarine Warfare							
Acoustic	Fleet Exercise/ Sustainment Exercise	Aircraft carrier and associated aircraft integrates with surface and submarine units in challenging multi-threat operational environment in order to maintain their ability to deploy. Fleet Exercises and Sustainment Exercises are similar to Composite Training Unit Exercises, but are shorter in duration	ASW1 ASW2 ASW3 ASW4 HF1 LF6 MF1 MF3 MF4 MF5 MF11 MF12	HRC SOCAL, PMSR	1 5	3 22	Up to 10 days
Acoustic	Undersea Warfare Exercise	Elements of anti-submarine warfare tracking exercise combine in this exercise of multiple air, surface, and subsurface units, over a period of several days	ASW3 ASW4 HF1 LF6 MF1 MF3 MF4 MF5 MF11	HRC	3	12	4 days

			MF12				
Integrated/Coordinated Training							
Acoustic	Small Integrated Anti-Submarine Warfare	Multiple ships and aircraft coordinate use of sensors, including sonobuoys, to search, detect, and track threat submarine	ASW2 ASW3 ASW4 HF1 MF1 MF1K MF3 MF4 MF5 MF6 MF12 TORP1 TORP2	HRC SOCAL	1 2-3	2 12	2-5 days
Acoustic	Medium Coordinated Anti-Submarine Warfare	Training for prospective Commanding Officers on submarines to assess officers' abilities to operate in numerous hostile environments, encompassing surface vessels, aircraft, and other submarines	ASW3 ASW4 HF1 MF1 MF3 MF4 MF5 TORP1 TORP2	HRC SOCAL	2 2	10 2	3-10 days
Acoustic	Small Coordinated Anti-Submarine Warfare	Multiple ships and helicopters integrate the use of their sensors, including sonobuoys, to search for, detect, classify, localize, and track a threat submarine to launch a torpedo	ASW2 ASW3 ASW4 HF1 MF1 MF3 MF4 MF5 MF11 MF12	HRC SOCAL	2 10-14	10 58	2-4 days
Amphibious Warfare							
Explosive	Naval Surface Fire Support Exercise – at Sea	Surface ship uses large-caliber gun to support forces ashore; Land targets are simulated at sea. Rounds impact water and scored by passive acoustic hydrophones located at or near target area	E5	HRC (W188)	15	75	8 hrs
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	Marine Expeditionary Unit Composite Training Unit Exercise	Amphibious Ready Group exercises are conducted to validate the Marine Expeditionary Unit's readiness for deployment	ASW2 ASW3 ASW4 HF1 MF1	SOCAL	2-3	12	Up to 21 days

		and includes small boat raids; visit, board, search, and seizure training; helicopter and mechanized amphibious raids; and non-combatant evacuation operation	MF3 MF4 MF5 MF11				
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 SOCAL	6 104	30 520	2-5 hrs
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 SOCAL	10 25	50 125	2-8 hrs
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 SOCAL	50 117	250 585	2-5 hrs
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 SOCAL	48 13	240 65	8 hrs
Acoustic	Anti-Submarine Warfare Tracking Exercise – Helicopter	Helicopter crews search for, track, and detect submarines	MF4 MF5	HRC SOCAL, PMSR HSTT Transit Corridor	159 524 6	795 2,620 30	2-4 hrs
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 SOCAL, PMSR	32 56	160 280	2-8 hrs
Acoustic	Anti-Submarine Warfare Tracking Exercise – Ship[6]	Surface ship crews search for, track, and detect submarines	ASW3 MF1 MF11 MF12	HRC SOCAL, PMSR	224 423	1,120 2,115	2-4 hrs
Acoustic	Anti-Submarine Warfare Tracking Exercise – Submarine	Submarine crews search for, track, and detect submarines	ASW4 HF1 HF3 MF3	HRC SOCAL, PMSR HSTT Transit	200 50	1,000 250	8 hrs

				Corridor	7	35	
Explosive, Acoustic	Service Weapons Test	Air, surface, or submarine crews employ explosive torpedoes against virtual targets	HF1 MF3 MF6 TORP2 E11	HRC SOCAL	2 1	10 5	8 hrs
Mine Warfare							
Acoustic	Airborne Mine Countermeasure – Mine Detection	Helicopter aircrews detect mines using towed or laser mine detection systems	HF4	SOCAL	10	50	2 hrs
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 San Diego, CA	1 1-3	5 12	Multiple days
Explosive	Marine Mammal Systems	Navy deploys trained bottlenose dolphins and California sea lions as part of a marine mammal mine-hunting and object-recovery system	E7	HRC SOCAL	10 175	50 875	Varies
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 SOCAL	30 92	150 460	1.5-4 hrs
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	1.5-4 hrs
Explosive, Acoustic	Mine Countermeasure Mine Neutralization Remotely Operated Vehicle	Ship, small boat, and helicopter crews locate and disable mines using remotely operated underwater vehicles	HF4 E4	HRC SOCAL	6 372	30 1,860	1.5 to 4 hrs
Explosive	Mine Neutralization Explosive Ordnance Disposal	Personnel disable threat mines using explosive charges	E4 E5 E6 E7	HRC (Puuloa) SOCAL (IB, SSTC, SOAR)	20 170	100 970	Up to 4 hrs
Acoustic	Submarine Mine Exercise	Submarine crews practice detecting mines in a designated area	HF1	HRC SOCAL	40 12	200 60	6 hrs
Acoustic	Surface Ship Object Detection	Ship crews detect and avoid mines while navigating restricted areas or channels	MF1K HF8	HRC SOCAL	42 164	210 820	30 minutes to 1 hr

		using active sonar					
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 (Northwest Harbor)	18	90	4 hrs
Explosive	Underwater Demolition Qualification and Certification	Navy divers conduct various levels of training and certification in placing underwater demolition charges	E5 E6 E7	HRC (Puuloa) SOCAL	25 120	125 600	Varies
Surface Warfare							
Explosive	Bombing Exercise Air-to-Surface	Fixed-wing aircrews deliver bombs against surface targets	E9 E10 E12	HRC SOCAL HSTT Transit Corridor	187 640 5	935 3,200 25	1 hr
Explosive	Gunnery Exercise Surface-to-Surface Boat Medium-Caliber	Small boat crews fire medium-caliber guns at surface targets	E1 E2	HRC SOCAL	10 14	50 70	1 hr
Explosive	Gunnery Exercise Surface-to-Surface Ship Large-caliber	Surface ship crews fire large-caliber guns at surface targets	E3 E5	HRC SOCAL HSTT Transit Corridor	32 200 13	160 1,000 65	Up to 3 hrs
Explosive	Gunnery Exercise Surface-to-Surface Ship Medium-Caliber	Surface ship crews fire medium-caliber guns at surface targets	E1 E2	HRC SOCAL HSTT Transit Corridor	50 180 40	1250 900 200	2-3 hrs
Acoustic, Explosive	Independent Deployer Certification Exercise/Tailored Surface Warfare Training	Multiple ships, aircraft, submarines conduct integrated multi-warfare training with surface warfare emphasis. Serves as ready-to-deploy certification for individual surface ships tasked with surface warfare missions	ASW2 ASW3 ASW4 HF1 MF1 MF3 MF4 MF5 MF11 E1 E3 E6 E10	SOCAL	1	5	15 days
Explosive	Integrated Live Fire Exercise	Naval Forces defend against swarm of surface threats (ships or small boats) with	E1 E3 E6	HRC (W188A) SOCAL	1 1	5 5	6-8 hrs

		bombs, missiles, rockets, and small-, medium- and large-caliber guns	E10	(SOAR)			
Explosive	Missile Exercise Air-to-Surface	Fixed-wing, helicopter aircrews fire air-to-surface missiles at surface targets	E6 E8 E10	HRC SOCAL	10 210	50 1,050	1 hr
Explosive	Missile Exercise Air-to-Surface Rocket	Helicopter aircrews fire precision-guided and unguided rockets at surface targets	E3	HRC SOCAL	227 246	1,135 1,120	1 hr
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 (W188A) SOCAL (W291)	20 10	100 50	2-5 hrs
Acoustic, Explosive	Sinking Exercise	Aircraft, ship, submarine crews deliberately sink seaborne target, usually decommissioned ship made environmentally safe for sinking according to U.S. Environmental Protection Agency standards, with variety of munitions	TORP2 E5 E8 E9 E10 E11 E12	HRC SOCAL	1-3 0-1	7 1	4-8 hrs, over 1-2 days
Other Training Activities							
Pile driving	Elevated Causeway System	Pier constructed off of a beach. Piles driven into bottom with impact hammer. Piles removed from seabed via vibratory extractor. Only in-water impacts are analyzed	Impact hammer or vibratory extractor	SOCAL	2	10	Up to 20 days for construct-ion; up to 10 days for removal
Acoustic	Kilo Dip	Functional check of dipping sonar prior to conducting full test or training event on the dipping sonar	MF4	HRC SOCAL	60 2,400	300 12,000	1.5 hrs
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 San Diego Bay, CA	220 80	1,100 400	Up to 2 hrs
Acoustic	Submarine Sonar Maintenance and Systems Checks	Maintenance of submarine sonar systems is conducted pierside or at sea	MF3	HRC Pearl Harbor, HI SOCAL San Diego Bay, CA HSTT Transit Corridor	260 260 93 92 10	1,300 1,300 465 460 50	Up to 1 hr

Acoustic	Submarine Under Ice Certification	Submarine crews train to operate under ice. Ice conditions are simulated during training and certification events	HF1	HRC SOCAL	12 6	60 30	Up to 1 hr
Acoustic	Surface Ship Sonar Maintenance and Systems Checks	Maintenance of surface ship sonar systems is conducted pierside or at sea	HF8 MF1	HRC Pearl Harbor, HI SOCAL San Diego Bay, CA HSTT Transit Corridor	75 80 250 250 8	375 400 1,250 1,250 40	Up to 4 hrs
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 systems can be employed effectively	FLS2 M3 SAS2 SAS4	HRC SOCAL	25 10	125 50	2 days

[1] Additional activities utilizing sources not listed in the Sonar Bin column may occur durmg integrated/coordmated exercises; All acoustic sources that may be used during training and testing activities have been accounted for in the modeling and analysis.
[2] Locations given are areas where activities typically occur. However, activities could be conducted in other locations within the HSTT Study Area.Where multiple locations are provided, the number of activities could occur in any of the locations, not in each of the locations.
[3] For activities where maximum number of events could vary between years, information is presented as 'representative-maximum' number of events per year. For activities where no variation is anticipated, only maximum number of events within as single year is provided.
[4] PMSR indicates only the portion of the Point Mugu Sea Range that overlaps Southern California portion of the HSTT Study Area.
[5] Rim of the Pacific (RIMPAC) training exercises typically occur every other year. This exercise is comprised of various activities accounted for elsewhere within Table 4. Some components of RIMPAC are conducted in SOCAL.
[6] For Anti-submarine Warfare Tracking Execise-Ship, 50 percent of requirements are met through synthetic training or other training exercises.
Notes: HRC = Hawaii Range Complex portion of HSTT, SOCAL = Southern California Range Complex portion of , HSTT = Hawaii-Southern California Training and Testing, PMSR = Point Mugu Sea Range Overlap, SOAR = Southern California Anti-Submarine Warfare Range, IB = Imperial Beach Minefield

Planned Testing Activities

Testing activities covered in these regulations are described in Table 5 through Table 8.

Naval Air Systems Command

Table 5 summarizes the planned testing activities for the Naval Air Systems Command analyzed within the HSTT Study Area.

Table 5. Naval Air Systems Command testing activities analyzed in 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, performance, and safe separation of guided and unguided 2.75-inch rockets fired from a hovering or forward flying helicopter or tilt rotor aircraft.	E3	HRC	2	10	1.5-2.5 hrs
				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.	FLS2, BB4 MF9	HRC	11-28	90	8 hrs

Naval Sea Systems Command

Table 6 summarizes the planned testing activities for the Naval Sea Systems Command analyzed within the HSTT Study Area.

Table 6. Naval Sea Systems Command testing activities analyzed in 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	ASW3, MF1, MF1K, MF9, MF10	HRC	3	15	Up to 3 weeks, intermittent sonar use
				Pearl Harbor, HI	3	15	

		maintenance.		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	E6	HRC	13	65	1 day-2 weeks
				HRC -	24	120	

		from submarines and surface combatants. Testing of the launching system and ship defense is performed.		SOCAL			
				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 planned testing activities for the Office of Naval Research analyzed within the HSTT Study Area.

Table 7. Office of Naval Research testing activities analyzed in 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, BB7, BB9, LF3, LF4, LF5, MF8, 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 planned testing activities for the Space and Naval Warfare Systems Command analyzed within the HSTT Study Area.

Table 8. Space and Naval Warfare Systems Command testing activities in 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 this rule. Table 9 shows the acoustic source classes (*i.e.,* LF, MF, and HF) that could occur in any year under the Planned Activities for training and testing activities. Under the Planned Activities, acoustic source class use would vary annually, consistent with the number of annual activities summarized above. The five-year total for the Planned 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	H	0	0	70	350

		binned					
	MF9	Active sources (equal to 180 dB and up to 200 dB) not otherwise binned	H	0	0	5,139 – 5,165	25,753
	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	H	0	0	1,380	6,900

		180 dB) not otherwise binned					
	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 – SD2	HF and VHF sources with short pulse lengths, used for the detection of swimmers and other objects for the purpose of port security	H	0	0	10	50
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

Table 10 shows the number of air gun shots planned 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 five-year period of the rule, the Navy will drive a total of 1,190 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 five-year period of the rule, the Navy will extract a total of 1,190 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 Planned Activities for training and testing activities. Under the Planned Activities, bin use would vary annually, consistent with the number of annual activities summarized above. The five-year total for the Planned 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 – 38	170	57	285
E9	> 100–250	500 lb bomb	0.3	410 – 450	2,090	4	20
E 10	> 250–500	Harpoon missile	0.3	219 – 224	1,100	30	150
E 11	> 500–650	650 lb mine	61, 150	7 – 17	45	12	60
E 12	> 650–1,000	2,000 lb bomb	0.3	16 – 21	77	0	0
E 13	> 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

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Vessel Movement

Vessels used as part of the Planned 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). The average speed of large Navy ships ranges between 10 and 15 knots and submarines generally operate at speeds in the range of 8–13 knots, while a few specialized vessels can travel at faster speeds. Small craft (for purposes of this analysis, less than 18 m in length) have much more variable speeds (0–50+ knots (kn), dependent on the activity), but generally range from 10 to 14 kn. From unpublished Navy data, average median speed for large Navy ships in the HSTT Study Area from 2011–2015 varied from 5–10 kn with variations by ship class and location (*i.e.,* slower

speeds close to the coast). 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 dynamic 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 because of continual operational requirements from Combatant Commanders. 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 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.

Because standard operating procedures are essential to safety and mission success, the Navy considers them to be part of the planned activities, and has included them in the environmental analysis. Additional details on standard operating procedures were provided in our **Federal Register** notice of proposed rulemaking (83 FR 29872; June 26, 2018); please see that notice of proposed rulemaking or the Navy's application for more information.

Duration and Location

Training and testing activities would be conducted under this authorization in the HSTT Study Area throughout the years. 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 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 [2] on the high seas where sonar training and testing may occur.

A Navy range complex consists of geographic areas that encompass a water component (above and below the surface) and airspace, and may encompass a land component where training and testing of military platforms, tactics, munitions, explosives, and electronic warfare systems occur. Range complexes include 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. Additional detail on range complexes and testing ranges was provided in our **Federal Register** notice of proposed rulemaking (83 FR 29872; June 26, 2018); please see that notice of proposed rulemaking or the Navy's application for more information.

Comments and Responses

We published a notice of proposed regulations in the **Federal Register** on June 26, 2018 (83 FR 29872), with a 45-day comment period. In that notice of proposed rulemaking, we requested public input on the requests for authorization described therein, our analyses, and the proposed authorizations, and requested that interested persons submit relevant information, suggestions, and comments. During the 45-day comment period, we received 22 comment letters in total. Of this total, two submissions were from other Federal agencies, two letters were from organizations or individuals acting in an official capacity (*e.g.,* non-governmental organizations (NGOs)) and 18 submissions were from private citizens. NMFS has reviewed all public comments received on the proposed rule and issuance of the LOAs. All relevant comments and our responses are described below. We provide no response to specific comments that addressed species or statutes not relevant to our proposed actions under section 101(a)(5)(A) of the MMPA (*e.g.,* comments related to sea turtles). We organize our comment responses by major categories.

General Comments

The majority of the 18 comment letters from private citizens expressed general opposition toward the Navy's proposed training and testing activities and requested that NMFS not issue the LOAs, but without providing information relevant to NMFS' decisions. These comments appear to indicate a lack of understanding of the MMPA's requirement that NMFS ''shall issue'' requested authorizations when certain findings (see the *Background* section) can be made; therefore, these comments were not considered further. The remaining comments are addressed below.

Impact Analysis

General

Comment 1: A commenter recommended that the Navy provide NMFS with an acoustics analysis that addresses noise impacts on land, from the air, and underwater. Full environmental analysis of the noise would examine a suite of metrics appropriate to the array of resources impacted. The impacts should discuss potential effects on wildlife, visitors, and other noise-sensitive receivers.

The commenter also recommended that the Navy consider the following as it plans to conduct activities in the HSTT Study Area:

- Use appropriate metrics to assess potential environmental impacts on land and water.
- Determine natural ambient acoustic conditions as a baseline for analysis.
- Assess effects from cumulative noise output, incorporating noise generated from other anthropogenic sources.
- Determine distance at which noise will attenuate to natural levels.
- Assess effects that these noise levels would have on terrestrial wildlife, marine wildlife, and visitors.
- Appropriate and effective mitigation measures should be developed and used to reduce vessel strike (*e.g.,* timing activities to avoid migration, and searching for marine

[2] 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. The 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.

mammals before and during activities and taking avoidance measures).

Response: NMFS refers the commenter to the HSTT FEIS/OEIS which conducts an assessment of all of the activities which comprise the proposed action and their impacts (including cumulative impacts) to relevant resources. The Navy is not required to do ambient noise monitoring or assess impacts to wildlife other than marine mammals or to visitors/tourists. The mitigation measures in the rule include procedural measures to minimize strike (avoiding whales by 500 yards, etc.), mitigation areas to minimize strike in biologically important areas, and Awareness Notification Message areas wherein all vessels are alerted to stay vigilant to the presence of large whales.

Density Estimates

Comment 2. A commenter commented that 30 iterations or Monte Carlo simulations is low for general bootstrapping methods used in those models but understands that increasing the number of iterations in turn increases the computational time needed to run the models. Accordingly, the commenter suggested that the Navy consider increasing the iterations from 30 to at least 200 for activities that have yet to be modeled for upcoming MMPA rulemakings for Navy testing and training activities.

Response: In areas where there are four season, 30 iterations are used in NAEMO which results in a total of 120 iterations per year for each event. However, in areas where only two seasons, warm and cold, the number of iterations per season is increased to 60 so that 120 iterations per year are maintained. Navy reached this number of iterations by running two iterations of a scenario and calculating the mean of exposures, then running a third iteration and calculating the running mean of exposures, then a fourth iteration and so on. This is done until the running mean becomes stable. Through this approach, it was determined 120 iterations was sufficient to converge to a statistically valid answer and provides a reasonable uniformity of exposure predictions for most species and areas. There are a few exceptions for species with sparsely populated distributions or highly variable distributions. In these cases, the running mean may not flatten out (or become stable); however, there were so few exposures in these cases that while the mean may fluctuate, the overall number of exposures did not result in significant differences in the totals. In total, the number of simulations conducted for HSTT Phase III exceeded six million simulations and produced hundreds of terabytes of data. Increasing the number of iterations, based on the discussion above, would not result in a significant change in the results, but would incur a significant increase in resources (*e.g.,* computational and storage requirements). This would divert these resources from conducting other more consequential analysis without providing for meaningfully improved data. The Navy has communicated that it is continually looking at ways to improve NAEMO and reduce data and computational requirements. As technologies and computational efficiencies improve, Navy will evaluate these advances and incorporate them where appropriate. NMFS has reviewed the Navy's approach and concurs that it is technically sound and reflects the best available science.

Comment 3: A commenter had concerns regarding the Navy's pinniped density estimates. Given that a single density was provided for the respective areas and pinnipeds were assumed to occur at sea as individual animals, uncertainty does not appear to have been incorporated in the Navy's animat modeling for pinnipeds. The Navy primarily used sightings or abundance data, assuming certain correction factors, divided by an area to estimate pinniped densities. Many, if not all, of the abundance estimates had associated measures of uncertainty (*i.e.,* coefficients of variation (CV), standard deviation (SD), or standard error (SE)). Therefore, the commenter recommended that NMFS require the Navy to specify whether and how it incorporated uncertainty in the pinniped density estimates into its animat modeling and if it did not, require the Navy to use measures of uncertainty inherent in the abundance data (*i.e.,* CV, SD, SE) similar to the methods used for cetaceans.

Response: As noted in the cited technical report *Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing* (U.S. Department of the Navy, 2017a), the Navy did not apply statistical uncertainty outside the survey boundaries into non-surveyed areas, since it deemed application of statistical uncertainty would not be meaningful or appropriate. We note that there are no measures of uncertainty (*i.e.,* no CV, SD, or SE) provided in NMFS Pacific Stock Assessment Report (SAR) Appendix 3 (Carretta *et al.,* 2017) associated with the abundance data for any of the pinniped species present in Southern California or for monk seals in Hawaii. Although some measures of uncertainty are presented in some citations within the SAR and in other relevant publications for some survey findings, it is not appropriate for the Navy to attempt to derive summations of total uncertainty for an abundance when the authors of the cited studies and the SAR have not. For additional information regarding use of pinniped density data, see the cited *U.S. Navy Marine Species Density Database Phase III for the Hawaii-Southern California Training and Testing Study Area* Section 11 (U.S. Department of the Navy, 2017b). As a result of the lack of published applicable measures of uncertainty for pinnipeds, the Navy did not incorporate measures of uncertainty into the pinniped density estimates. NMFS independently reviewed the methods and densities used by the Navy and concur that they are appropriate and reflect the best available science.

Comment 4: A commenter had concerns regarding the various areas, abundance estimates, and correction factors that the Navy used for pinnipeds. The commenter referenced a lot of information in the context of both what the Navy used and what they could have used instead and summarizes the discussion with seven recommendations.

For harbor seals, the area was based on the NMFS SOCAL stratum (extending to the extent of the U.S. exclusive economic zone (EEZ), 370 km from the coast) for its vessel-based surveys (*i.e.,* Barlow 2010) and the Navy applied the density estimates from the coast to 80-km offshore. The commenter believes that this approach is inappropriate and that the Navy should use the area of occurrence to estimate the densities for harbor seals. For harbor seals, the Navy assumed that 22 percent of the stock occurred in SOCAL, citing Department of the Navy (2015). The commenter had two concerns with this approach. First, one has to go to Department of the Navy (2015) to determine the original source of the information (Lowry *et al.,* 2008; see the commenter's February 20, 2014, letter on this matter). Second, Lowry *et al.* (2008) indicated that 23.3 percent of the harbor seal population occurred in SOCAL, not 22 percent as used by the Navy. Therefore, the commenter recommended that, at the very least, NMFS require the Navy to revise the pinniped density estimates using the extent of the coastal range (*e.g.,* from shore to 80 km offshore) of harbor seals as the applicable area, 23.3 percent of the California abundance estimate based on Lowry *et al.* (2008), and an at-sea correction factor of 65 percent based on

Harvey and Goley (2011) for both seasons.

For Monk seals the area was based on the areas within the 200-m isobaths in both the Main and Northwest Hawaiian Islands (MHI and NWHI, respectively) and areas beyond the 200-m isobaths in the U.S. EEZ. The commenter asserted that some of the abundances used were not based on best available science. The Navy noted that its monk seal abundance was less than that reported by Baker *et al.* (2016), but that those more recent data were not available when the Navy's modeling process began. The Baker *et al.* (2016) data have been available for almost two years and should have been incorporated accordingly, particularly since the data would yield greater densities and the species is endangered. For monk seals, the commenter recommended using the 2015 monk seal abundance estimate from Baker *et al.* (2016) and an at-sea correction factor of 63 percent for the MHI based on Baker *et al.* (2016) and 69 percent for the NWHI based on Harting *et al.* (2017).

For the northern fur seals, the area was based on the NMFS SOCAL stratum (extending to the extent of the U.S. EEZ, 370 km from the coast) for its vessel-based surveys (*i.e.,* Barlow 2010). For elephant seals, California sea lions, and Guadalupe fur seals, the area was based on the Navy SOCAL modeling area. The commenter had concerns that these areas are not based on the biology or ecology of these species. The commenter recommended using the same representative area for elephant seals, northern fur seals, Guadalupe fur seals, and California sea lions. The commenter recommended using an increasing trend of 3.8 percent annually for the last 15 years for elephant seals as part of the California population and at least 31,000 as representative of the Mexico population based on Lowry *et al.* (2014). Additionally, the commenter recommended using an at-sea correction factor of 44 percent for the cold season and 48 percent for the warm season for California sea lions based on Lowry and Forney (2005).

Finally, the commenter recommended that NMFS require the Navy to (1) specify the assumptions made and the underlying data that were used for the at-sea correction factors for Guadalupe and northern fur seals and (2) consult with experts in academia and at the NMFS Science Centers to develop more refined pinniped density estimates that account for pinniped movements, distribution, at-sea correction factors, and density gradients associated with proximity to haul-out sites or rookeries.

Response: The Navy provided additional clarification regarding the referenced concerns about areas, abundance estimates, and correction factors that were used for pinnipeds. We note that take estimation is not an exact science. There are many inputs that go into an estimate of marine mammal exposure, and the data upon which those inputs are based come with varying levels of uncertainty and precision. Also, differences in life histories, behaviors, and distributions of stocks can support different decisions regarding methods in different situations. Different methods may be supportable in different situations, and, further, there may be more than one acceptable method to estimate take in a particular situation. Accordingly, while NMFS always ensures that the methods are technically supportable and reflect the best available science, NMFS does not prescribe any one method for estimating take (or calculating some of the specific take estimate components that the commenter is concerned about). NMFS reviewed the areas, abundances, and correction factors used by the Navy to estimate take and concurs that they are appropriate. We note the following in further support of the analysis: While some of the suggestions the commenter makes could provide alternate valid ways to conduct the analyses, these modifications are not required in order to have equally valid and supportable analyses and, further, would not change NMFS' determinations for pinnipeds. In addition, we note that (1) many of the specific recommendations that the commenter makes are largely minor in nature: ''44 not 47 percent,'' ''63 not 61 percent,'' ''23.3 not 22 percent'' or ''area being approximately 13 percent larger;'' and (2) even where the recommendation is somewhat larger in scale, given the ranges of these stocks, the size of the stocks, and the number and nature of pinniped takes, recalculating the estimated take for any of these pinniped stocks using the commenter's recommended changes would not change NMFS' assessment of impacts on the recruitment or survival of any of these stocks, or the negligible impact determination. Below, we address the Commenters issues in more detail and, while we do not explicitly note it in every section, NMFS has reviewed the Navy's analysis and choices in relation to these comments and concurs that they are technically sound and reflect the best available science.

For harbor seals—Based on the results from satellite tracking of harbor seals at Monterey, California and the documented dive depths (Eguchi and Harvey, 2005), the extent of the range for harbor seals in the HSTT Study Area used by the Navy (a 50 nmi buffer around all known haul-out sites; approximately 93 km) is more appropriate than the suggested 80 km offshore suggested by commenter.

The comment is incorrect in its claim that the Navy did not use the best available science. Regarding the appropriate percentage of the California Current Ecosystem abundance to assign to the HSTT Study Area, the 22 percent that the Navy used is based on the most recent of the two years provided in Lowry *et al.* (2008) rather than the mean of two years, which is one valid approach. Additionally, since approximately 74 percent of the harbor seal population in the Channel Islands (Lowry *et al.,* 2017) is present outside and to the north of the HSTT Study Area, it is a reasonable assumption that the 22 percent used already provides a conservative overestimate and that it would not be appropriate to apply a higher percentage of the overall population for distribution into the Navy's modeling areas.

Again the comment is incorrect in its claim that the correction factors applied to population estimates were either unsubstantiated or incorrect. Regarding the commenter's recommended use of an at-sea correction factor of 65 percent for both seasons based on Harvey and Goley (2011), that correction factor was specifically meant to apply to the single molting season when harbor seals are traditionally surveyed (see discussion in Lowry *et al.,* 2017). Additionally, the authors of that study provided a correction factor (CF = 2.86; 35 percent) for Southern California but left open the appropriateness of that factor given the limited data available at the time. For these reasons, having separate correction factors for each of the seasons is more appropriate as detailed in Section 11.1.5 (*Phoca vitulina,* Pacific harbor seal) of the *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, 2017b).

For monk seals, as detailed in Section 11.1.4 (*Neomonachus schauinslandi,* Hawaiian monk seal) of the *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, 2017b), the Navy consulted with the researchers and subject matter experts at the Pacific Science Center and the Monk Seal Recovery Team regarding the abundance estimates, at sea correction factors, and distribution for monk seals in the Hawaiian Islands during development

of the HSTT FEIS/OEIS throughout 2015 and the Summer of 2016. The Navy incorporated the results of those consultations, including unpublished data, into the analysis of monk seals. Additional details in this regard to monk seal distributions and population trends as reflected by the abundance in the Hawaiian Islands are presented in the FEIS/OEIS in Section 3.7.2.2.9.2 (Habitat and Geographic Range) and Section 3.7.2.2.9.3 (Population Trends). The Navy has indicated that it has continued ongoing communications with researchers at the Pacific Islands Science Center and elsewhere, has accounted for the findings in the citations noted by the commenter (Baker *et al.,* 2016; Harting *et al.,* 2017) as well as information in forthcoming publications provided ahead of publication via those researchers (cited as in preparation), and specifically asked for and received concurrence from subject matter experts regarding specific findings presented in the HSTT FEIS/OEIS regarding monk seals. The Navy also considered (subsequent to publication of the HSTT FEIS) the new Main Hawaiian Islands haulout correction factor presented in the publication by Wilson *et al.* (2017, which would be inconsistent with the use of the Baker *et al.* (2016) correction factors suggested by the commenter), and the Harting *et al.* (2017) correction factor, and has considered the new abundance numbers presented in the 2016 Stock Assessment Report, which first became available in January 2018. It is the Navy's assessment that a revision of the monk seal at-sea density would only result in small changes to the predicted effects and certainly would not change the conclusions presented in the HSTT FEIS/OEIS regarding impact on the population or the impact on the species. The Navy has communicated that it assumes that as part of the ongoing regulatory discussions with NMFS, changes to estimates of effects can be best dealt with in the next rulemaking given Wilson *et al.* (2017) has now also provided a totally new haulout correction factor for the Main Hawaiian Islands that was not considered in Baker *et a*l. (2016), Harting *et al.* (2017), or the 2016 SAR.

For northern fur seals, elephant seals, California sea lions, and Guadalupe fur seals, the Navy consulted with various subject matter experts regarding the abundances and distributions used in the HSTT FEIS/OEIS analyses for these species and based on those consultations and the literature available, the Navy and NMFS believe that the findings presented in the HSTT FEIS/OEIS and supporting technical reports provide the most accurate assessments available for these species. Given the demonstrated differences in the at-sea distributions of elephant seals, northern fur seals, Guadalupe fur seals, and California sea lions (Gearin et al., 2017; Lowry *et al.,* 2014; Lowry,et al., 2017; Norris, 2017; Norris,et al., 2015; Robinson *et al.,* 2012; University of California Santa Cruz and National Marine Fisheries Service, 2016), it would not be appropriate to use the same representative area for distributions of these species' population abundances. For example, California sea lions forage predominantly within 20 nautical miles from shore (Lowry and Forney, 2005), while tag data shows that many elephant seals (Robinson *et al.,* 2012) and Guadalupe fur seals (Norris, 2017) seasonally forage in deep waters of the Pacific well outside the boundaries of the HSTT Study Area.

For northern elephant seals (*Mirounga angustirostris,* Northern elephant seal), as detailed in Section 11.1.3 of 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, the Navy considered a number of factors in the development of the data for this species, including the fact that not all of the elephant seal population is likely to occur exclusively within the Southern California portion of the HSTT Study Area. Given that the three main rookeries considered in this analysis are located at the northern boundary of the HSTT Study Area and that elephant seals migrate northward after the breeding season, the Navy, in consultation with subject matter experts, believes the current abundance used in the analysis is based on the best available science and represents a conservative overestimate of the number of elephant seals likely to be affected by Navy activities in the HSTT Study Area.

For California sea lions, the citation (Lowry and Forney, 2005) used as the basis for this recommendation specifically addressed the use of the Central and Northern California at-sea correction factor elsewhere, with the authors stating; ''In particular, [use of the Central and Northern California at-sea correction factor] would not be appropriate for regions where sea lions reproduce, such as in the Southern California Bight (SCB) and in Mexico, . . .'' Given the waters of the Southern California Bight and off Mexico overlap the HSTT Study Area and since the authors of the cited study specifically recommended not using the correction factor in the manner the commenter suggested, the Navy does not believe use of that correction factor for the HSTT Study Area would be appropriate. NMFS concurs with this approach

For Guadalupe fur seal—Additional detail regarding the data used for the analysis of Guadalupe fur seals has been added to the HSTT Final EIS/OEIS Section 3.7.2.2.8 (*Arctocephalus townsendi,* Guadalupe Fur Seal). The Navy had integrated the latest (September 2017) unpublished data for Guadalupe fur seals from researchers in the United States and Mexico into the at-sea correction factor and density distribution of the species used in the modeling, but consultations with experts in academia and at the NMFS Science Centers and their recommendations had not been finalized before release of the Draft EIS/OEIS. Subsequently, the Navy did not consider this revision of the text critical for the final NEPA document since the new data did not provide any significant change to the conclusions reached regarding the Guadalupe fur seal population. In fact, the data indicates an increase in the population and expansion of their range concurrent with decades of ongoing Navy training and testing in the SOCAL range complex.

For Northern Fur Seal—As presented in Section 11.1.2 (*Callorhinus ursinus,* Northern fur seal) of the Navy's Density Technical Report (U.S. Department of the Navy, 2017b), the correction factor percentages for northern fur seals potentially at sea were derived from the published literature as cited (Antonelis, Stewart, & Perryman, 1990; Ream, Sterling, & Loughlin, 2005; Roppel, 1984).

For future EISs, the Navy explained that it did and will continue to consult with authors of the papers relevant to the analyses as well as other experts in academia and at the NMFS Science Centers during the development of the Navy's analyses. During the development of the HSTT EIS/OEIS and as late as September 2017, the Navy had ongoing communications with various subject matter experts and specifically discussed pinniped movements, the distribution of populations within the study area to support the analyses, the pinniped haulout or at-sea correction factors, and the appropriateness of density gradients associated with proximity to haul-out sites or rookeries. As shown in the references cited, the personal communications with researchers have been made part of the public record, although many other

informal discussions with colleagues have also assisted in the Navy's approach to the analyses presented.

The Navy acknowledges that there have been previous comments provided by this commenter on other Navy range complex documents regarding the use of satellite tag movement and location data to derive at-sea pinniped density data, and the Navy asserts that previous responses to those comments remain valid. Additionally, the commenter has noted that the ''. . . Commenter continues to believe that data regarding movements and dispersion of tagged pinnipeds could yield better approximations of densities than the methods the Navy currently uses.'' The Navy acknowledges that in comments to previous Navy EIS/OEIS analyses, the commenter has recommended this untried approach; responses to those previous comments have been provided. The Navy also notes that there have been papers suggesting the future application of Bayesian or Markov chain techniques for use in habitat modeling (*e.g.,* Redfern *et al.,* 2006) and overcoming the bias introduced by interpretation of population habitat use based on non-randomized tagging locations (*e.g.,* Whitehead & Jonsen, 2013). However, the use of satellite tag location data in a Bayesian approach to derive cetacean or pinniped densities at sea has yet to be accepted, implemented, or even introduced in the scientific literature.

This issue was in fact recently discussed as part of the Density Modeling Workshop associated with the October 2017 Society for Marine Mammalogy conference. The consensus of the marine mammal scientists present was that while pinniped tag data could provide a good test case, it realistically was unlikely to be a focus of the near-term research. The working group determined that a focused technical group should be established to specifically discuss pinnipeds and data available for density surface modelling in the future. It was also discussed at the Density Modeling Workshop in October 2018. The Navy has convened a pinniped working group and NMFS ASFSC is sponsoring a demonstration project to use haulout and telemetry data from seals in Alaska to determine the viability of such an approach.

Therefore, consistent with previous assessments and based on recent discussions with subject matter experts in academia, the NMFS Science Centers, and the National Marine Mammal Laboratory, and given there is no currently established methodology for implementing the approach suggested by the commenter, the Navy believes that attempting to create and apply a new density derivation method at this point would introduce additional levels of uncertainty into density estimations.

For these reasons, the Navy and NMFS will not provide density estimates based on pinniped tracking data. Publications reporting on satellite tag location data have been and will continue to be used to aid in the understanding of pinniped distributions and density calculations as referenced in the FEIS/OEIS and the *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, 2017b). The Navy has communicated that it will continue, as it has in the past, to refine pinniped density and distributions using telemetry data and evolving new techniques (such as passive acoustic survey data) in development of the Navy's analyses. As noted above, NMFS has reviewed the Navy's methods and concurs that they are appropriate and reflect the best available science.

Comment 5: A commenter recommended that NMFS require the Navy to (1) specify what modeling method and underlying assumptions, including any relevant source spectra and assumed animal swim speeds and turnover rates, were used to estimate the ranges to PTS and TTS for impact and vibratory pile-driving activities, (2) accumulate the energy for the entire day of proposed activities to determine the ranges to PTS and TTS for impact and vibratory pile-driving activities, and (3) clarify why the PTS and TTS ranges were estimated to be the same for LF and HF cetaceans during impact pile driving.

Response: As explained in Section 3.7.3.1.4.1 of the HSTT FEIS/OEIS, the Navy measured values for source levels and transmission loss from pile driving of the Elevated Causeway System, the only pile driving activity included in the Specified Activity. The Navy reviewed the source levels and how the spectrum was used to calculate the range to effects; NMFS supports the use of these measured values. These recorded source waveforms were weighted using the auditory weighting functions. Low-frequency and high-frequency cetaceans have similar ranges for impact pile driving since low-frequency cetaceans would be relatively more sensitive to the low-frequency sound which is below high-frequency cetaceans' best range of hearing. Neither the NMFS user spreadsheet nor NAEMO were required for calculations. An area density model was developed in MS Excel which calculated zones of influence (ZOI) to thresholds of interest (*e.g.,* behavioral response) based on durations of pile driving and the aforementioned measured and weighted source level values. The resulting area was then multiplied by density of each marine mammal species that could occur within the vicinity. This produced an estimated number of animals that could be impacted per pile, per day, and overall during the entire activity for both the impact pile driving and vibratory removal phases. NOAA HQ scientists involved in the acoustic criteria development reviewed the manner in which the Navy applied the frequency weighting and calculated all values and concurred with the approach.

Regarding the appropriateness of accumulating energy for the entire day, based on the best available science regarding animal reaction to sound, selecting a reasonable SEL calculation period is necessary to more accurately reflect the time period an animal would likely be exposed to the sound. The Navy factored both mitigation effectiveness and animal avoidance of higher sound levels into the impact pile driving analysis. For impact pile driving, the mitigation zone extends beyond the average ranges to PTS for all hearing groups; therefore, mitigation will help prevent or reduce the potential for exposure to PTS. The impact pile driving mitigation zone also extends beyond or into a portion of the average ranges to TTS; therefore, mitigation will help prevent or reduce the potential for exposure to all TTS or some higher levels of TTS, depending on the hearing group. Mitigation effectiveness and animal avoidance of higher sound levels were both factored into the impact pile driving analysis as most marine mammals should be able to easily move away from the expanding ensonified zone of TTS/PTS within 60 seconds, especially considering the soft start procedure, or avoid the zone altogether if they are outside of the immediate area upon startup. Marine mammals are likely to leave the immediate area of pile driving and extraction activities and be less likely to return as activities persist. However, some ''naive'' animals may enter the area during the short period of time when pile driving and extraction equipment is being re-positioned between piles. Therefore, an animal ''refresh rate'' of 10 percent was selected. This means that 10 percent of the single pile ZOI was added for each consecutive pile within a given 24-hour period to generate the daily ZOI per effect category. These daily ZOIs were then multiplied by the number of days of pile driving and pile extraction and

then summed to generate a total ZOI per effect category (*i.e.,* behavioral response, TTS, PTS). The small size of the mitigation zone and its close proximity to the observation platform will result in a high likelihood that Lookouts would be able to detect marine mammals throughout the mitigation zone.

PTS/TTS Thresholds

Comment 6: A commenter supported the weighting functions and associated thresholds as stipulated in Finneran (2016), which are the same as those used for Navy Phase III activities, but points to additional recent studies that provide additional behavioral audiograms (*e.g.,* Branstetter *et al.* 2017; Kastelein *et al.* 2017b) and information on TTS *(e.g.,* Kastelein *et al.* 2017a, 2017c). However, they commented that the Navy should provide a discussion of whether those new data corroborate the current weighting functions and associated thresholds.

Response: The NMFS *Revised Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing* (NMFS 2018) (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, including the articles that the commenter referenced that were published subsequent to the publication of the first version of 2016 Acoustic Technical Guidance. The new data included in those articles are consistent with the thresholds and weighting functions included in the current version of the Acoustic Technical Guidance (NMFS 2018).

NMFS will continue to review and evaluate new relevant data as it becomes available and consider the impacts of those studies on the Acoustic Technical Guidance to determine what revisions/updates may be appropriate. Thus far, no new information has been published or otherwise conveyed that would fundamentally change the assessment of impacts or conclusions of this rule.

Comment 7: Commenters commented that the criteria that the agency has produced to estimate temporary threshold shift (TTS) and permanent threshold shift (PTS) in marine mammals are erroneous and non-conservative. Commenters cited multiple purported issues with NMFS' Acoustic Technical Guidance, such as pseudo-replication and inconsistent treatment of data, broad extrapolation from a small number of individuals, and disregarding ''non-linear accumulation of uncertainty.'' Commenters suggested that NMFS not rely exclusively on its auditory guidance for determining Level A harassment take, but should at a minimum retain the historical 180-dB rms Level A harassment threshold as a ''conservative upper bound'' or conduct a ''sensitivity analysis'' to ''understand the potential magnitude'' of the supposed errors.

Response: NMFS disagrees with this characterization of the Acoustic Technical Guidance and the associated recommendation. The Acoustic Technical Guidance is a compilation, interpretation, and synthesis of the scientific literature that provides the best scientific information regarding the effects of anthropogenic sound on marine mammals' hearing. The technical guidance was classified as a Highly Influential Scientific Assessment and, as such, underwent three independent peer reviews, at three different stages in its development, including a follow-up to one of the peer reviews, prior to its dissemination by NMFS. In addition, there were three separate public comment periods, during which time we received and responded to similar comments on the guidance (81 FR 51694), which we cross-reference here, and more recent public and interagency review under Executive Order 13795. This review process was scientifically rigorous and ensured that the Guidance represents the best scientific data available.

The Acoustic Technical Guidance updates the historical 180 dB rms injury threshold, which was based on professional judgement (*i.e.,* no data were available on the effects of noise on marine mammal hearing at the time this original threshold was derived). NMFS disagrees with any suggestion that the use of the Acoustic Technical Guidance provides erroneous results. The 180-dB rms threshold is plainly outdated, as the best available science indicates that rms SPL is not even an appropriate metric by which to gauge potential auditory injury (whereas the scientific debate regarding behavioral harassment thresholds is not about the proper metric but rather the proper level or levels and how these may vary in different contexts).

Multiple studies from humans, terrestrial mammals, and marine mammals have demonstrated less TTS from intermittent exposures compared to continuous exposures with the same total energy because hearing is known to experience some recovery in between noise exposures, which means that the effects of intermittent noise sources such as tactical sonars are likely overestimated. Marine mammal TTS data have also shown that, for two exposures with equal energy, the longer duration exposure tends to produce a larger amount of TTS. Most marine mammal TTS data have been obtained using exposure durations of tens of seconds up to an hour, much longer than the durations of many tactical sources (much less the continuous time that a marine mammal in the field would be exposed consecutively to those levels), further suggesting that the use of these TTS data are likely to overestimate the effects of sonars with shorter duration signals.

Regarding the suggestion of pseudo-replication and erroneous models, since marine mammal hearing and noise-induced hearing loss data are limited, both in the number of species and in the number of individuals available, attempts to minimize pseudoreplication would further reduce these already limited data sets. Specifically, with marine mammal behavioral temporary threshold shift studies, behaviorally derived data are only available for two mid-frequency cetacean species (bottlenose dolphin, beluga) and two phocids (in-water) pinniped species (harbor seal and northern elephant seal), with otariid (in-water) pinnipeds and high-frequency cetaceans only having behaviorally-derived data from one species. Arguments from Wright (2015) regarding pseudoreplication within the TTS data are therefore largely irrelevant in a practical sense because there are so few data. Multiple data points were not included for the same individual at a single frequency. If multiple data existed at one frequency, the lowest TTS onset was always used. There is only a single frequency where TTS onset data exist for two individuals of the same species: 3 kHz for dolphins. Their TTS (unweighted) onset values were 193 and 194 dB re 1 μPa2s. Thus, NMFS believes that the current approach makes the best use of the given data. Appropriate means of reducing pseudoreplication may be considered in the future, if more data become available. Many other comments from Wright (2015) and the comments from Racca *et al.* (2015b) appear to be erroneously based on the idea that the shapes of the auditory weighting functions and TTS/PTS exposure thresholds are directly related to the audiograms; *i.e.,* that changes to the composite audiograms would directly influence the TTS/PTS exposure functions (*e.g.,* Wright (2015) describes weighting functions as ''effectively the mirror image of an audiogram'' (p. 2) and states, ''The underlying goal was to estimate how

much a sound level needs to be above hearing threshold to induce TTS.'' (p. 3)). Both statements are incorrect and suggest a fundamental misunderstanding of the criteria/threshold derivation. This would require a constant (frequency-independent) relationship between hearing threshold and TTS onset that is not reflected in the actual marine mammal TTS data. Attempts to create a ''cautionary'' outcome by artificially lowering the composite audiogram thresholds would not necessarily result in lower TTS/PTS exposure levels, since the exposure functions are to a large extent based on applying mathematical functions to fit the existing TTS data.

Behavioral Harassment Thresholds

Comment 8: Commenters commented on what it asserts is NMFS' failure to set proper thresholds for behavioral impacts. Referencing the biphasic function that assumes an unmediated dose response relationship at higher received levels and a context-influenced response at lower received levels that NMFS uses to quantify behavioral harassment from sonar, Commenters commented that resulting functions depend on some inappropriate assumptions that tend to significantly underestimate effects. Commenters expressed concern that every data point that informs the agency's pinniped function, and nearly two-thirds of the data points informing the odontocete function (30/49), are derived from a captive animal study. Additionally, Commenters asserted that the risk functions do not incorporate (nor does NMFS apparently consider) a number of relevant studies on wild marine mammals. Commenters stated that it is not clear from the proposed rule, or from the Navy's recent technical report on acoustic ''criteria and thresholds,'' on which NMFS' approach in the rule is based, exactly how each of the studies that NMFS employed was applied in the analysis, or how the functions were fitted to the data, but the available evidence on behavioral response raises concerns that the functions are not conservative for some species. Commenters recommended NMFS make additional technical information available, including from any expert elicitation and peer review, so that the public can fully comment.

Response: The *Criteria and Thresholds for U.S. Navy Acoustic and Explosive Impacts to Marine Mammals and Sea Turtles Technical Report* (U.S. Department of the Navy, 2017) details how the Navy's proposed method, which was determined appropriate and adopted by NMFS, accounted for the differences in captive and wild animals in the development of the behavioral response functions. The Navy used the best available science, which has been reviewed by external scientists and approved by NMFS, in the analysis. The Navy and NMFS have utilized all available data that relate known or estimable received levels to observations of individual or group behavior as a result of sonar exposure (which is needed to inform the behavioral response function) for the development of updated thresholds. Limiting the data to the small number of field studies that include these necessary data would not provide enough data with which to develop the new risk functions. In addition, NMFS agrees with the assumptions made by the Navy, including the fact that captive animals may be less sensitive, in that the scale at which a moderate to severe response was considered to have occurred is different for captive animals than for wild animals, as the agency understands those responses will be different.

The new risk functions were developed in 2016, before several recent papers were published or the data were available. As new science is published, NMFS and the Navy continue to evaluate the information. The thresholds have been rigorously vetted among scientists and within the Navy community during expert elicitation and then reviewed by the public before being applied. It is unreasonable to revise and update the criteria and risk functions every time a new paper is published. These new and future papers provide additional information, and the Navy has already begun to consult them for updates to the thresholds in the future, when the next round of updated criteria will be developed. Thus far, no new information has been published or otherwise conveyed that would fundamentally change the assessment of impacts or conclusions of the HSTT FEIS/OEIS or this rule. To be included in the behavioral response function, data sets need to relate known or estimable received levels to observations of individual or group behavior. Melcon *et al.* (2012) does not relate observations of individual/group behavior to known or estimable received levels (at that individual/group). In Melcon *et al.* (2012), received levels at the HARP buoy averaged over many hours are related to probabilities of D-calls, but the received level at the blue whale individuals/group are unknown.

As noted, the derivation of the behavioral response functions is provided in the 2017 technical report titled *Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III).* The appendices to this report detail the specific data points used to generate the behavioral response functions. Data points come from published data that is readily available and cited within the technical report.

Comment 9: Commenters stated concerns with the use of distance ''cut-offs'' in the behavioral harassment thresholds, and one commenter recommended that NMFS refrain from using cut-off distances in conjunction with the Bayesian BRFs and re-estimate the numbers of marine mammal takes based solely on the Bayesian BRFs.

Response: The consideration of proximity (cut-off distances) was part of the criteria developed in consultation between the Navy and NMFS, is appropriate based on the best available science which shows that marine mammal responses to sound vary based on both sound level and distance, and was applied within the Navy's acoustic effects model. The derivation of the behavioral response functions and associated cut-off distances is provided in the 2017 technical report titled *Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III).* To account for non-applicable contextual factors, all available data on marine mammal reactions to actual Navy activities and other sound sources (or other large scale activities such as seismic surveys when information on proximity to sonar sources is not available for a given species group) were reviewed to find the farthest distance to which significant behavioral reactions were observed. These distances were rounded up to the nearest 5 or 10 km interval, and for moderate to large scale activities using multiple or louder sonar sources, these distances were greatly increased—doubled in most cases. The Navy's BRFs applied within these distances provide technically sound methods reflective of the best available science to estimate of impact and potential take under military readiness for the actions analyzed within the HSTT FEIS/OEIS and included in these regulations. NMFS has independently assessed the Navy's behavioral harassment thresholds and believes that they appropriately apply the best available science and it is not necessary to recalculate take estimates.

The commenter also specifically expressed concern that distance ''cut-offs'' alleviate some of the exposures that would otherwise have been counted if the received level alone were considered. It is unclear why the commenter finds this inherently inappropriate, as this is what the data show. As noted previously, there are

multiple studies illustrating that in situations where one would expect a behavioral harassment because of the received levels at which previous responses were observed, it has not occurred when the distance from the source was larger than the distance of the first observed response.

Comment 10: Regarding cut-off distances, Commenters noted that dipping sonar appears to be a significant predictor of deep-dive rates in beaked whales on Southern California Anti-submarine Warfare Range (SOAR), with the dive rate falling significantly (*e.g.,* to 35 percent of that individual's control rate) during sonar exposure, and likewise appears associated with habitat abandonment. Importantly, these effects were observed at substantially greater distances (*e.g.,* 30 or more km) from dipping sonar than would otherwise be expected given the systems' source levels and the beaked whale response thresholds developed from research on hull-mounted sonar. Commenters suggested that the analysis, and associated cut-off distances, do not properly consider the impacts of dipping sonar.

Response: The Navy relied upon the best science that was available to develop the behavioral response functions in consultation with NMFS. The Navy's current beaked whale BRF acknowledges and incorporates the increased sensitivity observed in beaked whales during both behavioral response studies and during actual Navy training events, as well as the fact that dipping sonar can have greater effects than some other sources with the same source level. Specifically, the distance cut-off for beaked whales is 50 km, larger than any other group. Moreover, although dipping sonar has a significantly lower source level than hull-mounted sonar, it is included in the category of sources with larger distance cut-offs, specifically in acknowledgement of its unpredictability and association with observed effects. This means that ''takes'' are reflected at lower received levels that would have been excluded because of the distance for other source types.

The referenced article (Associating patterns in movement and diving behavior with sonar use during military training exercises: A case study using satellite tag data from Cuvier's beaked whales at the Southern California Anti-submarine Warfare Range (Falcone *et al.,* 2017) was not available at the time the BRFs were developed. However, NMFS and the Navy have reviewed the article and concur that neither this article nor any other new information that has been published or otherwise conveyed since the proposed rule was published would significantly change the assessment of impacts or conclusions in the HSTT FEIS/OEIS or in this rulemaking. Nonetheless, the new information and data presented in the new article were recently thoroughly reviewed by the Navy and will be quantitatively incorporated into future behavioral response functions, as appropriate for data available at the time that new functions are needed to inform new analyses.

Furthermore, ongoing Navy funded beaked whale monitoring at the same site where the dipping sonar tests were conducted has not documented habitat abandonment by beaked whales. Passive acoustic detections of beaked whales have not significantly changed over eight years of monitoring (DiMarzio *et al.,* 2018). From visual surveys in the area since 2006 there have been repeated sightings of: The same individual beaked whale, beaked whale mother-calf pairs, and beaked whale mother-calf pairs with mothers on their second calf (Schorr *et al.,* 2018). Satellite tracking studies of beaked whale documented high site fidelity to this area (Schorr *et al.,* 2018).''

Comment 11: Regarding the behavioral thresholds for explosives, Commenters recommended that NMFS estimate and ultimately authorize behavior takes of marine mammals during all explosive activities, including those that involve single detonations.

Response: The derivation of the explosive injury criteria is provided in the 2017 technical report titled *Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III),* and NMFS has applied the general rule a commenter referenced to single explosives for years, *i.e.,* that marine mammals are unlikely to respond to a single instantaneous detonation in a manner that would rise to the level of a take. Neither NMFS nor the Navy are aware of evidence to support the assertion that animals will have significant behavioral reactions (*i.e.,* those that would rise to the level of a take) to temporally and spatially isolated explosions. The Navy has been monitoring detonations since the 1990s and has not observed these types of reactions. TTS and all other higher order impacts are assessed for all training and testing events that involve the use of explosives or explosive ordnance.

Further, to clarify, the current take estimate framework does not preclude the consideration of animals being behaviorally disturbed during single explosions as they are counted as ''taken by Level B harassment'' if they are exposed above the TTS threshold, which is only 5 dB higher than the behavioral harassment threshold. We acknowledge in our analysis that individuals exposed above the TTS threshold may also be behaviorally harassed and those potential impacts are considered in the negligible impact determination.

All of the Navy's monitoring projects, reports, and publications are available on the marine species monitoring web page (*https://www.navymarinespeciesmonitoring.us/*). NMFS will continue to review applicable monitoring and science data and consider modifying these criteria when and if new information suggests it is appropriate.

Mortality and injury thresholds for explosions

Comment 12: A commenter recommended that NMFS require the Navy to (1) explain why the constants and exponents for onset mortality and onset slight lung injury thresholds for Phase III have been amended, (2) ensure that the modified equations are correct, and (3) specify any additional assumptions that were made.

Response: The derivation of the explosive injury equations, including any assumptions, is provided in the 2017 technical report titled *Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III).* It is our understanding that the constants and exponents for onset mortality and onset slight lung injury were amended by the Navy since Phase II to better account for the best available science. Specifically, the equations were modified in Phase III to fully incorporate the injury model in Goertner (1982), specifically to include lung compression with depth. NMFS independently reviewed and concurred with this approach.

Comment 13: A commenter commented that the Navy only used the onset mortality and onset slight lung injury criteria to determine the range to effects, while it used the 50 percent mortality and 50 percent slight lung injury criteria to estimate the numbers of marine mammal takes. The commenter believes that this approach is inconsistent with the manner in which the Navy estimated the numbers of takes for PTS, TTS, and behavior for explosive activities. All of those takes have been and continue to be based on onset, not 50-percent values. The commenter commented on circumstances of the deaths of multiple common dolphins during one of the Navy's underwater detonation events in March 2011 (Danil and St. Leger, 2011)

and indicated that the Navy's mitigation measures are not fully effective, especially for explosive activities. The commenter believes it would be more prudent for the Navy to estimate injuries and mortalities based on onset rather than a 50-percent incidence of occurrence. The Navy did indicate that it is reasonable to assume for its impact analysis—thus its take estimation process—that extensive lung hemorrhage is a level of injury that would result in mortality for a wild animal (Department of the Navy 2017a). Thus, the commenter comments that it is unclear why the Navy did not follow through with that premise. The commenter recommends that NMFS use onset mortality, onset slight lung injury, and onset GI tract injury thresholds to estimate both the numbers of marine mammal takes and the respective ranges to effect.

Response: Based on an extensive review of the incident referred to by the commenter, in coordination with NMFS the Navy revised and updated the mitigation for these types of events. There have been no further incidents since these mitigation changes were instituted in 2011.

The Navy used the range to one percent risk of mortality and injury (referred to as ''onset'' in the Draft EIS/OEIS) to inform the development of mitigation zones for explosives. In all cases, the mitigation zones for explosives extend beyond the range to one percent risk of non-auditory injury, even for a small animal (representative mass = 5 kg). In the FEIS/OEIS, the Navy has clarified that the ''onset'' non-auditory injury and mortality criteria are actually one percent risk criteria.

Over-predicting impacts, which would occur with the use of one percent non-auditory injury risk criteria in the quantitative analysis, would not afford extra protection to any animal. The Navy, in coordination with NMFS, has determined that the 50 percent incidence of occurrence is a reasonable representation of a potential effect and appropriate for take estimation.

Although the commenter implies that the Navy did not use extensive lung hemorrhage as indicative of mortality, that statement is incorrect. Extensive lung hemorrhage is assumed to result in mortality, and the explosive mortality criteria are based on extensive lung injury data See the 2017 technical report titled *Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III).*

Range to Effects

Comment 14: One commenter noted that regarding TTS, the ranges to effect provided in Table 25 of the **Federal Register** notice of proposed rulemaking and Table 6–4 of the LOA application appear to be incorrect. The ranges for LF cetaceans should increase with increasing sonar emission time. Therefore, the commenter recommended that NMFS determine what the appropriate ranges to TTS for bin LF5 should be and amend the ranges for the various functional hearing groups in the tables accordingly.

Response: The error in the table has been fixed; specifically, the ranges for MF cetaceans have been revised. Note that the distances are shorter than initially provided in the proposed rule, indicating that the impacts of exposure to this bin are fewer than initially implied by the table. Regardless, the error was only associated with the information presented in this table; there was no associated error in any distances used in the take estimation, and both the take estimates and our findings remain the same.

Mitigation and Avoidance Calculations

Comment 15: Commenters cited concerns that there was not enough information by which to evaluate the Navy's post-modeling calculations to account for mitigation and avoidance and imply that Level A takes and mortality takes may be underestimated. A commenter recommended that NMFS (1) authorize the total numbers of model-estimated Level A harassment (PTS) and mortality takes rather than reduce the estimated numbers of takes based on the Navy's post-model analyses and (2) use those numbers, in addition to the revised Level B harassment takes, to inform its negligible impact determination analyses.

Response: The consideration of marine mammal avoidance and mitigation effectiveness is integral to the Navy's overall analysis of impacts from sonar and explosive sources. NMFS has independently evaluated the method and agrees that it is appropriately applied to augment the model in the prediction and authorization of injury and mortality as described in the rule. Details of this analysis are provided in the Navy's 2018 technical report titled *Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing;* additional information on the mitigation analysis also has been included in the final rule.

Sound levels diminish quickly below levels that could cause PTS. Studies have shown that all animals observed avoid areas well beyond these zones; therefore, the vast majority of animals are likely to avoid sound levels that could cause injury to their ear. As discussed in the Navy's 2018 technical report titled *Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing,* animats in the Navy's acoustic effects model do not move horizontally or ''react'' to sound in any way. The current best available science based on a growing body of behavioral response research shows that animals do in fact avoid the immediate area around sound sources to a distance of a few hundred meters or more depending upon the species. Avoidance to this distance greatly reduces the likelihood of impacts to hearing such as TTS and PTS.

Specifically, behavioral response literature, including the recent 3S and SOCAL BRS studies, indicate that the multiple species from different cetacean suborders do in fact avoid approaching sound sources by a few hundred meters or more, which would reduce received sound levels for individual marine mammals to levels below those that could cause PTS. The ranges to PTS for most marine mammal groups are within a few tens of meters and the ranges for the most sensitive group, the HF cetaceans, average about 200 m, to a maximum of 270 m in limited cases.

As discussed in the Navy's 2018 technical report titled *Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing,* the Navy's acoustic effects model does not consider procedural mitigations (*i.e.,* power-down or shut-down of sonars, or pausing explosive activities when animals are detected in specific zones adjacent to the source), which necessitates consideration of these factors in the Navy's overall acoustic analysis. Credit taken for mitigation effectiveness is extremely conservative. For example, if Lookouts can see the whole area, they get credit for it in the calculation; if they can see more than half the area, they get half credit; if they can see less than half the area, they get no credit. Not considering animal avoidance and mitigation effectiveness would lead to a great overestimate of injurious impacts. NMFS concurs with the analytical approach used, *i.e.,* we believe the estimated Level A take numbers represent the maximum number of these takes that are likely to occur and it would not be appropriate to authorize a higher number or consider a higher number in the negligible impact analysis.

Last, the Navy's 2018 technical report titled *Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing* very clearly explains in detail how species sightability, the Lookout's ability to observe the range to PTS (for sonar and other transducers) and mortality (for explosives), 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 the ability for sound sources to be positively controlled (powered down) are considered in the post-modeling calculation to account for mitigation and avoidance. It is not necessary to view the many tables of numbers generated in the assessment to evaluate the method.

Comment 16: A commenter stated in regards to the method in which the Navy's post-model calculation considers avoidance specifically (*i.e.,* assuming animals present beyond the range of PTS for the first few pings will be able to avoid it and incur only TTS, which results in a 95 percent reduction in the number of estimated PTS takes predicted by the model), given that sound sources are moving, it may not be until later in an exercise that the animal is close enough to experience PTS, and it is those few close pings that contribute to the potential to experience PTS. An animal being beyond the PTS zone initially has no bearing on whether it will come within close range later during an exercise since both sources and animals are moving. In addition, Navy vessels may move faster than the ability of the animals to evacuate the area. The Navy should have been able to query the dosimeters of the animats to verify whether its 5-percent assumption was valid. Commenters are concerned that this method underestimates the number of PTS takes.

Response: The consideration of marine mammals avoiding the area immediately around the sound source is provided in the Navy's 2018 technical report titled *Quantitative Analysis for Estimating Acoustic and Explosive Impacts to Marine Mammals and Sea Turtles.* As the commenter correctly articulates: ''For avoidance, the Navy assumed that animals present beyond the range to onset PTS for the first three to four pings are assumed to avoid any additional exposures at levels that could cause PTS. That equated to approximately 5 percent of the total pings or 5 percent of the overall time active; therefore, 95 percent of marine mammals predicted to experience PTS due to sonar and other transducers were instead assumed to experience TTS.'' In regard to the comment about vessels moving faster than animals' ability to get out of the way, as discussed in the Navy's 2018 technical report titled *Quantitative Analysis for Estimating Acoustic and Explosive Impacts to Marine Mammals and Sea Turtles,* animats in the Navy's acoustic effects model do not move horizontally or ''react'' to sound in any way, necessitating the additional step of considering animal avoidance of close-in PTS zones. NMFS independently reviewed this approach and concurs that it is fully supported by the best available science. Based on a growing body of behavioral response research, animals do in fact avoid the immediate area around sound sources to a distance of a few hundred meters or more depending upon the species. Avoidance to this distance greatly reduces the likelihood of impacts to hearing such as TTS and PTS, respectively. Specifically, the ranges to PTS for most marine mammal groups are within a few tens of meters and the ranges for the most sensitive group, the HF cetaceans, average about 200 m, to a maximum of 270 m in limited cases. Querying the dosimeters of the animats would not produce useful information since, as discussed previously, the animats do not move in the horizontal and are not programmed to ''react'' to sound or any other stimulus. The commenter references comments that they have previously submitted on the Navy's Gulf of Alaska incidental take regulations and we refer the commenter to NMFS' responses, which were included in the **Federal Register** document announcing the issuance of the final regulations (82 FR 19572, April 27, 2017).

Underestimated Beaked Whale Injury and Mortality

Comment 17: A commenter commented that the Navy and NMFS both underestimate take for Cuvier's beaked whales because they are extremely sensitive to sonar. A new study of Cuvier's beaked whales in Southern California exposed to mid and high-power sonar confirmed that they modify their diving behavior up to 100-km away (Falcone *et al.,* 2017). The commenter asserted that this science disproves NMFS' assumption that beaked whales will find suitable habitat nearby within their small range. This modified diving behavior, which was particularly strong when exposed to mid-power sonar, indicates disruption of feeding. Accordingly, impacts on Cuvier's beaked whales could include interference with essential behaviors that will have more than a negligible impact on this species. In addition, Lookouts and shutdowns do not protect Cuvier's beaked whales from Navy sonar because this is a deep-diving species that is difficult to see from ships.

Response: Takes of Cuvier's beaked whales are not underestimated. The behavioral harassment threshold for beaked whales has two components, both of which consider the sensitivity of beaked whales. First, the biphasic behavioral harassment function for beaked whales, which is based on data on beaked whale responses, has a significantly lower mid-point than other groups and also reflects a significantly higher probability of ''take'' at lower levels (*e.g.,* close to 15 percent at 120 dB). Additionally, the distance cut-off used for beaked whales is farther than for any other group (50 km, for both the MF1 and MF4 bins, acknowledging the fact that the unpredictability of dipping sonar likely results in takes at greater distances than other more predictable sources of similar levels). Regarding the referenced article, the commenter is selectively citing only part of it. The study, which compiles information from multiple studies, found that *shallow* dives were predicted to increase in duration as the distance to both high- and mid-power MFAS sources decreased, *beginning* at approximately 100 km away and, specifically, the differences only varied from approximately 20 minutes without MFAS to about 24 minutes with MFAS at the closest distance (*i.e.,* the dive time varied from 20 to 24 minutes over the distance of 100 km away to the closest distance measured). Further, the same article predicted that deep dive duration (which is more directly associated with feeding and linked to potential energetic effects) was predicted to increase with proximity to mid-power MFAS from approximately 60 minutes to approximately 90 minutes *beginning* at around 40 km (10 dives). There were four deep dives exposed high-power MFAS within 20 km, the distance at which deep dive durations increased with the lower power source types. Other responses to MFAS included deep dives that were shorter than typical and shallower, and instances where there were no observed responses at closer distances. The threshold for Level B harassment is higher than just ''any measurable response'' and NMFS and the Navy worked closely together to identify behavioral response functions and distance cut-offs that reflect the best available science to identify when

marine mammal behavioral patterns will be disrupted to a point where they are abandoned or significantly altered. Further, the take estimate is in no way based on an assumption that beaked whales will always be sighted by Lookouts—and adjustment to account for Lookout effectiveness considers the variable detectability of different stocks. In this rule, both the take estimate and the negligible impact analysis appropriately consider the sensitivity of, and scale of impacts to (we address impacts to feeding and energetics), Cuvier's (and all) beaked whales.

Comment 18: A commenter commented that NMFS is underestimating serious injury and mortality for beaked whales. A commenter noted the statement in the proposed rule that because a causal relationship between Navy MFAS use and beaked whale strandings has not been established in all instances, and that, in some cases, sonar was considered to be only one of several factors that, in aggregate, may have contributed to the stranding event, NMFS does ''not expect strandings, serious injury, or mortality of beaked whales to occur as a result of training activities.'' (83 FR at 30007). The commenter asserted that this opinion is inconsistent with best available science and does not take into account the fact that the leading explanation for the mechanism of sonar-related injuries—that whales suffer from bubble growth in organs that is similar to decompression sickness, or ''the bends'' in human divers—has now been supported by numerous papers. At the same time, the commenter argued that NMFS fails to seriously acknowledge that sonar can seriously injure or kill marine mammals at distances well beyond those established for permanent hearing loss (83 FR 29916) and dismisses the risk of stranding and other mortality events (83 FR 30007) based on the argument that such effects can transpire only under the same set of circumstances that occurred during known sonar-related events—an assumption that is arbitrary and capricious. In conclusion, a commenter argued that none of NMFS' assumptions regarding the expected lack of serious injury and mortality for beaked whales are supported by the record, and all lead to an underestimation of impacts.

Response: A commenter's characterization of NMFS' analysis is incorrect. NMFS does not disregard the fact that it is possible for naval activities using hull-mounted tactical sonar to contribute to the death of marine mammals in certain circumstances (that are not present in the HSTT Study Area) via strandings resulting from behaviorally mediated physiological impacts or other gas-related injuries. NMFS discussed these potential causes and outlined the few cases where active naval sonar (in the United States or, largely, elsewhere) had either potentially contributed to or (as with the Bahamas example) been more definitively causally linked with marine mammal strandings in the proposed rule. As noted, there are a suite of factors that have been associated with these specific cases of strandings directly associated with sonar (steep bathymetry, multiple hull-mounted platforms using sonar simultaneously, constricted channels, strong surface ducts, etc.) that are not present together in the HSTT Study Area and during the specified activities (and which the Navy takes care across the world not to operate under without additional monitoring). There have been no documented beaked whale mortalities from Navy activities within the HSTT Study Area. Further, none of the beaked whale strandings causally associated with Navy sonar stranding are in the Pacific. For these reasons, NMFS does not anticipate that the Navy's HSTT training or testing activities will result in beaked whale marine mammal strandings, and none are authorized. Furthermore, ongoing Navy funded beaked whale monitoring at a heavily used training and testing area in SOCAL has not documented mortality or habitat abandonment by beaked whales. Passive acoustic detections of beaked whales have not significantly changed over eight years of monitoring (DiMarzio *et al.,* 2018). From visual surveys in the area since 2006 there have been repeated sightings of: the same individual beaked whale, beaked whale mother-calf pairs, and beaked whale mother-calf pairs with mothers on their second calf (Schorr *et al.,* 2018). Satellite tracking studies of beaked whale documented high site fidelity to this area even though the study area is located in one of the most used Navy areas in the Pacific (Schorr *et al.,* 2018).

Ship Strike

Comment 19: A commenter commented that the Navy's current approach to determine the risk of a direct vessel collision with marine mammals is flawed and fails to account for the likelihood that ship strikes since 2009 were unintentionally underreported. The commenters noted that vessel collisions are generally underreported in part because they can be difficult to detect, especially for large vessels and that the distribution, being based on reported strikes, does not account for this problem. Additionally, the commenter asserted that the Navy's analysis does not address the potential for increased strike risk of non-Navy vessels as a consequence of acoustic disturbance. For example, some types of anthropogenic noise have been shown to induce near-surfacing behavior in right whales, increasing the risk of ship-strike—by not only the source vessel but potentially by third-party vessels in the area—at relatively moderate levels of exposure (Nowacek *et al.,* 2004). An analysis based on reported strikes by Navy vessels per se does not account for this additional risk. In assessing ship-strike risk, the Navy should include offsets to account for potentially undetected and unreported collisions.

Response: While NMFS agrees that broadly speaking the number of total ship strikes may be underestimated due to incomplete information from other sectors (shipping, etc.), NMFS is confident that whales struck by Navy vessels are detected and reported, and Navy strikes are the numbers used in NMFS' analysis to support the authorized number of strikes. Navy ships have multiple Lookouts, including on the forward part of the ship that can visually detect a hit whale (which has occasionally occurred), in the unlikely event ship personnel do not feel the strike. The Navy's strict internal procedures and mitigation requirements include reporting of any vessel strikes of marine mammals, and the Navy's discipline, extensive training (not only for detecting marine mammals, but for detecting and reporting any potential navigational obstruction), and strict chain of command give NMFS a high level of confidence that all strikes actually get reported. Accordingly, NMFS is confident that the information used to support the analysis is accurate and complete.

There is no evidence that Navy training and testing activities (or other acoustic activities) increase the risk of nearby non-Navy vessels (or other nearby Navy vessels not involved in the referenced training or testing) striking marine mammals. More whales are struck by non-Navy vessels off California in areas outside of the HSTT Study Area such as approaches to Los Angeles and San Francisco.

Mitigation and Monitoring

Least Practicable Adverse Impact Determination

Comment 20: A commenter commented that deaths of, or serious injuries to marine mammals that occur pursuant to activities conducted under an incidental take authorization, while

perhaps negligible to the overall health and productivity of the species or stock and of little consequence at that level, nevertheless are clearly adverse to the individuals involved and results in some quantifiable (though negligible) adverse impact on the population; it reduces the population to some degree. Under the least practicable adverse impact requirement, and more generally under the purposes and policies of the MMPA, the commenter asserted that Congress embraced a policy to minimize, whenever practicable, the risk of killing or seriously injuring a marine mammal incidental to an activity subject to section 101(a)(5)(A), including providing measures in an authorization to eliminate or reduce the likelihood of lethal taking. The commenter recommended that NMFS address this point explicitly in its analysis and clarify whether it agrees that the incidental serious injury or death of a marine mammal always should be considered an adverse impact for purposes of applying the least practicable adverse impact standard.

Response: NMFS disagrees that it is necessary or helpful to explicitly address the point the commenter raises in the general description of the least practicable adverse impact standard. The discussion of this standard already notes that there can be population-level impacts that fall below the ''negligible'' standard, but that are still appropriate to mitigate under the least practicable adverse impact standard. It is always NMFS' practice to mitigate mortality to the greatest degree possible, as death is the impact that is most easily linked to reducing the probability of adverse impacts to populations. However, we cannot agree that one mortality will always decrease any population in a quantifiable or meaningful way. For example, for very large populations, one mortality may fall well within typical known annual variation and not have any effect on population rates. Further, we do not understand the problem that the commenter's recommendation is attempting to fix. Applicants generally do not express reluctance to mitigate mortality, and we believe that modifications of this nature would confuse the issue.

Comment 21: A commenter recommended that NMFS address the habitat component of the least practicable adverse impact provision in greater detail. It asserted that NMFS' discussion of critical habitat, marine sanctuaries, and BIAs in the proposed rule is not integrated with the discussion of the least practicable adverse impact standard. It would seem that, under the least practicable adverse impact provision, adverse impacts on important habitat should be avoided whenever practicable. Therefore, to the extent that activities would be allowed to proceed in these areas, NMFS should explain why it is not practicable to constrain them further.

Response: Marine mammal habitat value is informed by marine mammal presence and use and, in some cases, there may be overlap in measures for the species or stock directly and for use of habitat. In this rule, we have identified time-area mitigations based on a combination of factors that include higher densities and observations of specific important behaviors of marine mammals themselves, but also that clearly reflect preferred habitat (*e.g.,* calving areas in Hawaii, feeding areas SOCAL). In addition to being delineated based on physical features that drive habitat function (*e.g.,* bathymetric features, among others for some BIAs), the high densities and concentration of certain important behaviors (*e.g.,* feeding) in these particular areas clearly indicate the presence of preferred habitat. The commenter seems to suggest that NMFS must always consider separate measures aimed at marine mammal habitat; however, the MMPA does not specify that effects to habitat must be mitigated in separate measures, and NMFS has clearly identified measures that provide significant reduction of impacts to both ''marine mammal species and stocks and their habitat,'' as required by the statute.

Comment 22: A commenter recommended that NMFS rework its evaluation criteria for applying the least practicable adverse impact standard to separate the factors used to determine whether a potential impact on marine mammals or their habitat is adverse and whether possible mitigation measures would be effective. In this regard, the commenter asserted that it seems as though the proposed ''effectiveness'' criterion more appropriately fits as an element of practicability and should be addressed under that prong of the analysis. In other words, a measure not expected to be effective should not be considered a practicable means of reducing impacts.

Response: In the *Mitigation Measures* section, NMFS has explained in detail our interpretation of the least practicable adverse impact standard, the rationale for our interpretation, and our approach for implementing our interpretation. The ability of a measure to reduce effects on marine mammals is entirely related to its ''effectiveness'' as a measure, whereas the effectiveness of a measure is not connected to its practicability. The commenter provides no support for its argument, and NMFS has not implemented the Commission's suggestion.

Comment 23: A commenter recommended that NMFS recast its conclusions to provide sufficient detail as to why additional measures either are not needed (*i.e.,* there are no remaining adverse impacts) or would not be practicable to implement. The commenter states that the most concerning element of NMFS' implementation of the least practicable adverse impact standard is its suggestion that the mitigation measures proposed by the Navy will ''sufficiently reduce impacts on the affected mammal species and stocks and their habitats'' (83 FR 11045). That phrase suggests that NMFS is applying a ''good-enough'' standard to the Navy's activities. Under the statutory criteria, however, those proposed measures are ''sufficient'' only if they have either (1) eliminated all adverse impacts on marine mammal species and stocks and their habitat or (2) if adverse impacts remain, it is impracticable to reduce them further.

Response: The statement that the commenter references does not indicate that NMFS applies a ''good-enough'' standard to determining least practicable adverse impact. Rather, it indicates that the mitigation measures are sufficient to meet the statutory legal standard. In addition, as NMFS has explained in our description of the least practicable adverse impact standard, NMFS does not view the necessary analysis through the yes/no lens that the commenter seeks to prescribe. Rather, NMFS' least practicable adverse impact analysis considers both the reduction of adverse effects and their practicability. Further, since the proposed rule was published, the Navy and NMFS have evaluated additional measures in the context of both their practicability and their ability to further reduce impacts to marine mammals and have determined that the addition of several measures (see *Mitigation Measures*) is appropriate. Regardless, beyond these new additional measures, where the Navy's HSTT activities are concerned, the Navy has indicated that further procedural or area mitigation of any kind (beyond that prescribed in this final rule) would be entirely impracticable. NMFS has reviewed documentation and analysis provided by the Navy explaining how and why specific procedural and geographic based mitigation measures impact practicability, and NMFS concurs with these assessments and has determined that the mitigation measures outlined in the final rule satisfy the statutory standard and that any adverse

impacts that remain are unable to be further mitigated.

Comment 24: A commenter recommended that any ''formal interpretation'' of the least practicable adverse impact standard by NMFS be issued in a stand-alone, generally applicable rulemaking (*e.g.,* in amendments to 50 CFR 216.103 or 216.105) or in a separate policy directive, rather than in the preambles to individual proposed rules.

Response: We appreciate the commenter's recommendation and may consider the recommended approaches in the future. We note, however, that providing relevant explanations in a proposed incidental take rule is an effective and efficient way to provide information to the reader and solicit focused input from the public, and ultimately affords the same opportunities for public comment as a stand-alone rulemaking would. NMFS has provided similar explanations of the least practicable adverse impact standard in other recent section 101(a)(5)(A) rules, including: U.S. Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar; Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico; and the final rule for U.S. Navy Training and Testing Activities in the Atlantic Fleet Study Area.

Comment 25: A commenter cited two judicial decisions and commented that the ''least practicable adverse impact'' standard has not been met. A commenter stated that contrary to the *Pritzker* Court decision, NMFS, while clarifying that population-level impacts are mitigated ''through the application of mitigation measures that limit impacts to individual animals,'' has again set population-level impact as the basis for mitigation in the proposed rule. Because NMFS' mitigation analysis is opaque, it is not clear what practical effect this position may have on its rulemaking. A commenter stated that the proposed rule is also unclear in its application of the ''habitat'' emphasis in the MMPA's mitigation standard, and that while NMFS' analysis is opaque, its failure to incorporate or even, apparently, to consider viable time-area measures suggests that the agency has not addressed this aspect of the *Pritzker* decision. A commenter argues that the MMPA sets forth a ''stringent standard'' for mitigation that requires the agency to minimize impacts to the lowest practicable level, and that the agency must conduct its own analysis and clearly articulate it: it ''cannot just parrot what the Navy says.''

Response: NMFS disagrees with much of what a commenter asserts. When a suggested or recommended mitigation measure is impracticable, NMFS has explored variations of that mitigation to determine if a practicable form of related mitigation exists. This is clearly illustrated in NMFS' independent mitigation analysis process explained in this rule. First, the type of mitigation required varies by mitigation area, demonstrating that NMFS has engaged in a site-specific analysis to ensure mitigation is tailored when practicability demands, *i.e.,* some forms of mitigation were practicable in some areas but not others. Examples of NMFS' analysis on this issue appear throughout the rule. For instance, while it was not practicable for the Navy to include a mitigation area for the Tanner-Cortes blue whale BIA, the Navy did agree to expand mitigation protection to all of the other blue whale BIAs in the SOCAL region. Additionally, while the Navy cannot alleviate all training in the mitigation areas that protect small resident odontocete populations in Hawaii, has further expanded the protections in those areas such that it does not use explosives or MFAS in the areas (MF1 bin in both areas, MF4 bin in the Hawaii Island area). Nonetheless, NMFS agrees that the agency must conduct its own analysis, which it has done here, and not just accept what is provided by the Navy. That does not mean, however, that NMFS cannot review the Navy's analysis of effectiveness and practicability, and concur with those aspects of the Navy's analysis with which NMFS agrees. A commenter seems to suggest that NMFS must describe in the rule in detail the rationale for not adopting every conceivable permutation of mitigation, which is neither reasonable nor required by the MMPA. NMFS has described our well-reasoned process for identifying the measures needed to meet the least practicable adverse impact standard in the *Mitigation Measures* section in this rule, and we have followed the approach described there when analyzing potential mitigation for the Navy's activities in the HSTT Study Area. Discussion regarding specific recommendations for mitigation measures provided by a commenter on the proposed rule are discussed separately.

Procedural Mitigation Effectiveness and Recommendations

Comment 26: A commenter commented that the Navy's proposed mitigation zones are similar to the zones previously used during Phase II activities and are intended, based on the Phase III HSTT DEIS/OEIS, to avoid the potential for marine mammals to be exposed to levels of sound that could result in injury (*i.e.,* PTS). However, the commenter believed that Phase III proposed mitigation zones would not protect various functional hearing groups from PTS. For example, the mitigation zone for an explosive sonobuoy is 549 m but the mean PTS zones range from 2,113–3,682 m for HF. Similarly, the mitigation zone for an explosive torpedo is 1,920 m but the mean PTS zones range from 7,635–10,062 m for HF, 1,969–4,315 m for LF, and 3,053–3,311 for PW. The appropriateness of such zones is further complicated by platforms firing munitions (*e.g.,* for missiles and rockets) at targets that are 28 to 139 km away from the firing platform. An aircraft would clear the target area well before it positions itself at the launch location and launches the missile or rocket. Ships, on the other hand, do not clear the target area before launching the missile or rocket. In either case, marine mammals could be present in the target area unbeknownst to the Navy at the time of the launch.

Response: NMFS is aware that some mitigation zones do not fully cover the area in which an animal from a certain hearing group may incur PTS. For this small subset of circumstances, NMFS discussed potential enlargement of the mitigation zones with the Navy, but concurred with the Navy's assessment that further enlargement would be impracticable. Specifically, the Navy explained that explosive mitigation zones, as discussed in Chapter 5 (Mitigation) of the HSTT FEIS/OEIS, any additional increases in mitigation zone size (beyond what is depicted for each explosive activity), or additional observation requirements would be impracticable to implement due to implications for safety, sustainability, the Navy's ability to meet Title 10 requirements to successfully accomplish military readiness objectives, and the Navy's ability to conduct testing associated with required acquisition milestones or as required on an as-needed basis to meet operational requirements. Additionally, Navy Senior Leadership has approved and determined that the mitigation detailed in Chapter 5 (Mitigation) of the HSTT FEIS/OEIS provides the greatest extent of protection that is practicable to implement. The absence of mitigation to avoid all Level A harassment in some of these circumstances has been analyzed, however, and the Navy is authorized for any of these Level A harassment takes that may occur.

Comment 27: One commenter made several comments regarding visual and acoustic detection as related to mitigating impacts that can cause injury. The commenter noted that the Navy indicated in the HSTT DEIS/OEIS that Lookouts would not be 100 percent effective at detecting all species of marine mammals for every activity because of the inherent limitations of observing marine species and because the likelihood of sighting individual animals is largely dependent on observation conditions (*e.g.,* time of day, sea state, mitigation zone size, observation platform). The Navy has been collaborating with researchers at the University of St. Andrews to study Navy Lookout effectiveness and the commenter anticipates that the Lookout effectiveness study will be very informative once completed, but notes that in the interim, the preliminary data *do* provide an adequate basis for taking a precautionary approach. The commenter believed that rather than simply reducing the size of the mitigation zones it plans to monitor, the Navy should supplement its visual monitoring efforts with other monitoring measures including passive acoustic monitoring.

The commenter suggested that sonobuoys could be deployed with the target in the various target areas prior to the activity. This approach would allow the Navy to better determine whether the target area is clear and remains clear until the munition is launched.

Although the Navy indicated that it was continuing to improve its capabilities for using range instrumentation to aid in the passive acoustic detection of marine mammals, it also stated that it didn't have the capability or resources to monitor instrumented ranges in real time for the purpose of mitigation. That capability clearly exists. While available resources could be a limiting factor, the commenter notes that personnel who monitor the hydrophones on the operational side do have the ability to monitor for marine mammals as well. The commenter has supported the use of the instrumented ranges to fulfill mitigation implementation for quite some time (see the commenter's most recent November 13, 2017 letter) and contends that localizing certain species (or genera) provides more effective mitigation than localizing none at all.

The commenter recommended that NMFS require the Navy to use passive and active acoustic monitoring, whenever practicable, to supplement visual monitoring during the implementation of its mitigation measures for all activities that have the potential to cause injury or mortality beyond those explosive activities for which passive acoustic monitoring already was proposed, including those activities that would occur on the SCORE and PMRF ranges.

Response: For explosive mitigation zones, any additional increases in mitigation zone size (beyond what is depicted for each explosive activity) or observation requirements would be impracticable to implement due to implications for safety, sustainability, and the Navy's ability to meet Title 10 requirements to successfully accomplish military readiness objectives. We do note, however, that since the proposed rule, the Navy has committed to implementing pre-event observations for all in-water explosives events (including some that were not previously monitored) and to using additional platforms if available in the vicinity of the detonation area to help with this monitoring.

As discussed in the comment, the Navy does employ passive acoustic monitoring when practicable to do so (*i.e.,* when assets that have passive acoustic monitoring capabilities are already participating in the activity). For other explosive events, there are no platforms participating that have passive acoustic monitoring capabilities. Adding a passive acoustic monitoring capability (either by adding a passive acoustic monitoring device to a platform already participating in the activity, or by adding a platform with integrated passive acoustic monitoring capabilities to the activity, such as a sonobuoy) for mitigation is not practicable. As discussed in Section 5.5.3 (Active and Passive Acoustic Monitoring Devices) of the HSTT FEIS/OEIS, there are significant manpower and logistical constraints that make constructing and maintaining additional passive acoustic monitoring systems or platforms for each training and testing activity impracticable. Additionally, diverting platforms that have passive acoustic monitoring platforms would impact their ability to meet their Title 10 requirements and reduce the service life of those systems.

Regarding the use of instrumented ranges for realtime mitigation, the commenter is correct that the Navy continues to develop the technology and capabilities on its Ranges for use in marine mammal monitoring, which can be effectively compared to operational information after the fact to gain information regarding marine mammal response. However, as discussed above, the manpower and logistical complexity involved in detecting and localizing marine mammals in relation to multiple fast-moving sound source platforms in order to implement real-time mitigation is significant. A more detailed discussion of the limitations for on range passive acoustic detection as real-time mitigation is provided in Comment 34 and is impracticable for the Navy. The Navy's instrumented ranges were not developed for the purpose of mitigation. For example, beaked whales produce highly directed echolocation clicks that are difficult to simultaneously detect on multiple hydrophones within the instrumented range at PMRF; therefore, there is a high probability that a vocalizing animal would be assigned a false location on the range (*i.e.,* the Navy would not be able to verify its presence in a mitigation zone). Although the Navy is continuing to improve its capabilities to use range instrumentation to aid in the passive acoustic detection of marine mammals, at this time it would not be effective or practicable for the Navy to monitor instrumented ranges for the purpose of real-time mitigation for the reasons discussed in Section 5.5.3 (Active and Passive Acoustic Monitoring Devices) of the HSTT FEIS/OEIS.

Comment 28: The commenter recommended that NMFS require the Navy to conduct additional pre-activity overflights before conducting any activities involving detonations barring any safety issues (*e.g.,* low fuel), as well as post-activity monitoring for activities involving medium- and large caliber projectiles, missiles, rockets, and bombs.

Response: The Navy has agreed to implement pre-event observation mitigation, as well as post-event observation, for all in-water explosive event mitigation measures. If there are other platforms participating in these events and in the vicinity of the detonation area, they will also visually observe this area as part of the mitigation team.

Comment 29: One commenter recommended that the Navy implement larger shutdown zones.

Response: The Navy mitigation zones represent the maximum surface area the Navy can effectively observe based on the platform involved, number of personnel that will be involved, and the number and type of assets and resources available. As mitigation zone sizes increase, the potential for observing marine mammals and thus reducing impacts decreases, because the number of observers can't increase although the area to observe increases. For instance, if a mitigation zone increases from 1,000 to 2,000 yd., the area that must be observed increases five-fold. NMFS has

analyzed the Navy's required mitigation and found that it will effect the least practicable adverse impact. The Navy's mitigation measures consider both the need to reduce potential impacts and the ability to provide effective observations throughout a given mitigation zone. To implement these mitigation zones, Navy Lookouts are trained to use a combination of unaided eye and optics as they search the surface around a vessel. In addition, there are other Navy personnel on a given bridge watch (in addition to designated Lookouts), who are also constantly watching the water for safety of navigation and marine mammals. Takes that cannot be mitigated are analyzed and authorized provided the necessary findings can be made.

Comment 30: Commenters commented that NMFS should cap the maximum level of activities each year.

Response: The commenters offers no rationale for why a cap is needed and nor do they suggest what an appropriate cap might be. The Navy is responsible under Title 10 for conducting the needed amount of testing and training to maintain military readiness, which is what they have proposed and NMFS has analyzed. Further, the MMPA states that NMFS shall issue MMPA authorizations if the necessary findings can be made, as they have been here. Importantly, as described in the *Mitigation Areas* section, the Navy will limit activities (active sonar, explosive use, MTE exercises, etc.) to varying degrees in multiple areas that are important to sensitive species or for critical behaviors in order to minimize impacts that are more likely to lead to adverse effects on rates of recruitment or survival.

Comment 31: A commenter suggested the Navy could improve observer effectiveness through the use of NMFS-certified marine mammal observers.

Response: The Navy currently requires at least one qualified Lookout on watch at all times a vessel is underway. In addition, on surface ships with hull-mounted sonars during sonar events, the number increases with two additional Lookouts on the forward portion of the vessel (*i.e.,* total of three Lookouts). Furthermore, unlike civilian commercial ships, there are additional bridge watch standers on Navy ships viewing the water during all activities. The Navy's Marine Species Awareness training that all bridge watchstanders including Lookouts take has been reviewed and approved by NMFS. This training is conducted annually and prior to MTEs. Note, Navy visual monitoring from Lookouts and bridge watchstanders as well as unit-based passive acoustic detection is used when available and appropriate.

As we understand from the Navy, mandating NMFS-certified marine mammal observers on all ships would require setting up and administering a certification program, providing security clearance for certified people, ensuring that all platforms are furnished with these individuals, and housing these people on ships for extended times from weeks to months. This would be an extreme logistic burden on realistic training. The requirement for additional non-Navy observers would provide little additional benefit, especially at the near ship mitigation ranges for mid-frequency active sonars on surface ships (<1,000 yds), nor be significantly better than the current system developed by the Navy in consultation with NMFS.

The purpose of Navy Lookouts is to provide sighting information for other boats and vessels in the area, in-water debris, and other safety of navigation functions. During active sonar use, additional personnel are assigned for the duration of the sonar event. In addition, the other Navy personnel on a given bridge watch along with designated Lookouts are also constantly watching the water for safety of navigation and marine mammals.

Navy training and testing activities often occur simultaneously and in various regions throughout the HSTT Study Area, with underway time that could last for days or multiple weeks at a time. The pool of certified marine mammal observers across the U.S. West Coast is rather limited, with many already engaged in regional NMFS survey efforts. Relative to the number of dedicated MMOs that would be required to implement this condition, as of July 2018, there are approximately 22 sonar-equipped Navy ships (*i.e.,* surface ships with hull-mounted active sonars) stationed in San Diego. Six additional vessels from the Pacific Northwest also transit to Southern California for training (28 ships times 2 observers per watch times 2 watches per day = minimum of 112 observers).

Senior Navy commands in the Pacific continuously reemphasize the importance of Lookout responsibilities to all ships. Further, the Navy has an ongoing study in which certified Navy civilian scientist observers embark periodically on Navy ships in support of a comparative Lookout effectiveness study. Results from this study will be used to make recommendations for further improvements to Lookout training.

Additionally, we note that the necessity to include trained NMFS-approved PSOs on Navy vessels, while adding little or no additional protective or data-gathering value, would be very expensive and those costs would need to be offset—most likely through reductions in the budget for Navy monitoring, through which invaluable data is gathered.

Comment 32: Commenters commented that NMFS should consider increasing the exclusion zone to the 120 dB isopleth because some animals are sensitive to sonar at low levels of exposure.

Response: First, it is important to note that the Commenters are suggesting that NMFS require mitigation that would eliminate all take, which is not what the applicable standard requires. Rather, NMFS is required to put in place measures that effect the ''least practicable adverse impact.'' Separately, NMFS acknowledges that some marine mammals may respond to sound at 120 dB in some circumstances; however, based on the best available data, only a subset of those exposed at that low level respond in a manner that would be considered harassment under the MMPA. NMFS and the Navy have quantified those individuals of certain stocks where appropriate, analyzed the impacts, and authorized them where needed. Further, NMFS and the Navy have identified exclusion zone sizes that are best suited to minimize impacts to marine mammal species and stocks and their habitat while also being practicable (see *Mitigation* section).

Comment 33: A commenter commented that NMFS should impose a 10-kn ship speed in biologically important areas and critical habitat for marine mammals to reduce vessel strikes. One commenter also specifically referenced this measure in regard to humpback whales and blue whales.

Response: This issue also is addressed elsewhere in the *Comments and Responses* section for specific mitigation areas. However, generally speaking, it is impracticable (because of impacts to mission effectiveness) to further reduce ship speeds for Navy activities, and, moreover, given the maneuverability of Navy ships at higher speeds and the presence of effective Lookouts, any further reduction in speed would reduce the already low probability of ship strike little, if any. The Navy is unable to impose a 10-kn ship speed limit because it would not be practical to implement and would impact the effectiveness of Navy's activities by putting constraints on training, testing, and scheduling. The Navy requires flexibility in use of variable ship speeds for training, testing, operational, safety, and engineering qualification requirements. Navy ships

typically use the lowest speed practical given individual mission needs. NMFS has reviewed the Navy's analysis of these additional restrictions and the impacts they would have on military readiness and concurs with the Navy's assessment that they are impracticable.

The main driver for ship speed reduction is reducing the possibility and severity of ship strikes to large whales. However, even given the wide ranges of speeds from slow to fast that Navy ships must use to meet training and testing requirements, the Navy has a very low strike history to large whales in Southern California, with no whales struck by the Navy from 2010–2018. Current Navy Standard Operating Procedures and mitigations require a minimum of at least one Lookout on duty while underway (in addition to bridge watch personnel) and, so long as safety of navigation is maintained, to keep 500 yards away from large whales and 200 yards away from other marine mammals (except for bow-riding dolphins and pinnipeds hauled out on shore or structures). Furthermore, there is no Navy ship strike of a marine mammal on record in SOCAL that has occurred in the coastal area (~40 Nmi from shore), which is where speed restrictions are most requested. Finally, the most recent model estimate of the potential for civilian ship strike risk to blue, humpback, and fin whales off the coast of California found the highest risk near San Francisco and Long Beach associated with commercial ship routes to and from those ports (Rockwood *et al.,* 2018). There was no indication of a similar high risk to these species off San Diego, where the HSTT Study Area occurs.

Previously, the Navy commissioned a vessel density and speed report based on an analysis of Navy ship traffic in the HSTT Study Area between 2011 and 2015. Median speed of all Navy vessels within the HSTT Study Area is typically already low, with median speeds between 5 and 12 knots. Further, the presence and transits of commercial and recreational vessels, annually numbering in the thousands, poses a more significant risk to large whales than the presence of Navy vessels. The HSTT FEIS/OEIS Chapter 3 (Affected Environment and Environmental Consequences) Section 3.7.3.4.1 (Impacts from Vessels and In-Water Devices) and Appendix K, Section K.4.1.6.2 (San Diego (Arc) Blue Whale Feeding Area Mitigation Considerations), explain the important differences between most Navy vessels and their operation and commercial ships that make Navy vessels much less likely to strike a whale.

When developing Phase III mitigation measures, the Navy analyzed the potential for implementing additional types of mitigation, such as vessel speed restrictions within the HSTT Study Area. The Navy determined that based on how the training and testing activities will be conducted within the HSTT Study Area, vessel speed restrictions would be incompatible with practicability criteria for safety, sustainability, and training and testing missions, as described in Chapter 5 (Mitigation), Section 5.3.4.1 (Vessel Movement) of the HSTT FEIS/OEIS.

Comment 34: Commenters commented that NMFS should improve detection of marine mammals with restrictions on low-visibility activities and alternative detection such as thermal or acoustic methods.

Response: The Navy has compiled information related to the effectiveness of certain equipment to detect marine mammals in the context of their activities, as well as the practicality and effect on mission effectiveness of using various equipment. NMFS has reviewed this evaluation and concurs with the characterization and the conclusions below.

Low visibility—Anti-submarine warfare training involving the use of mid-frequency active sonar typically involves the periodic use of active sonar to develop the ''tactical picture,'' or an understanding of the battle space (*e.g.,* area searched or unsearched, presence of false contacts, and an understanding of the water conditions). Developing the tactical picture can take several hours or days, and typically occurs over vast waters with varying environmental and oceanographic conditions. Training during both high visibility (*e.g.,* daylight, favorable weather conditions) and low visibility (*e.g.,* nighttime, inclement weather conditions) is vital because sonar operators must be able to understand the environmental differences between day and night and varying weather conditions and how they affect sound propagation and the detection capabilities of sonar. Temperature layers move up and down in the water column and ambient noise levels can vary significantly between night and day, affecting sound propagation and how sonar systems are operated. Reducing or securing power in low-visibility conditions as a mitigation would affect a commander's ability to develop the tactical picture and would prevent sonar operators from training in realistic conditions. Further, during integrated training multiple vessels and aircraft may participate in an exercise using different dimensions of warfare simultaneously (*e.g.,* submarine warfare, surface warfare, air warfare, etc.). If one of these training elements were adversely impacted (*e.g.,* if sonar training reflecting military operations were not possible), the training value of other integrated elements would also be degraded. Additionally, failure to test such systems in realistic military operational scenarios increases the likelihood these systems could fail during military operations, thus unacceptably placing Sailors' lives and the Nation's security at risk. Some systems have a nighttime testing requirement; therefore, these tests cannot occur only in daylight hours. Reducing or securing power in low visibility conditions would decrease the Navy's ability to determine whether systems are operationally effective, suitable, survivable, and safe for their intended use by the fleet even in reduced visibility or difficult weather conditions.

Thermal detection—Thermal detection systems are more useful for detecting marine mammals in some marine environments than others. Current technologies have limitations regarding water temperature and survey conditions (*e.g.,* rain, fog, sea state, glare, ambient brightness), for which further effectiveness studies are required. Thermal detection systems are generally thought to be most effective in cold environments, which have a large temperature differential between an animal's temperature and the environment. Current thermal detection systems have proven more effective at detecting large whale blows than the bodies of small animals, particularly at a distance. The effectiveness of current technologies has not been demonstrated for small marine mammals. Thermal detection systems exhibit varying degrees of false positive detections (*i.e.,* incorrect notifications) due in part to their low sensor resolution and reduced performance in certain environmental conditions. False positive detections may incorrectly identify other features (*e.g.,* birds, waves, boats) as marine mammals. In one study, a false positive rate approaching one incorrect notification per 4 min. of observation was noted.

The Navy has been investigating the use of thermal detection systems with automated marine mammal detection algorithms for future mitigation during training and testing, including on autonomous platforms. Thermal detection technology being researched by the Navy, which is largely based on existing foreign military grade hardware, is designed to allow observers and eventually automated software to detect the difference in temperature

between a surfaced marine mammal (*i.e.,* the body or blow of a whale) and the environment (*i.e.,* the water and air). Although thermal detection may be reliable in some applications and environments, the current technologies are limited by their: (1) Low sensor resolution and a narrow fields of view, (2) reduced performance in certain environmental conditions, (3) inability to detect certain animal characteristics and behaviors, and (4) high cost and uncertain long term reliability.

Thermal detection systems for military applications are deployed on various Department of Defense (DoD) platforms. These systems were initially developed for night time targeting and object detection such as a boat, vehicle, or people. Existing specialized DoD infrared/thermal capabilities on Navy aircraft and surface ships are designed for fine-scale targeting. Viewing arcs of these thermal systems are narrow and focused on a target area. Furthermore, sensors are typically used only in select training events, not optimized for marine mammal detection, and have a limited lifespan before requiring expensive replacement. Some sensor elements can cost upward of $300,000 to $500,000 per device, so their use is predicated on a distinct military need.

One example of trying to use existing DoD thermal system is being proposed by the U.S. Air Force. The Air Force agreed to attempt to use specialized U.S. Air Force aircraft with military thermal detection systems for marine mammal detection and mitigation during a limited at-sea testing event. It should be noted, however, these systems are specifically designed for and integrated into a small number of U.S. Air Force aircraft and cannot be added or effectively transferred universally to Navy aircraft. The effectiveness remains unknown in using a standard DoD thermal system for the detection of marine mammals without the addition of customized system-specific computer software to provide critical reliability (enhanced detection, cueing for an operator, reduced false positive, etc.)

Finally, current DoD thermal sensors are not always optimized for marine mammal detections verse object detection, nor do these systems have the automated marine mammal detection algorithms the Navy is testing via its ongoing research program. The combination of thermal technology and automated algorithms are still undergoing demonstration and validation under Navy funding.

Thermal detection systems specifically for marine mammal detection have not been sufficiently studied both in terms of their effectiveness within the environmental conditions found in the HSTT Study Area and their compatibility with Navy training and testing (*i.e.,* polar waters vs. temperate waters). The effectiveness of even the most advanced thermal detection systems with technological designs specific to marine mammal surveys is highly dependent on environmental conditions, animal characteristics, and animal behaviors. At this time, thermal detection systems have not been proven to be more effective than, or equally effective as, traditional techniques currently employed by the Navy to observe for marine mammals (*i.e.,* naked-eye scanning, hand-held binoculars, high-powered binoculars mounted on a ship deck). The use of thermal detection systems instead of traditional techniques would compromise the Navy's ability to observe for marine mammals within its mitigation zones in the range of environmental conditions found throughout the Study Area. Furthermore, thermal detection systems are designed to detect marine mammals and do not have the capability to detect other resources for which the Navy is required to implement mitigation, including sea turtles. Focusing on thermal detection systems could also provide a distraction from and compromise to the Navy's ability to implement its established observation and mitigation requirements. The mitigation measures discussed in Chapter 5 (Mitigation), Section 5.3 (Procedural Mitigation to be Implemented) of the HSTT FEIS/OEIS include the maximum number of Lookouts the Navy can assign to each activity based on available manpower and resources; therefore, it would be impractical to add personnel to serve as additional Lookouts. For example, the Navy does not have available manpower to add Lookouts to use thermal detection systems in tandem with existing Lookouts who are using traditional observation techniques.

The Defense Advanced Research Projects Agency funded six initial studies to test and evaluate infrared-based thermal detection technologies and algorithms to automatically detect marine mammals on an unmanned surface vehicle. Based on the outcome of these initial studies, follow-on efforts and testing are planned for 2018–2019. The Office of Naval Research Marine Mammals and Biology program funded a project (2013–2018) to test the thermal limits of infrared-based automatic whale detection technology. This project is focused on capturing whale spouts at two different locations featuring subtropical and tropical water temperatures, optimizing detector/classifier performance on the collected data, and testing system performance by comparing system detections with concurrent visual observations.

The Office of Naval Research Marine Mammals and Biology program is currently funding an ongoing project (2013–2018) that is testing the thermal limits of infrared based automatic whale detection technology (Principal Investigators: Olaf Boebel and Daniel Zitterbart). This project is focused on (1) capturing whale spouts at two different locations featuring subtropical and tropical water temperatures; (2) optimizing detector/classifier performance on the collected data; and (3) testing system performance by comparing system detections with concurrent visual observations. In addition, Defense Advanced Research Projects Agency (DARPA) has funded six initial studies to test and evaluate current technologies and algorithms to automatically detect marine mammals (IR thermal detection being one of the technologies) on an unmanned surface vehicle. Based on the outcome of these initial studies, follow-on efforts and testing are planned for 2018–2019.

The Navy plans to continue researching thermal detection systems for marine mammal detection to determine their effectiveness and compatibility with Navy applications. If the technology matures to the state where thermal detection is determined to be an effective mitigation tool during training and testing, NMFS and the Navy will assess the practicability of using the technology during training and testing events and retrofitting the Navy's observation platforms with thermal detection devices. The assessment will include an evaluation of the budget and acquisition process (including costs associated with designing, building, installing, maintaining, and manning the equipment); logistical and physical considerations for device installment, repair, and replacement (*e.g.,* conducting engineering studies to ensure there is no electronic or power interference with existing shipboard systems); manpower and resource considerations for training personnel to effectively operate the equipment; and considerations of potential security and classification issues. New system integration on Navy assets can entail up to 5 to 10 years of effort to account for acquisition, engineering studies, and development and execution of systems training. The Navy will provide information to NMFS about the status and findings of Navy-funded thermal

detection studies and any associated practicability assessments at the annual adaptive management meetings.

Passive Acoustic Monitoring—The Navy does employ passive acoustic monitoring when practicable to do so (*i.e.,* when assets that have passive acoustic monitoring capabilities are already participating in the activity). For other explosive events, there are no platforms participating that have passive acoustic monitoring capabilities. Adding a passive acoustic monitoring capability (either by adding a passive acoustic monitoring device to a platform already participating in the activity, or by adding a platform with integrated passive acoustic monitoring capabilities to the activity, such as a sonobuoy) for mitigation is not practicable. As discussed in Chapter 5 (Mitigation), Section 5.5.3 (Active and Passive Acoustic Monitoring Devices) of the HSTT FEIS/OEIS, there are significant manpower and logistical constraints that make constructing and maintaining additional passive acoustic monitoring systems or platforms for each training and testing activity impracticable. Additionally, diverting platforms that have passive acoustic monitoring platforms would impact their ability to meet their Title 10 requirements and reduce the service life of those systems.

The use of real-time passive acoustic monitoring (PAM) for mitigation at the Southern California Anti-submarine Warfare Range (SOAR) exceeds the capability of current technology. The Navy has a significant research investment in the Marine Mammal Monitoring on Navy Ranges (M3R) system at three ocean locations including SOAR. However, this system was designed and intended to support marine mammal research for select species, and not as a mitigation tool. Marine mammal PAM using instrumented hydrophones is still under development and while it has produced meaningful results for marine species monitoring, abundance estimation, and research, it was not developed for nor is it appropriate for real-time mitigation. The ability to detect, classify, and develop an estimated position (and the associated area of uncertainty) differs across species, behavioral context, animal location vs. receiver geometry, source level, etc. Based on current capabilities, and given adequate time, vocalizing animals within an indeterminate radius around a particular hydrophone are detected, but obtaining an estimated position for all individual animals passing through a predetermined area is not assured. Detecting vocalizations on a hydrophone does not determine whether vocalizing individuals would be within the established mitigation zone in the timeframes required for mitigation. Since detection ranges are generally larger than current mitigation zones for many activities, this would unnecessarily delay events due to uncertainty in the animal's location and put at risk event realism.

Furthermore, PAM at SOAR does not account for animals not vocalizing. For instance, there have been many documented occurrences during PAM verification testing at SOAR of small boats on the water coming across marine mammals such as baleen whales that were not vocalizing and therefore not detected by the range hydrophones. Animals must vocalize to be detected by PAM; the lack of detections on a hydrophone may give the false impression that the area is clear of marine mammals. The lack of vocalization detections is not a direct measure of the absence of marine mammals. If an event were to be moved based upon low-confidence localizations, it may inadvertently be moved to an area where non-vocalizing animals of undetermined species are present.

To develop an estimated position for an individual, it must be vocalizing and its vocalizations must be detected on at least three hydrophones. The hydrophones must have the required bandwidth, and dynamic range to capture the signal. In addition, calls must be sufficiently loud so as to provide the required signal to noise ratio on the surrounding hydrophones. Typically, small odontocetes echolocate with a directed beam that makes detection of the call on multiple hydrophones difficult. Developing an estimated position of selected species requires the presence of whistles which may or may not be produced depending on the behavioral state. Beaked whales at SOAR vocalize only during deep foraging dives which occur at a rate of approximately 10 per day. They produce highly directed echolocation clicks that are difficult to simultaneously detect on multiple hydrophones. Current real-time systems cannot follow individuals and at best produce sparse positions with multiple false locations. The position estimation process must occur in an area with hydrophones spaced to allow the detection of the same echolocation click on at least three hydrophones. Typically, a spacing of less than 4 km in water depths of approximately 2 km is preferred. In the absence of detection, the analyst can only determine with confidence if a group of beaked whales is somewhere within 6 km of a hydrophone. Beaked whales produce stereotypic click trains during deep (<500 m) foraging dives. The presence of a vocalizing group can be readily detected by an analyst by examining the click structure and repetition rate. However, estimating position is possible only if the same train of clicks is detected on multiple hydrophones which is often precluded by the animal's narrow beam pattern. Currently, this is not an automated routine.

In summary, the analytical and technical capabilities required to use PAM such as M3R at SOAR as a required mitigation tool are not sufficiently robust to rely upon due to limitations with near real-time classification and determining estimated positions. The level of uncertainty as to a species presence or absence and location are too high to provide the accuracy required for real-time mitigation. As discussed in Chapter 5 (Mitigation) of the HSTT FEIS/OEIS, existing Navy visual mitigation procedures and measures, when performed by individual units at-sea, still remain the most practical means of protection for marine species.

Comment 35: Commenters commented that NMFS should add mitigation for other marine mammal stressors such as dipping sonar, pile driving, and multiple exposures near homeports.

Response: The Navy implements a 200-yd shutdown for dipping sonar and a 100-yd exclusion zone for pile-driving. It is unclear what the commenter means by adding mitigation for ''multiple exposures'' near homeports, and therefore no explanation can be provided.

Mitigation Areas

Introduction

The Navy included a comprehensive proposal of mitigation measures in their initial application that included procedural mitigations that reduce the likelihood of mortality, injury, hearing impairment, and more severe behavioral responses for most species. The Navy also included time/area mitigation that further protects areas where important behaviors are conducted and/or sensitive species congregate, which reduces the likelihood of takes that are likely to impact reproduction or survival (as described in the Mitigation Measures section of the final rule and the Navy's application). As a general matter, where an applicant proposes measures that are likely to reduce impacts to marine mammals, the fact that they are included in the proposal

and application indicates that the measures are practicable, and it is not necessary for NMFS to conduct a detailed analysis of the measures the applicant proposed (rather, they are simply included). However, it is necessary for NMFS to consider whether there are additional practicable measures that could also contribute to the reduction of adverse effects on the species or stocks through effects on annual rates of recruitment or survival. In the case of the Navy's HSTT application, we worked with the Navy prior to the publication of the proposed rule and ultimately the Navy agreed to increase geographic mitigation areas adjacent to the island of Hawaii to more fully encompass specific biologically important areas and the Alenuihaha Channel and to limit additional anti-submarine warfare mid-frequency active sonar (ASW) source bins (MF4) within some geographic mitigation areas.

During the public comment period on the proposed rule, NMFS received numerous recommendations for the Navy to implement additional mitigation measures, both procedural and time/area limitations. Extensive discussion of the recommended mitigation measures in the context of the factors considered in the least practicable adverse impact analysis (considered in the Mitigation Measures section of the final rule and described below), as well as considerations of alternate iterations or portions of the recommended measures considered to better address practicability concerns, resulted in the addition of several procedural mitigations and expansion of multiple time/area mitigations (see the *Mitigation Measures* section in the final rule). These additional areas reflect, for example, concerns about blue whales in SOCAL and small resident odontocete populations in Hawaii (which resulted in expanded time/area mitigation), focus on areas where important behaviors and habitat are found (*e.g.,* in BIAs), and enhancement of the Navy's ability to detect and reduce injury and mortality (which resulted in expanded monitoring before and after explosive events). Through extensive discussion, NMFS and the Navy worked to identify and prioritize additional mitigation measures that are likely to reduce impacts on marine mammal species or stocks and their habitat and are also possible for the Navy to implement.

Following the publication of the 2013 HSTT MMPA incidental take rule, the Navy (and NMFS) were sued and the resulting settlement agreement prohibited or restricted Navy activities within specific areas in the HSTT Study Area. These provisional prohibitions and restrictions on activities within the HSTT Study Area were derived pursuant to negotiations with the plaintiffs in that lawsuit were specifically not evaluated or selected based on the type of thorough examination of best available science that occurs through the rulemaking process under the MMPA, or through related analyses conducted under the National Environmental Policy Act (NEPA) or the ESA. The agreement did not constitute a concession by the Navy as to the potential impacts of Navy activities on marine mammals or any other marine species, or to the practicability of the measures. The Navy's adoption of restrictions on its HSTT activities as part of a relatively short-term settlement does not mean that those restrictions are necessarily supported by the best available science, likely to reduce impacts to marine mammals species or stocks and their habitat, or practicable to implement from a military readiness standpoint over the longer term in the HSTT Study Area. Accordingly, as required by statute, NMFS analyzed the Navy's activities, impacts, mitigation and potential mitigation (including the settlement agreement measures) pursuant to the ''least practicable adverse impact'' standard to determine the appropriate mitigation to include in these regulations. Some of the measures included in the settlement agreement are included in the final rule, while some are not. Other measures that were not included in the settlement agreement are included in the final rule.

Ultimately, the Navy adopted all mitigation measures that are practicable without jeopardizing its mission and Title 10 responsibilities. In other words, a comprehensive assessment by Navy leadership of the final, entire list of mitigation measures concluded that the inclusion of any further mitigation beyond those measures identified here in the final rule would be entirely impracticable. NMFS independently reviewed the Navy's practicability determinations for specific mitigation areas and concurs with the Navy's analysis.

As we outlined in the *Mitigation Measures* section, NMFS has reviewed Appendix K (Geographic Mitigation Assessment) in the Navy's HSTT FEIS/OEIS and information contained reflects the best available science as well as a robust evaluation of the practicability of different measures, and NMFS uses Appendix K to support our independent least practicable adverse impact analysis. Below is additional discussion regarding specific recommendations for mitigation measures.

Comment 36: With respect to the national security exemption related to mitigation areas, a commenter recommended that NMFS should specify that authorization may be given only by high-level officers, consistent with the Settlement Agreement or with previous HSTT rulings.

Response: The Navy provided the technical analyses contained in Appendix K (Geographic Mitigation Assessment) of the HSTT FEIS/OEIS that included details regarding changing the measure to the appropriate delegated Command designee (see specifically Appendix K, Section K.2.2.1 (Proposed Mitigation Areas within the HSTT Study Area), for each of the proposed areas). The commenter proposed ''authorization may be given only by high-level officers'' and therefore appears to have missed the designations made within the cited sections above since those do constitute positions that could only be considered ''high level officers.'' The decision would be delegated to high-level officers. This delegation has been clarified in the Final rule as ''permission from the appropriate designated Command authority.''

SOCAL Areas

Comment 37: NPS recommended that the Navy consider the following as it plans to conduct activities in the HSTT Study Area. NPS noted the units of the NPS system that occur near the Navy's training and testing locations in Southern California and which may be affected by noise including Channel Islands National Park (NP) and Cabrillo National Monument.

Response: National Parks and marine protected areas in are addressed in Chapter 6 of the HSTT FEIS/OEIS. The Channel Islands National Marine Sanctuary consists 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 of Santa Barbara Island, or about 8 percent of the Channel Island National Marine Sanctuary, occurs within the SOCAL portion of the HSTT Study Area, but the entirety of that piece is included in the Santa Barbara Mitigation Area. The Navy will continue to implement a mitigation area out to 6 nmi of Santa Barbara Island, which includes a portion of the Channel Island National Marine Sanctuary and the Santa Barbara Marine Protected Area where the Navy will restrict the use of MF1 sonar sources and some explosive during training. Please refer to Figure 5.4–4 in the Navy's HSTT FEIS/OEIS shows the

spatial extent of the Santa Barbara Island mitigation area.

Cabrillo National Monument only contains some intertidal areas, but no marine waters. No Navy activities overlap with the Cabrillo National Monument; therefore, no impacts are expected.

Comment 38: A commenter recommended to extend the seasonality of the San Diego Arc Mitigation Area to December 31 for blue whales are present off southern California almost year round, and relatively higher levels from June 1 through December 31.

Response: Analysis of the San Diego Arc Mitigation Area and its consideration for additional geographic mitigation is provided in the HSTT FEIS/OEIS in Appendix K (Geographic Mitigation Assessment), Section K.4.1.6 (San Diego (Arc) Blue Whale Feeding Area; Settlement Areas 3–A through 3–C, California Coastal Commission 3 nmi Shore Area, and San Diego Arc Area), Section K.5.5 (Settlement Areas within the Southern California Portion of the HSTT Study Area), and Section K.6.2 (San Diego Arc: Area Parallel to the Coastline from the Gulf of California Border to just North of Del Mar). This analysis included consideration of seasonality and the potential effectiveness of restrictions to use of mid-frequency active sonar by Navy in the area. Based on the Appendix K (Geographic Mitigation Assessment) analyses, the Navy will implement additional mitigation within the San Diego Arc Mitigation Area, as detailed in Chapter 5 (Mitigation) Section 5.4.3 (Mitigation Areas for Marine Mammals in the Southern California Portion of the Study Area) of the HSTT FEIS/OEIS, to further avoid or reduce impacts on marine mammals from acoustic and explosive stressors and vessel strikes from Navy training and testing in this location. Since the proposed rule, the Navy is now limiting MF1 surface ship hull-mounted MFAS even further in the San Diego Arc Mitigation Area. The Navy will not conduct more than 200 hrs of MF1 MFAS in the *combined areas* of the San Diego Arc Mitigation Area and newly added San Nicholas Island and Santa Monica/Long Beach Mitigation Areas. As described in the proposed rule, the Navy will not use explosives that could potentially result in the take of marine mammals during large-caliber gunnery, torpedo, bombing, and missile (including 2.75″ rockets) activities during training and testing in the San Diego Mitigation Area. Regarding the recommended increase in seasonality to December 31, the San Diego Arc and current seasonality is based on the Biologically Important Area associated with this mitigation area (Calambokidis *et al.*, 2017), which identifies the primary months for feeding. While blue whale calls have been detected in Southern California through December (Rice *et al.,* 2017, Lewis and Širović, in press), given a large propagation range (10–50 km or more) for low-frequency blue whale vocalization, blue whale call detection from a Navy-funded single passive acoustic device near the San Diego Arc may not be a direct correlation with blue whale presence within the San Diego Arc from November through December. In addition, passive acoustic call detection data does not currently allow for direct abundance estimates. Calls may indicate some level of blue whale presence, but not abundance or individual residency time. In the most recent Navy-funded passive acoustic monitoring report including the one site in the northern San Diego Arc from June 2015 to April 2016, blue whale call detection frequency near the San Diego Arc starts declining in November after an October peak (Rice *et al.,* 2017, Širović, personal communication). The newest Navy-funded research on blue whale movements from 2014 to 2017 along the U.S. West Coast based on satellite tagging, has shown that individual blue whale movement is wide ranging with large distances covered daily (Mate *et al.,* 2017). Nineteen (19) blue whales were tagged in 2016, the most recent reporting year available (Mate *et al.,* 2017). Only 5 of the 19 blue whales spent time in the SOCAL portion of the HSTT Study Area, and only spent a few days within the range complex (2–13 days). Average distance from shore for blue whales was 113 km. None of the 19 blue whales tagged in 2016 spent time within the San Diego Arc. From previous year efforts (2014–2015), only a few tagged blue whales passed through the San Diego Arc. In addition, Navy and non-Navy-funded blue whale satellite tagging studies started in the early 1990s and has continued irregularly through 2017. In general, most blue whales start a south-bound migration from the ''summer foraging areas'' in the mid- to late-fall time period, unless food has not been plentiful, which can lead to a much earlier migration south. Therefore, while blue whales have been documented within the San Diego Arc previously, individual use of the area is variable, likely of short duration, and declining after October. Considering the newest passive acoustic and satellite tagging data, there is no scientific justification for extending the San Diego Arc Mitigation Area period from October 31 to December 31.

Comment 39: A commenter recommended limiting all MF1 use within the San Diego Arc Mitigation Area. A commenter also recommended NMFS should carefully consider prohibiting use of other LFAS and MFAS during the time period the San Diego Arc Mitigation Areas is in place, and for the MTEs to be planned for other months of the year.

Response: Since the proposed rule, the Navy is now limiting MF1 surface ship hull-mounted MFAS even further in the San Diego Arc Mitigation Area. The Navy will not conduct more than 200 hrs of MF1 MFAS in the *combined* areas of the San Diego Arc Mitigation Area and newly added San Nicholas Island and Santa Monica/Long Beach Mitigation Areas. Appendix K (Geographic Mitigation Assessment) of the HSTT FEIS/OEIS discusses the Navy's analysis of MFAS restrictions within the San Diego Arc Mitigation Area. Other training MFAS systems are likely to be used less frequently in the vicinity of the San Diego Arc area than surface ship MFAS. Given water depths, the San Diego Arc area is not conducive for large scale anti-submarine warfare exercises, nor near areas where other anti-submarine warfare training and testing occurs. Due to the presence of existing Navy subareas in the southern part of the San Diego Arc, a limited amount of helicopter dipping MFAS could occur. These designated range areas are required for proximity to airfields in San Diego such as Naval Air Station North Island and for airspace management. However, helicopters only used these areas in the Arc for a Kilo Dip. A Kilo Dip is a functional check of approximately 1–2 pings of active sonar to confirm the system is operational before the helicopter heads to more remote offshore training areas. This ensures proper system operation and avoids loss of limited training time, expenditure of fuel, and cumulative engine use in the event of equipment malfunction. The potential effects of dipping sonar have been accounted for in the Navy's analysis. Dipping sonar is further discussed below in Comment 40.

Comment 40: A commenter recommended prohibiting the use of air-deployed mid-frequency active sonar in the San Diego Arc Mitigation Area.

Response: The HSTT FEIS/OEIS and specifically Appendix K (Geographic Mitigation Assessment) discuss the Navy's analysis of mid-frequency and low-frequency active sonar restrictions within the San Diego Arc. Other sonar systems are likely to be used less frequently in the vicinity of the San

Diego Arc than surface ship mid-frequency active sonars. In regard to the recommendation to prohibit ''air-deployed'' or dipping mid-frequency active sonar, the only helicopter dipping sonar activity that would likely be conducted in the San Diego Arc area is a Kilo Dip, which occurs relatively infrequently and involves a functional check of approximately 1–2 pings of active sonar before moving offshore beyond the San Diego Arc to conduct the training activity. During use of this sonar, the Navy will implement the procedural mitigation as described in Section 5.3.2.1 (Active Sonar). The Kilo Dip functional check needs to occur close to Naval Air Station North Island in San Diego to insure all systems are functioning properly, before moving offshore. This ensures proper system operation and avoids loss of limited training time, expenditure of fuel, and cumulative engine use in the event of equipment malfunction. The potential effects of dipping sonar have been accounted for in the Navy's analysis. Further, due to lower power settings for dipping sonar, potential behavioral impact ranges of dipping sonar are significantly lower than surface ship sonars. For example, the HSTT average modeled range to temporary threshold shift of dipping sonar for a 1-second ping on low-frequency cetacean (*i.e.,* blue whale) is 77 m (HSTT FEIS/OEIS Table 3.7–7). This range is easily monitored for large whales by a hovering helicopter and is accounted for in the Navy's proposed mitigation ranges for dipping sonars. Limited ping time and lower power settings therefore would limit the impact from dipping sonar to any marine mammal species. It should be pointed out that the commenter's recommendation is based on new Navy behavioral response research specific to beaked whales (Falcone *et al.,* 2017). The Navy relied upon the best science that was available to develop behavioral response functions in consultation with NMFS for the HSTT FEIS/OEIS. The article cited in the comment (Falcone *et al.,* 2017) was not available at the time the HSTT EIS/OEIS was published. The new information and data presented in the article was thoroughly reviewed when it became available and further considered in discussions with some of the paper's authors. Many of the variables requiring further analysis for beaked whales and dipping sonar impact assessment are still being researched under continued Navy funding through 2019. The small portion of designated Kilo Dip areas that overlap the southern part of the San Diego Arc is not of sufficient depth for preferred habitat of beaked whales (see Figure 2.1–9 in the HSTT FEIS/OEIS). Further, passive acoustic monitoring for the past several years in the San Diego Arc confirms a lack of beaked whale detections (Rice *et al.,* 2017). Also, behavioral responses of beaked whales from dipping and other sonars cannot be universally applied to other species including blue whales. Navy-funded behavioral response studies of blue whales to simulated surface ship sonar has demonstrated there are distinct individual variations as well as strong behavioral state considerations that influence any response or lack of response (Goldbogen *et al.,* 2013).

Comment 41: A commenter recommends requiring vessel speed restrictions within the San Diego Arc Mitigation Area.

Response: Previously, the Navy commissioned a vessel density and speed report for the HSTT Study Area (CNA, 2016). Based on an analysis of Navy ship traffic in the HSTT Study Area between 2011 and 2015, median speed of all Navy vessels within Southern California is typically already low, with median speeds between 5 and 12 kn (CAN, 2016). Slowest speeds occurred closer to the coast including the general area of the San Diego Arc and approaches to San Diego Bay. The presence and transits of commercial and recreational vessels, numbering in the many hundreds, far outweighs the presence of Navy vessels. According the the SARs, blue whale mortality and injuries attributed to commercial ship strikes in California waters was zero in the most recent reporting period between 2011 and 2015 (Carretta *et al.,* 2017a). However, ship strikes were implicated in the deaths of four blue whales and the serious injury of a fifth whale between 2009 and 2013 (Carretta *et al.,* 2015). There has been no confirmed Navy ship strike to a blue whale in the entire Pacific over the 13-year period from 2005 to 2017. To minimize the possibility of ship strike in the San Diego Arc Mitigation Area, the Navy will implement procedural mitigation for vessel movements based on guidance from NMFS for vessel strike avoidance. The Navy will also issue seasonal awareness notification messages to all Navy vessel of blue, fin, and gray whale occurrence to increase ships awareness of marine mammal presence as a means of improving detection and avoidance of whales in SOCAL. When developing the mitigation for this 2018–2023 rule, the Navy analyzed the potential for implementing additional types of mitigation, such as developing vessel speed restrictions within the HSTT Study Area. The Navy determined that based on how the training and testing activities will be conducted within the HSTT Study Area under the planned activities, vessel speed restrictions would be incompatible with the practicability assessment criteria for safety, sustainability, and Title 10 requirements, as described in Section 5.3.4.1 (Vessel Movement) of the HSTT FEIS/OEIS.

Comment 42: A commenter recommended prohibiting the use of air-deployed mid-frequency active sonar in the Santa Barbara Island Mitigation Area.

Response: The commenter requested to prohibit ''air-deployed'' mid-frequency active sonar is based on one paper (Falcone *et al.,* 2017), which is a Navy-funded project designed to study behavioral responses of a single species, Cuvier's beaked whales, to mid-frequency active sonar. The Navy relied upon the best science that was available to develop behavioral response functions for beaked whales and other marine mammals in consultation with NMFS for the HSTT FEIS/OEIS. The article cited in the comment (Falcone *et al.,* 2017) was not available at the time the HSTT DEIS/OEIS was published but does not change the HSTT FEIS/OEIS criteria or conclusions. The new information and data presented in the article were thoroughly reviewed when they became available and further considered in discussions with some of the paper's authors. Many of the variables requiring further analysis for beaked whales and dipping sonar impact assessment are still being researched under continued Navy funding through 2019.

Behavioral responses of beaked whales from dipping and other sonars cannot be universally applied to other marine mammal species. For example, Navy-funded behavioral response studies of blue whales to simulated surface ship sonar has demonstrated there are distinct individual variations as well as strong behavioral state considerations that influence any response or lack of response (Goldbogen *et al.,* 2013). The same conclusion on the importance of exposure and behavioral context was stressed by Harris *et al.* (2017). Therefore, it is expected that other species would also have highly variable individual responses ranging from some response to no response to any anthropogenic sound. This variability is accounted for in the Navy's current behavioral response curves described in the HSTT FEIS/OEIS and supporting technical reports.

The potential effects of dipping sonar have been rigorously accounted for in the Navy's analysis. Parameters such as power level and propagation range for typical dipping sonar use are factored into HSTT acoustic impact analysis along with guild specific criteria and other modeling variables as detailed in the HSTT FEIS/OEIS and associated technical reports for criteria and acoustic modeling. Due to lower power settings for dipping sonar, potential impact ranges of dipping sonar are significantly lower than surface ship sonars. For example, the HSTT average modeled range to temporary threshold shift of dipping sonar for a 1-second ping on low-frequency cetacean (*i.e.,* blue whale) is 77 m, and for mid-frequency cetaceans including beaked whales is 22 m (HSTT FEIS/OEIS Table 3.7–7). This range is monitored for marine mammals by a hovering helicopter and is accounted for in the Navy's proposed mitigation ranges for dipping sonars (200 yd. or 183 m). Limited ping time and lower power settings therefore would limit the impact from dipping sonar to any marine mammal species.

For other marine mammal species, the small area around Santa Barbara Island does not have resident marine mammals, formally identified biologically important areas, nor is it identified as a breeding or persistent foraging location for cetaceans. Instead, the same marine mammals that range throughout the offshore Southern California area could pass at some point through the marine waters of Santa Barbara Island. As discussed in Appendix K (Geographic Mitigation Assessment) of the HSTT FEIS/OEIS, the Navy is already proposing year-round limitations to mid-frequency active sonar and larger explosive use. The Navy will not use MF1 surface ship hull-mounted mid-frequency active sonar during training or testing, or explosives that could potentially result in the take of marine mammals during medium-caliber or large-caliber gunnery, torpedo, bombing, and missile (including 2.75″ rockets) activities during training in the Santa Barbara Island Mitigation Area. Other mid-frequency active sonar systems for which the Navy is seeking authorization within SOCAL are used less frequently than surface ship sonars, and more importantly are of much lower power with correspondingly lower propagation ranges and reduced potential behavioral impacts.

Comment 43: A commenter recommended prohibiting other sources of mid-frequency active sonar in the Santa Barbara Mitigation Area.

Response: Appendix K (Geographic Mitigation Assessment) discusses the Navy's analysis of mid-frequency active sonar restrictions around Santa Barbara Island. Other training mid-frequency active sonar (MFAS) systems are likely to be used less frequently in the vicinity Santa Barbara Island than surface ship mid-frequency active sonars. Although not prohibiting the use of other sources of MFAS, the Navy will not use MF1 surface ship hull-mounted mid-frequency active sonar during training or testing, or explosives that could potentially result in the take of marine mammals during medium-caliber or large-caliber gunnery, torpedo, bombing, and missile (including 2.75″ rockets) activities during training in the Santa Barbara Island Mitigation Area.

Comment 44: A commenter recommended implementing vessel speed restrictions in the Santa Barbara Island Mitigation Area (Channel Islands Sanctuary Cautionary Area).

Response: The Channel Islands Sanctuary Cautionary Area was renamed the Santa Barbara Island Mitigation Area for the proposed rule. All locations within the HSTT Study Area have been used for Navy training and testing for decades. There has been no scientific evidence to indicate the Navy's activities are having adverse effects on populations of marine mammals, many of which continue to increase in number or are maintaining populations based on what regional conditions can support. This includes any marine mammal population that may transit through the Santa Barbara Island Mitigation Area. For example, the most recent NMFS U.S. West Coast survey findings (Moore and Barlow, 2017) encountered the highest estimated abundance of *Mesoplodon* beaked whales in the California Current since 1991. Multiple other surveys, monitoring efforts, and research projects continue to encounter long-term resident individuals such as populations of beaked whales in higher densities within the HSTT Study Area where various sonar systems have been in use for decades; see for example citation in the HSTT FEIS/OEIS to Debich *et al.* (2015a, 2015b), Falcone and Schorr (2012, 2014), Hildebrand *et al.* (2009), Moretti (2016), Širović *et al.* (2016), and Smultea and Jefferson (2014). The newest Navy-funded research, which was not available when the HSTT FEIS/OEIS was issued, continue to support the regular and repeated occurrence of marine mammal populations in HSTT including those thought most susceptible to behavioral response to anthropogenic sounds (DiMarzio *et al.,* 2018; Lewis and Širović, in press; Moretti *et al.,* 2017; Schorr *et al.,* 2018; Širović *et al.,* 2016, 2017, 2018; Širović *et al.,* 2018). Navy research and monitoring funding continues within the HSTT Study Area under current NMFS MMPA and ESA permits, and is planned through the duration of any future permits. Given the lack of effects to marine mammal populations in the HSTT Study Area from surface ship sonars, the effects from intermittent, less frequent use of lower powered dipping mid-frequency active sonar or other mid-frequency active sonar and low-frequency sonars would also not significantly affect local populations.

Additionally, here has not been any Navy ship strike to marine mammals in SOCAL over the 8-year period from 2010–2018, and there has never been a Navy strike within the boundary of the Channel Islands National Marine Sanctuary over the course of strike record collection dating back 20 years. Therefore, ship strike risk to marine mammals transiting the Santa Barbara Island Mitigation Area is minimal. Additionally, as detailed in the analysis in the HSTT FEIS/OEIS Section 3.7.3.4.1 (Impacts from Vessels and In-Water Devices) and in Appendix K (Geographic Mitigation Assessment), there are important differences between most Navy vessels and their operation and commercial ships that individually make Navy vessels much less likely to strike a whale. Navy vessels already operate at a safe speed given a particular transit or activity need. This also includes a provision to avoid large whales by 500 yd; so long as safety of navigation and safety of operations is maintained. Previously, the Navy commissioned a vessel density and speed report for HSTT (CNA, 2016). Based on an analysis of Navy ship traffic in HSTT between 2011 and 2015, the average speed of all Navy vessels within Southern California is typically already low, with median speeds between 5 and 12 kn (CNA, 2016). Slowest speeds occurred closer to the coast and islands. However, sometimes during training or testing activities, higher speeds are required.

Finally, given the lack of population impact to marine species throughout SOCAL from Navy activities, lack of significant and repeated use of the small portion of waters within the Santa Barbara Island Mitigation Area by marine mammals, anticipated low individual residency times within the Mitigation Area, application of mitigation and protective measures as outlined in the HSTT FEIS/OEIS, documented safe speeds Navy vessels already navigate by, detailed

assessments of realistic training and testing requirements and potential impacts of further restrictions, the Navy has adequately defined the most practicable mitigation measures in the HSTT FEIS/OEIS and Appendix K (Geographic Mitigation Assessment).

Comment 45: A commenter recommended additional mitigation areas for important beaked whale habitat in the Southern California Bight. A commenter asserted that it is important to focus substantial management efforts on beaked whales within the Navy's SOCAL Range Complex, which sees the greatest annual amount of sonar and explosives activity of any Navy range in the Pacific.

Response: The basis for this comment includes incorrect or outdated information or information that does not reflect the environment present in the HSTT Study Area, such as, ''. . .beaked whale populations in the California Current have shown significant, possibly drastic declines in abundance over the last twenty years.'' The citation provided in the footnote to the comment and postulated ''decline'' was for beaked whales up until 2008 (which does not take into account information from the last 10 years) and was a postulated trend for the entire U.S. West Coast, not data which is specific to the HSTT Study Area. As noted in Section 3.7.3.1.1.7 (Long-Term Consequences) of the HSTT FEIS/OEIS, the postulated decline was in fact not present within the SOCAL portion of the HSTT Study Area, where abundances of beaked whales have remained higher than other locations off the U.S. West Coast. In addition, the authors of the 2013 citation (Moore and Barlow, 2013) have published trends based on survey data gathered since 2008 for beaked whales in the California Current, which now includes the highest abundance estimate in the history of these surveys (Barlow 2016; Carretta *et al.,* 2017; Moore and Barlow, 2017). Also, when considering the portion of the beaked whale population within the SOCAL portion of the HSTT Study Area and as presented in the HSTT FEIS/OEIS, multiple studies have documented continued high abundance of beaked whales and the long-term residency of documented individual beaked whales, specifically where the Navy has been training and testing for decades (see for example Debich *et al.,* 2015a, 2015b; Dimarzio *et al.,* 2018; Falcone and Schorr, 2012, 2014; Hildebrand *et al.,* 2009; Moretti, 2016; Schorr *et al.,* 2018; Širović *et al.,* 2016; Smultea and Jefferson, 2014). There is no evidence that there have been any population-level impacts to beaked whales resulting from Navy training and testing in the SOCAL portion of the HSTT Study Area. The Navy did provide analysis and consideration of additional geographic mitigation for beaked whales in the Southern California Bight in Appendix K (Geographic Mitigation Assessment), Section K.7.2 (Southern California Public Comment Mitigation Area Assessment) and specifically Section K.7.2.7 (Northern Catalina Basin and the San Clemente Basin) of the HSTT FEIS/OEIS regarding the stated concern over the possible presence of Perrin's beaked whale. See Chapter 5 (Mitigation), Section 5.4.1.2 (Mitigation Area Assessment) of the HSTT FEIS/OEIS for additional details regarding the assessments of areas considered for mitigation.

Comment 46: A commenter recommended additional mitigation areas in the San Nicholas Basin. A commenter notes that the settlement agreement established a ''refuge'' from sonar and explosives activities in a portion of the whales' secondary habitat, outside the Southern California Anti-submarine Warfare Range (SOAR), with more management effort being necessary in the long term a commenter recommended at a minimum that NMFS should prescribe the ''refuge'' during the next five-year operation period and should consider all possible habitat-based management efforts, including but not limited to the expansion of this area further south towards SOAR, to address impacts on the small population of Cuvier's beaked whales associated with San Clemente Island. A commenter also commented the energetic costs of displacement of beaked whales into sub-optimal foraging habitat outweigh the costs of repeated sonar exposure for whale survival, while creating conditions of a population sink, such as has been seen on the Navy's AUTEC range (Claridge 2013).

Response: Navy did provide analysis and consideration of additional geographic mitigation for beaked whales in the San Nicolas Basin in Appendix K (Geographic Mitigation Assessment), Section K.7.2 (Southern California Public Comment Mitigation Area Assessment) and specifically Section K.7.2.1 (San Nicolas Basin) of the HSTT FEIS/OEIS. See Chapter 5 (Mitigation), Section 5.4.1.2 (Mitigation Area Assessment) of the HSTT FEIS/OEIS for additional details regarding the assessments of areas considered for mitigation.

Within San Nicolas Basin, there is a documented, recurring number of Cuvier's beaked whales strongly indicating that the Navy's activities areis not having a population-level impact to this species. This is supported by repeated visual re-sighting rates of individuals, sightings of calves and, more importantly, reproductive females, and passive acoustic assessments of steady vocalization rates and abundance over at least the most recent seven-year interval. It is incorrect to consider as fact that there is a ''population sink, such as has been seen on the Navy's AUTEC range. In the citation provided (Claridge 2013), that statement is merely a hypothesis, yet to be demonstrated.

The Navy has been funding Cuvier's beaked whale research specifically in San Nicolas Basin since 2006. This research is planned to continue for at least the next five years through the duration of the planned HSTT MMPA permit. Cumulative from 2006 to 2016, over 170 individual Cuvier's beaked whales have been catalogued within San Nicolas Basin. Schorr *et al.* (2018) state for the most recent field season from 2016 to 2017 that: Identification photos of suitable quality were collected from 69 of the estimated 81 individual Cuvier's beaked whales encountered in 2016–2017. These represented 48 unique individuals, with eight of these whales sighted on two different days, and another three on three different days during the study period. Nineteen (39 percent) of these whales had been sighted in previous years. Many more whales identified in 2016 had been sighted in a previous year (16/28 individuals, 57 percent), compared to 2017 (5/22 individuals, 23 percent), though both years had sightings of whales seen as early as 2007. There were three adult females photographed in 2016 that had been sighted with calves in previous years, one of which was associated with her second calf. Additionally, a fourth adult female, first identified in 2015 without a calf, was subsequently sighted with a calf. The latter whale was sighted for a third consecutive year in 2017, this time without a calf, along with two other adult females with calves who had not been previously sighted. These sightings of known reproductive females with and without calves over time (n = 45) are providing critically needed calving and weaning rate data for Population Consequences of Disturbance (PcoD) models currently being developed for this species on SOAR.

In 2018, an estimate of overall abundance of Cuvier's beaked whales at the Navy's instrumented range in San Nicolas Basin was obtained using new dive-counting acoustic methods and an archive of passive acoustic M3R data representing 35,416 hours of data (DiMarzio, 2018; Moretti, 2017). Over the seven-year interval from 2010–2017,

there was no observed change and perhaps a slight increase in annual Cuvier's beaked whale abundance within San Nicolas Basin (DiMarzio 2018). There does appear to be a repeated dip in population numbers and associated echolocation clicks during the fall centered around August and September (DiMarzio, 2018; Moretti, 2017). A similar August and September dip was noted by researchers using stand-alone off-range bottom passive acoustic devices in Southern California (Rice *et al.,* 2017; Širović *et al.,* 2016). This dip in abundance documented over 10 years of monitoring may be tied to some as yet unknown population dynamic or oceanographic and prey availability dynamic. It is unknown scientifically if this represents a movement to different areas by parts of the population, or a change in behavioral states without movement (*i.e.,* breeding verse foraging). Navy training and testing events are spatially and temporally spread out across the SOCAL portion of the HSTT Study Area. In some years events occur in the fall, yet in other years events do not. Yet, the same dip has consistently been observed lending further evidence this is likely a population biological function.

Comment 47: A commenter recommended additional mitigation areas in the Santa Catalina Basin. A commenter commented that there is likely a small, resident population of Cuvier's beaked whales resides in the Santa Catalina Basin and that this population is subject to regular acoustic disturbance due to the presence of the Shore Bombardment Area (SHOBA) and 3803XX. The population may also be exposed to training activities that occupy waters between Santa Catalina and San Clemente Islands. Similar to the San Nicholas population, the settlement agreement established a ''refuge'' from sonar and explosives activities in the northern portion of the Santa Catalina Basin. A commenter recommended that, at a minimum the Navy should carefully consider implementing the ''refuge'' during the next five-year authorization period and should continue to consider all possible habitat-based management efforts to address impacts on the population.

Response: The water space areas mentioned in the comment as ''(SHOBA)'' off the southern end of San Clemente Island are waters designated as Federal Danger and Safety Zones via formal rule making (Danger Zone—33 CFR 334.950 and Safety Zone—33 CFR 165.1141) because they are adjacent to the shore bombardment impact area that is on land at the southern end of San Clemente Island. Waters designated as ''3803XX,'' which are associated with the Wilson Cove anchorages and moorings, where ship calibration tests, sonobuoy lot testing, and special projects take place, are designated as Federal Safety and Restricted Zones via formal rule making (Safety Zone—33 CFR 165.1141 and Restricted Zone—33 CFR 334.920).

The comment states a concern that a population of Cuvier's beaked whale is, ''subject to regular acoustic disturbance due to the presence of the Shore Bombardment Area,'' is not correct. The SHOBA is a naval gun impact area located on land at the southern end of San Clemente Island. This area is an instrumented land training range used for a variety of bombardment training and testing activities. The in-water administrative boundary for SHOBA does not delineate the locations where a ship firing at land targets must be located and does not represent where gunfire rounds are targeted. The water area in Santa Catalina Basin is a controlled safety zone in the very unlikely event a round goes over the island and lands in the water. With the modern advent of better precision munitions, computers, and advanced fire control, that probability is very remote. Navy vessels use the waters south of San Clemente Island (SHOBA West and SHOBA East) from which to fire into land targets on southern San Clemente Island (see the HSTT FEIS/OEIS Figure 2.1–7). Therefore, there would not be any underwater acoustic disturbance to Cuvier's beaked whales located within the Santa Catalina Basin from in-water explosives or ship firing.

Comment 48: A commenter recommended additional mitigation areas for the southernmost edge of the California Current, west of Tanner and Cortes Banks. In light of the importance of the Southernmost edge of the California Current, west of Tanner and Cortes banks, Commenters recommend assessing the designation of the southern offshore waters of the Southern California Bight as a seasonal time-area management area for Cuvier's beaked whales between November and June. The approximate coordinates are 32.75 N, 119.46 W (referenced as Site E). As part of this assessment, a commenter recommended that the boundaries be refined via expert consideration of acoustic and other relevant information pertaining to beaked whale biology and bathymetric and oceanographic data.

Response: Baumann-Pickering *et al.* (2014a, b, 2015), as the commenter referenced, did not specify this area as biologically important and the author's data only indicated there have been detections of the Cuvier's beaked whales within this area. Further, the species is widely distributed within Southern California and across the Pacific with almost all suitable deep water habitat greater than 800 m in Southern California conceivably containing Cuvier's beaked whales. Only limited population vital rates exist for beaked whales, covering numbers of animals, populations vs. subpopulations determination, and residency time for individual animals (Schorr *et al.,* 2017, 2018). The science of passive acoustic monitoring is positioned to answer some questions on occurrence and seasonality of beaked whales, but cannot as of yet address all fundamental population parameters including individual residency time.

Furthermore, while passive acoustic monitoring within Southern California has been ongoing for 28 years, with many sites funded by the Navy, not all sites have been consecutively monitored for each year. All of the single bottom-mounted passive acoustic devices used for the analysis by Baumann-Pickering *et al.* (2014a, b, 2015), and used in the comment to support its argument, are not continuous and have various periodicities from which data have been collected. Specifically, devices have been deployed and removed from various locations with some sites having multiple years of data, others significantly less, with perhaps just a few months out of a year. For instance, Site E, located west of Tanner and Cortes Banks and used by the commenter to justify restrictions in this area, was only monitored for 322 days from September 2006 through July 2009 (obtaining slightly less than a full year's worth of data).

Site E was also used again for another 63 days from Dec 2010 through February 2011. During this second monitoring period at Site E, Gassman *et al.* (2015) reported detection of only three Cuvier's beaked whales over six separate encounters with time intervals of 10–33 minutes. As sources of data associated with a single monitoring point, the two monitoring episodes conducted at Site E may not be indicative of Cuvier's beaked whale presence at other locations within Southern California, which lack comparable monitoring devices. Nor would they be indicative of overall importance or lack of importance of the area west of Tanner and Cortes Banks. Further, more recent acoustic sampling of bathymetrically featureless areas off Southern California with drifting hydrophones conducted by NMFS, detected many beaked whales over abyssal plains and not associated with

slope or seamount features. This counters a common misperception that beaked whales are primarily found over slope waters, in deep basins, or over seamounts (Griffins and Barlow 2016).

Most importantly, older passive acoustic data prior to 2009 may not be indicative of current or future occurrence of beaked whales, especially in terms of potential impact of climate change on species distributions within Southern California. To summarize, these limited periods of monitoring (322 days in a three-year period prior to 2010 and 63 days in 2011) may or may not be reflective of current beaked whale distributions within Southern California and into the future. Furthermore, passive acoustic-only detection of beaked whales, without additional population parameters, can only determine relative occurrence, which could be highly variable over sub-regions and through time.

While Cuvier's beaked whales have been detected west of Tanner and Cortes Banks, as noted above this species is also detected in most all Southern California locations greater than 800 m in depth. Furthermore, the Navy has been training and testing in and around Tanner and Cortes Banks with the same basic systems for over 40 years, with no evidence of any adverse impacts having occurred. Further, there are no indications that Navy training and testing in the Southern California portion of the HSTT Study Area has had any adverse impacts on populations of beaked whales in Southern California. In particular, a re-occurring population of Cuvier's beaked whales co-exists within San Nicolas Basin to the east, an area with significantly more in-water sonar use than west of Tanner and Cortes Banks.

To gain further knowledge on the presence of beaked whales in Southern California, the Navy continues to fund additional passive acoustic field monitoring, as well as research advancements for density derivation from passive acoustic data. For the five-year period from 2013 to 2017, U.S. Pacific Fleet on behalf of the U.S. Navy funded $14.2 million in marine species monitoring within Hawaii and Southern California. Specifically, in terms of beaked whales, the Navy has been funding beaked whale population dynamics, tagging, and passive acoustic studies within the HSTT Study Area since 2007 (DiMarzio *et al.,* 2018; Moretti, 2017; Rice *et al.,* 2017, Schorr *et al.,* 2017, 2018; Širović, *et al.,* 2017). Variations of these efforts are planned to continue through the duration of the next HSTT MMPA permit cycle using a variety of passive acoustic, visual, tagging, photo ID, and genetics research tools. This Navy effort is in addition and complementary to any planned NMFS efforts for beaked whales and other marine mammals. For instance, the Navy is co-funding with NMFS and the Bureau of Ocean Energy Management a planned Summer-Fall 2018 visual and passive acoustic survey along the U.S. West Coast and off Baja Mexico. New passive detection technologies focusing on beaked whales will be deployed during these surveys (similar to Griffiths and Barlow, 2016). The Navy continues SOCAL beaked whale occurrence and impact studies with additional effort anticipated through 2020.

Analysis of the southernmost edge of the California Current, west of Tanner-Cortes Bank and the presence of Cuvier's beaked whales was addressed in Appendix K (Geographic Mitigation Assessment), Section K.7.2.4 (Southernmost Edge of California Current, West of Tanner-Cortes Bank) and Section K.7.2.6 (Cuvier's Beaked Whale Habitat Areas Mitigation Assessment) of the HSTT FEIS/OEIS. Also see Chapter 3, Section 3.7.2.3.24 (Cuvier's Beaked Whale (*Ziphius cavirostris*)) of the HSTT FEIS/OEIS for additional information regarding this species.

As noted in Appendix K (Geographic Mitigation Assessment), the waters west of Tanner and Cortes Banks are also critical to the Navy's training and testing activities; therefore, it is not practicable to preclude activities within that water space in the SOCAL portion of the HSTT Study Area. Reasonable mitigation measures, as discussed in Appendix K (Geographic Mitigation Assessment), would limit the impact of training and testing on marine mammals, and especially beaked whales, in this area.

Given that there is no evidence that Navy training and testing activities are having significant impacts to population of beaked whales anywhere in the SOCAL portion of the HSTT Study Area, the uncertainty of current use by Cuvier's beaked whales of the area west of Tanner and Cortes Banks, the fact that general occurrence of beaked whales in Southern California may not necessarily equate to factors typically associated with biologically important areas, and consideration of the importance of Navy training and testing activities in the areas around Tanner and Cortes Banks discussed in Appendix K (Geographic Mitigation Assessment) of the HSTT FEIS/OEIS, additional geographic mitigation specifically for the area west of Tanner and Cortes Banks is not warranted.

As noted in Appendix K (Geographic Mitigation Assessment) and Chapter 5 (Mitigation), Section 5.3 (Procedural Mitigation to be Implemented) of the HSTT FEIS/OEIS, the Navy will continue to implement procedural mitigation measures throughout the HSTT Study Area.

Comment 49: A commenter commented that the same long-term passive acoustic study of the Southern California Bight as discussed for Cuvier's beaked whales above in Comment 48 also suggests that southern-central waters represent biologically important habitat for Perrin's beaked whale. A commenter recommended that the Northern Catalina Basin and the waters southeast of Santa Catalina Island (approximate coordinates of 33.28 N, −118.25 W), and the San Clemente Basin (approximate coordinates of 32.52 N, −118.32 W), both based on location of HARP deployments (referenced as sites ''A'' and ''S''), be considered as management areas for Perrin's beaked whales. A commenter recommended that the boundaries of any restrictions be established via expert consideration.

Response: All of the single bottom-mounted passive acoustic devices used for the analysis by Baumann-Pickering *et al.* (2014) and used by the commenter to support their argument are not continuous and have various periodicities for which data have been collected. As single point sources of data, these passive acoustic devices may not be indicative of Perrin's beaked whale presence at other locations within Southern California without comparable devices. Nor would older data prior to 2009 be indicative of current or future occurrence especially in terms of potential impact of climate change on species distributions.

Navy-funded passive acoustic monitoring within the SOCAL portion of the HSTT Study Area has been ongoing for the past 21 years, but not all areas are monitored continuously, and devices have been deployed and removed from various locations. Santa Catalina Basin was only monitored from August 2005 to July 2009. Santa Catalina Basin has not been monitored under Navy funding since 2009 because other areas in Southern California were prioritized for passive acoustic device placement by the researchers. For San Clemente Island, the single monitoring site ''S'' used in Baumann-Pickering *et al.* (2014) and cited as the source of the comment's claim for San Clemente Basin was only deployed for a limited time of approximately 1.5 years, resulting in 409 days of data (September 2009–May 2011). For both sites

combined, only 41 hours of BW43 signal types were detected over a cumulative approximately five-and-a-half years of monitoring. The 41 hours of BW43 detections therefore only represents a small fraction of overall recording time (less than 1 percent).

The beaked whale signal type detected called BW43 has been suggested as coming from Perrin's beaked whales (Baumann-Pickering et al. 2014), but not yet conclusively and scientifically confirmed.

A different Navy-funded single site south of San Clemente Island within the San Clemente Basin has had a passive acoustic device in place from July 2014 through current. Širović et al. (2016) and Rice *et al.* (2017) contain the most current results from San Clemente Basin site ''N.'' While Širović *et al.* (2016) and Rice *et al.* (2017) do report periodic passive acoustic detections of Mesoplodon beaked whales thought to be Perrin's beaked whale in San Clemente Basin, the overall detection rate, periodicity, and occurrence has not been high. Between May 2015 and June 2016, there were only seven weeks in which potential Perrin's beaked whale echolocation clicks were detected, with each week having less than 0.14 hours/week of detections. Acoustic sampling of bathymetrically featureless areas off Southern California with drifting hydrophones by NMFS detected many beaked whales over abyssal plains and not always associated with slope or seamount features, which counters a common misperception that beaked whales are primarily found over slope waters, in deep basins, or over seamounts (Griffins and Barlow 2016). One of these devices was deployed within the SOCAL portion of the HSTT Study Area. In addition, analysis of NMFS visual survey data from 2014, the most recent year available, showed an increase in Mesoplodon beaked whales along the entire U.S. West Coast, which the authors attributed to an influx of tropical species of Mesoplodon during the unusually warm water condition that year (Barlow 2016; Moore & Barlow 2017). Perrin's beaked whale, part of the Mesoplodon guild, could be part of these sightings. In summary, San Clemente Basin and Santa Catalina Basin with similar low passive acoustic detection rates are likely to be part of Perrin beaked whale's general distribution along the U.S. West Coast and in particular Southern California and Baja Mexico. This distribution is likely to be wide ranging for Perrin's beaked whales as a species and highly correlated to annual oceanographic conditions. Santa Catalina and San Clemente basins do have infrequent suspected Perrin's beaked whale passive acoustic detections from a limited number of devices, but these areas may not specifically represent unique high occurrence locations warranting geographic protection beyond existing Navy protective measures.

The Navy has been training and testing in and around the Northern Catalina Basin and waters southeast of Santa Catalina Island with the same systems for over 40 years, and there is no evidence of any adverse impacts having occurred and no indications that Navy training and testing has had any adverse impacts on populations of beaked whales in Southern California. The main source of anthropogenic noise in the Catalina Basin and waters south of San Clemente Island are associated with commercial vessel traffic concentrated in the northbound and southbound lanes of the San Pedro Channel that runs next to Santa Catalina Island and leads to and from the ports of Los Angeles/Long Beach and other commercial traffic from San Diego and ports to the north and south of Southern California. These waters in and around Northern Catalina Basin and waters southeast of Santa Catalina Island are critical to the Navy's training and testing activities, and so it is not practicable to limit or reduce access or preclude activities within that water space in the SOCAL portion of the HSTT Study Area.

The Santa Catalina Basin area and Perrin's beaked whales were addressed in Appendix K (Geographic Mitigation Assessment), Section K.7.2.3 (Catalina Basin) and K.7.2.7 (Northern Catalina Basin and the San Clemente Basin) of the HSTT FEIS/OEIS. Also see Appendix K (Geographic Mitigation Assessment), Section K.7.2.7.2 (Northern Catalina Basin and Waters Southeast of Catalina Island Perrin's Beaked Whale Habitat Mitigation Considerations) of the HSTT FEIS/OEIS for additional information regarding this species. Additional limitations as discussed in Appendix K (Geographic Mitigation Assessment) would limit training and impact readiness. Given that there is no evidence of impacts to the population of beaked whales in the area, and low potential occurrence of Perrin's beaked whales in the Southern California portion of the HSTT Study Area, geographic mitigation would not effectively balance a reduction of biological impacts with an acceptable level of impact on military readiness activities. As noted in Appendix K (Geographic Mitigation Assessment) and Chapter 5, Section 5.3 (Procedural Mitigation to be Implemented) of the HSTT FEIS/OEIS, the Navy will continue to implement procedural mitigation measures throughout the HSTT Study Area.

Comment 50: Commenters recommended additional mitigation areas for important fin whale habitat off Southern California. The commenters recommended that the waters between the 200 m and 1000 m isobaths be assessed for time-area management so that, at minimum, ship strike awareness measures for fin whales can be implemented during the months of November through February, when the whales aggregate in the area.

Response: As described and detailed in the HSTT FEIS/OEIS, the Navy implements a number of ship-strike risk reduction measures for all vessels, in all locations and seasons, and for all marine mammal species. New research by Širović *et al.* (2017) supports a hypothesis that between the Gulf of California and Southern California, there could be up to four distinct sub-populations based on fin whale call types, including a Southern California resident population. There is also evidence that there can be both sub-population shifts and overlap within Southern California (Širović *et al.,* 2017). Scales *et al.* (2017) also postulated two Southern California sub-populations of fin whales based on satellite tagging and habitat modeling. Scales *et al.* (2017) stated that some fin whales may not follow the typical baleen whale migration paradigm, with some individuals found in both warm, shallow nearshore waters <500 m, and deeper cool waters over complex seafloor topographies. Collectively, the author's spatial habitat models with highest predicted occurrence for fin whales cover the entire core training and testing portion of the SOCAL portion of the HSTT Study Area, not just areas between 200 and 1,000 m. Results from Navy-funded long-term satellite tagging of fin whales in Southern and Central California still shows some individual fin whales engage in wide-ranging movements along the U.S. West Coast, as well as large daily movements well within subareas (Mate *et al.,* 2017). In support of further refining the science on Southern California fin whales, Falcone and Schorr (2014) examined fin whale movements through photo ID and short-to-medium term (days-to-several weeks) satellite tag tracking under funding from the Navy. The authors conducted small boat surveys from June 2010 through January 2014, approximately three-and-a-half years. Of interest in terms of the comment and the 200–1,000 m isobaths occurrence, more fin whale tag locations were reported off the Palos Verdes

Peninsula and off of the Los Angeles/Long Beach commercial shipping ports in fall, both areas north of and outside of the Navy's Southern California Range Complex. Compared to the above areas, there were not as many tag locations in the similar isobaths region off San Diego associated with the Navy range area. Falcone and Schorr (2014) did document an apparent inshore-offshore distribution between Winter–Spring and Summer–Fall. Given the apparent resident nature of some fin whales in Southern California as discussed in Falcone and Schorr (2014), Scales *et al.* (2017), and Širović *et al.* (2017), it remains uncertain if the inshore-offshore seasonal pattern as well as sub-population occurrence will persist into the future, or if fin whales will change distribution based on oceanographic impacts on available prey (ex. El Nino, climate change, etc.). The efforts from Falcone and Schorr on fin whales began in 2010 and are planned to continue for the next several years under Navy monitoring funding to further refine fin whale population structure and occurrence within Southern California.

The data from the various single bottom-mounted passive acoustic devices used in the analysis are not continuous and have various periodicities for which data have been collected. Many of these devices are purposely placed in 200–1000 m of water. Given these are point sources of data, they may or may not be indicative of fin whale calling or presence at other locations within Southern California without devices. Passive acoustic analysis is only useful for those individuals that are calling and may not indicate total population occurrence. Low-frequency fin whale calls by their very nature have relatively long underwater propagation ranges so detections at a single device could account for individuals 10–50 miles away if not further, depending on local propagation conditions. This would mean calling whales are not in the 200–1000 m area. Širović *et al.* (2015) acknowledge in discussing their data biases, that their use of ''call index'' may best indicate a period of peak calling. But fin whales produce multiple call types depending on behavioral state. Based on technology limitations, some fin whale call types were not included in Širović *et al.* (2015).

1. The study cited by a commenter (Širović *et al.,* 2015) and used as the basis for ''Figure 3'' concerns trends seen within the Southern California Bight, not exclusively the SOCAL Range Complex;

2. The research used as the basis for Figure 3 was funded by the Navy to develop baseline information for the areas where Navy trains and tests and was by no means designed to or otherwise intended as a representative sample of all waters off California or the entire habitat of the fin whale population in the area;

3. It is not correct to assume detected vocalizations (a ''call index'') reported in Širović *et al.* (2015) for fin whales equates with where fin whales are aggregated in the Southern California Bight. For example, the acoustic monitoring data did not pick up or otherwise correspond to the observed seasonal distribution shift of fin whales indicated by visual survey data covering the same time periods (Campbell *et al.,* 2015; Douglas *et al.,* 2014);

4. Širović *et al.* (2015) make no such claim of aggregations during the winter months but instead compare call index rates and state that the purpose for the paper was to demonstrate that passive acoustics can be a powerful tool to monitor population trends, not relative abundances;

5. There is no science to support the contention that fin whales are ''at particular risk of ship-strike on the naval range.'' Two fin whales were struck by the Navy in 2009 in the Southern California portion of the HSTT Study Area as Navy noted in Appendix K (Geographic Mitigation Assessment), but there have been no fin whales struck and in fact no whales of any species struck in the subsequent nine-year period despite a documented increase in the fin whale population inhabiting the area (Barlow, 2016; Moore & Barlow, 2011; Smultea & Jefferson, 2014). Furthermore, one of those vessel strikes occurred at the end of the recommended mitigation timeframe (February) and the other well outside the time period (May), so the proposed mitigation would only have been marginally effective, if at all. Neither of these Navy fin whale strike locations were close to shore (both >50–60 Nmi from shore), or associated with coastal shipping lanes. Based on an analysis of Navy ship traffic in the HSTT Study Area between 2011 and 2015, median speed of all Navy vessels within Southern California is typically already low, with median speeds between 5 and 12 knots (CNA, 2016). This includes areas within and outside of 200–1000 m within Southern California, with slowest speeds closer to the coast; and

6. As presented in the EIS/OEIS, fin whales are present off all the waters of Southern California year-round (Širović *et al.,* 2015, 2017). Using available quantitative density and distribution mapping, the best available science, and expert elicitation, definitive areas of importance for fin whales could not be determined by a panel of scientists specifically attempting to do so (Calambokidis *et al.,* 2015).

Navy vessels already operate at a safe speed given a particular transit or activity need. This also includes a provision to avoid large whales by 500 yards, so long as safety of navigation and safety of operations is maintained. Previously, the Navy commissioned a vessel density and speed report for HSTT (CNA, 2016). Based on an analysis of Navy ship traffic in HSTT between 2011 and 2015, median speed of all Navy vessels within Southern California is typically already low, with median speeds between 5 and 12 knots (CNA, 2016). Slowest speeds occurred closer to the coast and islands.

In conclusion, speed restrictions within 200–1000 m is unwarranted given the wide range of fin whale movements along the U.S. West Coast including areas within and outside of 200–1000 m contours, sometimes large-scale daily movements within regional areas as documented from Navy-funded satellite tagging, the current lack of ship strike risk from Navy vessels in Southern California (2010–2017), the already safe training and testing ship speeds Navy uses within HSTT, and existing Navy mitigation measures including provisions to avoid large whales by 500 yards where safe to do so.

In addition, the Navy agreed to send out seasonal awareness messages of blue, fin, and gray whale occurrence to improve awareness of all vessels operating to the presence of these species in SOCAL.

Hawaii Areas

Comment 51: NPS recommends that the Navy consider the following as it plans to conduct activities in the HSTT Study Area. NPS notes units of the NPS system that occur near training and testing areas around Hawaii and identify which can be affected by noise. The Units are: Kaloko-Honokohau National Historical Park (NHP), Pu'uhonua o Honaunau NHP, Pu'ukolhola Heiau National Historic Site, Kalaupapa NHP, and the World War II Valor in the Pacific National Monument.

Response: National Parks and Marine protected areas in are addressed in Chapter 6 of the HSTT FEIS/OEIS. Kalaupapa National Historical Park (NHP) is discussed in Comment 52 below. No planned activities overlap with Kaloko-Honokohau NHP; therefore, no impacts are expected within the Kalaupapa NHP. The Pu'uhonua o Honaunau NHP and Pu'ukolhola Heiau National Historic Site are not specifically addressed in Chapter 6 of

the FEIS/OEIS, but neither site appears to contain any marine waters. The Navy's planned activities do not occur on land except in designated training areas on Navy properties (*i.e.,* for amphibious assaults, etc.); therefore, there are no activities that overlap with these sites and no impacts are expected. The WWII Valor in the Pacific Monument is for the USS Arizona which is a Navy war memorial. No activities occur within the boundary of the site itself, and the monument was not designated to protect marine species. There are training and testing activities that occur within Pearl Harbor as a whole, and impacts to marine mammals in the waters of Pearl Harbor as a whole were include in Navy's proposed activities and therefore analyzed by NMFS in this final rule.

Comment 52: The NPS noted the presence of marine mammal species in the Kalaupapa NHP (on the north shore of Molokai), and is concerned about potential take of protected species that inhabit water out to 1000 fathoms, and recommended the Navy consider alternate training areas to avoid impacts to these species. Species that occur year-round include the false killer whale, sperm whale, pygmy sperm whale, spinner dolphin, and bottlenose dolphin. Humpback whales are seasonal visitors from November to April. The Hawaiian monk seal pups are within the Kalaupapa NHP during the Spring and Summer.

Response: Part of the Kalaupapa NHP (northern portion) is protected by the measures employed inside the 4-Islands Region Mitigation Area such as year-round prohibition on explosives and no use of MF1 surface ship hull mounted mid-frequency active sonar from November 15–April 15).

We note, however, that the majority of the Kalaupapa NHP is not in the 4-Islands Region Mitigation Area as it is mainly landbased, but just outside it. The Kalaupapa NHP was designated to protect the two historic leper colonies on the property and was not designated with the purpose of protecting marine species. The boundaries of the Kalaupapa NHP extend a quarter mile offshore. The Navy does propose conducting activities associated with the planned activities in the boundary of the the Kalaupapa NHP. There would be no effect to Hawaiian monk seal pupping on NHP land as the Navy does not have any planned activities in the boundary of the Kalaupapa NHP, especially on land. The Navy's planned activities do not include any land-based activities except for a few activities which are conducted on designated Navy property (*i.e.,* amphibious assaults on Silver Strand, etc.). Further, as the seaspace adjacent to the Kalaupapa NHP is not an established training or testing area, it is unlikely naval activity would occur in this area.

Comment 53: A commenter recommended expanding the Hawaii Island Mitigation Area westward to protect resident Cuvier's beaked whales and rough-toothed dolphins. The boundaries of the Hawaii Island Mitigation Area should be expanded westward to remain consistent with the boundaries of the BIAs defined in Baird *et al.* (2015), which informed the boundaries of Conservation Council Settlement Areas 1–C and 1–D. This expansion will cover habitat for Cuvier's beaked whales and toothed dolphins that are resident around the Big Island.

Response: Analyses of the marine mammal species mentioned in the comment and considered within the Hawaii Island Mitigation Area are discussed throughout Appendix K (Geographic Mitigation Assessment), Section K.3 (Biologically Important Areas within the Hawaii Range Complex Portion of the HSTT Study Area) and Sections K.5.1 (Settlement Areas Within the Hawaii Portion of the HSTT Study Area) through K.5.4 (Proposed Mitigation Areas that Overlap the Hawaii Portion of the HSTT Settlement Agreement Areas) of the HSTT FEIS/OEIS. Additional information on the marine mammals mentioned in the comment is also provided in the species-specific sub-sections in Chapter 3, Section 3.7.2 (Affected Environment) of the HSTT FEIS/OEIS. Based on these analyses, the Navy will implement additional mitigation within the Hawaii Island Mitigation Area (year-round) as detailed in Chapter 5, Section 5.4.2 (Mitigation Areas for Marine Mammals in the Hawaii Range Complex) of the HSTT FEIS/OEIS, to further avoid or reduce impacts on marine mammals from acoustic and explosive stressors from the planned activities.

The mitigation requirement of prohibiting the use of explosives year-round during training and testing across the entire Hawaii Island Mitigation Area satisfies the previous mitigation requirement of a prohibition on the use of in-water explosives for training and testing activities of the Settlement Agreement for Areas 1–A, 1–C, and 1–D, and further extends that requirement to the 'Alenuihāhā Channel (Area 1–B). The Hawaii Island Mitigation Area still includes 100 percent of Settlement Areas 1–C and 1–D and includes a large majority of the BIAs for Cuvier's Beaked Whale (Hawaii Island BIA) and Rough-Toothed Dolphins (Hawaii Island BIA) (the areas in question by this comment). Particularly, it covers 93.30 percent of the Cuvier's Beaked Whale BIA westward of Hawaii Island and 83.58 percent of Rough-toothed dolphins Hawaii Island BIA westward of Hawaii Island.

Only the northern portion of the Cuvier's beaked whale BIA in Alenuihaha Channel and a smaller offshore portion of the BIA west of Hawaii are not covered by mitigations included in the Hawaii Island Mitigation Area on the west and east of Hawaii Island. The BIAi s based on the known range of the island-associated population, and the authors suggest that ''the range of individuals from this population is likely to increase as additional satellite-tag data become available'' (Baird et al., 2015b). Cuvier's beaked whales are not expected to be displaced from their habitat due to training and testing activities further offshore in these small areas of the biologically important area, given that the biologically important area covers 23,583 km^2, is unbroken and continuous surrounding the island, and the BIA likely underrepresents their range. The small portion of the BIA that does not overlap the Hawaii Island Mitigation Area is offshore, and according to the most recent stock assessment approximately 95 percent of all sighting locations were within 45 km of shore. Additionally, consequences to individuals or populations are not unknown. No PTS is estimated or authorized. A small numbers of TTS and Level B behavioral harassment takes for Cuvier's beaked whales are estimated across the entire Hawaii portion of the Study Area due to acoustic stressors. Most of the TTS and Level B behavioral harassment takes for Cuvier's beaked whales are associated with testing in the Hawaii Temporary Operating Area, impacting the pelagic population (see Figure 3.7–36 of the HSTT FEIS/OEIS). It is extremely unlikely that any modeled takes would be of individuals in this small portion of the BIA that extends outside the Hawaii Island Mitigation Area.

Long-term and relatively comprehensive research has found no evidence of any apparent effects while documenting the continued existence of multiple small and resident populations of various species as well as long-term residency by individual beaked whales spanning the length of the current studies that exceed a decade. Further, the Navy has considered research showing that in specific contexts (such as associated with urban noise, commercial vessel traffic, eco-tourism, or whale watching, Chapter 3, Section 3.7.2.1.5.2 (Commercial Industries)) of

the HSTT FEIS/OEIS that chronic repeated displacement and foraging disruption of populations with residency or high site fidelity can result in population-level effects. As also detailed in the HSTT FEIS/OEIS, however, the Navy training and testing activities do not equate with the types of disturbance in this body of research, nor do they rise to the level of chronic disturbance where such effects have been demonstrated because Navy activities are typically sporadic and dispersed. There is no evidence to suggest there have been any population-level effects in the waters around Oahu, Kauai, and Niihau or anywhere in the HSTT Study Area. In the waters around Oahu, Kauai, and Niihau, documented long-term residency by individuals and the existence of multiple small and resident populations are precisely where Navy training and testing have been occurring for decades, strongly suggesting a lack of significant impact to those individuals and populations from the continuation of Navy training and testing.

Mark-recapture estimates derived from photographs of rough-toothed dolphins taken between 2003 and 2006 resulted in a small and resident population estimate of 198 around the island of Hawaii (Baird *et al.,* 2008), but those surveys were conducted primarily with 40 km of shore and may underestimate the population. Data do suggest high site fidelity and low population size for the island-associated population. There are no tagging data to provide information about the range of the island-associated population; the biologically important area is based on sighting locations and encompasses 7,175 km2. Generally, this species is typically found close to shore around oceanic islands. Only approximately half of the BIA offshore is not covered by the Hawaii Island Mitigation Area, where the BIA overlaps with special use airspace. Consequences to individuals or populations are not unknown. No PTS is estimated or authorized. Some TTS and Level B behavioral harassment takes due to acoustic stressors for this species across the entire HSTT Study Area (see Figure 3.7–66). Significant impacts on rough-toothed dolphin natural behaviors or abandonment due to training with sonar and other transducers are unlikely to occur within the small and resident population area. A few minor to moderate TTS or Level B behavioral harassment to an individual over the course of a year are unlikely to have any significant costs or long-term consequences for that individual, and nothing in the planned activities is expected to cause a ''catastrophic event.'' The Navy operating areas west of Hawaii Island are used commonly for larger events for a variety of reasons described further in Section K.3 (Biologically Important Areas Within the Hawaiian Range Complex Portion of the HSTT Study Area) (*e.g.,* the relatively large group of seamounts in the open ocean offers challenging bathymetry in the open ocean far away from civilian vessel traffic and air lanes where ships, submarines, and aircraft are completely free to maneuver) and sonar may be used by a variety of platforms. Enlarging the Hawaii Island Mitigation Area is not anticipated to realistically reduce adverse impacts. Expanding the Hawaii Island Mitigation Area has a limited likelihood of further reducing impacts on marine mammal species or stocks and their habitat, while these open ocean operating areas for important for training and testing and, in consideration of these factors (and the broader least practicable adverse impact considerations discussed in the introduction), NMFS has determined that requiring this additional mitigation is not appropriate.

Comment 54: A commenter recommended limiting MTEs to reduce cumulative exposure in the Hawaii Island Mitigation Area.

Response: Prohibiting MTEs outright or spatially separating them within the Hawaii Island Mitigation Area (which includes the formerly named Planning Awareness Area) was proposed as additional mitigation to ensure that ''marine mammal populations with highly discrete site fidelity . . . are not exposed to MTEs within a single year.'' The goal of geographic mitigation is not to be an absolute, outright barrier and stop exposing animals to exercises per se; it is to reduce adverse impacts to the maximum extent practicable. Impacts associated with major training exercises, including cumulative impacts, are addressed in Chapters 3 (Affected Environment and Environmental Consequences) and Chapter 4 (Cumulative Impacts) of the HSTT FEIS/OEIS, and Navy quantitative analysis using the best available science has determined that training and testing activities will not have population-level impacts on any species. As determined in Chapter 3, Section 3.7.4 (Summary of Potential Impacts on Marine Mammals) of the HSTT FEIS/OEIS, it is not anticipated that the Proposed Action will result in significant impacts to marine mammals. To date, the findings from research and monitoring and the regulatory conclusions from previous analyses by NMFS are that the majority of impacts from Navy training and testing activities are not expected to have deleterious impacts on the fitness of any individuals or long-term consequences to populations of marine mammals.

MTEs cannot be moved around within the Hawaii Island Mitigation Area, given that those activities are specifically located to leverage particular features like the Alenuihaha Channel and the approaches to Kawaihae Harbor. This recommendation is not, therefore, appropriate in consideration of NMFS' least practicable adverse impact standard.

To limit activities, the Navy will not conduct more than 300 hours of MF1 surface ship hull-mounted mid-frequency active sonar or 20 hours of MF4 dipping sonar, or use explosives that could potentially result in takes of marine mammals during training and testing in the Hawaii Mitigation Area.

Comment 55: A commenter recommended prohibiting or restricting other sources of mid-frequency active sonar in the Hawaii Island Mitigation Area including prohibiting the use of helicopter-deployed mid-frequency active sonar in the Hawaii Island Mitigation Area.

Response: The Navy is already limiting other sources of MFAS. Between the application and the proposed rule, the Navy added new mitigation that includes a limit to the annual use of helicopter dipping sonar in the Hawaii Island Mitigation Area. Specifically, the Navy will not conduct more than 20 hours of MF4 dipping sonar that could potentially result in takes of marine mammals during training and testing. Helicopters deploy MFAS from a hover position in bouts generally lasting under 20 minutes, moving rapidly between sequential deployment and their duration of use and source level (217 dB) are generally well below those of hull-mounted frequency sonar (235 dB). All locations within the HSTT Study Area have been used for Navy training and testing for decades. There has been no scientific evidence to indicate the Navy's activities are having adverse effects on populations of marine mammals, many of which continue to increase in number or are maintaining populations based on what regional conditions can support. Navy research and monitoring funding continues within the HSTT Study Area under current NMFS MMPA and ESA permits, and is planned through the duration of any future permits. Given the lack of effects to marine mammal populations in the HSTT Study Area from larger, more powerful surface ship sonars, the effects from intermittent, less

frequent use of lower powered mid-frequency dipping sonar or other mid-frequency active sonars would also not significantly affect small and resident populations.

Comment 56: A commenter recommended extending the 4-Islands Region Mitigation Area westward to encompass the Humpback Whale Special Reporting Area in Kaiwi Channel. Additionally the 4-Island Region Mitigation Area is inadequate to protect endangered Main Hawaiian Island insular false killer whales as the Main Hawaiian Island insular false killer whale is highly range-restricted to certain high-use areas, one of which includes the ESA critical habitat and the BIA north of Maui and Molokai (''False killer whale Hawaii Island to Niihau'' BIA).

Response: The portion of the special reporting area that extends into Kaiwi Channel over Penguin Bank (equivalent to settlement area 2A) is generally not a higher use area for Main Hawaiian Island insular false killer whales and does not overlap significantly with the biologically important area. As presented in Chapter 3 (Affected Environment and Environmental Consequences), Navy quantitative analysis indicates that significant impacts on false killer whale natural behaviors or abandonment due to training with sonar and other transducers are unlikely to occur within the entire small and resident population area, let alone in the small sub-portion of the biologically important area that overlaps the proposed extension. Additionally, most of the modeled takes are for the Hawaii pelagic population of false killer whale (see Figure 3.7–46 and Table 3.7–31). Also, as described in more detail in Appendix K of the HSTT FEIS/OEIS, due to training and testing needs, the expansion of this area is considered impracticable.

Comment 57: A commenter recommended extending to year-round restrictions in the 4-Island Region Mitigation Area and the proposed extension into the Kaiwi Channel Humpback Whale Special Reporting Area.

Response: The additional expansion requested in the comment is not expected to reduce adverse impacts to an extent that would outweigh the negative impacts if unit commanders were unable to conduct unit-level training and testing, especially as they pass over Penguin Bank while transiting between Pearl Harbor and other parts of the Study Area. Prohibiting mid-frequency active sonar would preclude the Submarine Command Course from meeting its objectives and leveraging the important and unique characteristics of the 4-Islands Region, as described in multiple sections of Appendix K (*e.g.,* Section K.3.1.6 (4-Islands Region and Penguin Bank Humpback Whale Reproduction Area, and Settlement Area 2–A and 2–B)). Penguin Bank is particularly used for shallow water submarine testing and anti-submarine warfare training because of its large expanse of shallow bathymetry. The conditions in Penguin Bank offer ideal bathymetric and oceanographic conditions allowing for realistic training and testing and serve as surrogate environments for active theater locations.

Additionally, this mitigation would further increase reporting requirements. As discussed in Chapter 5 (Mitigation) Section 5.5.2.6 (Increasing Reporting Requirements) of the HSTT FEIS/OEIS, the Navy developed its reporting requirements in conjunction with NMFS, balancing the usefulness of the information to be collected with the practicability of collecting it. An increase in reporting requirements as a mitigation would draw the event participants' attentions away from the complex tactical tasks they are primarily obligated to perform (such as driving a warship), which would adversely impact personnel safety, public health and safety, and the effectiveness of the military readiness activity. Expanding the Mitigation Area and extending the restrictions is not, therefore, appropriate in consideration of NMFS' least practicable adverse impact standard.

Comment 58: A commenter recommended implementing vessel speed restrictions within the 4-Islands Region Mitigation Area.

Response: This mitigation measure was proposed to address impacts on humpback whales due to both ship noise and ship strikes. As described and detailed in the Draft EIS, the Navy already implements a number of ship-strike risk reduction measures for all vessels, in all locations and seasons, and for all marine mammal species. The Navy cannot implement mitigation that restricts vessel speed during training or testing in the HSTT Study Area. Vessels must be able to maneuver freely as required by their tactics in order for training events to be effective. Imposition of vessel speed restrictions would interfere with the Navy's ability to complete tests that must occur in specific bathymetric and oceanic conditions and at specific speeds. Navy vessel operators must test and train with vessels in such a manner that ensures their ability to operate vessels as they would in military missions and combat operations (including being able to react to changing tactical situations and evaluate system capabilities). Furthermore, testing of new platforms requires testing at the full range of propulsion capabilities and is required to ensure the delivered platform meets requirements. Based on an analysis of Navy ship traffic in the HSTT Study Area between 2011 and 2015, median speed of all Navy vessels within Hawaii is typically already low, with median speeds between 8–16 kn (CNA, 2016). Speed restrictions in the Cautionary Area (renamed the 4-Islands Region Mitigation Area) are unwarranted given the movement of all social groups throughout the islands outside the Mitigation Area, the current lack of ship strike risk from Navy vessels in Hawaii (2010–2017), the already safe training and testing ship speeds the Navy uses within HSTT, and existing Navy mitigation measures, including provisions to avoid large whales by 500 yards where safe to do so. Implementing speed restrictions in the Mitigation Area is not, therefore, appropriate in consideration of NMFS' least practicable adverse impact standard.

Information on the response of baleen whales to vessel noise is presented in Section 3.7.3.1.1.5 (Behavioral Reactions) and Section 3.7.3.1.5 (Impacts from Vessel Noise). Impacts, if they did occur, would most likely be short-term masking and minor behavioral responses. Therefore, significant impacts on humpback whale reproductive behaviors from vessel noise associated with training activities are not expected. Navy vessels are intentionally designed to be quieter than civilian vessels, and ship speed reductions are not expected to reduce adverse impacts on humpback whales due to vessel noise.

Comment 59: A commenter recommended prohibiting the use of in-water explosives in the 4-Islands Region Mitigation Area.

Response: The Navy has agreed to implement a year-round restriction on the use of in-water explosives that could potentially result in takes of marine mammals during training and testing. Should national security present a requirement explosives that could potentially result in the take of marine mammals 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 (*e.g.,* sonar hours or explosives usage) in its annual activity reports submitted to NMFS.

Comment 60: A commenter recommended prohibiting other sources

of MFAS in the 4-Islands Region Mitigation Area.

Response: NMFS reviewed Navy's assessment for the 4-Islands Mitigation Area. This area provides a unique and irreplaceable shallow water training capability for units to practice operations in littoral areas that are both shallow and navigationally constrained (HSTT FEIS Appendix K (Geographic Mitigation Assessment), Section K.3.3.1.6). The 4-Islands Region provides an environment for anti-submarine warfare search, tracking and avoidance of opposing anti-submarine warfare forces. The bathymetry provides unique attributes and unmatched opportunity to train in searching for submarines in shallow water. Littoral training allows units to continue to deploy improved sensors or tactics in littoral waters. In the Hawaii portion of the HSTT Study Area specifically, anti-submarine warfare training in shallow water is vitally important to the Navy since diesel submarines typically hide in that extremely noisy and complex marine environment (Arabian Gulf, Strait of Malacca, Sea of Japan, and the Yellow Sea all contain water less than 200 m deep). There is no other area in this portion of the HSTT Study Area with the bathymetry and sound propagation analog to seas where Navy conducts real operations that this training could relocate to. The Navy cannot conduct realistic shallow water training exercises without training in and around the 4-Islands Region Mitigation Area. In addition, this area includes unique shallow water training opportunities for unit-level training, including opportunity to practice operations in littoral areas that are both shallow, and navigationally constrained, and in close proximity to deeper open ocean environments. While MFAS is used infrequently in this area, a complete prohibition of all active sonars would impact Navy training readiness in an area identified as important for the Navy based on its unique bathymetry. However, the Navy recognizes the biological importance of this area to humpback whales during the reproductive season and with NMFS concurrence strives to limit the use of surface ship hull-mounted MFAS during that time of year. While the Navy has been training and testing in the area with the same basic systems for over 40 years, there is no evidence of any adverse impacts having occurred, and there are multiple lines of evidence demonstrating the small odontocete population high site fidelity to the area.

Comment 61: A commenter recommended prohibiting the use of helicopter-deployed mid-frequency active sonar in the 4-Islands Region Mitigation Area.

Response: The commenter's request to prohibit ''air-deployed'' mid-frequency active sonar is based on one paper (Falcone *et al.,* 2017), which is a Navy-funded project designed to study the behavioral responses of a single species, Cuvier's beaked whales, to mid-frequency active sonar. The Navy relied upon the best science that was available to develop behavioral response functions for beaked whales and other marine mammals in consultation with NMFS for the Draft EIS/OEIS. The article cited in the comment (Falcone *et al.,* 2017) was not available at the time the Draft EIS/OEIS was published but does not change the current FEIS/OEIS criteria or conclusions. The new information and data presented in the article was thoroughly reviewed when it became available and further considered in discussions with some of the paper's authors following its first presentation in October 2017 at a recent scientific conference. Many of the variables requiring further analysis for beaked whales and dipping sonar impact assessment are still being researched under continued Navy funding through 2019.

There are no beaked whale biologically important areas in the 4-Islands Region Mitigation Area, and the Mitigation Area is generally shallower than beaked whales' preferred habitat. Behavioral responses of beaked whales from dipping and other sonars cannot be universally applied to other marine mammal species. Research indicates that there are distinct individual variations as well as strong behavioral state considerations that influence any response or lack of response (Goldbogen *et al.,* 2013; Harris *et al.,* 2017). Therefore, it is expected that other species would have highly variable individual responses ranging from some response to no response to any anthropogenic sound. This variability is accounted for in the Navy's current behavioral response curves described in the HSTT Draft EIS/OEIS and supporting technical reports.

Furthermore, the potential effects of dipping sonar have been rigorously accounted for in the Navy's analysis. Parameters such as power level and propagation range for typical dipping sonar use are factored into HSTT acoustic impact analysis along with guild specific criteria and other modeling variables, as detailed in the HSTT DEIS/OEIS and associated technical reports for criteria and acoustic modeling. Further, due to lower power settings for dipping sonar, potential impact ranges of dipping sonar are significantly lower than surface ship sonars. For example, the HSTT average modeled range to TTS of dipping sonar for a 1-second ping on low-frequency cetacean (*i.e.,* blue whale) is 77 m, and for mid-frequency cetaceans including beaked whales is 22 m (HSTT FEIS/OEIS Table 3.7–7). This range is easily monitored for marine mammals by a hovering helicopter and is accounted for in the Navy's proposed mitigation ranges for dipping sonars (200 yds. or 183 m). Limited ping time (*i.e.,* less dipping sonar use as compared to typical surface ship sonar use) and lower power settings therefore would limit the impact from dipping sonar to any marine mammal species.

This is an area of extremely low use for air-deployed mid-frequency active sonar. Prohibiting air-deployed mid-frequency active sonar in the Mitigation Area would not be any more protective to marine mammal populations generally, or the Main Hawaiian Islands insular false killer whale in particular, than currently implemented procedural mitigation measures for air-deployed mid-frequency active sonar and is not, therefore, appropriate in consideration of NMFS' least practicable adverse impact standard.

Comment 62: A commenter recommended prohibiting use of low-frequency active sonar in the 4-Islands Region Mitigation Area.

Response: The commenters suggested that ''Baleen whales are vulnerable to the impacts of low-frequency active sonar, particularly in calving areas where low-amplitude communication calls between mothers and calves can be easily masked.'' As described in Chapter 3, Section 3.7.2.3.1 (Humpback Whale (*Megaptera novaeangliae*), Hawaii DPS) of the HSTT FEIS/OEIS, the best available science has demonstrated humpback whale population increases and an estimated abundance greater than some pre-whaling estimates. This data does not indicate any population-level impacts from decades of ongoing Navy training and testing in the Hawaiian Islands.

Comment 63: A commenter recommended additional mitigation areas critical habitat for the Main Hawaiian Islands insular false killer whale. NMFS issued the Final Rule designating critical habitat under the ESA on July 24, 2018. A commenter stated that in light of the 2018 listing under the ESA, NMFS must protect this species from the noise and other disturbance resulting from naval activities, including by mitigating impacts within its critical habitat. The commenter recommended that, at minimum, the Navy establish protective

Mitigation Areas in all the BIAs identified for this species by NOAA and that NMFS should revisit and revise its Mitigation Areas and mitigation requirements based on the final critical habitat designation.

Response: Critical habitat includes waters from the 45 m depth contour to the 3,200 m depth contour around the main Hawaiian Islands from Niihau east to Hawaii (82 FR 51186). With regard to the analysis of the identified Biologically Important Areas for the Main Hawaiian Islands insular false killer whales, see Section K.3.3 (False Killer Whale Small and Resident Population Area: Main Hawaiian Island Insular stock). With regard to the identified threats to the species, see Section 3.7.2.2.7.5 (Species-Specific Threats) and specifically the documented incidental take by commercial fisheries (Bradford and Forney, 2016; Oleson *et al.,* 2010; Reeves *et al.,* 2009; West, 2016). NMFS has previously determined that Navy's current training and testing activities are not expected to have fitness consequences for individual Main Hawaiian Islands insular false killer whales and not likely to reduce the viability of the populations those individual whales represent.

The Navy is implementing the Hawaii Island Mitigation Area which encompassess all of the BIA for Main Hawaiian Islands insular false killer whales around that island, and the 4-Islands Region Mitigation Area (which captures approximately 40 percent of the BIAs in the 4-island area). As discussed in the *Mitigation Areas in Hawaii* section of this final rule, these mitigation areas are expected to significantly reduce impacts to this stock and its habitat.

Comment 64: Commenters recommended additional mitigation areas for important habitat areas off Oahu, Kauai, and Niihau—the waters off Oahu, Kauai, and Niihau include a number of important habitat areas for a variety of species, including false killer whale critical habitat (see above), five NOAA-identified BIAs off Oahu (false killer whale, humpback whale, pantropical spotted dolphin, bottlenose dolphin, and spinner dolphin) and three BIAs off Kauai and Niihau (humpback whale, spinner dolphin, and bottlenose dolphin) (Baird et al. 2012). The commenters assert that the agency must consider the implementation of Mitigation Areas off Oahu, Kauʻi, and Niihau. Providing mitigation measures for select activities during even a limited season within some important habitat areas.

Response: In the HSTT FEIS/OEIS, the Navy considered the science, the Navy requirements, and the effectiveness of identified habitat areas off Oahu, Kauai, and Niihau as presented in Appendix K (Geographic Mitigation Assessment) Section K.3 (Biologically Important Areas within the Hawaii Range Complex Portion of the HSTT Study Area). This includes the five identified Biologically Important Areas off Oahu (false killer whale, humpback whale, pantropical spotted dolphin, bottlenose dolphin, and spinner dolphin) and three Biologically Important Areas off Kauai and Niihau (humpback whale, spinner dolphin, and bottlenose dolphin) as well as a discussion in Appendix K (Geographic Mitigation Assessment), Section K.1.1.5 (Mitigation Areas Currently Implemented) regarding the 4-Islands Region Mitigation Area.

Based on the Navy's analysis and as detailed in the sections referenced above, there is no scientific basis indicating the need for mitigation in the first place; see specifically the discussion in Appendix K (Geographic Mitigation Assessment), Section K.2.1.2 (Biological Effectiveness Assessment) of the HSTT FEIS/OEIS. As presented and reviewed in the HSTT FEIS/OEIS, the Navy has presented citations to research showing that in specific contexts (such as associated with urban noise, commercial vessel traffic, eco-tourism, or whale watching; see Chapter 3,Section 3.7.2.1.5.2 (Commercial Industries)) and references (Dunlop, 2016; Dyndo *et al.,* 2015; Erbe *et al.,* 2014; Frisk, 2012; Gedamke *et al.,* 2016; Hermannsen *et al.,* 2014; Li *et al.,* 2015; McKenna *et al.,* 2012; Melcón *et al.,* 2012; Miksis-Olds and Nichols, 2015; Nowacek *et al.,* 2015; Pine *et al.,* 2016; Pirotta *et al.* 2018; Williams *et al.,* 2014c) or specifically for Hawaii (Heenehan *et al.,* 2016a, 2016b; Heenehan *et al.,* 2017a, 2017b; Tyne *et al.,* 2014; Tyne, 2015; Tyne *et al.,* 2015; Tyne *et al.,* 2017), that chronic repeated displacement and foraging disruption of populations with residency or high site fidelity can result in population-level effects. As also detailed in the HSTT FEIS/OEIS, the planned Navy training and testing activities do not equate with the types of disturbance in the citations above nor do they rise to the level of chronic disturbance where such effects have been demonstrated. There is no evidence to suggest there have been any population-level effects in the waters around Oahu, Kauai, and Niihau or in the HSTT Study Area resulting from the same training and testing activities that have been ongoing for decades, which the commenter recommends the need to stop, or at a minimum, be mitigated. In the waters around Oahu, Kauai, and Niihau, documented long-term residency by individuals and the existence of multiple small and resident populations precisely where Navy training and testing have been occurring for decades strongly suggests a lack of significant impact to those individuals and populations from the continuation of Navy training and testing. Appendix K of the HSTT FEIS/OEIS further describes the importance of these areas for Navy training and testing and why implementation of additional mitigation areas would be impracticable.

Comment 65: A commenter recommended additional mitigation area for Cross Seamount, as Cross Seamount represents important foraging habitat for a potentially rare or evolutionary distinct species of beaked whale, a commenter strongly recommended that the HSTT EIS/OEIS assess the designation of a year-round management area to protect the seamount. Such a designation would have secondary benefits for a variety of other odontocete species foraging at Cross Seamount seasonally between November and May. NMFS should also consider habitat-based management measures for other nearby seamounts.

Response: Analysis and consideration of Cross Seamount and ''other nearby seamounts'' for additional geographic mitigation was provided in Appendix K (Geographic Mitigation Assessment), Section K.7.1 (Hawaii Public Comment Mitigation Area Assessment), including sub-sections K.7.1.1 (General Biological Assessment of Seamounts in the Hawaii Portion of the Study Area) and K.7.1.2 (Cross Seamount) of the HSTT FEIS/OEIS.

As discussed in Appendix K (Geographic Mitigation Assessment), Section 4.7.1.3 (Mitigation Assessment) of the HSTT FEIS/OEIS, implementing new geographic mitigation measures in addition to ongoing procedural mitigation within the vicinity of Cross Seamount would not be effective at reducing adverse impacts on beaked whales or other marine mammal populations. The Navy has been training and testing in the broad ocean area around Cross Seamount with the same basic systems for over 40 years, and there is no evidence of any adverse impacts to marine species. Additionally, the suggested mitigation would not be practicable to implement. The broad ocean area around Cross Seamount and the seamounts to the north are unique in that there are no similar broad ocean areas in the vicinity of the Hawaiian Islands that are not otherwise

encumbered by commercial vessel traffic and commercial air traffic routes. In addition, beaked whales may be more widely distributed than currently believed. Ongoing passive acoustic efforts from NMFS and Navy within the Pacific have documented beaked whale detections at many locations beyond slopes and seamounts to include areas over abyssal plains (Klinck *et al.* 2015, Griffiths and Barlow 2016, Rice *et al.,* 2018).

Comment 66: A commenter commented that the NMFS must ensure that the activities are having the least practicable adverse impact, so it must do a comprehensive analysis of whether the proposed mitigation areas sufficiently protect marine mammals. NMFS must require the Navy to implement additional, practicable measures to mitigate further the adverse impacts of its activities. To ensure least practicable adverse impacts, NMFS must consider additional mitigation time/area restrictions, including but not limited to: (1) Expanded areas in Southern California to include all of the biologically important areas for whales; (2) add a Cuvier's beaked whale mitigation area in Southern California to protect that small, declining population that has high site fidelity; (3) add mitigation areas for the biologically important areas off of Oahu and Kauai; (4) the entire Humpback National Marine Sanctuary should be afforded protections from Navy activities because it is an important habitat for breeding, calving and nursing; and (5) limits on sonar and explosives should be adopted in the designated critical habitat for the Hawaiian monk seal and false killer whale.

Response: In regards to expanded areas in Southern California to include all of the biologically important areas for whales, the Navy has agreed to expanded areas in SOCAL, a portion of the San Nicholas Island BIA and the Santa Monica/Long Beach BIA are now included as part of the San Diego Arc Mitigation Area but also named the San Nicholas Island Mitigation Area and the Santa Monica/Long Beach Mitigation Area. The Santa Monica Bay/Long Beach and San Nicolas Island BIA only partially overlaps a small portion of the northern part of the SOCAL portion of the HSTT Study Area. The Santa Monica Bay/Long Beach BIA overlap in SOCAL is 13.9 percent. The San Nicolas Island BIA overlap in SOCAL is 23.5 percent.

The Navy will limit surface ship sonar and not exceed 200 hours of MFAS sensor MF1 June 1 through October 31 during unit-level training and MTEs in the Santa Monica Bay/Long Beach BIA and San Nicolas Island Mitigation Areas (as well as San Diego Arc Mitigation Area). The Navy has also agreed to limit explosives. Specifically, within the San Nicolas Island Mitigation Area, the Navy will not use explosives that could potentially result in the take of marine mammals during mine warfare, large-caliber gunnery, torpedo, bombing, and missile (including 2.75″ rockets) activities during training. Within the Santa Monica/Long Beach Mitigation Area, the Navy will not use explosives that could potentially result in the take of marine mammals during mine warfare, large-caliber gunnery, torpedo, bombing, and missile (including 2.75″ rockets) activities during training and testing.

The Tanner-Cortes Bank BIA—NMFS and the Navy have discussed this extensively, and the Navy is unable to incorporate this area into geographic mitigation because is impracticable. Specifically, it would not be practical for the Navy to implement and prevents the Navy from meeting training and testing missions. As discussed in detail in Appendix K (Geographic Mitigation Assessment) of the HSTT FEIS/OEIS, during the Navy's practicability and biological review of the Tanner Bank BIA, it was concluded that implementation of a mitigation area was not practical for this species. The area in and around Tanner Banks is a core high priority training and testing venue for SOCAL combining unique bathymetry and existing infrastructure. This includes an existing bottom training minefield adjacent to Tanner Banks, future Shallow Water Training Range (SWTR West) expansion as well as proximity to critical tactical maneuver areas to the south and the Navy's underwater instrumented range to the northeast. Furthermore, the general area is in or adjacent to critical Navy training that cannot occur at other locations due to available, existing infrastructure, operationally relevant bathymetry, sea space, proximity to San Clemente Island and San Diego, etc.). Of all the blue whale BIAs designated, the Tanner Banks BIA had the fewest blue whale sighting records supporting its designation. New science since designation funded by the Navy further highlights how infrequently Tanner Bank is used by blue whales as compared to the rest of their movements in SOCAL. Out of 73 blue whales tagged with satellite transmitters, only a few transits through Tanner Banks were documented between 2014–2017. The longest cumulative time any individual whale stayed within the boundaries of the Tanner Banks BIA was less than one and a half days. Typical average blue whale daily movement along the U.S. West Coast is often up to 13–27 nautical miles a day (Oregon State University, unpublished data). Most blue whale area restricted foraging occurred around the northern Channel Islands, north of and outside of the HSTT SOCAL Study Area.

The feeding areas as recommended by the commenter north of Los Angeles for humpbacks (Santa Barbara Channel-San Miguel BIA and Morro Bay to Pt Sal) and blue whales (Santa Barbara Channel to San Miguel BIA, Pt Conception/Arguello to Pt Sal) are outside of the HSTT Study Area; therefore are not applicable for inclusion.

In regard to adding a Cuvier's beaked whale mitigation area in Southern California to protect that small, declining population that has high site fidelity, NMFS is assuming the commenter is referring to the area west of San Clemente Island as the comment letter did not specify an exact location. The beaked whale species detected most frequently in Southern California is Cuvier's beaked whale. Cuvier's beaked whales are widely distributed within Southern California and across the Pacific with almost all suitable deep water habitat >800 m conceivably containing Cuvier's beaked whales. In new unpublished Navy funded data, beaked whales have even been detected over deep water, open abyssal plains (>14,000 feet). Only limited population vital rates exist for beaked whales, covering numbers of animals, populations vs. subpopulations determination, and residency time for individual animals. While Cuvier's beaked whales have been detected north and west of Tanner and Cortes Banks, as noted above this species is also detected in most all Southern California locations 800 m in depth. The Navy's Marine Mammal Monitoring on Navy Ranges (M3R) program has documented continual Cuvier's beaked whale presence on SOAR over 8-years from 2010–2017 with slight abundance increases through 2017 (DiMarzio *et al.,* 2018.)

Navy-funded research on Cuvier's beaked whales within the Southern California (SOCAL) Range Complex began in 2006. In 2008, researchers began deploying satellite tags as a part of this research. To date, 27 Low-Impact Minimally-Percutaneous External-electronics Transmitting (LIMPET) tags have been deployed within the complex. Twenty-five of those whales were tagged within the San Nicolas Basin and two were tagged in the Catalina Basin. Average transmission duration was 36.6 days (sd

= 29.8), with the longest transmitting for 121.3 days. Movement data suggest that Cuvier's beaked whales have a high degree of site-fidelity to the Southern California Range Complex, and the San Nicolas basin in particular. Overall, there were 3,207 filtered location estimates from the 27 tagged whales, 91 percent of which were within the SoCal Range Complex. 54 percent of all location estimates were within the San Nicolas Basin, with twelve tagged whales spending more than 80 percent of their transmission duration within the basin. The two whales tagged in the Catalina Basin never entered the San Nicolas Basin. Only three whales tagged in the San Nicolas Basin crossed into the Catalina Basin (1.3 percent of all locations); two of those whales had just one Catalina Basin location each, though the remaining whale had 28 percent of its locations there. Five whales tagged in the San Nicolas Basin moved into the Santa Cruz Basin for anywhere from 1–62 percent of their time (6 percent of all locations). In contrast, 20 of 25 whales tagged in the San Nicolas Basin moved south of the basin at some point. Of these 20 whales, most remained within either Tanner Canyon or the San Clemente Basin immediately to the south, but one traveled north to near San Miguel Island and four traveled south towards Guadalupe Island. Three of these whales have not been documented in the San Nicolas basin since, though to date at least six whales tagged in the San Nicolas Basin have been re-sighted there a year or more after the deployment. Additionally, one of the whales that was south of San Nicolas when the tag stopped transmitting has since been sighted three times since.

Given that there is the uncertainty of current residence of Cuvier's beaked whales in the areas north and west of SOAR, the fact that general occurrence of beaked whales in Southern California may not necessarily equate to factors typically associated with biologically important areas (*i.e.,* one area not more important than another), and consideration of the importance of Navy training and testing in the areas around SOAR and Tanner and Cortes Banks as discussed in Appendix K (Geographic Mitigation Assessment), *i.e.,* the impracticability of additional area mitigation in this area, additional geographic mitigation to create a ''refuge'' in the recommended area is not scientifically supported or warranted.

In regard to the comment on the entire Humpback Whale National Marine Sanctuary should be afforded protections from Navy activities because it is an important habitat for breeding, calving and nursing the Humpback National Marine Sanctuary largely overlaps both the Hawaii Island Mitigation Area as well as the 4-Islands Region Mitigation Area. In the Hawaii Island Mitigation Area (year-round), the Navy will not conduct more than 300 hours of MF1 surface ship hull-mounted mid-frequency active sonar or 20 hours of MF4 dipping sonar, or use explosives that could potentially result in takes of marine mammals during training and testing. In the 4-Islands Region Mitigation Area (November 15–April 15 for active sonar; year-round for explosives), the Navy will not use MF1 surface ship hull-mounted mid-frequency active sonar or explosives that could potentially result in takes of marine mammals during training and testing. This seasonal limitation is specifically during important breeding, calving, and nursing, times/habitat for humpback whales and was expanded for humpback whales as the previous season for this mitigation area was December 15–April 15).

There are areas of the Humpback Whale National Marine Sanctuary around the islands of Niihau, Kauai, Oahu, and west of Molokai (Penguin Bank) that are outside of the Navy's mitigation areas. However, none of the Navy's training and testing areas for explosives around Kauai and Niihau are within the Hawaiian Islands Humpback Whale National Marine Sanctuary. There may be limited sonar use as units transit to/from PMRF ranges.

Part of the Humpback Whale National Marine Sanctuary, west of the island of Molokai, Penguin Bank, is not included in the 4-Islands Region Mitigation Area. Penguin Bank particularly is used for shallow water submarine testing and anti-submarine warfare training because of its large expanse of shallow bathymetry. While submarines do not typically use mid-frequency active sonar, relying primarily on passive sonar (listening mode) to avoid detection from adversaries, submarines are required to train in counter detection tactics, techniques and procedures against threat surface vessels, airborne anti-submarine warfare units and other threat submarines using mid-frequency active sonar as part of both their perspective Commanding Officers qualification course and pre-deployment certification. The ability for surface vessels and air assets to simulate opposing forces, using mid-frequency active sonar when training with submarines, is critical to submarine crew training for deployed and combat operations. Surface ships and aircraft mimicking opposition forces present submarines with a realistic and complicated acoustic and tactical environment. The Navy expects real-world adversaries to target our submarines with active sonar. Without active sonar from opposition forces submarines do not get a realistic picture regarding if they successfully evaded detection. Surface warfare training is designed to support unit-level training requirements and group cross-platform events in 28 mission areas for surface ship certification prior to deployment.

Additionally, the Navy will implement the Humpback Whale Special Reporting Area (December 15 through April 15) is comprised of additional areas of high humpback whale densities that overlap the Humpback Whale National Marine Sanctuary. This reporting is included in the exercise and monitoring reports that are an ongoing Navy requirement and are submitted to NMFS annually. Special reporting data, along with all other reporting requirements, are considered during adaptive management to determine if additional mitigation may be required. The Navy currently reports to NMFS the total hours (from December 15 through April 15) of all hull-mounted mid-frequency active sonar usage occurring in the Humpback Whale Special Reporting Area, plus a 5 km buffer, but not including the Pacific Missile Range Facility. The Navy will continue this reporting for the Humpback Whale Special Reporting Area.

In regard to limits on sonar and explosives should be adopted in the ESA-designated critical habitat for the Hawaiian monk seal and false killer whale, the Navy will cap MFAS for the entire false killer whale BIA adjacent to the island of Hawaii and a portion of the false killer whale BIA north of Maui and Molokai as follows. The Navy already will to limit explosive use in the entire false killer whale BIA adjacent to the island of Hawaii. The Navy will now add year-round limitation on explosives to the 4-Islands Region Mitigation Area, which includes a portion of the false killer whale BIA north of Maui and Molokai. *For the Hawaii Island Mitigation Area (year-round):* The Navy will not conduct more than 300 hours of surface ship hull-mounted MFAS sonar MF1 (MF1) or 20 hours of MFAS dipping sonar MF4 (MF4), or use explosives during training and testing year-round. *For the 4-Islands Region Mitigation Area* (November 15–April 15 for active sonar, year-round for explosives): The Navy will not use surface ship hull-mounted MFAS sonar MF1 from November 15–April 15 and explosive year-round during training or

testing activities. The remaining false killer whale BIA overlaps with areas (*e.g.,* Kaiwi Channel) where additional mitigations were found to be impractical.

In regard to limits on sonar and explosives in ESA-designated critical habitat for Hawaiian monk seal, the Navy's training and testing activities do occur in a portion of the ESA-designated critical habitat for Hawaiian monk seals, which is of specific importance to the species. However, monk seals in the main Hawaiian Islands have increased while the Navy has continued its activities, even though 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.

The Hawaii Island Mitigation Area overlaps all of their critical habitat around the Island of Hawaii (as well as the southern end of Maui) and, by not using explosives or the most impactful sonar sources in this, thereby reduces the likelihood that take might impact reproduction or survival by interfering with important feeding or resting behaviors (potentially having adverse impacts on energy budgets) or separating mothers and pups in times when pups are more susceptible to predation and less able to feed or otherwise take care of themselves. The 4-Islands Mitigation Area overlaps with ESA-designated critical habitat around Maui, Lanai, and Molokai.

Comment 67: A commenter commented that in the proposed rule, NMFS estimates 588 takes annually will cause multiple instances of exposure to insular false killer whales, taking 400 percent of the population. As the potential biological removal is 0.18 animals, the loss of a single individual, or an impairment to its health and fitness, could place the species on an extinction trajectory. NMFS must consider additional mitigation in the designated critical habitat, as well as excluded areas, to ensure a negligible impact on false killer whales.

Response: The commenter is conflating behavioral take with mortality take addressed in PBR. There are no insular false killer whale mortality takes modeled, anticipated, or authorized. 400 percent of the population would mean that all animals would be behaviorally harassed an average of 4 times per year, or once per season. The short term biological reaction of an animal for periods of minutes to hours a few times a year would not have any fitness impacts to the individual let alone any population level impacts. NMFS confirms that these impacts are negligible. Additionally, much of the Navy's mitigations on Hawaii and the 4 island region encompass areas that overlap with high use insular false killer whale habitat and thus already mitigate impacts. From the Navy consultation with NMFS under the ESA for insular false killer whale critical habitat, less than 12 percent of modeled takes would take place in or near insular false killer whale critical habitat. These takes as explained previously would be transitory (short-duration), and spread out in time and space.''

Comment 68: A commenter recommended establishing stand-off distances around the Navy's mitigation areas to the greatest extent practicable, allowing for variability in size given the location of the area, the type of operation at issue, and the species of concern.

Response: Mitigation areas are typically developed in consideration of both the area that is being protected and the distance from the stressor in question that is appropriate to maintain to ensure the protection. Sometimes this results in the identification of the area plus a buffer, and sometimes both the protected area and the buffer are considered together in the designation of the edge of the area. We note that the edges of a protected area are typically of less importance to a protected stock or behavior, since important areas often have a density gradient that lessens towards the edge. Also, while a buffer of a certain size may be ideal to alleviate all impacts of concern, a lessened buffer does not mean that the protective value is significantly reduced, as the core of the area is still protected. Also, one should not assume that activities are constantly occurring in the area immediately adjacent to the protected area.

These issues were considered here, and the Navy has indicated that the mitigation identified in Chapter 5 (Mitigation), Section 5.4 (Mitigation Areas to be Implemented) of the HSTT FEIS/OEIS represents the maximum mitigation within mitigation areas and the maximum size of mitigation areas that are practicable to implement under the Proposed Action. The Navy has communicated (and NMFS concurs with the assessment) that implementing additional mitigation (*e.g.,* stand-off distances that would extend the size of the mitigation areas) beyond what is described in Chapter 5 (Mitigation), Section 5.4 (Mitigation Areas to be Implemented) of the HSTT FEIS/OEIS would be impracticable due to implications for safety (the ability to avoid potential hazards), sustainability (based on the amount and type of resources available, such as funding, personnel, and equipment)), and the Navy's ability to continue meeting its Title 10 requirements.

Additional Mitigation Research

Comment 69: A commenter recommended NMFS consider additional mitigation measures to prescribe or research including: (1) Research into sonar signal modifications; (2) mitigation and research on Navy ship speeds (the commenter recommended that the agency require the Navy to collect and report data on ship speed as part of the EIS process); and (3) compensatory mitigation for the adverse impacts of the permitted activity on marine mammals and their habitat that cannot be prevented or mitigated.

Response: NMFS consulted with the Navy regarding potential research into additional mitigation measures and discussion is included below.

1. Research into sonar signal modification—Sonar signals are designed explicitly to provide optimum performance at detecting underwater objects (*e.g.,* submarines) in a variety of acoustic environments. The Navy acknowledges that there is very limited data, and some suggest that up or down sweeps of the sonar signal may result in different animal reactions; however, this is a very small data sample, and this science requires further development. If future studies indicate this could be an effective approach, then NMFS and the Navy will investigate the feasibility and practicability to modify signals, based on tactical considerations and cost, to determine how it will affect the sonar's performance.

2. Mitigation and research on Navy ship speeds inclusive of Navy collecting and reporting data on ship speed as part of the EIS—The Navy conducted an operational analysis of potential mitigation areas throughout the entire Study Area to consider a wide range of mitigation options, including but not limited to vessel speed restrictions. As

discussed in Chapter 3, Section 3.0.3.3.4.1 (Vessels and In-Water Devices) of the HSTT FEIS/OEIS, Navy ships transit at speeds that are optimal for fuel conservation or to meet operational requirements. Operational input indicated that implementing additional vessel speed restrictions beyond what is identified in Chapter 5 (Mitigation), Section 5.4 (Mitigation Areas to be Implemented) of the HSTT FEIS/OEIS would be impracticable to implement due to implications for safety and sustainability. In its assessment of potential mitigation, the Navy considered implementing additional vessel speed restrictions (*e.g.,* expanding the 10 kn restriction to other activities). The Navy determined that implementing additional vessel speed restrictions beyond what is described in Chapter 5 (Mitigation), Section 5.5.2.2 (Restricting Vessel Speed) of the HSTT FEIS/OEIS would be impracticable due to implications for safety (the ability to avoid potential hazards), sustainability (maintain readiness), and the Navy's ability to continue meeting its Title 10 requirements to successfully accomplish military readiness objectives. Additionally, as described in Chapter 5 (Mitigation), Section 5.5.2.2 (Restricting Vessel Speed) of the HSTT FEIS/OEIS, any additional vessel speed restrictions would prevent vessel operators from gaining skill proficiency, would prevent the Navy from properly testing vessel capabilities, or would increase the time on station during training or testing activities as required to achieve skill proficiency or properly test vessel capabilities, which would significantly increase fuel consumption. As discussed in Chapter 5 (Mitigation), Section 5.3.4.1 (Vessel Movement) of the HSTT FEIS/OEIS, the Navy implements mitigation to avoid vessel strikes throughout the Study Area. As directed by the Chief of Naval Operations Instruction (OPNAVINST) 5090.1D, Environmental Readiness Program, Navy vessels report all marine mammal incidents worldwide, including ship speed. Therefore, the data required for ship strike analysis discussed in the comment is already being collected. Any additional data collection required would create an unnecessary and impracticable administrative burden on the Navy.

3. Compensatory mitigation—For years, the Navy has implemented a very broad and comprehensive range of measures to mitigate potential impacts to marine mammals from military readiness activities. As the HSTT FEIS/OEIS documents in Chapter 5 (Mitigation), the Navy is proposing to expand these measures further where practicable. Aside from direct mitigation, as noted by the commenter, the Navy engages in an extensive spectrum of other activities that greatly benefit marine species in a more general manner that is not necessarily tied to just military readiness activities. As noted in Chapter 3, Section 3.0.1.1 (Marine Species Monitoring and Research Programs) of the HSTT FEIS/OEIS, the Navy provides extensive investment for research programs in basic and applied research. The U.S. Navy is one of the largest sources of funding for marine mammal research in the world, which has greatly enhanced the scientific community's understanding of marine species much more generally. The Navy's support and marine mammal research includes: Marine mammal detection, including the development and testing of new autonomous hardware platforms and signal processing algorithms for detection, classification, and localization of marine mammals; improvements in density information and development of abundance models of marine mammals; and advancements in the understanding and characterization of the behavioral, physiological (hearing and stress response), and potentially population-level consequences of sound exposure on marine life. Compensatory mitigation is not required to be imposed upon Federal agencies under the MMPA. Importantly, the commenter did not recommend any specific measure(s), rendering it impossible to conduct any meaningful evaluation of its recommendation. Finally, many of the methods of compensatory mitigation that have proven successful in terrestrial settings (purchasing or preserving land with important habitat, improving habitat through plantings, etc.) are not applicable in a marine setting with such far-ranging species. Thus, any presumed conservation value from such an idea would be purely speculative at this time.

Comment 70: A commenter recommended that given the paucity of information on marine mammal habitat currently available for the HSTT Study Area, that efforts be undertaken in an iterative manner by NMFS, and the Navy, to identify additional important habitat areas across the HSTT Study Area, using the full range of data and information available to the agencies (*e.g.,* habitat-based density models, NOAA-recognized BIAs, survey data, oceanographic and other environmental data, etc.).

Response: NMFS and the Navy used the best available scientific information (*e.g.,* SARs and numerous study reports from Navy-funded monitoring and research in the specific geographic region) in assessing density, distribution, and other information regarding marine mammal use of habitats in the HSTT Study Area. In addition, NMFS consulted LaBrecque *et al.* (2015), which provides a specific, detailed assessment of known BIAs, which may be region-, species-, and/or time-specific, include reproductive areas, feeding areas, migratory corridors, and areas in which small and resident populations are concentrated. While the science of marine mammal occurrence, distribution, and density resides as a core NMFS mission, the Navy does provide extensive support to the NMFS mission via ongoing HSTT specific monitoring as detailed in this final rule. Also included are direct Navy funding support to NMFS for programmatic marine mammal surveys in Hawaii and the U.S. West Coast, and spatial habitat model improvements.''

Comment 71: A commenter recommended integration of important habitat areas to improve resolution of operations. The delineation of BIAs by NOAA, the updates made by the Navy to its predictive habitat models, and evidence of additional important habitat areas within the HSTT Study Area, provide the opportunity for the agencies to improve upon their current approach to the development of alternatives by improving resolution of their analysis of operations. A commenter offered the following thoughts for consideration.

They state that recognizing that important habitat areas imply the non-random distribution and density of marine mammals in space and time, both the spatial location and the timing of training and testing events in relation to those areas is a significant determining factor in the assessment of acoustic impacts. Levels of acoustic impact derived from the NAEM are likely to be under- or over-estimated depending on whether the location of the modeled event is further from the important habitat area, or closer to it, than the actual event. Thus, there is a need for the Navy to compile more information regarding the number, nature, and timing of testing and training events that take place within, or in close proximity to, important habitat areas, and to refine its scale of analysis of operations to match the scale of the habitat areas that are considered to be important. While the proposed rule, in assessing environmental impacts on marine mammals, breaks down estimated impacts by general region (*i.e.,* HRC and SOCAL), the resolution is seldom greater than range complex or

homeport and is not specifically focused on areas of higher biological importance. Current and ongoing efforts to identify important habitat areas for marine mammals should be used by NMFS and by the Navy as a guide to the most appropriate scale(s) for the analysis of operations.

Response: In their take request and effects analysis provided to NMFS, the Navy considered historic use (number and nature of training and testing activities) and locational information of training and testing activities when developing modelling boxes. The timing of training cycles and testing needs varies based on deployment requirements to meet current and emerging threats. Due to the variability, the Navy's description of its specified activities is structured to provide flexibility in training and testing locations, timing, and number. In addition, information regarding the exact location of sonar usage is classified. Due to the variety of factors, many of which influence locations that cannot be predicted in advance (*e.g.,* weather), the analysis is completed at a scale that is necessary to allow for flexibility. The purpose of the Navy's quantitative acoustic analysis is to provide the best estimate of impact/take to marine mammals and ESA listed species for the regulatory and ESA section 7 consultation analyses. Specifically, the analysis must take into account multiple Navy training and testing activities over large areas of the ocean for multiple years; therefore, analyzing activities in multiple locations over multiple seasons produces the best estimate of impacts/take to inform the HSTT FEIS/OEIS and regulators. Also, the scale at which spatially explicit marine mammal density models are structured is determined by the data collection method and the environmental variables that are used to build the model. Therefore, altogether, given the variables that determine when and where the Navy trains and tests, as well as the resolution of the density data, the analysis of potential impacts is scaled to the level that the data fidelity will support. NMFS has worked with the Navy over the years to increase the spatio-temporal specificity of the descriptions of activities planned in or near areas of biological importance, when possible (*e.g., in BIAs or Sanctuaries, where possible*), and NMFS is confident that the granularity of information provided sufficiently allows for an accurate assessment of both the impacts of the Navy's activities on marine mammal populations and the protective measures evaluated to mitigate those impacts.

Monitoring Recommendations

Comment 72: A commenter recommended that NMFS require that the Navy continue to conduct long-term monitoring with the aim to provide baseline information on occurrence, distribution, and population structure of marine mammal species and stocks, and baseline information upon which the extent of exposure to disturbance from training and testing activities at the individual, and ultimately, population level-impacts, and the effectiveness of mitigation measures, can be evaluated. The commenter recommended individual-level behavioral-response studies, such as focal follows and tagging using DTAGs, carried out before, during, and after Navy training and testing activities. The commenter recommended prioritizing DTAG studies that further characterize the suite of vocalizations related to social interactions. The commenter recommends the use of unmanned aerial vehicles. The commenter recommended that NMFS require the Navy to use these technologies for assessing marine mammal behavior before, during, and after Navy training and testings (*e.g.,* swim speed and direction, group cohesion). Additionally, the commenter recommended studies into how these technologies can be used to assess body condition be supported as this can provide an important indication of energy budget and health, which can inform the assessment of population-level impacts.

Response: Broadly speaking, NMFS works closely with the Navy in the identification of monitoring priorities and the selection of projects to conduct, continue, modify, and/or stop through the Adaptive Management process, which includes annual review and debriefs by all scientists conducting studies pursuant to the Navy's MMPA rule. The process NMFS and the Navy have developed allows for comprehensive and timely input from the Navy and other stakeholders that is based on rigorous reporting out from the Navy and the researchers doing the work. Further, the Navy is pursuing many of the topics that the commenter identifies, either through the Navy monitoring required under the MMPA and ESA, or through Navy-funded research programs (ONR and LMR). We are confident that the monitoring conducted by the Navy satisfies the requirements of the MMPA.

The Navy established the Strategic Planning Process under the marine species monitoring program to help structure the evaluation and prioritization of projects for funding. Chapter 5 (Mitigation), Section 5.1.2.2.1.3 (Strategic Planning Process) of the HSTT FEIS/OEIS provides a brief overview of the Strategic Planning Process. More detail, including the current intermediate scientific objectives, is available on the monitoring portal as well as in the Strategic Planning Process report. The Navy's evaluation and prioritization process is driven largely by a standard set of criteria that help the steering committee evaluate how well a potential project would address the primary objectives of the monitoring program. NMFS has opportunities to provide input regarding the Navy's intermediate scientific objectives as well as providing feedback on individual projects through the annual program review meeting and annual report. For additional information, please visit: *https://www.navymarinespeciesmonitoring.us/about/strategic-planning-process/*.

Details on the Navy's involvement with future research will continue to be developed and refined by the Navy and NMFS through the consultation and adaptive management processes, which regularly consider and evaluate the development and use of new science and technologies for Navy applications. The Navy has indicated that it will continue to be a leader in funding of research to better understand the potential impacts of Navy training and testing activities and to operate with the least possible impacts while meeting training and testing requirements.

(1) Individual-level behavioral-response studies—In addition to the Navy's marine species monitoring program investments for individual-level behavioral-response studies, the Office of Naval Research Marine Mammals and Biology program and the Navy's Living Marine Resources program continue to heavily invest in this topic. For example, the following studies are currently being funded:

- The Southern California Behavioral Response Study (Principal Investigators: John Calambokidis and Brandon Southall)
- Cuvier's Beaked Whale and Fin Whale Behavior During Military Sonar Operations: Using Medium-term Tag Technology to Develop Empirical Risk Functions (Principal Investigators: Greg Schorr and Erin Falcone)
- 3S3-Behavioral responses of sperm whales to naval sonar (Principal Investigators: Petter Kvadsheim and Frans-Peter Lam)
- Measuring the effect of range on the behavioral response of marine mammals through the use of Navy sonar (Principal Investigators: Stephanie Watwood and Greg Schorr)

- Behavioral response evaluations employing robust baselines and actual Navy training (BREVE) (Principal Investigators: Steve Martin, Tyler Helble, Len Thomas)
- Integrating remote sensing methods to measure baseline behavior and responses of social delphinids to Navy sonar (Principal Investigators: Brandon Southall, John Calambokidis, John Durban).

(2) DTAGS to characterize social communication between individuals of a species or stock, including mothers and calves. Furthermore, DTAGs are just one example of animal movement and acoustics tag. From the Navy's Office of Naval Research and Living Marine Resource programs, Navy funding is being used to improve a suite of marine mammal tags to increase attachment times, improve data being collected, and improve data satellite transmission—The Navy has funded a variety of projects that are collecting data that can be used to study social interactions amongst individuals. Examples of these projects include:

- Southern California Behavioral Response Study (Principal Investigators: John Calambokidis and Brandon Southall)
- Tagging and Tracking of Endangered North Atlantic Right Whales in Florida Waters (Principal Investigators: Doug Nowacek and Susan Parks). This project involves the use of DTAGs, and data regarding the tagged individual and group are collected in association with the tagging event. In addition to the vocalization data that is being collected on the DTAGs, data is collected on individual and group behaviors that are observed, including between mother/calf pairs when applicable. The Navy will continue to collect this type of data when possible.
- Integrating remote sensing methods to measure baseline behavior and responses of social delphinids to Navy sonar (Principal Investigators: Brandon Southall, John Calambokidis, John Durban)
- Acoustic Behavior of North Atlantic Right Whale (Eubalaena glacialis) Mother-Calf Pairs (Principal Investigators: Susan E. Parks and Sofie Van Parijs). The long-term goal of this project is to quantify the behavior of mother-calf pairs from the North Atlantic right whale to determine: a) why mothers and calves are more susceptible to collisions with vessels and b) the vocal behavior of this critical life stage to assess the effectiveness of passive acoustic monitoring to detect mother-calf pairs in important habitat areas (see *https://www.onr.navy.mil/reports/FY15/mbparks.pdf*).
- Social Ecology and Group Cohesion in Pilot Whales and Their Responses to Playback of Anthropogenic and Natural Sounds (Principal Investigator: Frants H. Jensen). This project investigates the social ecology and cohesion of long-finned pilot whales as part of a broad multi-investigator research program that seeks to understand how cetaceans are affected by mid-frequency sonar and other sources of anthropogenic noise (see *https://www.onr.navy.mil/reports/FY15/mbjensen.pdf*).

(3) Unmanned Aerial Vehicles to assess marine mammal behavior before, during, and after Navy training and testing activities (*e.g.,* swim speed and direction, group cohesion)—Studies that use unmanned aerial vehicles to assess marine mammal behaviors and body condition are being funded by the Office of Naval Research Marine Mammals and Biology program. Although the technology shows promise, the field limitations associated with the use of this technology has hindered the useful application in behavioral response studies in association with Navy training and testing events. For safety, research vessels cannot remain in close proximity to Navy vessels during Navy training or testing events, so battery life of the unmanned aerial vehicles has been an issue. However, as the technology improves, the Navy will continue to assess the applicability of this technology for the Navy's research and monitoring programs. An example project is Integrating Remote Sensing Methods to Measure Baseline Behavior and Responses of Social Delphinids to Navy sonar (Principal Investigators: Brandon Southall, John Calambokidis, and John Durban).

(4) NMFS asked the Navy to expand funding to explore the utility of other, simpler modeling methods that could provide at least an indicator of population-level effects, even if each of the behavioral and physiological mechanisms are not fully characterized—The Office of Naval Research Marine Mammals and Biology program has invested in the Population Consequences of Disturbance (PCoD) model, which provides a theoretical framework and the types of data that would be needed to assess population level impacts. Although the process is complicated and many species are data poor, this work has provided a foundation for the type of data that is needed. Therefore, in the future, relevant data that is needed for improving the analytical approaches for population level consequences resulting from disturbances will be collected during projects funded by the Navy's marine species monitoring program. General population level trend analysis is conducted by NMFS through its stock assessment reports and regulatory determinations. The Navy's analysis of effects to populations (species and stocks) of all potentially exposed marine species, including marine mammals and sea turtles, is based on the best available science as discussed in Sections 3.7 (Marine Mammals) and 3.8 (Reptiles) of the HSTT FEIS/OEIS. PCoD models, similar to many fisheries stock assessment models, once developed will be powerful analytical tools when mature. However, currently they are dependent on too many unknown factors for these types of models to produce a reliable answer. As discussed in the *Monitoring* section of the final rule, the Navy's marine species monitoring program typically supports 10–15 projects in the Atlantic at any given time. Current projects cover a range of species and topics from collecting baseline data on occurrence and distribution, to tracking whales and sea turtles, to conducting behavioral response studies on beaked whales and pilot whales. The Navy's marine species monitoring web portal provides details on past and current monitoring projects, including technical reports, publications, presentations, and access to available data and can be found at: *https://www.navymarinespeciesmonitoring.us/regions/atlantic/current-projects/*. A list of the monitoring studies that the Navy is currently planning under this rule are listed at the bottom of the *Monitoring* section of this final rule.

Negligible Impact Determination

General

Comment 73: Commenters commented that NMFS' analytical approach for negligible impact determination is not transparent and that the methods and resulting data cannot be substantiated with the information provided. The Commission stated that in general, NMFS has based negligible impact determinations associated with incidental take authorizations on abundance estimates provided either in its Stock Assessment Reports (SARs) or other more recent published literature. For the HSTT proposed rule, NMFS used abundance estimates as determined by the Navy's underlying density estimates rather than abundance estimates from either the SARs or published literature. NMFS did also not specify how it determined the actual abundance given that many of the densities differ on orders of kilometers. Interpolation or smoothing, and potentially extrapolation, of data likely would be necessary to achieve NMFS' intended goal—it is unclear whether any such methods were implemented. In addition, it is unclear whether NMFS estimated the abundances in the same manner beyond the U.S. EEZ as it did within the U.S. EEZ for HRC and why it did not compare takes within the U.S. EEZ and beyond the U.S. EEZ for

SOCAL, given that a larger proportion of the Navy's SOCAL action area is beyond the U.S. EEZ than HRC. Furthermore, NMFS did not specify how it determined the proportion of total takes that would occur beyond the U.S. EEZ. Moreover, the 'instances' of the specific types of taking (*i.e.,* mortality, Level A and B harassment) do not match the total takes 'inside and outside the EEZ' in Tables 69–81 (where applicable) or those take estimates in Tables 41–42 and 67–68. It also appears the 'instances' of take columns were based on only those takes in the U.S. EEZ for HRC rather than the area within and beyond the U.S. EEZ. It further is unclear why takes were not apportioned within and beyond the U.S. EEZ for SOCAL. Given that the negligible impact determination is based on the total taking in the entire study area, NMFS should have partitioned the takes in the 'instances' of take columns in Tables 69–81 for all activities that occur within *and* beyond the U.S. EEZ. One commenter further asserts that any ''small numbers'' determination that relies on abundance estimates derived simplistically from modeled densities is both arbitrary and capricious. The commenters assert that NMFS should, at least for data rich species, derive its absolute abundance estimates from NMFS' SARs or more recently published literature.

Response: NMFS' *Analysis and Negligible Impact Determination* section has been updated and expanded in the final rule to clarify the issues the Commenters raise here (as well as others). Specifically, though, NMFS uses both the Navy-calculated abundance (based on the Navy-calculated densities described in detail in the *Estimated Take of Marine Mammal* section) and the SARs abundances, where appropriate, in the negligible impact analysis—noting that the nature of the overlap of the Navy Study Area with the U.S. EEZ is different in Hawaii versus SOCAL, supporting different analytical comparisons.

NMFS acknowledges that there were a few small errors in the take numbers in the proposed rule; however, they have been corrected (*i.e.,* the take totals in Tables 41 and 42 for a given stock now equal the ''in and outside the U.S. EEZ'' take totals in Tables X–Y) and the minor changes do not affect the analysis or determinations in the rule.

Also, the Commenters are incorrect that the instances of take for HRC do not reflect the take both within and outside the U.S. EEZ. They do. Last, one commenter mentions the agency making a ''small numbers'' determination, but such a determination is not applicable in the context of military readiness activities.

Comment 74: A commenter commented that the activities proposed by the Navy include high-intensity noise pollution, vessel traffic, explosions, pile driving, and more at a massive scale. According to the commenter, NMFS has underestimated the amount of take and the adverse impact that it will have on marine mammals and their habitat.

Response: NMFS has provided extensive information demonstrating that the best available science has been used to estimate the amount of take, and further to analyze the impacts that all of these takes combined will have on the affected species and stocks. As described in the *Analysis and Negligible Impact Determination* section, this information and our associated analyses support the negligible impact determinations necessary to issue these regulations.

Comment 75: A commenter commented that blue whales exposed to mid-frequency sonar (with received levels of 110 to 120 dB re 1 μPa) are less likely to produce calls associated with feeding behavior. They cite the Goldbogen *et al.* (2013) study (and a subsequent study) as extremely concerning because of the potential impacts of sonar on the essential life functions of blue whales as it found that sonar can disrupt feeding and displace blue whales from high-quality prey patches, significantly impacting their foraging ecology, individual fitness, and population health. They also state that mid-frequency sonar has been associated with several cases of blue whale stranding events and that low-frequency anthropogenic noise can mask calling behavior, reduce communication range, and damage hearing. These impacts from sonar on blue whales suggest that the activities' impacts would have long-term, non-negligible impacts on the blue whale population.

Response: As described in this final rule in the *Analysis and Negligible Impact Determination* section, NMFS has fully considered the effects that exposure to sonar can have on blue whales, including impacts on calls and feeding and those outlined in the Goldbogen study. However, as discussed, any individual blue whale is not expected to be exposed to sonar and taken on more than several days per year. Thus, while vocalizations may be impacted or feeding behaviors temporarily disrupted, this small scale of impacts is not expected to affect reproductive success or survival of any individuals, especially given the limitations on sonar and explosive use within blue whale BIAs. Of additional note, while the blue whale behavioral response study (BRS) in Southern California documented some foraging responses by blue whales to simulated Navy sonar, any response was highly variable by individual and context of the exposure. There were, for instance, some individual blue whales that did not respond. Recent Navy-funded blue whale tracking has documented wide ranging movements through Navy areas such that any one area is not used extensively for foraging. More long-term blue whale residency occurs north of and outside of the HSTT Study Area. Further, we disagree with the assertion that MFAS has been causally associated with blue whale strandings. This topic was discussed at length in the proposed rule and there is no data causally linking MFAS use with blue whale strandings.

Comment 76: A commenter commented that NMFS cannot consider the additional mortality/serious injury, including the 0.2 in the proposed authorization for ship strike for blue whales, to have a negligible impact determination for this stock. They also state that counts of mortality/serious injury do not account for the additional takes proposed to be authorized that cumulatively can have population level impacts from auditory injury and behavioral disturbance. Similarly, the commenter commented that NMFS cannot consider the proposed authorization for 0.4 annual mortality/serious injury to have a negligible impact on the CA/OR/WA stock of humpback whales because take is already exceeding the potential biological removal, and especially concerning is any take authorized for the critically endangered Central America population that would have significant adverse population impacts.

Response: As described in detail in the *Estimated Take of Marine Mammals* section, the Navy and NMFS have revisited and re-analyzed the Navy's initial request for takes by mortality of blue and humpback whales from vessel strike and determined that only 1 strike of either would be anticipated over the course of 5 years, and therefore authorized the lesser amount. Further, NMFS has expanded and refined the discussion of mortality take, PBR, and our negligible impact finding in the *Serious Injury and Mortality* sub-section of the *Analysis and Negligible Impact Determination* section and do not repeat it here.

Comment 77: A commenter commented that the estimated

population size for the Hawaii stock of sei whales is only 178 animals, and the potential biological removal is 0.2 whales per year. According to the Commenters, NMFS admits that the mortality for the Hawaii stock of sei whales is above potential biological removal. The commenter asserted that the conclusion that the action will have a negligible impact on this stock is arbitrary and capricious.

Response: As described in detail in the *Estimated Take of Marine Mammals* section, the Navy and NMFS revisited and re-analyzed the Navy's initial request for the take of a sei whale from vessel strike and determined that this take is unlikely to occur and, therefore, it is not authorized.

Comment 78: A commenter commented that any take of Hawaiian monk seal by the proposed activities will have a non-negligible impact given the precarious status of this species.

Response: NMFS' rationale for finding that the Navy's activity will have a negligible impact on monk seals is included in the *Pinniped* subsection of the *Analysis and Negligible Impact Determination* section and is not re-printed here. Nonetheless we reiterate that no mortality or injury due to tissue damage is anticipated or authorized, only one instance of PTS is estimated and authorized, and no individual monk seal is expected to be exposed to stressors that would result in take more than a few days a year. Further, the Hawaii Island and 4-Island mitigation areas provide significant protection of monk seal critical habitat in the Main Hawaiian Islands, reducing impacts form sonar and explosives around a large portion of pupping beaches and foraging habitat, as described in the *Mitigation Measures* section.

Cumulative and Aggregate Effects

Comment 79: One commenter asserted that NMFS has not apparently considered the impact of Navy activities on a population basis for many of the marine mammal populations within the HSTT Study Area. Instead, it has lodged discussion for many populations within broader categories, most prominently ''mysticetes'' (14 populations) and ''odontocetes'' (37 populations), that in some cases correspond to general taxonomic groups. Such grouping of stocks elides important differences in abundance, demography, distribution, and other population-specific factors, making it difficult to assume ''that the effects of an activity on the different stock populations'' are identical. That is particularly true where small, resident populations are concerned, and differences in population abundance, habitat use, and distribution relative to Navy activities can be profoundly significant. Additionally, the commenter states that NMFS assumed that all of the Navy's estimated impacts would not affect individuals or populations through repeated activity—even though the takes anticipated each year would affect the same populations and, indeed, would admittedly involve extensive use of some of the same biogeographic areas.

Response: NMFS provides information regarding broader groups in order to avoid repeating information that is applicable across multiple species or stocks, but analyses have been conducted and determinations made specific to each stock. The method used to avoid repeating information applicable to a number of species or stocks while also presenting and integrating all information applicable to particular species or stocks is described in the rule. Also, NMFS' analysis does address the fact that some individuals may be repeatedly impacted and how those impacts may or may not accrue to more serious effects. The *Analysis and Negligible Impacts Determination* section has been expanded and refined to better explain this.

Comment 80: NMFS' negligible impact analysis for Cuvier's beaked whales is predicated on a single take estimate for the CA/OR/WA stock. This is deeply problematic as the species is known to occur in small, resident populations within the SOCAL Range Complex. These populations are acutely vulnerable to Navy sonar. Cuvier's beaked whales have repeatedly been associated with sonar-related pathology, are known to react strongly to sonar at distances up to 100 kilometers, and are universally regarded to be among the most sensitive of all marine mammals to anthropogenic noise (Falcone *et al.,* 2017). Some populations, such as the one in San Nicholas Basin that coincides with the Navy's much-used Southern California ASW Range (SOAR), are repeatedly exposed to sonar, posing the same risk of population-wide harm documented on a Navy range in the Bahamas (Falcone and Schorr, 2013). The broad take estimates presented in the Proposed Rule, and the negligible impact analysis that they are meant to support, provide no insight into the specific impacts proposed for these small populations.

Response: NMFS acknowledges the sensitivity of small resident populations both in our analyses and in the identification of mitigation measures, where appropriate. However, we are required to make our negligible impact determination in the context of the MMPA-designated stock, which, in the case of the CA/OR/WA stock of Cuvier's beaked whale, spans the U.S. EEZ off the West Coast. As described in our responses to previous comments, NMFS and the Navy have fully accounted for the sensitivity of Cuvier's beaked whales in the behavioral thresholds and the estimation of take. Further, contrary to the assertions of the commenter, NMFS has absolutely considered the potential impacts of repeated takes on individuals that show site fidelity and that analysis can be found in the *Analysis and Negligible Impact Determination* section, which has been refined and updated since the proposed rule based on public input. Nonetheless, in 2018, an estimate of overall abundance of Cuvier's beaked whales at the Navy's instrumented range in San Nicolas Basin was obtained using new dive-counting acoustic methods and an archive of passive acoustic M3R data representing 35,416 hours of data (DiMarzio, 2018; Moretti, 2017). Over the seven-year period from 2010–2017, there was no observed decrease and perhaps a slight increase in annual Cuvier's beaked whale abundance within San Nicolas Basin (DiMarzio, 2018). There does appear to be a repeated dip in population numbers and associated echolocation clicks during the fall centered around August and September (Moretti 2017, DiMarzio 2018). A similar August and September dip was noted by researchers using stand-alone off-range bottom passive acoustic devices in Southern California (Širović *et al.,* 2016; Rice *et al.,* 2017). This dip in abundance may be tied to some as yet unknown population dynamic or oceanographic and prey availability dynamics.

Comment 81: One commenter asserted that with respect to mortalities and serious injuries, NMFS' application of potential biological removal (PBR) is unclear and may not be consistent with its prior interpretations. The agency recognizes that PBR is a factor in determining whether the negligible impact threshold has been exceeded, but argues that, since PBR and negligible impact are different statutory standards, NMFS might find that an activity that kills marine mammals beyond what PBR could support would not necessarily exceed the negligible impact threshold. Regardless, however, of whether Congress intended PBR as a formal constraint on NMFS' ability to issue incidental take permits under section 101(a)(5), NMFS' own definition of ''negligible impact'' prevents it from authorizing mortalities or other takes that would threaten the sustainability of

marine mammal stocks. Mortalities and serious injuries exceeding potential biological removal levels would do just that.

Additionally, in assessing the consequences of authorized mortality below PBR, NMFS applies an ''insignificance'' standard, such that any lethal take below 10 percent of residual PBR is presumed not to exceed the negligible impact threshold. This approach seems inconsistent, however, with the regulatory thresholds established for action under the commercial fisheries provision of the Act, where bycatch of 1 percent of total PBR triggers mandatory take reduction procedures for strategic marine mammal stocks. See 16 U.S.C. 1387(f)(1); 83 FR 5349, 5349 (Feb. 7, 2018). NMFS should clarify why it has chosen 10 percent rather than, for example, 1 percent as its ''insignificance'' threshold, at least for endangered species and other populations designated as strategic under the MMPA.

Response: NMFS disagrees that the consideration of PBR is unclear and notes that the narrative describing the application of PBR has been updated in this final rule to further explain how the agency considers this metric in the context of the negligible impact determination under section 101(a)(5)(A) (see the *Serious Injury and Mortality* sub-section of the *Analysis and Negligible Impact Determination* section) and is not repeated here. That discussion includes how PBR is calculated and therefore how it is possible for anticipated M/SI to exceed PBR or residual PBR and yet not adversely affect a particular species or stock through effects on annual rates of recruitment and survival.

Regarding the insignificance threshold, as explained in the rule, residual PBR is a metric that can be used to inform the assessment of M/SI impacts, and the insignificance threshold is an analytical tool to help prioritize analyst effort. But the insignificance threshold is not applied as a strict presumption as described by the commenter. Although it is true that as a general matter M/SI that is less than 10 percent of residual PBR should have no effect on rates of recruitment or survival, the agency will consider whether there are other factors that should be considered, such as whether an UME is affecting the species or stock.

The 10 percent insignificance threshold is an analytical tool that indicates that the potential mortality or serious injury is an insignificant incremental increase in anthropogenic mortality and serious injury that alone (in the absence of any other take and any other unusual circumstances) would clearly not affect rates of recruitment or survival. As such, potential mortality and serious injury at the insignificance-threshold level or below is evaluated in light of other relevant factors (such as an ongoing UME) and then considered in conjunction with any anticipated Level A or Level B harassment take to determine if the total take would affect annual rates of recruitment or survival. Ten percent was selected because it corresponds to the insignificance threshold under the MMPA framework for authorizing incidental take of marine mammals resulting from commercial fisheries. There the insignificance threshold, which also is 10 percent of PBR, is ''the upper limit of annual incidental mortality and serious injury of marine mammal stocks by commercial fisheries that can be considered insignificant levels approaching a zero mortality and serious injury rate'' (see 50 CFR 229.2). A threshold that represents an insignificant level of mortality or serious injury approaching a zero mortality and serious injury rate was thought to be an appropriate level to indicate when, absent other factors, the agency can be confident that expected mortality and serious injury will not affect annual rates of recruitment and survival, without the need for significant additional analysis.

Regarding the claim that NMFS' interpretation of PBR may be inconsistent with prior interpretations, we disagree. Rather, NMFS' interpretation of PBR has been utilized appropriately within the context of the different MMPA programs and associated statutory standards it has informed. The application of PBR under section 101(a)(5)(A) also has developed and been refined in response to litigation and as the amount of and nature of M/SI requested pursuant to this section has changed over time, thereby calling for the agency to take a closer look at how M/SI relative to PBR relates to effects on rates of recruitment and survival. Specifically, until recently, NMFS had used PBR relatively few times to support determinations outside of the context of MMPA commercial fisheries assessments and decisions. Indeed, in *Georgia Aquarium, Inc.* v. *Pritzker,* 135 F. Supp.3d 1280 (N.D. Ga. 2015), in ruling on a lawsuit in which the plaintiffs sought to use PBR as the reason they should be allowed to import animals from the Sahklin-Amur stock of beluga whales for public display, the Court summarized a ''handful'' of cases where NMFS had used PBR to support certain agency findings. The Court agreed that the agency does not have a ''practice and policy'' of applying PBR in all circumstances. Importantly, the Court stated that ''NMFS has shown that where the Agency has considered PBR outside of the U.S. commercial fisheries context, it has treated PBR as only one 'quantitative tool' and that it is not used as the sole basis for its impact analyses,'' just as NMFS has done here for its negligible impact analyses.

The examples considered by the *Georgia Aquarium* Court involved scientific research permits or subsistence harvest decisions where reference to PBR was one consideration among several. Thus, in one of the examples referenced by the Court, PBR was included to evaluate different alternatives in a 2007 EIS developed in support of future grants and permits related to research on northern fur seals and Steller sea lions (*available at https://repository.library.noaa.gov/view/noaa/17331*). Similarly, in the 2015 draft EIS on the Makah Tribe's request to hunt gray whales, different levels of harvest were compared against PBR along with other considerations in the various alternatives (*available at https://www.westcoast.fisheries.noaa.gov/publications/protected_species/marine_mammals/cetaceans/gray_whales/makah_deis_feb_2015.pdf*). Consistent with what the *Georgia Aquarium* Court found, in both of those documents PBR was one consideration in developing alternatives for the agency's EIS and not determinative in any decision-making process.

After 2013 in response to an incidental take authorization request from NMFS' Southwest Fisheries Science Center that contained PBR analysis and more particularly in response to a District Court's March 2015 ruling that NMFS' failure to consider PBR when evaluating lethal take under section 101(a)(5)(A) violated the requirement to use the best available science (see *Conservation Council for Hawaii* v. *National Marine Fisheries Service,* 97 F. Supp.3d 1210 (D. Haw. 2015)), NMFS began to systematically consider the role of PBR when evaluating the effects of M/SI during section 101(a)(5)(A) rulemakings. Previously, in 1996 shortly after the PBR metric was first introduced, NMFS denied a request from the U.S. Coast Guard for an incidental take authorization for their vessel and aircraft operations, seemingly solely on the basis of the potential for ship strike in relation to PBR. The decision did not appear to consider other factors that might also have informed the potential

for ship strike of a North Atlantic right whale in relation to the negligible impact standard.

During the following years and until the Court's decision in *Conservation Council* and the agency issuing the proposed incidental take authorization for the Southwest Fisheries Science Center, NMFS issued incidental take regulations without referencing PBR. Thereafter, however, NMFS began considering and articulating the appropriate role of PBR when processing incidental take requests for M/SI under section 101(a)(5)(A). Consistent with the interpretation of PBR across the rest of the agency, NMFS' Permits and Conservation Division has been using PBR as a tool to inform the negligible impact analysis under section 101(a)(5)(A), recognizing that it is not a dispositive threshold that automatically determines whether a given amount of M/SI either does or does not exceed a negligible impact on the affected species or stock.

Comment 82: A commenter commented that NMFS failed to adequately assess the aggregate effects of all of the Navy's activities included in the rule. The commenter alleges that NMFS' lack of analysis of these aggregate impacts, which is essential to any negligible impact determination, represents a glaring omission from the proposed rule. While NMFS states that Level B behavioral harassment (aside from those caused by masking effects) involves a stress response that may contribute to an animal's allostatic load, it assumes without further analysis that any such impacts would be insignificant.

Response: NMFS did analyze the potential for aggregate effects from mortality, injury, masking, habitat effects, energetic costs, stress, hearing loss, and behavioral harassment from the Navy's activities in reaching the negligible impact determinations. Significant additional discussion has been added to the *Analysis and Negligible Impact Determination* section of the final rule to better explain the potential for aggregate or cumulative effects on individuals as well as how these effects on individuals relate to potential effects on annual rates of recruitment and survival for each species or stock.

In addition, NMFS fully considers the potential for aggregate effects from all Navy activities. We also consider UMEs and previous environmental impacts, where appropriate, to inform the baseline levels of both individual health and susceptibility to additional stressors, as well as stock status. Further, the species and stock-specific assessments in the *Analysis and Negligible Impact Determination* section (which have been updated and expanded) pull together and address the combined mortality, injury, behavioral harassment, and other effects of the aggregate HSTT activities (and in consideration of applicable mitigation) as well as other information that supports our determinations that the Navy activities will not adversely affect any species or stocks via impacts on rates of recruitment or survival. We refer the reader to the *Analysis and Negligible Impact Determination* section for this analysis.

Widespread, extensive monitoring since 2006 on Navy ranges that have been used for training and testing for decades has demonstrated no evidence of population-level impacts. Based on the best available research from NMFS and Navy-funded marine mammal studies, there is no evidence that ''population-level harm'' to marine mammals, including beaked whales, is occurring in the HSTT Study Area. The presence of numerous small, resident populations of cetaceans, documented high abundances, and populations trending to increase for many marine mammals species in the area suggests there are not likely population-level consequences resulting from decades of ongoing Navy training and testing activities. Through the process described in the rule and the LOAs, the Navy will work with NMFS to assure that the aggregate or cumulative impacts remain at the negligible impact level.

Regarding the consideration of stress responses, NMFS does not assume that the impacts are insignificant. There is currently neither adequate data nor mechanism by which the impacts of stress from acoustic exposure can be reliably and independently quantified. However, stress effects that result from noise exposure likely often occur concurrently with behavioral harassment and many are likely captured and considered in the quantification of other takes by harassment that occur when individuals come within a certain distance of a sound source (behavioral harassment, PTS, and TTS).

Comment 83: Some Commenters asserted that in reaching our MMPA negligible impact finding, NMFS did not adequately consider the cumulative impacts of the Navy's activities when combined with the effects of other non-Navy activities.

Response: Both the statute and the agency's implementing regulations call for analysis of the effects of the applicant's activities on the affected species and stocks, not analysis of other unrelated activities and their impacts on the species and stocks. That does not mean, however, that effects on the species and stocks caused by other non-Navy activities are ignored. The preamble for NMFS' implementing regulations under section 101(a)(5) (54 FR 40338; September 29, 1989) explains in response to comments that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the environmental baseline. Consistent with that direction, NMFS has factored into its negligible impact analyses the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline (*e.g.,* as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors (such as incidental mortality in commercial fisheries or UMEs)). See the *Analysis and Negligible Impact Determination* section of this rule.

Our 1989 final rule for the MMPA implementing regulations also addressed public comments regarding cumulative effects from future, unrelated activities. There we stated that such effects are not considered in making findings under section 101(a)(5) concerning negligible impact. We indicated that NMFS would consider cumulative effects that are reasonably foreseeable when preparing a NEPA analysis and also that reasonably foreseeable cumulative effects would be considered under section 7 of the ESA for ESA-listed species.

Also, as described further in the *Analysis and Negligible Impact Determination* section of the final rule, NMFS evaluated the impacts of HSTT authorized mortality on the affected stocks in consideration of other anticipated human-caused mortality, including the mortality predicted in the SARs for other activities along with other NMFS-permitted mortality (*i.e.,* authorized as part of the Southwest Fisheries Science Center rule), using multiple factors, including PBR. As described in more detail in the *Analysis and Negligible Impact Determination* section, PBR was designed to identify the maximum number of animals that may be removed from a stock (not including natural mortalities) while allowing that stock to reach or maintain its OSP and is also helpful in informing whether mortality will adversely affect annual rates of recruitment or survival in the context of a section 101(a)(5)(A).

NEPA

Comment 84: Commenters commented that NMFS cannot rely on

the Navy's HSTT FEIS/OEIS to fulfill its obligations under NEPA because the purpose and need is too narrow and does not support NMFS' MMPA action, and therefore the HSTT FEIS/OEIS does not explore a reasonable range of alternatives.

Response: The proposed action at issue is the Navy's proposal to conduct testing and training activities in the HSTT Study Area. NMFS is a cooperating agency for that proposed action, as it has jurisdiction by law and special expertise over marine resources impacted by the proposed action, including marine mammals and federally-listed threatened and endangered species. Consistent with the regulations published by the Council on Environmental Quality (CEQ), it is common and sound NEPA practice for NOAA to adopt a lead agency's NEPA analysis when, after independent review, NOAA determines the document to be sufficient in accordance with 40 CFR 1506.3. Specifically here, NOAA must be satisfied that the Navy's EIS adequately addresses the impacts of issuing the MMPA incidental take authorization and that NOAA's comments and concerns have been adequately addressed. There is no requirement in CEQ regulations that NMFS, as a cooperating agency, issue a separate purpose and need statement in order to ensure adequacy and sufficiency for adoption. Nevertheless, the Navy, in coordination with NMFS, has clarified the statement of purpose and need in the HSTT FEIS/OEIS to more explicitly acknowledge NMFS' action of issuing an MMPA incidental take authorization. NMFS also clarified how its regulatory role under the MMPA related to Navy's activities. NMFS' early participation in the NEPA process and role in shaping and informing analyses using its special expertise ensured that the analysis in the HSTT FEIS/OEIS is sufficient for purposes of NMFS' own NEPA obligations related to its issuance of incidental take authorization under the MMPA.

Regarding the alternatives, NMFS' early involvement in development of the HSTT EIS/OEIS and role in evaluating the effects of incidental take under the MMPA ensured that the HSTT DEIS/OEIS would include adequate analysis of a reasonable range of alternatives. The HSTT FEIS/OEIS includes a No Action Alternative specifically to address what could happen if NMFS did not issue an MMPA authorization. The other two Alternatives address two action options that the Navy could potentially pursue while also meeting their mandated Title 10 training and testing responsibilities. More importantly, these alternatives fully analyze a comprehensive variety of mitigation measures. This mitigation analysis supported NMFS' evaluation of our options in potentially issuing an MMPA authorization, which, if the authorization may be issued, primarily revolves around the appropriate mitigation to prescribe. This approach to evaluating a reasonable range of alternatives is consistent with NMFS policy and practice for issuing MMPA incidental take authorizations. NOAA has independently reviewed and evaluated the EIS, including the purpose and need statement and range of alternatives, and determined that the HSTT FEIS/OEIS fully satisfies NMFS' NEPA obligations related to its decision to issue the MMPA final rule and associated LOAs, and we have adopted it.

Endangered Species Act

Comment 85: A commenter commented that under the ESA NMFS has the discretion to impose terms, conditions, and mitigation on any authorization. They believe the proposed action clearly affects listed whales, sea turtles, and Hawaiian monk seals, triggering the duty to consult. The commenter urged NMFS to fully comply with the ESA and implement robust reasonable and prudent alternatives and conservation measures to avoid harm to endangered species and their habitats.

Response: NMFS has fully complied with the ESA. The agency consulted pursuant to section 7 of the ESA and NMFS' ESA Interagency Cooperation Division provided a biological opinion concluded that NMFS' action of issuing MMPA incidental take regulations for the Navy HSTT activities would not jeopardize the continued existence of any threatened or endangered species and nor would it adversely modify any designated critical habitat. The biological opinion may be viewed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.*

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 anticipates the take of 39 individual 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 requested authorization for ten serious injuries or mortalities combined 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. Two marine mammal species, the Hawaiian monk seal and the Main Hawaiian Islands Insular false killer whale, have critical habitat designated under the ESA in the HSTT Study Area (described below).

The species considered but not carried forward for analysis are two American Samoa stocks of spinner dolphins—(1) the Kure and Midway stock and (2) the Pearl and Hermes stock. There is no potential for overlap with any stressors from Navy activities and therefore there would be no incidental takes, in which case, these stocks are not considered further.

We presented a detailed discussion of marine mammals and their occurrence in the planned action area, inclusive of ESA-designated critical habitat, BIAs, National Marine Sanctuaries, and unusual mortality events (UMEs) in our **Federal Register** notice of proposed rulemaking (83 FR 29872; June 26, 2018); please see that notice of proposed rulemaking or the Navy's application for more information. There have been no changes or new information on BIAs and National Marine Sanctuaries since publication of the proposed rule; therefore, they are not discussed further. Additional information on certain ESA-designated critical habitat and UMEs has become available and so both of these topics are discussed following Table 13.

TABLE 13—MARINE MAMMAL 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.	Strategic, Depleted.	Endangered	Southern California.		1,647 (0.07)/1,551
		Central North Pacific.	Strategic, Depleted.	Endangered	Hawaii	Summer	133 (1.09)/63
Bryde's whale	*Balaenoptera brydei/edeni.*	Eastern Tropical Pacific.			Southern California.		unknown
		Hawaii			Hawaii		1,751 (0.29)/1,378
Fin whale	*Balaenoptera physalus.*	CA/OR/WA	Strategic, Depleted.	Endangered	Southern California.		9,029 (0.12)/8,127
		Hawaii	Strategic, Depleted.	Endangered	Hawaii	Summer	154 (1.05)/75
Gray whale	*Eschrichtius robustus.*	Eastern North Pacific.			Southern California.		26,960 (0.05)/25,849
		Western North Pacific.	Strategic, Depleted.	Endangered	Southern California.		175 (0.05)/167
Humpback whale.	*Megaptera novaeangliae.*	CA/OR/WA	Strategic, Depleted.	Threatened/ Endangered [1]	Southern California.		2,900 (0.03)/2,784
		Central North Pacific.	Strategic		Hawaii	Summer	10,103 (0.30)/7,891
Minke whale	*Balaenoptera acutorostrata.*	CA/OR/WA			Southern California.		636 (0.72)/369
		Hawaii			Hawaii	Summer	unknown
Sei whale	*Balaenoptera borealis.*	Eastern North Pacific.	Strategic, Depleted.	Endangered	Southern California.		519 (0.4)/374
		Hawaii	Strategic, Depleted.	Endangered	Hawaii	Summer	391 (0.90)/204
Sperm whale	*Physeter macrocephalus.*	CA/OR/WA	Strategic, Depleted.	Endangered	Southern California.		1,997 (0.57)/1,270
		Hawaii	Strategic, Depleted.	Endangered	Hawaii		4,559 (0.33)/3,478
Pygmy sperm whale.	*Kogia breviceps*	CA/OR/WA			Southern California.	Winter and Fall	4,111 (1.12)/1,924
		Hawaii			Hawaii		unknown
Dwarf sperm whale.	*Kogia sima*	CA/OR/WA			Southern California.		unknown
		Hawaii			Hawaii		unknown
Baird's beaked whale.	*Berardius bairdii*	CA/OR/WA			Southern California.		2,697 (0.6)/1,633
Blainville's beaked whale.	*Mesoplodon densirostris.*	Hawaii			Hawaii		2,105 (1.13)/980
Cuvier's beaked whale.	*Ziphius cavirostris*	CA/OR/WA			Southern California.		3,274 (0.67)/2,059
		Hawaii			Hawaii		723 0.69/428
Longman's beaked whale.	*Indopacetus pacificus.*	Hawaii			Hawaii		7,619 (0.66)/4,592
Mesoplodon beaked whales.	*Mesoplodon spp*	CA/OR/WA			Southern California.		3,044 (0.54)/1,967
Common Bottlenose dolphin.	*Tursiops truncatus*	California Coastal.			Southern California.		453 (0.06)/346
		CA/OR/WA Offshore.			Southern California.		1,924 (0.54)/1,255
		Hawaii Pelagic			Hawaii		21,815 (0.57)/13.957
		Kauai and Niihau.			Hawaii		NA NA/97
		Oahu			Hawaii		NA
		4-Islands			Hawaii		NA
		Hawaii Island			Hawaii		NA NA/91
False killer whale.	*Pseudorca crassidens.*	Main Hawaiian Islands Insular.	Strategic, Depleted.	Endangered	Hawaii		167 (0.14)/149

TABLE 13—MARINE MAMMAL OCCURRENCE WITHIN THE HSTT STUDY AREA—Continued

Common name	Scientific name	Stock	Status		Occurrence	Seasonal absence	Stock abundance (CV)/minimum population
			MMPA	ESA			
		Hawaii Pelagic	.....	.....	Hawaii	.....	1,540 (0.66)/928
		Northwestern Hawaiian Islands.	.....	.....	Hawaii	.....	617 (1.11)/290
Fraser's dolphin.	*Lagenodelphis hosei.*	Hawaii	.....	.....	Hawaii	.....	51,491 (0.66)/31,034
Killer whale	*Orcinus orca*	Eastern North Pacific Offshore.	.....	.....	Southern California.	.....	300 (0.1)/276
		Eastern North Pacific Transient/West Coast Transient [2].	.....	.....	Southern California.	.....	243 unknown/243
		Hawaii	.....	.....	Hawaii	.....	146 (0.96)/74
Long-beaked common dolphin.	*Delphinus capensis.*	California	.....	.....	Southern California.	.....	101,305 (0.49)/68,432
Melon-headed whale.	*Peponocephala electra.*	Hawaiian Islands.	.....	.....	Hawaii	.....	8,666 (1.00)/4,299
		Kohala Resident.	.....	.....	Hawaii	.....	447 (0.12)/404
Northern right whale dolphin.	*Lissodelphis borealis.*	CA/OR/WA	.....	.....	Southern California.	.....	26,556 (0.44)/18,608
Pacific white-sided dolphin.	*Lagenorhynchus obliquidens.*	CA/OR/WA	.....	.....	Southern California.	.....	26,814 (0.28)/21,195
Pantropical spotted dolphin.	*Stenella attenuata*	Oahu	.....	.....	Hawaii	.....	unknown
		4-Islands	.....	.....	Hawaii	.....	unknown
		Hawaii Island ..	.....	.....	Hawaii	.....	unknown
		Hawaii Pelagic	.....	.....	Hawaii	.....	55,795 (0.40)/40,338
Pygmy killer whale.	*Feresa attenuata*	Tropical	.....	.....	Southern California.	Winter & Spring.	unknown
		Hawaii	.....	.....	Hawaii	.....	10,640 (0.53)/6,998
Risso's dolphins.	*Grampus griseus*	CA/OR/WA	.....	.....	Southern California.	.....	6,336 (0.32)/4,817
		Hawaii	.....	.....	Hawaii	.....	11,613 (0.43)/8,210
Rough-toothed dolphin.	*Steno bredanensis*	NSD [3]	.....	.....	Southern California.	.....	unknown
		Hawaii	.....	.....	Hawaii	.....	72,528 (0.39)/52,833
Short-beaked common dolphin.	*Delphinus delphis*	CA/OR/WA	.....	.....	Southern California.	.....	969,861 (0.17)/839,325
Short-finned pilot whale.	*Globicephala macrorhynchus.*	CA/OR/WA	.....	.....	Southern California.	.....	836 (0.79)/466
		Hawaii	.....	.....	Hawaii	.....	19,503 (0.49)/13,197
Spinner dolphin	*Stenella longirostris.*	Hawaii Pelagic	.....	.....	Hawaii	.....	unknown
		Hawaii Island ..	.....	.....	Hawaii	.....	665 (0.09)/617
		Oahu and 4-Islands.	.....	.....	Hawaii	.....	NA
		Kauai and Niihau.	.....	.....	Hawaii	.....	NA
		Kure and Midway.	.....	.....	Hawaii	.....	unknown
		Pearl and Hermes.	.....	.....	Hawaii	.....	unknown
Striped dolphin	*Stenella coeruleoalba.*	CA/OR/WA	.....	.....	Southern California.	.....	29,211 (0.20)/24,782

TABLE 13—MARINE MAMMAL OCCURRENCE WITHIN THE HSTT STUDY AREA—Continued

Common name	Scientific name	Stock	Status		Occurrence	Seasonal absence	Stock abundance (CV)/minimum population
			MMPA	ESA			
		Hawaii			Hawaii		61,021 (0.38)/44,922
Dall's porpoise	*Phocoenoides dalli*	CA/OR/WA			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.*	Hawaii	Strategic, Depleted.	Endangered	Hawaii		1,415 (0.03)/1,384
Northern elephant seal.	*Mirounga angustirostris.*	California			Southern California.		179,000 NA/81,368
California sea lion.	*Zalophus californianus.*	U.S. Stock			Southern California.		257,606 NA/233,515
Guadalupe fur seal.	*Arctocephalus townsendi.*	Mexico to California.	Strategic, Depleted.	Threatened	Southern California.		20,000 NA/15,830
Northern fur seal.	*Callorhinus ursinus.*	California			Southern California.		14,050 NA/7,524

[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 the ESA as Threatened, and the Central America Distinct Population Segment, which is listed under the 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] NSD—No stock designation. 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.

The proposed rule (83 FR 29909, June 26, 2018) includes a description of ESA designated critical habitat, BIAs, National Marine Sanctuaries, and unusual mortality events that are applicable in the HSTT Study area and that material remains applicable and is not repeated here. However, we do include information where anything has changed. In this case, since the proposed rule was published, ESA designated critical habitat for main Hawaiian Islands insular false killer whales was finalized and new information regarding the California sea lion UME became available.

Critical habitat for the ESA-listed Main Hawaiian Islands insular false killer whale DPS was finalized in July 2018 (83 FR 35062; July 24, 2018) designating waters from the 45 m depth contour to the 3,200 m depth contour around the main Hawaiian Islands from Niihau east to Hawaii. This designation does not include most bays, harbors, or coastal in-water structures. NMFS excluded 14 areas (one area, with two sites, for the Bureau of Ocean Energy Management and 13 areas requested by the Navy) from the critical habitat designation because it was determined that the benefits of exclusion outweighed the benefits of inclusion, and exclusion would not result in extinction of the species. In addition, two areas, the Ewa Training Minefield and the Naval Defensive Sea Area, were ineligible for designation because they are managed under the Joint Base Pearl Harbor-Hickam Integrated Natural Resources Management Plan that was found to benefit main Hawaiian Islands insular false killer whales. The total area designated was approximately 45,504 km^2 (17,564 mi^2) of marine habitat and the designation stresses the importance of protecting: adequate space for movement and use; prey species of sufficient quantity, quality, and availability to support growth and reproduction; waters free of harmful types and amounts of pollutants; and sound levels that would not significantly impair false killer whale use or occupancy.

Regarding the California sea lion UME, although this UME has not been closed, NMFS staff recently confirmed that the mortality of pups and yearlings returned to normal in 2017 and 2018 and they plan to present it to the Working Group to discuss closure by the end of 2018 (Deb Fauquier, pers. comm.). Please refer to the proposed rule (83 FR 29872; June 26, 2018) and NMFS' website at *https://www.fisheries.noaa.gov/national/marine-life-distress/2013-2017-california-sea-lion-unusual-mortality-event-california* for more information on this UME.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

We provided a summary and discussion of the potential effects of the specified activity on marine mammals and their habitat in our **Federal Register** notice of proposed rulemaking (83 FR 29872; June 26, 2018). In the *Potential Effects of Specified Activities on Marine Mammals and Their Habitat* section of the proposed rule, NMFS provided a description of the ways marine mammals may be affected by these activities in the form of serious injury or mortality, physical trauma, sensory impairment (permanent and temporary threshold shift and acoustic masking), physiological responses (particular stress responses), behavioral disturbance, or habitat effects. Therefore, we do not reprint the information here but refer the reader to that document. For additional summary and discussion of recent scientific studies not included in the proposed rulemaking, we direct the reader to the HSTT FEIS/OEIS (Chapter 3, Section 3.7 *Marine Mammals, http://www.hstteis.com/*), which NMFS participated in the development of via our cooperating agency status and adopted to meet our NEPA requirements. We highlight several studies below, but direct the reader to the HSTT FEIS/OEIS for a full compilation. As noted above, NMFS has reviewed and accepted the Navy's compilation and interpretation of the best available science contained in the HSTT FEIS/OEIS. More specifically, we have independently reviewed the more recent studies that were not included in NMFS' proposed rule, have concluded that the Navy's descriptions and interpretations of those studies in the

FEIS/OEIS are accurate, and have taken those studies into consideration in our analyses that inform our negligible impact determinations. Importantly, we note that none of the newer information highlighted here or in the HSTT FEIS/OEIS affects our analysis in a manner that changes our determinations under the MMPA from the proposed rule.

The Acoustic Technical Guidance (NMFS, 2018), 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. New data on killer whale hearing (Branstetter *et al.,* 2017), harbor porpoise hearing (Kastelein *et al.,* 2017a), harbor porpoise threshold shift (TS) in response to airguns (Kastelein *et al.,* 2017b) and mid-frequency sonar (Kastelein *et al.,* 2017c), and harbor seal TS in response to pile-driving sounds (Kastelein *et al.,* 2018) are consistent with data included and thresholds presented in the Acoustic Technical Guidance.

Recent studies with captive odontocete species (bottlenose dolphin, harbor porpoise, beluga, and false killer whale) have observed increases in hearing threshold levels when individuals received a warning sound prior to exposure to a relatively loud sound (Finneran, 2018; Nachtigall and Supin, 2013, 2015; Nachtigall *et al.,* 2016a,b,c; Nachtigall, *et al.,* 2018). These studies suggest that captive animals have a mechanism to reduce hearing sensitivity prior to impending loud sounds. Hearing change was observed to be frequency dependent and Finneran (2018) suggests hearing attenuation occurs within the cochlea or auditory nerve. Based on these observations on captive odontocetes, the authors suggest that wild animals may have a mechanism to self-mitigate the impacts of noise exposure by dampening their hearing during prolonged exposures of loud sound, or if conditioned to anticipate intense sounds (Finneran, 2018, Nachtigall *et al.,* 2018).

Recent reviews have synthesized data from experimental studies examining marine mammal behavioral response to anthropogenic sound, and have documented large variances in individual behavioral responses to anthropogenic sound both within and among marine mammal species. These reviews highlight the importance of the exposure context (*e.g.,* behavioral state, presence of other animals and social relationships, prey abundance, distance to source, presence of vessels, environmental parameters, etc.) in determining or predicting a behavioral response. As described in the proposed rule, in a review of experimental field studies to measure behavioral responses of cetaceans to sonar, Southall *et al.* (2016) observed that some individuals of different species display clear yet varied responses (some of which have negative implications), while others appear to tolerate high levels. Results from the studies they investigated demonstrate that responses are highly variable and may not be fully predictable with simple acoustic exposure metrics (*e.g.,* received sound level). Rather, differences among species and individuals along with contextual aspects of exposure (*e.g.,* behavioral state) appear to affect response probability (Southall *et al.,* 2016). Dunlop *et al.* (2018) combined data from the BRAHSS (Behavioural Response of Australian Humpback whales to Seismic Surveys) studies designed to examine the behavioral responses of migrating humpback whales to various seismic array sources to develop a dose-response model. The model accounted for other variables such as presence of the vessel, array towpath relative to the migration, and social and environmental parameters. Authors observed that whales were more likely to avoid the airgun or array (defined by increasing their distance from the source) when they were exposed to sounds greater than 130 dB re 1 $\mu Pa^2 \cdot s$ and they were within 4 km of the source (Dunlop *et al.,* 2018). At sound exposure levels of 150–155 dB re 1 $\mu Pa^2 \cdot s$ and less than 2.5 km from the source the model predicted a 50 percent probability of response (Dunlop *et al.,* 2018). However, it was not possible to estimate the maximum response threshold as at the highest received levels of 160–170 dB re 1 $\mu Pa^2 \cdot s$, a small number of whales moving rapidly and close to the source did not exhibit an avoidance response as defined by the study (Dunlop *et al.,* 2018).

Estimated Take of Marine Mammals

This section indicates the number of takes that NMFS is authorizing, which are based on the amount of take that NMFS anticipates could occur 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 limited exception, agrees that the methods the Navy put forth in their application to estimate take (including the model, thresholds, and density estimates), and the resulting numbers are based on the best available science and appropriate for authorization. As noted elsewhere, additional discussion and subsequent analysis led both NMFS and the Navy, in coordination, to conclude that different take estimates for serious injury or mortality from vessel strikes were appropriate, and where those numbers differ from the Navy's application or our proposed rule, NMFS has explicitly described our rationale and indicated what we consider an appropriate number of takes.

Takes are predominantly in the form of harassment, but a small number of serious injuries or mortalities are also authorized. For military readiness activities, 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 more likely to result in the disruption of natural behavioral patterns to a point where they are abandoned or significantly altered (as defined specifically in the paragraph above, but referred to generally as behavioral disruption) or TTS for marine mammals than other forms of take. There is also the potential for Level A harassment, however, in the form of auditory injury and/or tissue damage (the latter from 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 a five 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 authorized, the required mitigation and monitoring measures are expected to minimize the likelihood that ship strike or these high level explosive exposures (and the associated serious injury or mortality) actually occur.

Generally speaking, for acoustic impacts 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 taken by Level B harassment (in this case, as defined in the military readiness definition of Level B harassment 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 or event; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) the number of days of activities or events. Below, we describe these components in more detail and present the take estimate.

Acoustic Thresholds

Using the best available science, NMFS, in coordination with the Navy, has established acoustic thresholds that identify the most appropriate received level of underwater sound above which marine mammals exposed to these sound sources could be reasonably expected to experience a disruption in behavior 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 non-auditory injury from exposure to pressure waves from explosive detonation.

Despite the quickly evolving science, there are still challenges in quantifying expected behavioral responses that qualify as Level B harassment, especially where the goal is to use one or two predictable indicators (*e.g.,* received level and distance) to predict responses that are also driven by additional factors that cannot be easily incorporated into the thresholds (*e.g.,* context). So, while the new Level B behavioral harassment thresholds have been refined here to better consider the best available science (*e.g.,* incorporating both received level and distance), they also still, accordingly, have some built-in conservative factors to address the challenge noted. For example, while duration of observed responses in the data are now considered in the thresholds, some of the responses that are informing take thresholds are of a very short duration, such that it is possible some of these responses might not always rise to the level of disrupting behavior patterns to a point where they are abandoned or significantly altered. We describe the application of this Level B behavioral harassment threshold as identifying the maximum number of instances in which marine mammals could be reasonably expected to experience a disruption in behavior patterns to a point where they are abandoned or significantly altered. In summary, we believe these Level B behavioral harassment thresholds are the most appropriate method for predicting Level B behavioral harassment given the best available science and the associated uncertainty.

Hearing Impairment (TTS/PTS and Tissues Damage and Mortality)

Non-Impulsive and Impulsive

NMFS' Acoustic Technical Guidance (NMFS, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The Acoustic Technical Guidance also identifies criteria to predict TTS, which is not considered injury and falls into the Level B harassment category. The Navy's planned activity includes the use of non-impulsive (sonar, vibratory pile driving/removal) and impulsive (explosives, airguns, 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. The references, analysis, and methodology used in the development of the thresholds are described in Acoustic Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance*.

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
Otarid 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	Onset TTS	Onset PTS	Mean onset slight GI tract injury	Mean onset slight lung injury	Mean onset mortality
Low-frequency cetaceans	All mysticetes	168 dB SEL (weighted) or 213 dB Peak SPL.	183 dB SEL (weighted) or 219 dB Peak SPL.	237 dB Peak SPL.	Equation 1	Equation 2.

TABLE 15—ONSET OF TTS, PTS, TISSUE DAMAGE, AND MORTALITY THRESHOLDS FOR MARINE MAMMALS FOR EXPLOSIVES AND OTHER IMPULSIVE SOURCES—Continued

Functional hearing group	Species	Onset TTS	Onset PTS	Mean onset slight GI tract injury	Mean onset slight lung injury	Mean onset mortality
Mid-frequency cetaceans	Most delphinids, medium and large toothed whales.	170 dB SEL (weighted) or 224 dB Peak SPL.	185 dB SEL (weighted) or 230 dB Peak SPL.	237 dB Peak SPL.		
High-frequency cetaceans	Porpoises and *Kogia spp*	140 dB SEL (weighted) or 196 dB Peak SPL.	155 dB SEL (weighted) or 202 dB Peak SPL.	237 dB Peak SPL.		
Phocidae	Harbor seal, Hawaiian monk seal, Northern elephant seal.	170 dB SEL (weighted) or 212 dB Peak SPL.	185 dB SEL (weighted) or 218 dB Peak SPL.	237 dB Peak SPL.		
Otariidae	California sea lion, Guadalupe fur seal, Northern fur seal.	188 dB SEL (weighted) or 226 dB Peak SPL.	203 dB SEL (weighted) 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 Chapter 6 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 Chapter 6, 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 proposed rule under *Potential Effects of Specified Activities on Marine Mammals and Their Habitat* section—*Acoustically Mediated Bubble Growth and other Pressure-related Injury* and is therefore not considered further in this analysis.

Behavioral Harassment

Though significantly driven by received level, the onset of Level B harassment by 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 (Ellison *et al.,* 2011; Southall *et al.,* 2007). Based on what the available science indicates and the practical need to use thresholds based on a factor, or factors, that are both predictable and measurable for most activities, NMFS uses generalized acoustic thresholds based primarily on received level (and distance in some cases) to estimate the onset of Level B behavioral harassment.

Air Guns and Pile Driving

For air guns and pile driving, NMFS predicts that marine mammals are likely to be taken by Level B behavioral 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 Level B behavioral harassment from air guns, the existing NMFS Level B harassment threshold of 160 dB re 1 μPa (rms) is used. The rms 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 Level B behavioral harassment from impact and vibratory pile driving (Table 16).

TABLE 16—PILE DRIVING LEVEL B HARASSMENT THRESHOLDS USED IN THIS ANALYSIS TO PREDICT BEHAVIORAL RESPONSES FROM MARINE MAMMALS

Pile driving criteria (SPL, dB re 1 μPa)	Level B harassment 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 above, the Navy coordinated with NMFS to propose Level B 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 Level B harassment 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 has carefully reviewed the Navy's Level B behavioral thresholds and establishment of cutoff distances for the species, and agrees that it is the best available science and is the appropriate method to use at this time for determining impacts to marine mammals from sonar and other transducers and for calculating take and to support the determinations made in the final rule.

As noted above, marine mammal responses to sound (some of which are considered disturbances that rise to the level of a take) are highly variable and context specific, *i.e.,* they are 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. This means that there is support for considering alternative approaches for estimating Level B behavioral harassment. Although the statutory definition of Level B harassment for military readiness activities means that a natural behavior pattern of a marine mammal is significantly altered or abandoned, the current state of science for determining those thresholds is somewhat unsettled.

In its analysis of impacts associated with sonar acoustic sources (which was coordinated with NMFS), the Navy used an updated conservative approach that likely overestimates the number of takes by Level B harassment due to behavioral disturbance and response. Many of the behavioral responses identified using the Navy's quantitative analysis are most likely to be of moderate severity as described in the Southall *et al.* (2007) behavioral response severity scale. These ''moderate'' severity responses were considered significant if they were sustained for the duration of the exposure or longer. Within the Navy's quantitative analysis, many reactions are predicted from exposure to sound that may exceed an animal's Level B behavioral harassment threshold for only a single exposure (a few seconds) to several minutes, and it is likely that some of the resulting estimated behavioral responses that are counted as Level B harassment would not constitute ''significantly altering or abandoning natural behavioral patterns.'' The Navy and NMFS have used the best available science to address the challenging differentiation between significant and non-significant behavioral reactions (*i.e.,* whether the behavior has been abandoned or significantly altered such that it qualifies as harassment), but have erred on the cautious side where uncertainty exists (*e.g.,* counting these lower duration reactions as take), which likely results in some degree of overestimation of Level B behavioral harassment. We consider application of this Level B behavioral harassment threshold, therefore, as identifying the maximum number of instances in which marine mammals could be reasonably expected to experience a disruption in behavior patterns to a point where they are abandoned or significantly altered (*i.e.,* Level B harassment). Because this is the most appropriate method for estimating Level B harassment given the best available science and uncertainty on the topic, it is these numbers of Level B harassment by behavioral disturbance that are analyzed in the *Analysis and Negligible Impact Determination* section and are being authorized.

In the Navy's acoustic impact analyses during Phase II, the likelihood of Level B behavioral harassment in response 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 (at the level of a Level B harassment) to the received SPL. The BRF was used to estimate the percentage of an exposed population that is likely to exhibit Level B harassment due to 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, a step function at an SPL of 140 dB re 1 μPa was used for beaked whales as the threshold to predict Level B harassment by behavioral disturbance. Of note, a separate step function at an SPL of 120 dB re 1 μPa was used for harbor porpoises in the 2013–2018 rule, but there are no harbor porpoises in the HSTT Study Area (and Dall's porpoises do not have the same behavioral sensitivities), so harbor porpoises are not discussed further.

Developing the new Level B behavioral harassment criteria for Phase III involved multiple steps: All available behavioral response studies conducted both in the field and on captive animals were examined to understand the breadth of behavioral responses of marine mammals to sonar and other transducers. Six behavioral response field studies with observations of 14 different marine mammal species reactions to sonar or sonar-like signals and 6 captive animal behavioral studies with observations of 8 different species reactions to sonar or sonar-like signals were used to provide a robust data set for the derivation of the Navy's Phase III marine mammal behavioral response criteria. All behavioral response research that has been published since the derivation of the Navy's Phase III criteria (c.a. December 2016) has been examined and is consistent with the current behavioral response functions. 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 17 below). This was determined by examining all available published field observations of behavioral reactions to sonar or sonar-like signals that included the distance between the sound source and the marine mammal. The longest distance, rounded up to the nearest 5-km increment, was chosen as the cutoff distance for each behavioral criteria group (*i.e.,* odontocetes, mysticetes, pinnipeds, and beaked whales). For animals within the cutoff distance, a behavioral response function based on a received SPL as presented in Chapter 3, 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 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 (however, we note that helicopter dipping sonars were considered in the intense sound source group, despite lower source levels, because of data indicating that marine mammals are sometimes more responsive to the less predictable employment of this source). There are currently few behavioral observations under these circumstances; therefore, the Navy conservatively predicted significant behavioral responses that would rise to Level B harassment 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 SIL/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

Note: dB re 1 μPa @1 m: Decibels referenced to 1 micropascal at 1 meter; km: Kilometer; SL: Source level.

The range to received sound levels in 6-dB steps from five representative sonar bins and the percentage of animals that may be taken by Level B harassment under each behavioral response function (or step function in the case of the harbor porpoise) are shown in Table 18 through Table 22. 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 Chapter 6, Section 6.4.2.1.1 (Methods for Analyzing Impacts from Sonars and Other Transducers) of the Navy's rulemaking/LOA application for further details on the derivation and use of the behavioral response functions, thresholds, and the cutoff distances to identify takes by Level B harassment, which were coordinated with NMFS. Table 18 illustrates the maximum likely percentage of exposed individuals taken at the indicated received level and associated range (in which marine mammals would be reasonably expected to experience a disruption in behavior patterns to a point where they are abandoned or significantly altered) for LFAS. As noted previously, NMFS carefully reviewed, and contributed to, the Navy's proposed level B behavioral harassment thresholds and cutoff distances for the species, and agrees that these methods represent the best available science at this time for determining impacts to marine mammals from sonar and other transducers.

Table 18. Ranges to estimated Level B behavioral harassment takes 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 Level B Behavioral Harassment for Sonar Bin LF5*			
		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 identify the maximum likely percentage of exposed individuals taken at the indicated received level and associated range for MFAS.

Table 19. Ranges to estimated Level B behavioral harassment takes 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 Level B Behavioral Harassment 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 estimated Level B behavioral harassment takes 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 Level B Behavioral Harassment 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 estimated Level B behavioral harassment takes 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 Level B Behavioral Harassment 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. Ranges to an estimated Level B behavioral harassment takes 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 Level B Behavioral Harassment 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.

Table 22 identifies the maximum likely percentage of exposed individuals taken at the indicated received level and associated range for HFAS.

Explosives

Phase III explosive criteria for Level B behavioral harassment 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. NMFS continues to concur that this approach represents the best available science for determining impacts to marine mammals from explosives.

TABLE 23—PHASE III LEVEL B BEHAVIORAL HARASSMENT 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 μPa^{2}s underwater. PW—pinnipeds underwater, OW—otariids 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 and each dosimeter 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, 2018).

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. 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, 2018) 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 ELCAS (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 Chapter 1, 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 in not only predicting acoustic impacts, but also in verifying the accuracy of model results against real-world situations and determining adequate mitigation ranges to avoid higher level effects, especially physiological effects to marine mammals.

Sonar

The range to received sound levels in 6–dB steps from five representative sonar bins and the percentage of the total number of animals that may exhibit a significant behavioral response (and therefore Level B harassment) under each behavioral response function (or step function in the case of the harbor porpoise) are shown in Table 17 through Table 21 above, respectively. See Chapter 6, Section 6.4.2.1 (Methods for Analyzing Impacts from Sonars 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 that are used to identify Level B behavioral harassment.

The ranges to 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)
Phocidae	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 five representative sonar systems (see Table 25 through Table 29).

TABLE 25—RANGES TO TEMPORARY THRESHOLD SHIFT (METERS) 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)
Phocidae	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 (METERS) 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)
Phocidae	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)

TABLE 27—RANGES TO TEMPORARY THRESHOLD SHIFT (METERS) FOR SONAR BIN MF4 OVER A REPRESENTATIVE RANGE OF ENVIRONMENTS WITHIN THE HSTT STUDY AREA—Continued

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
Phocidae	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)
Phocidae	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)
Phocidae	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, Section 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, Section 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 34). Ranges are determined by modeling the distance that noise from an explosion would need to propagate to reach exposure level thresholds specific to a hearing group that would cause behavioral response (to the degree of Level B behavioral harassment), TTS, PTS, and non-auditory injury. Ranges are provided for a representative source depth and cluster size for each bin. For events with multiple explosions, sound from successive explosions can be expected to accumulate and increase the range to the onset of an impact based on SEL thresholds. Ranges to non-auditory injury and mortality are shown in Tables 35 and 36, respectively. Range to effects is important information in not only predicting impacts from explosives, but also in verifying the accuracy of model results against real-world situations and determining adequate mitigation ranges to avoid higher level effects, especially physiological effects to marine mammals. For additional information on how ranges to impacts from

explosions were estimated, see the technical report *Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing* (U.S. Navy, 2018).

Table 30 shows the minimum, average, and maximum ranges to onset of auditory and likely behavioral effects that rise to the level of Level B harassment for high-frequency cetaceans based on the developed thresholds.

TABLE 30—SEL-BASED RANGES (METERS) TO ONSET PTS, ONSET TTS, AND LEVEL B BEHAVIORAL HARASSMENT 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 likely behavioral effects that rise to the level of Level B harassment for mid-frequency cetaceans based on the developed thresholds.

TABLE 31—SEL-BASED RANGES (METERS) TO ONSET PTS, ONSET TTS, AND LEVEL B BEHAVIORAL HARASSMENT 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)
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)

TABLE 31—SEL-BASED RANGES (METERS) TO ONSET PTS, ONSET TTS, AND LEVEL B BEHAVIORAL HARASSMENT FOR MID-FREQUENCY CETACEANS—Continued

Range to effects for explosives: Mid-frequency cetacean [1]					
Bin	Source depth (m)	Cluster size	PTS	TTS	Behavioral
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 likely behavioral effects that rise to the level of Level B harassment for low-frequency cetaceans based on the developed thresholds.

TABLE 32—SEL-BASED RANGES (METERS) TO ONSET PTS, ONSET TTS, AND LEVEL B BEHAVIORAL HARASSMENT 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 likely behavioral effects that rise to the level of Level B harassment for phocids based on the developed thresholds.

TABLE 33—SEL-BASED RANGES (METERS) TO ONSET PTS, ONSET TTS, AND LEVEL B BEHAVIORAL HARASSMENT 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 likely behavioral effects that rise to the level of Level B harassment for ottariids based on the developed thresholds.

TABLE 34—SEL-BASED RANGES (METERS) TO ONSET PTS, ONSET TTS, AND LEVEL B BEHAVIORAL HARASSMENT FOR OTARIIDS

Range to effects for explosives: Otariids [1]					
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)

TABLE 34—SEL-BASED RANGES (METERS) TO ONSET PTS, ONSET TTS, AND LEVEL B BEHAVIORAL HARASSMENT FOR OTARIIDS—Continued

Range to effects for explosives: Otariids [1]					
Bin	Source depth (m)	Cluster size	PTS	TTS	Behavioral
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)
	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 shows 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). Ranges to gastrointestinal tract injury typically exceed ranges to slight lung injury; therefore, the maximum range to effect is not mass-dependent. Animals within these water volumes would be expected to receive minor injuries at the outer ranges, increasing to more substantial injuries, and finally mortality as an animal approaches the detonation point.

TABLE 35—RANGES [1] TO 50 PERCENT NON-AUDITORY INJURY RISK FOR ALL MARINE MAMMAL HEARING GROUPS

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 likely behavioral responses that rise to the level of a take 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/or Level B behavioral harassment.

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)
Phocidae	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)
Phocidae	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/or Level B behavioral harassment that rise to the level of a take 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
Phocidae	19	151	870
Otariidae	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
Phocidae	0	2	376
Otariidae	0	0	376

Note: PTS: permanent threshold shift; TTS: temporary threshold shift.

Marine Mammal Density

A quantitative analysis of impacts on a species or stock 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 is estimated using line-transect surveys or mark-recapture studies (*e.g.,* Barlow, 2010; Barlow and Forney, 2007; Calambokidis *et al.,* 2008). The result provides one single density estimate value for each species across broad geographic areas. This is the general approach applied in estimating cetacean abundance in the NMFS' SARs. Although the single value provides a good average estimate of abundance (total number of individuals) for a specified area, it does not provide information on the species distribution or concentrations within that area, and it does not estimate density for other timeframes or seasons that were not surveyed. More recently, spatial habitat modeling developed by NMFS' Southwest Fisheries Science Center has been used to estimate cetacean densities (Barlow *et al.,* 2009; Becker *et al.,* 2010, 2012a, b, c, 2014, 2016; Ferguson *et al.,* 2006a; 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 HSTT 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 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 e*t 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; therefore, this model cannot be used for species with low numbers of sightings.

2. Stratified design-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' SARS in some cases for a variety of reasons. Models may predict different population abundances for many reasons, including being based on different data sets, different areas, or different time periods. 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. For

example, the SAR encompasses the U.S. EEZ, while the HSTT Study area overlaps only part of the U.S. EEZ (specifically, the Pacific SAR overlaps only 35 percent of the Hawaii part of the HSTT Study Area and only about 14 percent of SOCAL), but alternately extends out significantly beyond it to the West. 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 fully understood before drawing conclusions.

The global population structure of humpbacks, with 14 DPSs all associated with multiple feeding areas at which individuals from multiple DPSs convene, is another reason that SAR abundance estimates can differ from other estimates and be somewhat confusing—the same individuals are addressed in multiple SARs. 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 because 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 approach for density appropriately utilizes the best available science. Later, in the *Analysis and 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 FEIS/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 three stressors below could result in the incidental taking of marine mammals. NMFS has reviewed the Navy's data and analysis and determined that it is complete and accurate and agrees that the following stressors have the potential to result in takes of marine mammals from the Navy's planned 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).

NMFS reviewed, and agrees with, the Navy's conclusion that acoustic and explosive sources have the potential to result in incidental takes of marine mammals by harassment, serious injury, or mortality. NMFS carefully reviewed the Navy's analysis and conducted its own analysis of vessel strikes, determining that the likelihood of any particular species of large whale being struck is quite low. Nonetheless, NMFS agrees that vessel strikes have the potential to result in incidental take from serious injury or mortality for certain species of large whales and the Navy has specifically requested coverage for these species. Therefore, the likelihood of vessel strikes, and later the effects of the incidental take that is being authorized, has been fully analyzed and is described below.

The quantitative analysis process used for the HSTT FEIS/OEIS and the Navy's take 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, 2018). 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 extent to which the mitigation areas reduce impacts on the affected species and stocks is addressed separately in the *Analysis and Negligible Impact Determination* section.

The Navy assessed the effectiveness of its procedural 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 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 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 procedural mitigation.

Equation 1:

$$\text{Mitigation Effectiveness} = \text{Species Sightability} \times \text{Visibility} \times \text{Observation Area} \times \text{Positive Control}$$

Species Sightability is the ability to detect marine mammals and 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 the standard ''detection probability'' referred to as g(0) is most appropriate. 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, 2018).

To quantify the number of marine mammals predicted to be sighted by Lookouts during implementation of procedural 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. To quantify the number of marine mammals predicted to be sighted by Lookouts during implementation of procedural 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 predicted to be sighted by Lookouts during implementation of procedural 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 procedural mitigation on acoustic and explosive exposures and takes, and NMFS independently reviewed and concurs with the Navy that it is appropriate to incorporate the quantitative assessment of mitigation 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, 2018) and Chapter 6 (Take Estimates for Marine Mammals) and Chapter 11 (Mitigation Measures) of the Navy's rulemaking/LOA application.

In summary, we believe the Navy's methods, including the method for incorporating mitigation and avoidance, are the most appropriate methods for predicting PTS and TTS. But even with the consideration of mitigation and avoidance, given some of the more conservative components of the methodology (*e.g.,* the thresholds do not consider ear recovery between pulses), we would describe the application of these methods as identifying the maximum number of instances in which marine mammals would be reasonably expected to incur either TTS or PTS.

Summary of Requested Take From Training and Testing Activities

As a general matter, NMFS does not prescribe the methods for estimating take for any applicant, but we review and ensure that applicants use the best available science, and methodologies that are logical and technically sound. Applicants may use different methods of calculating take (especially when using models) and still get to a result that is representative of the best available science and that allows for a rigorous and accurate evaluation of the effects on the affected populations. There are multiple pieces of the Navy take estimation methods—propagation models, animat animal movement models, and behavioral thresholds, for example. NMFS evaluates the acceptability of these pieces as they evolve and are used in different rules and impact analyses. Some of the pieces of the Navy's take estimation process have been used in their rules since 2009 and undergone multiple public comment processes, all of them have undergone extensive internal Navy review, and all of them have undergone comprehensive review by NMFS, which has sometimes resulted in modifications to methods or models.

The Navy uses rigorous review processes (verification, validation, and accreditation processes, peer and public review) to ensure the data and methodology it uses represent the best available science. For instance, the NAEMO (animal movement) model is the result of a NMFS-led Center for Independent Experts (CIE) review of the components used in earlier models. The acoustic propagation component of the NAEMO model (CASS/GRAB) is accredited by the Oceanographic and Atmospheric Master Library (OAML), and many of the environmental variables used in the NAEMO model come from approved OAML databases and are based on in-situ data collection. The animal density components of the NAEMO model are base products of the Navy Marine Species Density Database, which includes animal density components that have been validated and reviewed by a variety of scientists from NMFS Science Centers and academic institutions. Several components of the model, for example the Duke University habitat-based density models, have been published in peer reviewed literature. Others like AMAPPS, which was conducted by NMFS Science Centers, have undergone quality assurance and quality control (QA/QC) processes. Finally the NAEMO model simulation components underwent QA/QC review and validation for model parts such as the scenario builder, acoustic builder, scenario simulator, etc., conducted by qualified statisticians and modelers to ensure accuracy. Other models and methodologies have gone through similar review processes.

Based on the methods discussed in the previous sections and the Navy's model and the quantitative assessment of mitigation, the Navy provided its 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 determined that it is complete and accurate and that the takes by harassment as well as the takes by serious injury or mortality from explosives requested for authorization are reasonably expected to occur and that the takes by serious injury or mortality could occur as a result 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.

Authorized Take From Training Activities

For training activities, Table 41 summarizes the Navy's take request and the maximum amount and type of Level A and Level B harassment that NMFS concurs is reasonably likely to occur by species or stock. Authorized mortality is addressed further below. Navy Figures 6–12 through 6–50 in Chapter 6 of the Navy's rulemaking/LOA application illustrate the comparative amounts of TTS and Level B behavioral harassment for each species, noting that if a ''taken'' animat was exposed to both TTS and Level B behavioral harassment, it was recorded as a TTS.

TABLE 41—SPECIES AND STOCK-SPECIFIC TAKE FROM ACOUSTIC AND EXPLOSIVE EFFECTS FOR ALL TRAINING ACTIVITIES IN THE HSTT STUDY AREA

Species	Stock	Annual		5-Year total **	
		Level B harassment	Level A harassment	Level B harassment	Level A harassment
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
	Hawaii †	105	0	429	0
Fin whale *	CA/OR/WA	1,245	0	5,482	0
	Hawaii	33	0	133	0
Humpback whale †	CA/OR/WA †	1,254	1	5,645	3
	Central North Pacific	5,604	1	23,654	6
Minke whale	CA/OR/WA	649	1	2,920	4
	Hawaii	3,463	1	13,664	2
Sei whale *	Eastern North Pacific	53	0	236	0
	Hawaii	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 *	CA/OR/WA	1,397	0	6,257	0
	Hawaii	1,714	0	7,078	0
Family Kogiidae (sperm whales)					
Dwarf sperm whale	Hawaii	13,961	35	57,571	148
Pygmy sperm whale	Hawaii	5,556	16	22,833	64
Kogia whales	CA/OR/WA	6,012	23	27,366	105
Family Ziphiidae (beaked whales)					
Baird's beaked whale	CA/OR/WA	1,317	0	6,044	0
Blainville's beaked whale	Hawaii	3,687	0	16,364	0
Cuvier's beaked whale	CA/OR/WA	7,016	0	33,494	0
	Hawaii	1,235	0	5,497	0
Longman's beaked whale	Hawaii	13,010	0	57,172	0
Mesoplodon spp	CA/OR/WA	3,778	0	18,036	0
Family Delphinidae (dolphins)					
Bottlenose dolphin	California Coastal	214	0	876	0
	CA/OR/WA Offshore	31,986	2	142,966	9
	Hawaii Pelagic	2,086	0	9,055	0
	Kauai & Niihau	74	0	356	0
	Oahu	8,186	1	40,918	7
	4-Island	152	0	750	0
	Hawaii Island	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	Hawaii	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
	Hawaii	84	0	352	0

TABLE 41—SPECIES AND STOCK-SPECIFIC TAKE FROM ACOUSTIC AND EXPLOSIVE EFFECTS FOR ALL TRAINING ACTIVITIES IN THE HSTT STUDY AREA—Continued

Species	Stock	Annual		5-Year total **	
		Level B harassment	Level A harassment	Level B harassment	Level A harassment
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	CA/OR/WA	56,820	8	253,068	40
Pacific white-sided dolphin	CA/OR/WA	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	Hawaii	5,816	0	24,428	0
	Tropical	471	0	2,105	0
Risso's dolphin	CA/OR/WA	76,276	6	338,560	30
	Hawaii	6,590	0	28,143	0
Rough-toothed dolphin	Hawaii	4,292	0	18,506	0
	NSD [1]	0	0	0	0
Short-beaked common dolphin	CA/OR/WA	932,453	45	4,161,283	216
Short-finned pilot whale	CA/OR/WA	990	1	4,492	5
	Hawaii	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	CA/OR/WA	119,219	1	550,936	3
	Hawaii	5,388	0	22,526	0
Family Phocoenidae (porpoises)					
Dall's porpoise	CA/OR/WA	27,282	137	121,256	634
Suborder Pinnipedia					
Family Otariidae (eared seals)					
California sea lion	U.S	69,543	90	327,136	447
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
Hawaiian monk seal *	Hawaii	139	1	662	3
Northern elephant seal	California	38,169	72	170,926	349

Note: Kogia: Pygmy and dwarf sperm whales are difficult to distinguish between at sea, and abundance estimates are only available for Kogia spp (reported in Barlow 2016 and Carretta et al. 2017). Due to low estimated abundances of CA/OR/WA dwarf sperm whales, the majority of Kogia in the HSTT Study Area are anticipated to be CA/OR/WA pygmy sperm whales.

Mesoplodon: No methods are available to distinguish between the six species of Mesoplodon beaked whales in the CA/OR/WA stocks (Blainville's beaked whale (M. densirostris), Perrin's beaked whale (M. perrini), Lesser beaked whale (M. peruvianus), Stejneger's beaked whale (M. stejnegeri), Gingko-toothed beaked whale (M. gingkodens), and Hubbs' beaked whale (M. carlhubbsi)) when observed during at-sea surveys (Carretta et al., 2018). These six species are managed as one unit.

* 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.

Authorized Take From Testing Activities

For testing activities, Table 42 summarizes the Navy's take request and the maximum amount and type of take by Level A and Level B harassment that NMFS concurs is reasonably likely to occur and has authorized by species or stock. Navy Figures 6–12 through 6–50 in Chapter 6 of the Navy's rulemaking/LOA application illustrate the comparative amounts of TTS and Level B behavioral harassment for each species, noting that if a ''taken'' animat was exposed to both TTS and Level B behavioral harassment in the model, it was recorded as a TTS.

TABLE 42—SPECIES AND STOCK-SPECIFIC TAKE FROM ACOUSTIC AND EXPLOSIVE SOUND SOURCE EFFECTS FOR ALL TESTING ACTIVITIES IN THE HSTT STUDY AREA

Species	Stock	Annual		5-year total **	
		Level B harassment	Level A harassment	Level B harassment	Level A harassment
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
	Hawaii †	41	0	194	0
Fin whale *	CA/OR/WA	980	1	4,695	3
	Hawaii	15	0	74	0
Humpback whale †	CA/OR/WA †	740	0	3,508	0
	Central North Pacific	3,522	2	16,777	11
Minke whale	CA/OR/WA	276	0	1,309	0
	Hawaii	1,467	1	6,918	4
Sei whale *	Eastern North Pacific	26	0	124	0
	Hawaii	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 *	CA/OR/WA	1,096	0	5,259	0
	Hawaii	782	0	3,731	0
Family Kogiidae (sperm whales)					
Dwarf sperm whale	Hawaii	6,459	29	30,607	140
Pygmy sperm whale	Hawaii	2,595	13	12,270	60
Kogia whales	CA/OR/WA	3,120	15	14,643	67
Family Ziphiidae (beaked whales)					
Baird's beaked whale	CA/OR/WA	727	0	3,418	0
Blainville's beaked whale	Hawaii	1,698	0	8,117	0
Cuvier's beaked whale	CA/OR/WA	4,484	1	21,379	20
	Hawaii	561	0	2,675	0
Longman's beaked whale	Hawaii	6,223	0	29,746	0
Mesoplodon spp	CA/OR/WA	2,415	1	11,512	11
Family Delphinidae (dolphins)					
Bottlenose dolphin	California Coastal	1,595	0	7,968	0
	CA/OR/WA Offshore	23,436	1	112,410	4
	Hawaii 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 Island	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	Hawaii	12,664	1	60,345	6
Killer whale	Eastern North Pacific Offshore	34	0	166	0
	Eastern North Pacific Transient/ West Coast Transient.	64	0	309	0
	Hawaii	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	CA/OR/WA	41,279	3	198,917	15
Pacific white-sided dolphin	CA/OR/WA	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

TABLE 42—SPECIES AND STOCK-SPECIFIC TAKE FROM ACOUSTIC AND EXPLOSIVE SOUND SOURCE EFFECTS FOR ALL TESTING ACTIVITIES IN THE HSTT STUDY AREA—Continued

Species	Stock	Annual		5-year total **	
		Level B harassment	Level A harassment	Level B harassment	Level A harassment
	4-Island	458	0	1,734	0
Pygmy killer whale	Hawaii	2,708	0	13,008	0
	Tropical	289	0	1,351	0
Risso's dolphin	CA/OR/WA	49,985	3	240,646	16
	Hawaii	2,808	0	13,495	0
Rough-toothed dolphin	Hawaii	2,193	0	10,532	0
	NSD [1]	0	0	0	0
Short-beaked common dolphin	CA/OR/WA	560,120	44	2,673,431	216
Short-finned pilot whale	CA/OR/WA	923	0	4,440	0
	Hawaii	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	CA/OR/WA	56,035	2	262,973	11
	Hawaiian	2,396	0	11,546	0
Family Phocoenidae (porpoises)					
Dall's porpoise	CA/OR/WA	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	7
Hawaiian monk seal *	Hawaii	66	0	254	0
Northern elephant seal	California	22,702	27	107,343	131

Note: Kogia: Pygmy and dwarf sperm whales are difficult to distinguish between at sea, and abundance estimates are only available for Kogia spp (reported in Barlow 2016 and Carretta et al. 2017). Due to low estimated abundances of CA/OR/WA dwarf sperm whales, the majority of Kogia in the HSTT Study Area are anticipated to be CA/OR/WA pygmy sperm whales.

Mesoplodon: No methods are available to distinguish between the six species of Mesoplodon beaked whales in the CA/OR/WA stocks (Blainville's beaked whale (M. densirostris), Perrin's beaked whale (M. perrini), Lesser beaked whale (M. peruvianus), Stejneger's beaked whale (M. stejnegeri), Gingko-toothed beaked whale (M. gingkodens), and Hubbs' beaked whale (M. carlhubbsi)) when observed during at-sea surveys (Carretta et al., 2018). These six species are managed as one unit.

* 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

Vessel strikes from commercial, recreational, and military vessels are known to affect large whales and have resulted in serious injury and occasional fatalities to cetaceans (Berman-Kowalewski *et al.,* 2010; Calambokidis, 2012; Douglas *et al.,* 2008; Laggner 2009; Lammers *et al.,* 2003). Records of collisions date back to the early 17th century, and the worldwide number of collisions appears to have increased steadily during recent decades (Laist *et al.,* 2001; Ritter 2012).

Numerous studies of interactions between surface vessels and marine mammals have demonstrated that free-ranging marine mammals often, but not always (*e.g.,* McKenna *et al.,* 2015), engage in avoidance behavior when surface vessels move toward them. It is not clear whether these responses are caused by the physical presence of a surface vessel, the underwater noise generated by the vessel, or an interaction between the two (Amaral and Carlson, 2005; Au and Green, 2000; Bain *et al.,* 2006; Bauer, 1986; Bejder *et al.,* 1999; Bejder and Lusseau, 2008; Bejder *et al.,* 2009; Bryant *et al.,* 1984; Corkeron, 1995; Erbe, 2002; Félix, 2001; Goodwin and Cotton, 2004; Lemon *et al.,* 2006; Lusseau, 2003; Lusseau, 2006; Magalhaes *et al.,* 2002; Nowacek *et al.,* 2001; Richter *et al.,* 2003; Scheidat *et al.,* 2004; Simmonds, 2005; Watkins, 1986; Williams *et al.,* 2002; Wursig *et al.,* 1998). Several authors suggest that the noise generated during motion is probably an important factor (Blane and Jaakson, 1994; Evans *et al.,* 1992; Evans *et al.,* 1994). Water disturbance may also be a factor. These studies suggest that the behavioral responses of marine mammals to surface vessels are similar to their behavioral responses to predators. Avoidance behavior is expected to be even stronger in the subset of instances that the Navy is

conducting training or testing activities using active sonar or explosives.

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.,* sperm whales). 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.

Some researchers have suggested the relative risk of a vessel strike can be assessed as a function of animal density and the magnitude of vessel traffic (*e.g.,* Fonnesbeck *et al.,* 2008; Vanderlaan *et al.,* 2008). Differences among vessel types also influence the probability of a vessel strike. The ability of any ship to detect a marine mammal and avoid a collision depends on a variety of factors, including environmental conditions, ship design, size, speed, and ability and number of personnel observing, as well as the behavior of the animal. Vessel speed, size, and mass are all important factors in determining if injury or death of a marine mammal is likely due to a vessel strike. For large vessels, speed and angle of approach can influence the severity of a strike. For example, Vanderlaan and Taggart (2007) found that between vessel speeds of 8.6 and 15 knots, the probability that a vessel strike is lethal increases from 0.21 to 0.79. Large whales also do not have to be at the water's surface to be struck. Silber *et al.* (2010) found when a whale is below the surface (about one to two times the vessel draft), there is likely to be a pronounced propeller suction effect. This suction effect may draw the whale into the hull of the ship, increasing the probability of propeller strikes.

There are some key differences between the operation of military and non-military vessels, which make the likelihood of a military vessel striking a whale lower than some other vessels (*e.g.,* commercial merchant vessels). Key differences include:

- Many military ships have their bridges positioned closer to the bow, offering better visibility ahead of the ship (compared to a commercial merchant vessel).
- There are often aircraft associated with the training or testing activity (which can serve as Lookouts), which can more readily detect cetaceans in the vicinity of a vessel or ahead of a vessel's present course before crew on the vessel would be able to detect them.
- Military ships are generally more maneuverable than commercial merchant vessels, and if cetaceans are spotted in the path of the ship, could be capable of changing course more quickly.
- The crew size on military vessels is generally larger than merchant ships, allowing for stationing more trained Lookouts on the bridge. At all times when vessels are underway, trained Lookouts and bridge navigation teams are used to detect objects on the surface of the water ahead of the ship, including cetaceans. Additional Lookouts, beyond those already stationed on the bridge and on navigation teams, are positioned as Lookouts during some training events.
- When submerged, submarines are generally slow moving (to avoid detection) and therefore marine mammals at depth with a submarine are likely able to avoid collision with the submarine. When a submarine is transiting on the surface, there are Lookouts serving the same function as they do on surface ships.

Vessel strike to marine mammals is not associated with any specific training or testing activity but is rather an extremely limited and sporadic, but possible, accidental result of Navy vessel movement within the HSTT Study Area or while in transit.

There have been two recorded Navy vessel strikes of large whales in the HSTT Study Area from 2009 through 2018, the period in which Navy began implementing effective mitigation measures to reduce the likelihood of vessel strikes. Both strikes occured in 2009 and both were to fin whales. In order to account for the accidental nature of vessel strikes to large whales in general, and the potential risk from any vessel movement within the HSTT Study Area within the five-year period in particular, the Navy requested incidental takes based on probabilities derived from a Poisson distribution using ship strike data between 2009–2016 in the HSTT Study Area (the time period from when current mitigations were instituted until the Navy conducted the analysis for the EIS/OEIS and rulemaking/LOA application; no new strikes have occurred since), as well as historical at-sea days in the HSTT Study Area from 2009–2016 and estimated potential at-sea days for the period from 2018 to 2023 covered by the requested regulations. This distribution predicted the probabilities of a specific number of strikes (n=0, 1, 2, etc.) over the period from 2018 to 2023. The analysis is described in detail in Chapter 6 of the Navy's rulemaking/LOA application (and further refined in the Navy's revised ship strike analysis posted on NMFS' website *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities*).

For the same reasons listed above describing why a Navy vessel strike is comparatively unlikely, it is highly unlikely that a Navy vessel would strike a whale, dolphin, porpoise, or pinniped without detecting it and, accordingly, NMFS is confident that the Navy's reported strikes are accurate and appropriate for use in the analysis. Specifically, Navy ships have multiple Lookouts, including on the forward part of the ship that can visually detect a hit animal, in the unlikely event ship personnel do not feel the strike (which has occasionally occurred). Navy's strict internal procedures and mitigation requirements include reporting of any vessel strikes of marine mammals, and the Navy's discipline, extensive training (not only for detecting marine mammals, but for detecting and reporting any potential navigational obstruction), and strict chain of command give NMFS a high level of confidence that all strikes actually get reported.

The Navy used those two fin whale strikes in their calculations to determine the number of strikes likely to result from their activities (although worldwide strike information, from all Navy activities and other strikes, was used to inform the species that may be struck) 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, which will remain in place along with additional mitigation measures during the five years of this rule.

The probability analysis concluded that there was a 29 percent chance that zero whales would be struck by Navy vessels over the five-year period, indicating a 71 percent chance that at least one whale would be struck over the five years and a 10 percent chance of striking three whales over the five-year period. Therefore, the Navy estimates, and NMFS agrees, that there is some probability that the Navy 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.

Small delphinids, porpoises, and pinnipeds are neither expected nor authorized to be struck by Navy vessels. In addition to the reasons listed above that make it unlikely that the Navy will hit a large whale (more maneuverable ships, larger crew, etc.), following are the additional reasons that vessel strike of dolphins, small whales, porpoises, and pinnipeds is considered very unlikely. Dating back more than 20 years and for as long as it has kept records, the Navy has no records of individuals of these groups being struck by a vessel as a result of Navy activities

and, further, their smaller size and maneuverability make a strike unlikely. Also, NMFS has never received any reports from other authorized activities indicating that these species have been struck by vessels. Worldwide ship strike records show little evidence of strikes of these groups from the shipping sector and larger vessels and the majority of the Navy's activities involving faster-moving vessels (that could be considered more likely to hit a marine mammal) are located in offshore areas where smaller delphinid, porpoise, and pinniped densities are lower. Based on this information, NMFS concurs with the Navy's assessment and recognizes the potential for (and is authorizing) incidental take by vessel strike of large whales only (*i.e.,* no dolphins, small whales, porpoises, or pinnipeds) over the course of the five-year regulations from training and testing activities as discussed below.

For large whales, the Navy's application identified the distribution of species over which the take request would apply based on the species/stocks most likely to be present in the HSTT Study Area based on documented abundance and where overlap occurs between a species' distribution and core Navy training and testing areas within the HSTT Study Area. To determine which species may be struck, the Navy used a weight of evidence approach to qualitatively rank range complex specific species using historic and current stranding data from NMFS, relative abundance as derived by NMFS for the HSTT Biological Opinion, and the Navy-funded monitoring data within each range complex. Results of this approach are presented in Table 5–4 of the Navy's rulemaking/LOA application.

Based on the analysis described above and in its application, the Navy estimated that it has the potential to strike, and take by serious injury or mortality, up to three large whales incidental to the specified activity over the course of the five years of the HSTT regulations. The Navy initially requested incidental take authorization for up to two of any the following stocks in the five-year period: gray whale (Eastern North Pacific stock), fin whale (CA/OR/WA stock), humpback whale (CA/OR/WA stock, Mexico DPS), humpback whale (Central North Pacific stock), and sperm whale (Hawaii stock). The Navy also initially requested incidental take authorization for one of any the following species over the five-year period: blue whale (Eastern North Pacific stock), Bryde's whale (Eastern Tropical Pacific stock), Bryde's whale (Hawaii stock), humpback whale (CA/OR/WA stock, Central America DPS), minke whale (CA/OR/WA stock), minke whale (Hawaii stock), sperm whale (CA/OR/WA stock), sei whale (Hawaii stock), and sei whale (Eastern North Pacific stock).

NMFS independently reviewed this analysis and agrees that three ship strikes have at least the potential to occur and, therefore, that the request for mortal takes of three large whales over the five-year period of the rule is reasonable based on the available strike data (two strikes by Navy over approximately 10 years) and the Navy's probability analysis. Based on the reasons described below, however, NMFS does not agree that two mortal takes of humpback whale (CA/OR/WA stock) or sperm whales are likely, or that any strike of the following whale species is remotely likely: Minke whale (CA/OR/WA stock), minke whale (Hawaii stock), sei whale (Hawaii stock), sei whale (Eastern North Pacific stock), Bryde's whale (Eastern Tropical Pacific stock), sperm whale (CA/OR/WA stock) and Bryde's whale (Hawaii stock).

Since the proposed rule was published, NMFS and the Navy re-examined and re-analyzed the available information regarding how many of any given stock could be struck and should be authorized for lethal take. As noted in the proposed rule, the Navy initially considered a weight of evidence approach that considered relative abundance, historical strike data over many years, and the overlap of Navy activities with the stock distribution in their request. Since the proposed rule, NMFS and the Navy further discussed the available information and considered two factors in addition to those considered in the Navy's additional request: (1) The relative likelihood of hitting one stock versus another based on available strike data from all vessel types as denoted in the SARs and (2) whether the Navy has ever definitively struck an individual from a particular stock and, if so, how many times.

To address number (1) above, NMFS compiled information from NMFS' SARs on detected annual rates of large whale serious injury and mortality from vessel collisions. The annual rates of large whale serious injury and mortality from vessel collisions from the SARs help inform the relative susceptibility of large whale species to vessel strike in SOCAL and Hawaii as recorded systematically over the last five years. We summed the annual rates of mortality and serious injury from vessel collisions as reported in the SARs, then divided each species' annual rate by this sum to get the relative likelihood. To estimate the percent likelihood of striking a particular species of large whale, we multiplied the relative likelihood of striking each species by the total probability of striking a whale (*i.e.,* 71 percent, as described by the Navy's probability analysis above). We also calculated the percent likelihood of striking a particular species of large whale twice by squaring the value estimated for the probability of striking a particular species of whale once (*i.e.,* to calculate the probability of an event occurring twice, multiply the probability of the first event by the second). We note that these probabilities vary from year to year as the average annual mortality for a given five-year window changes (and we include the annual averages from 2017 and 2018 SARs in Table 43 to illustrate), however, over the years and through changing SARs, stocks tend to consistently maintain a relatively higher or relatively lower likelihood of being struck.

The probabilities calculated as described above are then considered in combination with the information indicating the species that the Navy has definitively hit in the HSTT Study Area since 1991 (since they started tracking consistently), as well as the information originally considered by the Navy in their application, which includes relative abundance, total recorded strikes, and the overlay of all of this information with the Navy's action area. We note that for all of the mortal take of species specifically denoted in Table 43 below, 19 percent of the individuals struck overall by any vessel type remained unidentified and 36 percent of those struck by the Navy (5 of 14 in the Pacific) remained unidentified. However, given the information on known stocks struck, the analysis below remains appropriate. We also note that Rockwood *et al.* (2017) modeled the likely vessel strike of blue whales, fin whales, and humpback whales on the U.S. West Coast (discussed in more detail in the Serious Injury and Mortality subsection of the *Analysis and Negligible Impact Determination* section), and those numbers help inform the relative likelihood that the Navy will hit those stocks.

For each indicated stock, Table 43 includes the percent likelihood of hitting an individual whale once based on SAR data, total strikes from Navy vessels and from all other vessels, relative abundance, and modeled vessel strikes from Rockwood *et al.* The last column indicates the annual mortality authorized: those stocks with one M/SI take authorized over the five-year period of the rule are shaded lightly, while those with two M/SI takes authorized

over the five-year period of the rule are shaded more darkly.

Table 43. Summary of factors considered in determining the number of individuals in each stock potentially struck by a vessel.

ESA status	Species	Stock	Percent likelihood of hitting individual from stock once		Total Known *Navy* Strikes in HSTT Study Area	Summarized from compilation in Navy application**		Rockwood et al., 2017 modeled vessel strikes***	Annual Author-ized Take
			2017 SAR	2018 SAR		Review of all NMFS' strike data - # of total strikes**	Relative Abundance		
Listed	Blue whale	Central North Pacific	0	-	0	0	0.016	-	-
		Eastern North Pacific	5.8	2	1 in SOCAL	14	0.103	18	0.2
	Fin whale	CA/OR/WA	16.2	15.7	2 in SOCAL	21	0.46	43	0.4
		Hawaii	0	-	0	0	0.027	-	-
	Humpback whale*	CA/OR/WA stock, Mexico	9.9*	20.5*	No	15*	0.041	22	0.2
	Sei whale	Eastern North Pacific	0	2	No	1	0.007	-	-
		Hawaii	0	-	No	0	0.041	-	-
	Gray whale	Western North Pacific	0	0	No	-	0	-	-
	Sperm whale	CA/OR/WA	1.8	2	No	1	0.107	-	-
		Hawaii	0	-	1 in HRC	2	0.487	-	0.2
Not listed	Gray whale	Eastern North Pacific	18	7.8	3 in SOCAL	35	0.25	-	0.4
	Bryde's whale	Eastern Tropical Pacific	0.2	-	No	0	0	-	-
		Hawaii	0	-	No	0	0.048	-	-
	Minke whale	CA/OR/WA	0	-	No	0	0.032	-	-
		Hawaii	0	-	No	0	0.027	-	-
	Humpback whale	Central North Pacific	18	19.3	2 in HRC	58	0.245	-	0.4

* Humpback information applies to CA/OR/WA stock, Mexico DPS only. Text explains why takes in SOCAL come from Mexico DPS.

** The Navy compiled information related to vessel strike in Sec 5.2 of application, this column sums information presented on pg 5-11, which comes from multiple NMFS datasets and goes back to 1991 in SOCAL and 1975 in HI.

*** Rockwood et al. modeled likely annual vessel strikes off the West Coast for these three species only.

Accordingly, stocks that have no record of ever having been struck by any vessel are considered unlikely to be struck by the Navy in the five-year period of the rule. Stocks that have never been struck by the Navy, have rarely been struck by other vessels, and have a low percent likelihood based on the SAR calculation and a low relative abundance are also considered unlikely to be struck by the Navy during the five-year rule. We note that while vessel strike records have not differentiated between Eastern North Pacific and Western North Pacific gray whales, given their small population size and the comparative rarity with which individuals from the Western North Pacific stock are detected off the U.S. West Coast, it is highly unlikely that they would be encountered, much less struck. This rules out all but six stocks.

Three of the six stocks (CA/OR/WA stock of fin whale, Eastern North Pacific stock of gray whale, and Central North Pacific stock of humpback whale) are the only stocks to have been hit more than one time each by the Navy in the HSTT StudyAarea, have the three highest total strike records (21, 35, and 58 respectively), have three of the four highest percent likelihoods based on the SAR records, have three of the four significantly higher relative abundances, and have up to a 3 or 4 percent likelihood of being struck twice based on NMFS' SAR calculation (not shown in Table 43, but proportional to percent likelihood of being struck once). Based on all of these factors, it is considered reasonably likely that these stocks could be struck twice during the five-year rule.

Based on the information summarized in Table 43 and the fact that we expect three large whales could be struck, it is considered reasonably likely that one individual from the remaining three stocks could be struck. Sperm whales have only been struck a total of two times by any vessel type in the whole HSTT Study Area, however, the Navy struck a sperm whale once in Hawaii prior to 2009 and the relative abundance of sperm whales in Hawaii is the highest of any of the stocks present. Therefore, we consider it reasonably likely that the Hawaii stock of sperm whales could be struck once during the five-year rule. The total strikes of Eastern North Pacific blue whales, the percent likelihood of striking one based on the SAR calculation, and their relative abundance can all be considered moderate compared to other stocks and the Navy has struck one in the past prior to 2009 (with the likelihood of striking two based on the SAR calculation being below one percent). Therefore, we consider it reasonably likely that the Navy could strike one individual over the course of the five-year rule. The Navy has not hit a humpback whale in the HSTT Study Area and their relative abundance is very low. However, the Navy has struck a humpback whale in the Northwest and as a species, humpbacks have a moderate to high number of total strikes and percent likelihood of being struck. Although the likelihood of CA/OR/WA humpback whales being struck overall is moderate to high relative to other stocks, the distribution of the Mexico DPS versus the Central America DPS, as well as the distribution of overall vessel strikes inside versus outside of the SOCAL area (the majority are outside), supports the reasonable likelihood that the Navy could strike one individual humpback whale (not two), and that that

individual would be highly likely to be from the Mexico DPS, as described below.

Specifically, regarding the likelihood of striking a humpback whale from a particular DPS, as suggested in Wade *et al.* (2016), the probability of encountering (which is thereby applied to striking) humpback whales from each DPS in the CA/OR area is 89.6 percent and 19.7 percent for the Mexico and Central America DPSs, respectively (note that these percentages reflect the upper limit of the 95 percent confidence interval to reduce the likelihood of underestimating take, and thereby do not total to 100). This suggests that the chance of striking a whale from the Central America DPS is one tenth to one fifth of the overall chance of hitting a CA/OR/WA humpback whale in general in the SOCAL part of the HSTT Study Area, which in combination with the fact that no humpback whale has been struck in SOCAL makes it highly unlikely, and thereby none from the Central America DPS are anticipated or authorized. If a humpback whale were struck in SOCAL, it is likely it would be of the Mexico DPS. However, regarding the overall likelihood of striking a humpback whale at all and the likely number of times, we note that the majority of strikes of the CA/OR/WA humpback whale (*i.e.,* the numbers reflected in Table 43) take place outside of SOCAL and, whereas the comparative DPS numbers cited above apply in the California and Oregon feeding area, in the Washington and Southern British Columbia feeding area, Wade *et al.* (2016) suggest that 52.9, 41.9, and 14.7 percent of humpback whales encountered will come from the Hawaii, Mexico, and Central America DPSs, respectively. This means that the numbers in Table 43 indicating the overall strikes of CA/OR/WA humpback whales and SAR calculations based on average annual mortality over the last five years are actually lower than indicated for the Mexico DPS, which would only be a subset of those mortalities. Last, the Rockwood *et al.* paper supports a relative likelihood of 1:1:2 for striking blue whales, humpback whales, and fin whales off the U.S. West Coast, which supports the authorized take included in this rule, which is 1, 1, and 2, respectively over the five-year period. For these reasons, one mortal take of CA/OR/WA humpback whales, which would be expected to be of the Mexico DPS, could reasonably likely occur and is authorized.

Accordingly, the Navy revised their request for take by serious injury or mortality to include up to two of any the following species in the five-year period: Gray whale (Eastern North Pacific stock), fin whale (CA/OR/WA stock), humpback whale (Central North Pacific stock); and one of any of the following species in the five year period: Blue whale (Eastern North Pacific stock), humpback whale (CA/OR/WA stock, Mexico DPS), or sperm whale (Hawaii stock).

As described above, NMFS and the Navy concur that vessel strikes to the stocks below are very unlikely to occur due to the stocks' relatively low occurrence in the HSTT Study Area, particularly in core HSTT training and testing subareas, and the fact that the stocks have not been struck by the Navy and are rarely, if ever, recorded struck by other vessels. Therefore the Navy is not requesting lethal take authorization, and NMFS is not authorizing lethal take, for the following stocks: Bryde's whale (Eastern Tropical Pacific stock), Bryde's whale (Hawaii stock), humpback whale (CA/OR/WA stock, Central America DPS), minke whale (CA/OR/WA stock), minke whale (Hawaii stock), sei whale (Hawaii stock), sei whale (Eastern North Pacific stock), and sperm whale (CA/OR/WA stock).

In conclusion, although it is generally unlikely that any whales will be struck in a year, based on the information and analysis above, NMFS anticipates that no more than three whales could be taken by serious injury or mortality over the five-year period of the rule, and that those three whales may include no more than two of any of the following stocks: Gray whale (Eastern North Pacific stock), fin whale (CA/OR/WA stock), humpback whale (Central North Pacific stock); and no more than one of any of the following stocks: Blue whale (Eastern North Pacific stock), humpback whale (CA/OR/WA, Mexico DPS), and sperm whale (Hawaii stock). Accordingly, NMFS has evaluated under the negligible impact standard the serious injury or mortality of 0.2 or 0.4 whales annually from each of these species or stocks (*i.e.,* 1 or 2 takes, respectively, divided by 5 years to get the annual number), along with other expected harassment incidental take.

Explosives

The Navy's model and quantitative analysis process used for the HSTT FEIS/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, 2018). 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 five-year period of the regulations 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 approach for estimating the number of animals from each species that could be affected by mortality takes from explosives.

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] satisfies] 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 Surveillance Towed Array Sensor System Low Frequency Active Sonar (SURTASS LFA) incidental take rule (77 FR 50290), the Ninth Circuit Court of Appeals in *Natural Resources Defense Council (NRDC)* v. *Pritzker,* 828 F.3d 1125, 1134 (9th Cir. 2016), stated, ''[c]ompliance with the 'negligible impact' requirement does not mean there [is] compliance with the 'least practicable adverse impact' standard.'' As the Ninth Circuit noted in its opinion, however, the Court was

interpreting the statute without the benefit of NMFS' formal interpretation. We state here explicitly that NMFS is in full agreement that the ''negligible impact'' and ''least practicable adverse impact'' requirements are distinct, even though both statutory standards refer to species and stocks. With that in mind, we provide further explanation of our interpretation of least practicable adverse impact, and explain what distinguishes it from the negligible impact standard. This discussion is consistent with, and expands upon, previous rules we have issued, such as the Navy Gulf of Alaska rule (82 FR 19530; April 27, 2017) and the Navy Atlantic Fleet Testing and Training rule (83 FR 57076; November 14, 2018).

Before NMFS can issue incidental take regulations under section 101(a)(5)(A) of the MMPA, it must make a finding that the total taking will have a ''negligible impact'' on the affected ''species or stocks'' of marine mammals. NMFS' and U.S. Fish and Wildlife Service's implementing regulations for section 101(a)(5) 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 [3] 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.[4]

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). Both the negligible impact standard and the least practicable adverse impact standard call for evaluation at the level of the species or stock, and the terms ''species'' and ''stock'' both relate to populations; therefore, it is appropriate to view both the negligible impact standard and the least practicable adverse impact standard 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 and their habitat. 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.[5]

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

[3] A growth rate can be positive, negative, or flat.

[4] For purposes of this discussion, we omit reference to the language in the standard for least practicable adverse impact that says we also must mitigate for subsistence impacts because they are not at issue in this regulation.

[5] 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 *Analysis and Negligible Impact Determination* section 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 activities, 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)(iii).

While the language of the least practicable adverse impact standard calls for minimizing impacts to affected species or stocks and their habitats, we recognize that the reduction of impacts to those species or stocks accrues through the application of mitigation measures that limit impacts to individual animals. Accordingly, NMFS' analysis focuses on measures that are designed to avoid or minimize impacts on individual marine mammals that are likely to increase the probability or severity of population-level effects.

While direct evidence of impacts to species or stocks from a specified activity is rarely available, and additional study is still needed to understand how specific disturbance events affect the fitness of individuals of certain species, there have been 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 often be inferred 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 (or the risk thereof) 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.*[6] 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 appropriate mitigation measures and because the focus of the standard is on reducing impacts at the species or stock level, the least practicable adverse impact standard does not compel mitigation for every kind of take, or every individual taken, if that mitigation is unlikely to meaningfully contribute to the reduction of adverse impacts on the species or stock and its habitat, 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 activities, 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)(iii)).

Assessment of Mitigation Measures for HSTT Rule

NMFS reviewed the Specified Activities and the mitigation measures as described in the Navy's rulemaking/LOA application and the HSTT FEIS/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 coordinated with and informed by input from NMFS and included consideration of the measures that were added as a result of the settlement agreement (see below), can be found in Chapter 5 (Mitigation) and Appendix K (Geographic Mitigation Assessment) of the HSTT FEIS/OEIS and is summarized below in this section. The process described in Chapter 5 (Mitigation) and Appendix K (Geographic Mitigation Assessment) of the HSTT FEIS/OEIS robustly supports NMFS' independent evaluation of whether the mitigation measures required by this rule meet the least practicable adverse impact standard. The Navy is required to implement the mitigation measures identified in this rule to avoid or reduce potential impacts from acoustic, explosive, and physical disturbance and ship strike stressors.

As a general matter, where an applicant proposes measures that are likely to reduce impacts to marine mammals, the fact that they are included in the proposal and application indicates that the measures are practicable, and it is not necessary for NMFS to conduct a detailed analysis of the measures the applicant proposed (rather, they are simply included). We note that in their application, the Navy added a couple of mitigation measures that were new since the 2013–2018 HSTT incidental take regulations: (1) The Santa Barbara Island Mitigation Area—to avoid or reduce potential impacts from mid-frequency active sonar and explosives on numerous marine mammal species (including blue whales and gray whales) within the mitigation area, which contains important foraging or migration habitat and overlaps a portion of the Channel Islands National Marine Sanctuary, and (2) Blue Whale, Gray Whale, and Fin Whale Awareness Notification Message Areas—to further help avoid or reduce potential impacts from vessel strikes and training and testing activities on blue whales, gray whales, and fin whales within the Southern California portion of the Study Area, which contains important seasonal foraging or migration habitat for these species. However, it is still necessary for NMFS to consider whether there are additional practicable measures that could also contribute to the reduction of adverse effects on the species or stocks through effects on annual rates of recruitment or survival. In the case of the Navy's HSTT application, we worked with the Navy

[6] 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.

prior to the publication of the proposed rule and ultimately, the Navy agreed to significantly expand geographic mitigation areas adjacent to the island of Hawaii to more fully encompass the Alenuihaha Channel (important habitat and migration area) and overlap the BIAs of multiple species (reproductive area for humpbacks, and overlapping the ranges of multiple small resident populations of odontocetes) and to limit additional anti-submarine warfare mid-frequency active sonar (ASW) source bins (MF4) within those mitigation areas, which is expected to further reduce the probability and severity of impacts that would be more likely to affect reproduction or survival of individuals or adversely affect the stock.

Of note, following publication of the 2013 HSTT incidental take rule, the Navy and NMFS were sued and the parties reached a settlement in *Conservation Council for Hawaii* v. *National Marine Fisheries Service,* 97 F. Supp.3d 1210 (D. Haw. 2015), in which the Navy agreed to restrict its activities within specific areas in the HSTT Study Area (beyond the areas and restrictions included as mitigation measures in the 2013 rule). Additional detail is provided below in the subsection entitled *Brief Comparison of Settlement Mitigation and Final HSTT Mitigation in the Rule.*

In summary (and as described in more detail below in this section), the Navy has agreed to procedural mitigation measures that 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 will 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 will implement multiple time/area restrictions (several of which have been added since the 2013 HSTT MMPA incidental take 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.

Since publication of the proposed rule, NMFS and the Navy have agreed to additional mitigation measures that are expected to reduce the likelihood and/or severity of adverse impacts on marine species/stocks and their habitat and are practicable for implementation. Below we summarize the added measures and describe the manner in which they are expected to reduce the likelihood or severity of adverse impacts on marine mammal species or stocks and their habitat. A full description of each measure is included in Tables 45–62.

1. Pre-event in-water explosive event observations—The Navy will implement pre-event observation mitigation for all in-water explosive event mitigation measures. Additionally, if there are other platforms participating in these events and in the vicinity of the detonation area, Navy personnel on those platforms will also visually observe this area as part of the mitigation team. This added monitoring for a subset of activities for which it was not previously required (explosive bombs, missiles and rockets, projectiles, torpedoes, and grenades) in advance of explosive events increases the likelihood that marine mammals will be detected if they are in the mitigation area for that event and that, if any animals are detected, explosions will be delayed by timely mitigation implementation, thereby further reducing the already low likelihood that animals will be injured or killed by the blast.

2. Post-event in-water explosive event observations—The Navy will implement post-event observation mitigation for all in-water explosive event mitigation measures. Additionally, if there are other platforms participating in these events and in the vicinity of the detonation area, Navy personnel on those platforms will also visually observe this area as part of the mitigation team. This added monitoring for a subset of activities for which it was not previously required (explosive bombs, missiles and rockets, projectiles, torpedoes, grenades) increases the likelihood that any injured marine mammals would be detected following an explosive event, which would increase our understanding of impacts and could potentially inform mitigation changes via the adaptive management provisions.

3. The San Diego Arc Mitigation Area was the initial mitigation area for the proposed rule. For the final rule, the Navy agreed to add the San Nicolas Island and Santa Monica/Long Beach Mitigation Areas (June 1–October 31), which include all of the relatively small portions of the Santa Monica Bay/Long Beach and San Nicolas Island BIAs that overlap the HSTT Study Area (55.4 Nmi^2 or 13.9 percent and 33.6 Nmi^2 or 23.5 percent, respectively). The Navy agrees to limit explosives during training in the Santa Monica Bay/Long Beach and San Nicolas Island Mitigation Areas. This reduction of activities (as described here and in the newly expanded measure immediately below, *i.e.,* fewer explosives and MF1 sonar) in these areas with higher concentrations of blue whales engaged in important feeding behaviors is expected to reduce the probability or severity of impacts on blue whales that would be more likely to adversely affect the reproduction or survival of any individual, which in turn reduces the likelihood that any impacts would translate to adverse impacts on the stock.

4. The Navy agrees to limit surface ship sonar in the Santa Monica/Long Beach and San Nicolas Island Mitigation Areas. The Navy will not exceed 200 hrs of MFAS sensor MF1 from June 1 through October 31 in the combined San Diego Arc, San Nicolas Island, and Santa Monica/Long Beach Mitigation Areas (manner in which this helps reduce impact to marine mammals noted directly above).

5. In the proposed rule, the Navy included a seasonal restriction on the use of hull-mounted active sonar in the 4-Islands Mitigation Area, but no limit on explosive use. The Navy has added an all-year restriction on the use of explosives in this area. The 4-Islands Mitigation Area overlaps with a reproductive BIA for humpback whales, as well as BIAs for several small resident populations of multiple odontocetes (bottlenose dolphins, main Hawaiian Island false killer whales, pantropical spotted dolphins, and spinner dolphins). For humpback whales, the reduction of activities in this area with individuals that have calves or are potentially breeding is expected to reduce the probability or severity of impacts that would be more likely to adversely impact reproduction or survival of individuals by directly interfering with breeding behaviors or by separating mothers and calves at a time with calves are more susceptible to predators. For the odontocete stocks with BIAs for small resident populations, we aim to avoid overwhelming small populations (which are more susceptible to certain population effects, such as Allee effects) with large scale impacts, especially when the population is limited to a small area and less able to access alternative habitat. Limiting explosive effects in these mitigation areas that overlap the BIAs further reduces impacts to these stocks, although we note that all four of these odontocete small resident populations span multiple islands, which means that

impacts in any one location are less likely to affect the whole population.

6. The Navy has agreed to issue notification messages to increase operator awareness of the presence of marine mammals. The Navy will review WhaleWatch, a program coordinated by NMFS' West Coast Region as an additional information source to inform the drafting of the annual notification messages for blue, fin, and gray whales in SOCAL.The information will alert vessels to the possible presence of these stocks to maintain safety of navigation and further reduce the potential for a vessel strike. Any expanded mechanisms for detecting large whales, either directly around a vessel or in the wider area to increase vigilance for vessels, further reduce the probability that a whale will be struck.

The Navy assessed the new and/or expanded measures it has agreed to (above) 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 described above, NMFS has independently evaluated all of the measures the Navy has committed to (including those above added since the proposed rule was published) in the manner described earlier in this section *(i.e.,* in consideration of their ability to reduce adverse impacts on marine mammal species and stocks and their habitat and their practicability for implementation). We have determined that the additional measures will further reduce impacts on the affected marine mammal species and stocks and their habitat beyond the initial measures proposed and, further, be practicable for Navy implementation.

The Navy also evaluated numerous measures in the HSTT FEIS/OEIS that were not included in the Navy's rulemaking/LOA application, and NMFS independently reviewed and concurs with Navy's analysis that their inclusion was not appropriate under the least practicable adverse impact standard based on our assessment. The Navy considered these additional potential mitigation measures in two groups. First, Chapter 5 (Mitigation) of the HSTT FEIS/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 (Geographic Mitigation Assessment) of the HSTT FEIS/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 (Mitigation) of the HSTT FEIS/OEIS, commenters sometimes recommend that the Navy reduce its overall amount of training, reduce explosive use, modify its sound sources, completely replace live training with computer simulation, or include time of day restrictions. Many of these mitigation 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 (Mitigation) of the HSTT FEIS/OEIS, the Navy needs to train and test in the conditions in which it fights—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. After independent review, NMFS finds Navy's judgment on the impacts of potential mitigation measures to personnel safety, practicality of implementation, and the undermining of the effectiveness of training and testing persuasive, and 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 (Mitigation) of the HSTT FEIS/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 measures would have significant direct negative effects on mission effectiveness and are considered impracticable (see Chapter 5 Mitigation of HSTT FEIS/OEIS). NMFS independently reviewed the Navy's evaluation and concurred with this assessment, which supports NMFS' findings that the impracticability of this additional mitigation would greatly outweigh any potential minor reduction in marine mammal impacts that might result; therefore, these additional mitigation measures are not required under the least practicable adverse impact standard.

Last, Appendix K (Geographic Mitigation Assessment) of the HSTT FEIS/OEIS 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 areas in which certain Navy activities were limited under the terms of the 2015 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.

The Navy proposed (and NMFS has incorporated into this rule) several time/area mitigations that were not included in the 2013–2018 HSTT MMPA regulations (as described above). For the areas that are not included in these regulations, though, the analysis in the HSTT FEIS/OEIS (Chapter 5 and Appendix K) shows that on balance, the mitigation was not warranted because the anticipated reduction of adverse impacts on marine mammal species or stocks 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). We note that in regard to the protection of marine mammal habitat, habitat value is informed by marine mammal presence and use and, in some cases, there may be overlap in measures that minimize impacts to the species or stock directly and measures that minimize impacts on

habitat. In this rule, we have identified time-area mitigations based on a combination of factors that include higher densities and observations of specific important behaviors of marine mammals themselves, but also that clearly reflect preferred habitat (*e.g.,* blue whale feeding areas in SOCAL, and in-shore small resident populations of odontocetes around Hawaii). In addition to being delineated based on physical features that drive habitat function (*e.g.,* bathymetric features, among others for some BIAs), the high densities and concentration of certain important behaviors (*e.g.,* feeding) in these particular areas clearly indicate the presence of preferred habitat.

Overall, NMFS has independently reviewed the Navy's mitigation analysis Chapter 5 (Mitigation) and Appendix K (Geographic Mitigation Assessment) of the HSTT FEIS/OEIS as referenced above), which considers the same factors that NMFS considers to satisfy the least practical adverse impact standard, and concurs with the conclusions. Therefore, NMFS is not including the additional measures discussed in the HSTT FEIS/OEIS in these regulations, other than the new measures that were discussed in the proposed rule and those agreed upon after publication of the proposed rule, as described above. Below, we list and describe the mitigation measures (organized into procedural measures and mitigation areas) that NMFS has 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. However, first, in the section immediately below, we provide a brief summary of the ways in which the mitigation included in this rule compares to the mitigation the Navy implemented during the settlement agreement.

Brief Comparison of 2015 Settlement Mitigation and Final HSTT Mitigation in the Rule

As noted above, following publication of the 2013 HSTT MMPA incidental take rule, the Navy and NMFS were sued and the parties reached a settlement in 2015 under which the Navy agreed to restrict its activities within specific areas in the HSTT Study Area (beyond the areas and restrictions included in the 2013 rule). While we have described above the analysis that supports the selection of mitigation measures included in the final rule (referencing the associated Navy documents, where appropriate), because the Navy has been implementing the settlement agreement measures since 2015, we provide here a summary description of the differences and additional analysis.

First, we note broadly that the provisional restrictions on activities within the HSTT Study Area were derived pursuant to negotiations with the plaintiffs as part of the lawsuit and specifically were not evaluated or selected based on the best available science as would occur through the MMPA rulemaking process or through related analyses conducted under the National Environmental Policy Act (NEPA) or the ESA. The agreement did not constitute a concession by the Navy as to the impacts of Navy activities on marine mammals or any other marine species, the extent to which the measures would reduce impacts, or the practicability of the measures. The Navy's adoption of restrictions on its HSTT testing and training activities as part of the relatively short-term settlement agreement therefore did not mean that those restrictions were supported by the best available science, likely to reduce impacts on marine mammals species or stocks and their habitat, or practicable to implement from a military readiness standpoint over the longer term in the HSTT Study Area. Accordingly, as required by statute, NMFS analyzed the Navy's activities as set forth in its application and including impacts, proposed mitigation, and additional potential mitigation (including the settlement agreement measures) pursuant to the ''least practicable adverse impact'' standard to determine the appropriate mitigation to include in these regulations. Some of the measures that were included in the 2015 settlement agreement are included in the final rule, while some are not.

As characterized elsewhere in the rule, we look here at the differences in both procedural mitigation measures and mitigation areas. The 2015 settlement agreement included two procedural mitigations (one of which was a group of related reporting measures). Regarding one of the measures, the 2015 settlement agreement indicated that ''Navy surface vessels operating within the HSTT shall avoid approaching marine mammals head-on and shall maneuver to maintain a 500 yard (457 meter) mitigation zone for observed whales and a 200 yard (183 meter) mitigation zone for all other observed marine mammals (except bow riding dolphins), providing it is safe to do so.'' This measure is fully included in this final rule. Regarding the other measure, the settlement agreement included several related reporting requirements for NMFS to implement in the event the discovery of an injured or dead marine mammal triggered certain Navy reporting requirements included in the 2013 rule. These reporting requirements are not included in this rule both because it is not the role of 101(a)(5)(A) regulations to require reporting and notifications by NMFS to others (where appropriate notice and opportunity for public involvement is already provided for under the statute) and this reporting by NMFS did not further the conservation of marine mammals. Last, these settlement agreement reporting measures highlighted inconsistencies between some of the measures required under the 2013 regulations and those inconsistencies have been resolved; the 2018 LOAs include updated reporting requirements.

NMFS' and the Navy's analysis of mitigation areas is described in the subsections above and the description of areas included in the final rule are described in the subsection below. In order to assist the reader in understanding the differences in mitigation areas between the terms of the 2015 settlement agreement (as a result of the ruling in *Conservation Council for Hawaii* v. *National Marine Fisheries Service,* 97 F. Supp.3d 1210 (D. Haw. 2015)) and this final rule, we offer the following:

- Figures 1, 2, 3, and 4 below depict the settlement mitigation areas and the HSTT Mitigation Areas for Hawaii and SOCAL.
- Table 44 below compares the mitigation requirements from the 2015 settlement agreement areas to the mitigation requirements for the areas specified in this final rule (noting also the species for which impacts will be reduced).
- Table K.2–2 of Appendix K in the HSTT FEIS/OEIS includes a comparison of the settlement agreement areas to mitigation areas for this rulemaking period by species and BIAs.
- NMFS' CetSound website includes an interactive map depicting the BIAs for all species and stocks (there are 12 overlapping BIAs in the main Hawaiian Islands, making it difficult to present them effectively in a static map). See *https://cetsound.noaa.gov/biologically-important-area-map.*

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Figure 1. 2015 Settlement Agreement Areas in the Hawaii Portion of the HSTT Study Area.

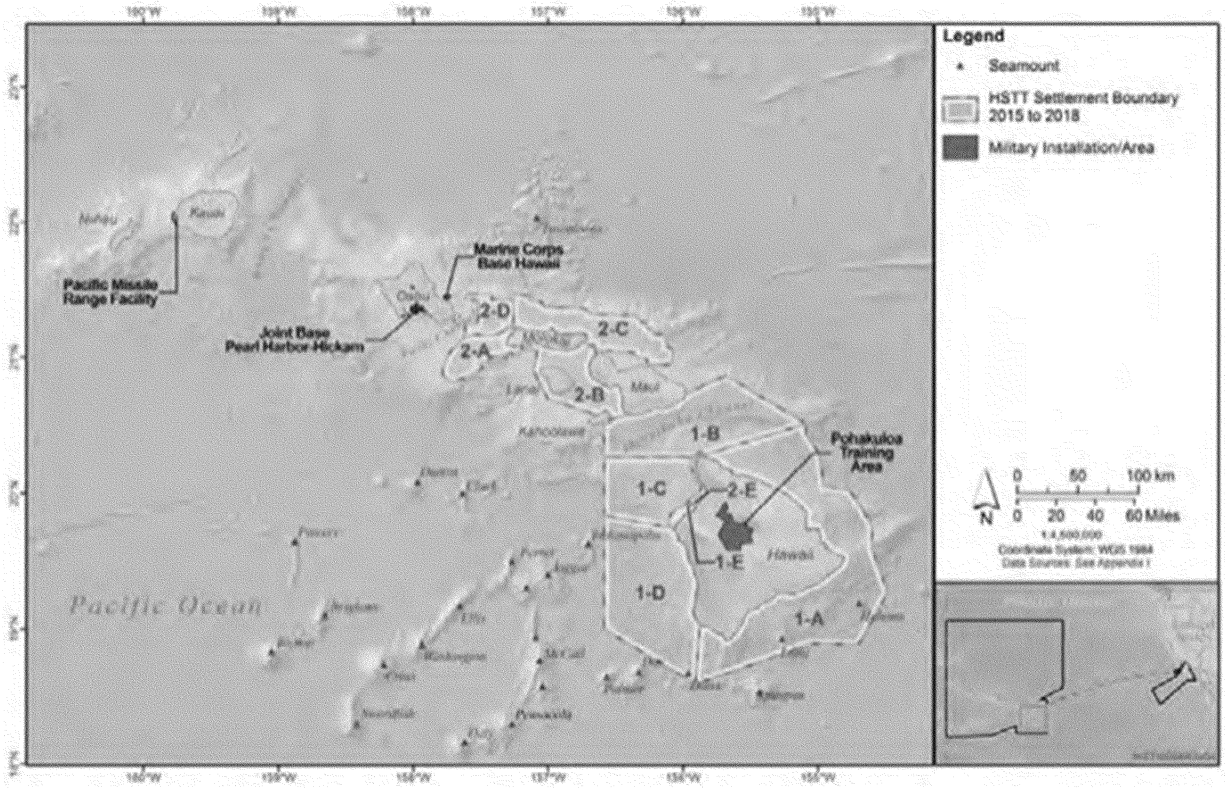

Figure 2. 2018 - 2023 Mitigation Areas in the Hawaii Portion of the HSTT Study Area.

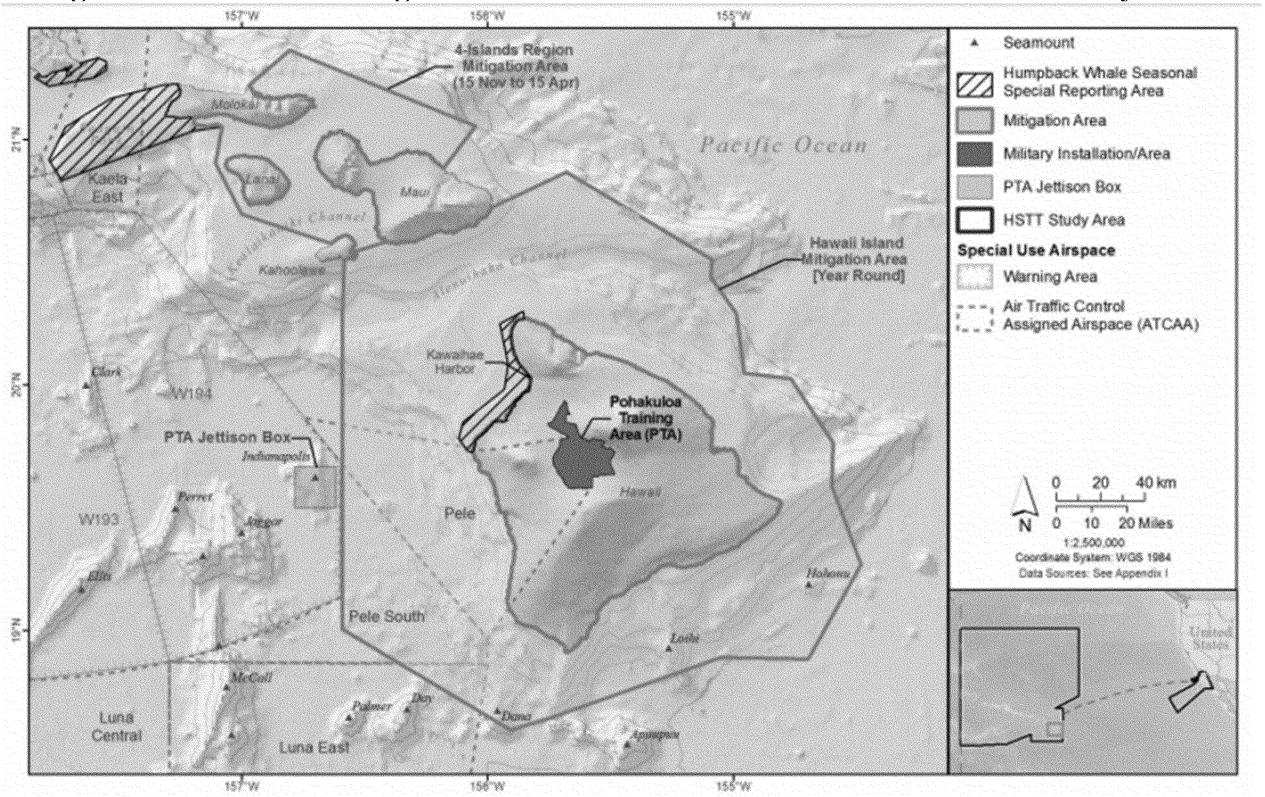

Figure 3. 2015 Settlement Agreement Areas in the Southern California Portion of the HSTT Study Area.

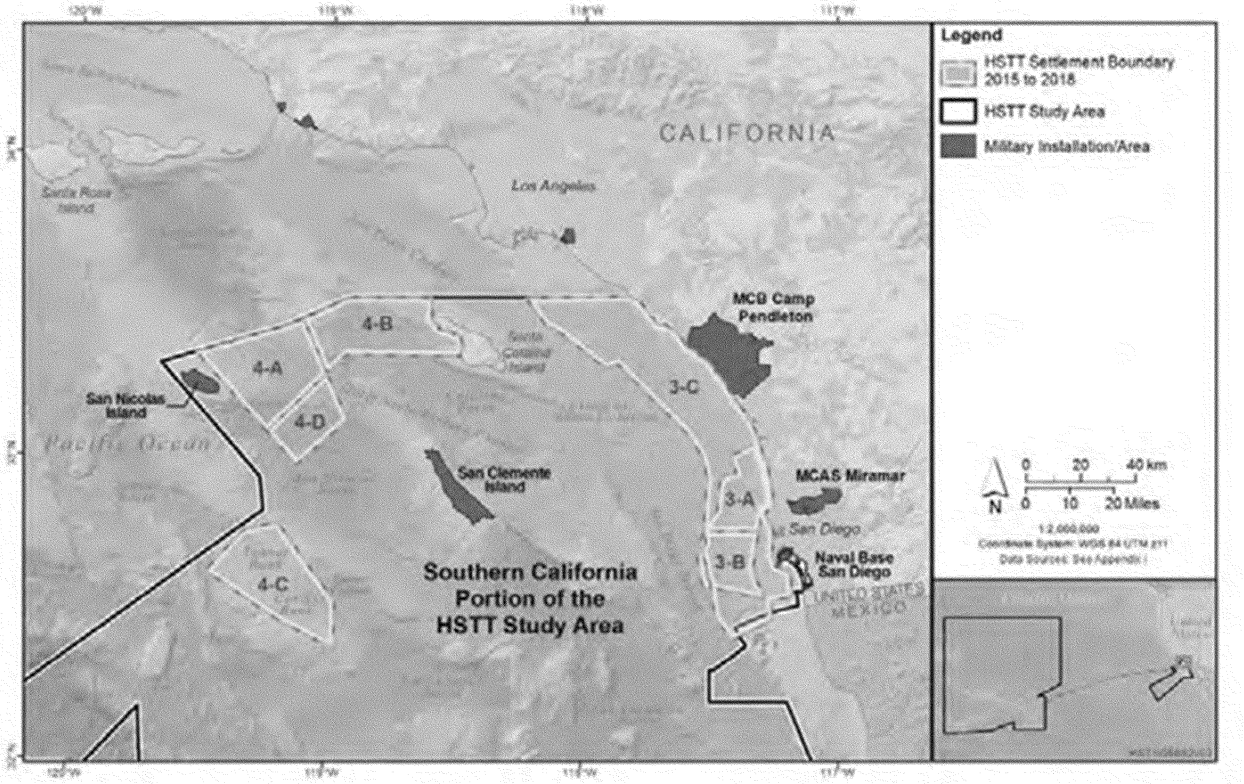

Figure 4. 2018 - 2023 Mitigation Areas in the Southern California Portion of the HSTT Study Area.

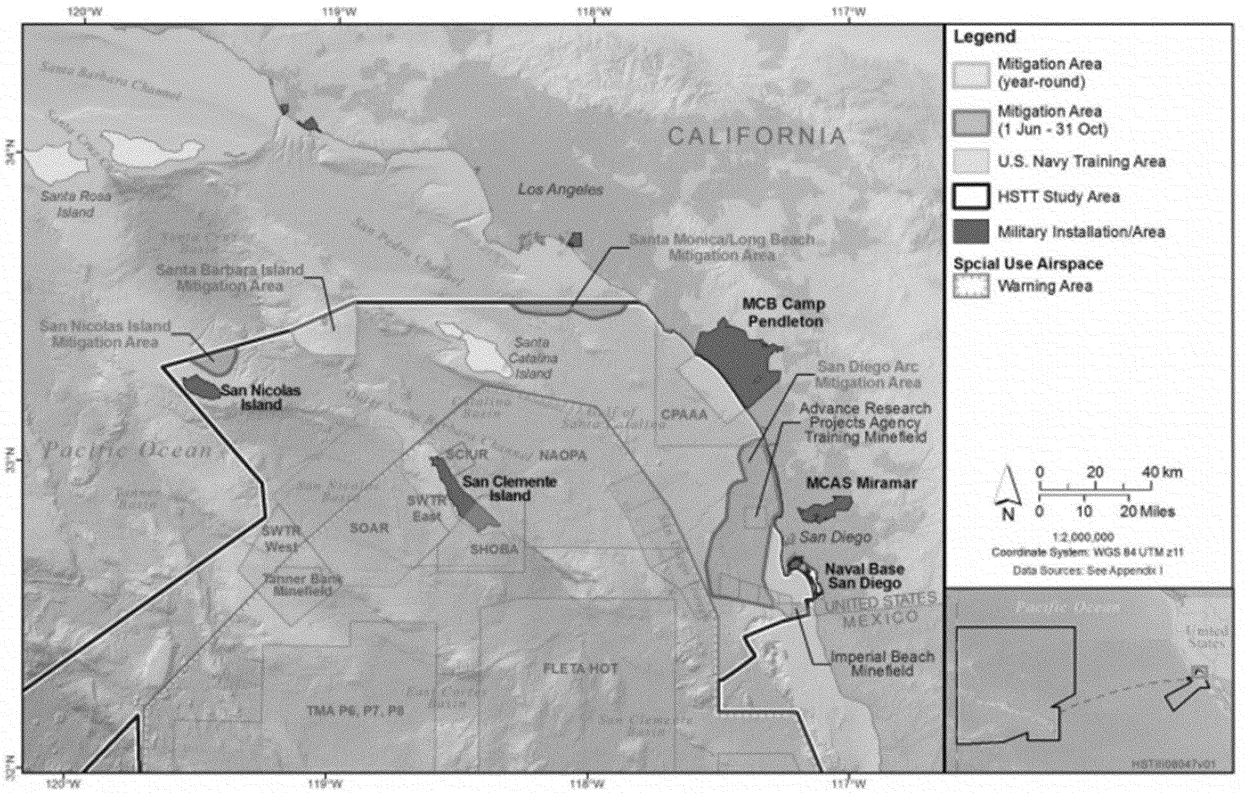

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TABLE 44—COMPARISON OF MITIGATION AREAS IN EFFECT 2015–2018 UNDER THE 2015 SETTLEMENT AGREEMENT TO MITIGATION AREAS IMPLEMENTED UNDER 2018 FINAL RULE

Litigation settlement (2015–December 2018)	HSTT final MMPA incidental take rule (December 2018–2023)
Hawaii	Hawaii
• *Area 1–A Hawaii Island (North, South, East) (year-round).* (a) Prohibit the use of MFAS for training and testing activities during both MTEs and unit-level training; and (b) prohibit the use of in-water explosives for training and testing activities. Reduces impacts to false killer whales, pygmy killer whales, short-finned pilot whales, bottlenose dolphins, spinner dolphins, Cuvier's beaked whales, and Blainville's beaked whales	• *Hawaii Island Mitigation Area (year-round).* Incorporates parts of settlement measures 1–A through 1–E and 2–A through 2–E. Navy will minimize the use of MFAS (MF1 and MF4) and will not use explosives during testing and training. Reduces impacts on ESA-listed false killer whales and monk seals, two species of beaked whales, humpback whales, and other species.
• *Area 1–B Hawaii Island (Northwest) (year-round).* Limit the use of MFAS for training and testing activities during MTEs to one Rim of the Pacific in 2016, one Rim of the Pacific in 2018, three Undersea Warfare Exercises per calendar year, and one Independent Deployer Certification Exercise per calendar year. Reduces impacts to humpback whales, false killer whales, short-finned pilot whales, melon-headed whales, bottlenose dolphins, spinner dolphins, Cuvier's beaked whales, and Blainville's beaked whales	• *4-Islands Region Mitigation Area (November 1–April 15 for active sonar, year-round for explosives).* Incorporates parts of settlement Areas 1–A, 1–B, 1–C, 1–D, 1–E, 2–A, 2–B, and 2–C and humpback reporting area. Navy will not use MFAS (MF1) or explosives in this mitigation area during training and testing. Reduces impacts to humpback whales, ESA-listed false killer whales and monk seals, and some dolphin species. • *Humpback Whale Special Reporting Areas (December 15–April 15).* Incorporates parts of settlement areas 1–B, 1–C, 1–D, 2–A, 2–B, and 2–D, humpback special reporting area and humpback cautionary area. Navy will report the hours of MF1 used in these areas in training and testing activity reports. • *Humpback Whale Awareness Notification Message Area (November–April).* 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.
• *Area 1–C Hawaii Island (West) (year-round).* (a) Limit the use of MFAS for training and testing activities during MTEs to one Rim of the Pacific in 2016, one Rim of the Pacific in 2018, three Undersea Warfare Exercises per calendar year, and one Independent Deployer Certification Exercise per calendar year; (b) prohibit the use of MFAS for training and testing activities during unit-level training (excluding unit-level training conducted by participants in an ongoing MTE; and (c) prohibit the use of in-water explosives for training and testing activities. Reduces impacts to humpback whales, false killer whales, dwarf sperm whales, pygmy killer whales, short-finned pilot whales, bottlenose dolphins, spotted dolphins, spinner dolphins, rough toothed dolphins, Cuvier's beaked whales, and Blainville's beaked whales	
• *Area 1–D Hawaii Island (Southwest) (year-round).* (a) Limit the use of MFAS for training and testing activities during MTEs to one Rim of the Pacific in 2016, one Rim of the Pacific in 2018, three Undersea Warfare Exercises per calendar year, one Independent Deployer Certification Exercise per calendar year, and one Sustainment Exercise per calendar year; (b) prohibit the use of MFAS for training and testing activities during unit-level training (excluding unit-level training conducted by participants in ongoing MTEs); and (c) prohibit the use of in-water explosives for training and testing activities. Reduces impacts to dwarf sperm whales, pygmy killer whales, short-finned pilot whales, bottlenose dolphins, spotted dolphins, spinner dolphins, rough-toothed dolphins, Cuvier's beaked whales, and Blainville's beaked whales	
• *Area 1–E and 2–E Hawaii Island (nearshore Northwest) (year-round).* Require that all surface vessels use extreme caution and proceed at 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. Reduces impacts to dwarf sperm whales, false killer whales, pygmy killer whales, melon-headed whales, bottlenose dolphins, spotted dolphins, spinner dolphins, rough-toothed dolphins, and Blainville's beaked whales	

TABLE 44—COMPARISON OF MITIGATION AREAS IN EFFECT 2015–2018 UNDER THE 2015 SETTLEMENT AGREEMENT TO MITIGATION AREAS IMPLEMENTED UNDER 2018 FINAL RULE—Continued

Litigation settlement (2015–December 2018)	HSTT final MMPA incidental take rule (December 2018–2023)
• *Area 2–A (Southeast Oahu, Southwest Molokai, Penguin Bank) (year-round).* (a) Prohibit the use of MFAS for training and testing activities during MTEs; (b) prohibit the use of in-water explosives for training and testing activities; and (c) require that all surface vessels use extreme caution and proceed at 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. Reduces impacts to humpback whales, false killer whales, bottlenose dolphins, and spinner dolphins • *Area 2–B (South Molokai, East Maui, Penguin Bank) (year-round).* (a) Prohibit the use of in-water explosives for training and testing activities; and (b) require that all surface vessels use extreme caution and proceed at 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. Reduces impacts to humpback whales, bottlenose dolphins, spotted dolphins, and spinner dolphins • *Area 2–C (North Molokai, North Maui) (year-round).* (a) Prohibit the use of MFAS for training and testing activities during MTEs; (b) implement a Protective Measure Assessment Protocol measure advising Commanding Officers that the area is false killer whale habitat and that they should avoid using MFAS during unit-level training within the area whenever practicable; and (c) prohibit the use of in-water explosives for training and testing activities (within the overlap of Area 2–B and Area 2–C, the restrictions imposed in Area 2–B and Area 2–C both apply). Reduces impacts to false killer whales, bottlenose dolphins, and spinner dolphins • *Area 2–D (Southeast Oahu, Northwest Molokai) (year-round).* Prohibit the use of in-water explosives for training and testing activities. Reduces impacts to false killer whales, bottlenose dolphins, and spinner dolphins	
Southern California • *Area 3–A (San Diego Arc, coastal) (June 1–October 31).* (a) Prohibit the use of MFAS for training and testing activities during MTEs and unit-level training; and (b) require that all surface vessels use extreme caution and proceed at 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. Reduces impacts to blue and gray whales	Southern California • *San Diego Arc, San Nicolas Island, and Santa Monica/Long Beach Mitigation Areas (June 1–October 31).* Incorporates parts of settlement areas 3–A, 3–B, 3–C, 4–A, 4–B, 4–C, and 4–D. Navy will minimize the use of MFAS (MF1) within the three Mitigation Areas during training and testing. Within the San Diego Arc Mitigation Area, Navy will not use explosives during large-caliber gunnery, torpedo, bombing, and missile activities during testing and training. Within the San Nicolas Island Mitigation Area Navy will not use explosives during mine warfare, large-caliber gunnery, torpedo, bombing and missile activities during training. Within the Santa Monica/Long Beach Mitigation Area, Navy will not use explosives during mine warfare, large-caliber gunnery, torpedo, bombing, and missile (including 2.75″ rockets) activities during training and testing. Reduces impacts primarily to blue whales, but also gray and fin whales. • *Santa Barbara Island Mitigation Area (year-round).* Incorporates parts of settlement areas 4A, Channel Island NMS. Navy will not use MFAS (MF1) and explosives in small-, medium-, and large-caliber gunnery, torpedo, bombing, and missile activities during unit-level training or MTEs. Reduces impacts to numerous marine mammal species that use the Channel Islands NMS and partially overlap areas for blue whales and gray whales. • *Blue Whale (June–October), Gray Whale (November–March), and Fin Whale (November–May) Awareness Notification Message Areas.* 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, particularly blue, gray, and fin whales.

TABLE 44—COMPARISON OF MITIGATION AREAS IN EFFECT 2015–2018 UNDER THE 2015 SETTLEMENT AGREEMENT TO MITIGATION AREAS IMPLEMENTED UNDER 2018 FINAL RULE—Continued

Litigation settlement (2015–December 2018)	HSTT final MMPA incidental take rule (December 2018–2023)
• *Area 3–B (San Diego Arc, coastal) (June 1–October 31).* (a) Prohibit the use of MFAS for training and testing activities during MTEs and unit-level training, except for system checks; (b) implement a seasonal Protective Measure Assessment Protocol measure advising Commanding Officers that the area is blue whale habitat and that they should avoid conducting system checks within the area whenever practicable; and (c) require that all surface vessels use extreme caution and proceed at 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. Reduces impacts to blue and gray whales • *Area 3–C (Santa Monica Bay to Long Beach, coastal) (November 1–May 20).* Require that all surface vessels use extreme caution and proceed at 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. Reduces impacts to blue and gray whales • *Area 4–A (East of San Nicholas Island) (year-round).* (a) Prohibit the use of MFAS for training and testing activities during MTEs and unit-level training; and (b) prohibit the use of in-water explosives for training and testing activities. Reduces impacts to blue and gray whales • *Area 4–B (east of Santa Catalina Island) (year-round).* Prohibit the use of MFAS for training and testing activities during MTEs and unit-level training. Reduces impacts to gray whales • *Area 4–C (Tanner-Cortes Bank) (June 1–October 31).* Require that all surface vessels use extreme caution and proceed at 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. Reduces impacts to blue and gray whales • *Area 4–D (south of 4–A) (year-round).* Require all surface vessels to use extreme caution and proceed at a safe speed so they can take proper and effective action to avoid a collision with any sighted object or disturbance, and can be stopped within a distance appropriate to the prevailing circumstances and conditions. Reduces impacts to gray whales	

As described above, NMFS analyzed the Navy's activities as set forth in its application, the impacts of those activities, the proposed mitigation, and potential additional mitigation (including the 2015 settlement agreement measures) pursuant to the ''least practicable adverse impact'' standard to determine the appropriate mitigation to include in these regulations. Some of the measures that were included in the 2015 settlement agreement are included in this final rule (for example, the vast majority of the area in Hawaii included in the mitigation for the settlement agreement is included in Mitigation Areas in this rule), while some are not (for example, because of the instrumented ranges and specific training needs in SOCAL, less of the area covered in the settlement agreement is included as Mitigation Areas in this rule). As noted previously, Appendix K (Geographic Mitigation Assessment) of the HSTT FEIS/OEIS includes a detailed analysis of all of the potential mitigation areas and associated measures (including the settlement measures addressed in this section), in the context of both reduction of marine mammal impacts and practicability. NMFS has independently reviewed Appendix K (Geographic Mitigation Assessment), determined that the analysis reflects the best available science, and used the information to support our findings outlined in this *Mitigation Measures* section. A summary of the rationale for not adopting the relatively small subset of remaining 2015 settlement agreement measures that were not carried forward follows.

In Hawaii, about 85 percent of the area that was covered by 2015 settlement areas is covered by mitigation areas in this final rule (see Figures 1 and 2 above). The protected area around the island of Hawaii is the same in this rule as it was in the 2015 settlement agreement (Hawaii Mitigation Area), with the difference being that the settlement agreement included mitigation on Penguin Bank and in a couple of areas north of Molokai and Maui that are not included in the 4-Islands Mitigation Area in this final rule. As explained in more detail in the full analysis in Section 3 of Appendix K of the HSTT FEIS/OEIS, Penguin Bank offers critical shallow and constrained conditions for Navy training (especially submarines) that are not available anywhere else in Hawaii. The areas north of Molokai and Maui that are not included in the current 4-Islands Mitigation Area are similarly critical for certain exercises that specifically include torpedo exercises deliberately conducted in this area north of the islands to avoid the other suitable training areas between the four islands where humpback whale density is higher. The 2015 settlement agreement mitigation restricted all MFAS and explosive use on Penguin Bank (area 2–A), however, as the Navy explains, this MFAS restriction is impracticable in that it would have unacceptable impacts on their training and testing capabilities. In addition, the Navy does not typically use explosives in this area. For the settlement areas north of Molokai and Maui that are not covered in the rule (area 2–B and part of area 2–C), the settlement agreement restricted explosive use but did not restrict MFAS in the 2–B area. Explosive use in these areas is also already rare, but for the reasons described in Appendix K,

restricting MFAS use is impracticable and would have unacceptable impacts on training and testing. We also note that while it is not practicable to restrict MFAS use on Penguin Bank, MFAS use is relatively low and we have identified it as a special reporting area for which the Navy will report the MFAS use in that area to inform adaptive management discussions in the future. Additionally, some of the areas that the 2015 settlement agreement identified included language regarding extra vigilance intended to avoid vessel strikes. Neither NMFS nor the Navy thought that inclusion of this term as written would necessarily reduce the probability of a vessel strike, so instead we have included the Humpback Whale Awareness Notification provision, which sends out a message to all Navy vessels in Hawaii during the time that humpback whales are present. Last we note that the 2015 settlement mitigation areas with MFAS restrictions sometimes excluded all MFAS, while sometimes they limited the number of MTEs that could occur (with no limit on any particular type of sonar, meaning that hull-mounted surface ship sonar could be operated), whereas the sonar restrictions in this final rule limit the use of surface ship hull-mounted sonar, which is the source that results in the vast majority of incidental takes.

For SOCAL, the 2015 settlement areas had four primary objectives: Reducing impacts in blue whale feeding areas, reducing the likelihood of large whale vessel strikes, minimizing incidental take of gray whales, and minimizing incidental take of beaked whales in areas that the plaintiffs argued were specifically important to beaked whales. As noted previously, of the four blue whale feeding areas in SOCAL, the Navy mitigation areas in this rule fully cover three of them (those associated with settlement areas 3–A, 3–B, 4–A, and 4–B in the 2015 settlement agreement) and limit surface ship hull-mounted MFAS and explosive use. In fact, we included protections for the southern end of a blue whale feeding BIA (Santa Monica/Long Beach area), by limiting hull-mounted MFAS and explosives that were not included in the 2015 settlement areas. The fourth blue whale feeding BIA, Tanner-Cortes Banks, provides unique and irreplaceable shallow-water conditions that are critical for shallow-water training and testing (especially for submarines) and that are not available elsewhere in SOCAL, along with a shallow-water minefield training range. Notably, in a satellite tracking study of blue whales in Southern California from 2014 to 2017, Tanner-Cortes Banks was only transited minimally by individual blue whales (Mate *et al.,* 2018). Limiting activities in this area would inhibit the Navy's ability to successfully test and train and is impracticable. In fact, the 2015 settlement area at Tanner-Cortes Banks did not limit MFAS or explosive use. Rather, Tanner-Cortes Banks (area 4–C), settlement area 4–D, and the large settlement area close to shore (area 3–C) each only had one associated protective measure, which was language regarding extra vigilance intended to avoid vessel strikes. However, neither NMFS nor the Navy thought that inclusion of this term as written would necessarily reduce the probability of a vessel strike, so instead we have included the Blue Whale, Gray Whale, and Fin Whale Awareness Notification Area, which sends out a message to all Navy vessels in SOCAL during the time these large whales are present and will more effectively help to reduce the probability of ship strike.

The remaining areas covered by 2015 settlement mitigation areas that are not covered by mitigation areas in this final rule (area 4–B and the outer edges of area 4–A, which does not align exactly with the blue whale BIA like the current Navy mitigation area does) were intended to reduce impacts on gray whales and to provide some sort of protection for beaked whales. However, NMFS and the Navy disagree that the remaining 2015 settlement areas provide the protection the plaintiffs assert. As noted earlier, gray whales migrate primarily through a 5 to 10 km corridor along the West Coast, with some individuals occasionally ranging offshore (noting that mother/calf pairs always stay very close to shore), which resulted in the BIA recognizing a 47-km buffer beyond the 5 to 10 km main migration corridor, but also expanding the BIA further offshore in order to encompass the Channel Islands, where some individuals also sometimes range further. Prohibiting activities outside of the main migration corridor in an area where gray whales may be present only occasionally is not expected to meaningfully reduce effects, especially if the mitigation area is small compared to the much larger buffer area and the same amount of activities occur outside of the mitigation area, but still in the larger area that gray whales occupy. Regarding beaked whales, the plaintiffs in the *Conservation Council for Hawaii* case indicated that settlement area 4–B would provide important habitat for beaked whales based on tagging data from two whales in 2014. However, while beaked whales are present in the area, tagging data through 2018 (for 27 Cuvier's beaked whales) shows that these whales have site fidelity to the SOAR Range and typically do not move toward the 2015 settlement areas when they do leave SOAR. In other words, since the 2015 settlement area is not an area of known particular importance for these whales, protecting it would not be expected to reduce impacts. Appendix K of the HSTT FEIS/OEIS explains in detail why additional limitations in this area would inhibit training and testing and thereby be impracticable, and the *Comments and Responses* section of this rule addresses these recommendations specifically. In summary, the mitigation areas identified in this rule address the valid concerns that were targeted through the 2015 settlement agreement, but areas that were either impracticable to continue to implement or do not provide a reduction in impacts on marine mammals were not carried forward.

The final Procedural Mitigation measures and Mitigation Area measures are described in the sections below.

Final 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 45) is designed to aid Lookouts and other applicable personnel with their observation, environmental compliance, and reporting responsibilities. The remainder of the procedural mitigation measures (Tables 45 through Tables 64) 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 45–PROCEDURAL MITIGATION FOR ENVIRONMENTAL AWARENESS AND EDUCATION

Procedural Mitigation Description
Stressor or Activity: • All training and testing activities, as applicable. Mitigation Requirements: • Appropriate Navy personnel (including civilian personnel) involved in mitigation and training or testing activity reporting under the specific activities must 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:

TABLE 45–PROCEDURAL MITIGATION FOR ENVIRONMENTAL AWARENESS AND EDUCATION—Continued

Procedural Mitigation Description
—Introduction to the U.S. Navy Afloat Environmental Compliance Training Series. The introductory module provides information on environmental laws (*e.g.,* ESA, MMPA) and the corresponding responsibilities that are relevant to Navy training and testing activities. The material explains why environmental compliance is important in supporting the Navy's commitment to environmental stewardship. —Marine Species Awareness Training. All bridge watch personnel, Commanding Officers, Executive Officers, maritime patrol aircraft aircrews, anti-submarine warfare and mine warfare rotary-wing aircrews, Lookouts, and equivalent civilian personnel must successfully complete the Marine Species Awareness Training prior to standing watch or serving as a Lookout. The Marine Species Awareness Training provides information on sighting cues, visual observation tools and techniques, and sighting notification procedures. Navy biologists developed Marine Species Awareness Training to improve the effectiveness of visual observations for biological resources, focusing on marine mammals and sea turtles, and including floating vegetation, jellyfish aggregations, and flocks of seabirds. —U.S. Navy Protective Measures Assessment Protocol. This module provides the necessary instruction for accessing mitigation requirements during the event planning phase using the Protective Measures Assessment Protocol software tool. —U.S. Navy Sonar Positional Reporting System and Marine Mammal Incident Reporting. This module provides instruction on the procedures and activity reporting requirements for the Sonar Positional Reporting System and marine mammal incident reporting.

Procedural Mitigation for Acoustic Stressors

Mitigation measures for acoustic stressors are provided in Tables 46 through 49.

Procedural Mitigation for Active Sonar

Procedural mitigation for active sonar is described in Table 46 below.

TABLE 46—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 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 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:* —1 Lookout: Platforms with space or manning restrictions while underway (at the forward part of a small boat or ship) and platforms using active sonar while moored or at anchor (including pierside). —2 Lookouts: Platforms without space or manning restrictions while underway (at the forward part of the ship). • *Sources that are not hull-mounted:* —1 Lookout on the ship or aircraft conducting the activity. *Mitigation Requirements:* • *Mitigation zones:* —During the activity, at 1,000 yd Navy personnel must power down 6 dB, at 500 yd, Navy personnel must power down an additional 4 dB (for a total of 10 dB), and at 200 yd Navy personnel must shut down for low-frequency active sonar ≥200 decibels (dB) and hull-mounted mid-frequency active sonar. —200 yd shut down for low-frequency active sonar <200 dB, mid-frequency active sonar sources that are not hull-mounted, and high-frequency active sonar. • *Prior to the initial start of the activity (e.g., when maneuvering on station):* —Observe the mitigation zone for floating vegetation; if floating vegetation is observed, relocate or delay the start until the mitigation zone is clear. —Observe the mitigation zone for marine mammals; if marine mammals are observed, relocate or delay the start of active sonar transmission. • *During the activity:* —Low-frequency active sonar ≥200 decibels (dB) and hull-mounted mid-frequency active sonar: Navy personnel must observe the mitigation zone for marine mammals; power down active sonar transmission by 6 dB if marine mammals are observed within 1,000 yd of the sonar source; power down an additional 4 dB (for a total of 10 dB total) within 500 yd; cease transmission within 200 yd. —Low-frequency active sonar <200 dB, mid-frequency active sonar sources that are not hull-mounted, and high-frequency active sonar: Observe the mitigation zone for marine mammals; cease active sonar transmission if marine mammals are observed within 200 yd of the sonar source. • *Commencement/recommencement conditions after a marine mammal sighting before or during the activity:* —Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing or powering up active sonar transmission) until one of the following conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the sonar source; (3) the mitigation zone has been clear from any additional sightings for 10 min. for aircraft-deployed sonar sources or 30 min. for vessel-deployed sonar sources; (4) for mobile activities, the active sonar source has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting; or (5) for activities using hull-mounted sonar, the ship concludes that dolphins are deliberately closing in on the ship to ride the ship's bow wave, and are therefore out of the main transmission axis of the sonar (and there are no other marine mammal sightings within the mitigation zone).

Procedural Mitigation for Air Guns

Procedural mitigation for air guns is described in Table 47 below.

TABLE 47—PROCEDURAL MITIGATION FOR AIR GUNS

Procedural Mitigation Description
Stressor or Activity: • Air guns. *Number of Lookouts and Observation Platform:* • *1 Lookout must be positioned on a ship or pierside.* *Mitigation Requirements:* • *Mitigation zone:* —150 yd around the air gun • *Prior to the initial start of the activity (e.g., when maneuvering on station):* —Observe the mitigation zone for floating vegetation; if floating vegetation is observed, relocate or delay the start until the mitigation zone is clear. —Observe the mitigation zone for marine mammals; if marine mammals are observed, relocate or delay the start of air gun use. • *During the activity:* —Observe the mitigation zone for marine mammals; if marine mammals are observed, cease air gun use. • *Commencement/recommencement conditions after a marine mammal sighting before or during the activity:* —Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing air gun use) until one of the following 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 48 below.

TABLE 48—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 must be positioned on the shore, the elevated causeway, or a small boat.* *Mitigation Requirements:* • *Mitigation zone:* —100 yd around the pile. • *Prior to the initial start of the activity (for 30 min.):* —Observe the mitigation zone for floating vegetation; if floating vegetation is observed, delay the start until the mitigation zone is clear. —Observe the mitigation zone for marine mammals; if marine mammals are observed, delay the start of pile driving or vibratory pile extraction. • *During the activity:* —Observe the mitigation zone for marine mammals; if marine mammals are observed, cease impact pile driving or vibratory pile extraction. • *Commencement/recommencement conditions after a marine mammal sighting before or during the activity:* —Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing pile driving or pile extraction) until one of the following 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 49 below.

TABLE 49—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 must be positioned on the ship conducting the firing.*

TABLE 49—PROCEDURAL MITIGATION FOR WEAPONS FIRING NOISE—Continued

Procedural mitigation description
—Depending on the activity, the Lookout could be the same one provided for under Explosive Medium-Caliber and Large-Caliber Projectiles or under Small-, Medium, and Large-Caliber Non-Explosive Practice Munitions. *Mitigation Requirements:* • *Mitigation zone:* —30° on either side of the firing line out to 70 yd from the muzzle of the weapon being fired. • *Prior to the initial start of the activity:* —Observe the mitigation zone for floating vegetation; if floating vegetation is observed, relocate or delay the start of weapons firing until the mitigation zone is clear. —Observe the mitigation zone for marine mammals; if marine mammals are observed, relocate or delay the start of weapons firing. • *During the activity:* —Observe the mitigation zone for marine mammals; if marine mammals are observed, cease weapons firing. • *Commencement/recommencement conditions after a marine mammal sighting before or during the activity:* —Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing weapons firing) until one of the following 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 50 through 59.

Procedural Mitigation for Explosive Sonobuoys

Procedural mitigation for explosive sonobuoys is described in Table 50 below.

TABLE 50—PROCEDURAL MITIGATION FOR EXPLOSIVE SONOBUOYS

Procedural mitigation description
Stressor or Activity: • *Explosive sonobuoys.* *Number of Lookouts and Observation Platform:* • *1 Lookout must be positioned must be positioned in an aircraft or on small boat.* • If additional platforms are participating in the activity, personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties. *Mitigation Requirements:* • *Mitigation zone:* —600 yd around an explosive sonobuoy. • *Prior to the initial start of the activity (e.g., during deployment of a sonobuoy field, which typically lasts 20–30 min.):* —Observe the mitigation zone for floating vegetation; if floating vegetation is observed, relocate or delay the start until the mitigation zone is clear. —Conduct passive acoustic monitoring for marine mammals; use information from detections to assist visual observations. —Visually observe the mitigation zone for marine mammals; if marine mammals are observed, relocate or delay the start of sonobuoy or source/receiver pair detonations. • *During the activity:* —Observe the mitigation zone for marine mammals; if marine mammals are observed, cease sonobuoy or source/receiver pair detonations. • *Commencement/recommencement conditions after a marine mammal sighting before or during the activity:* —Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following 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. • *After completion of the activity (e.g., prior to maneuvering off station):* —When practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, follow established incident reporting procedures. —If additional platforms are supporting this activity (*e.g.,* providing range clearance), these assets must assist in the visual observation of the area where detonations occurred.

Procedural Mitigation for Explosive Torpedoes

Procedural mitigation for explosive torpedoes is described in Table 51 below.

TABLE 51—PROCEDURAL MITIGATION FOR EXPLOSIVE TORPEDOES

Procedural mitigation description
Stressor or Activity: • *Explosive torpedoes.* *Number of Lookouts and Observation Platform:* • *1 Lookout must be positioned in an aircraft.* • *If additional platforms are participating in the activity, personnel positioned in those assets (e.g., safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.* *Mitigation Requirements:* • *Mitigation zone:* —2,100 yd around the intended impact location. • *Prior to the initial start of the activity (e.g., during deployment of the target):* —Observe the mitigation zone for floating vegetation; if floating vegetation is observed, relocate or delay the start until the mitigation zone is clear. —Conduct passive acoustic monitoring for marine mammals; use information from detections to assist visual observations. —Visually observe the mitigation zone for marine mammals and jellyfish aggregations; if marine mammals or jellyfish aggregations are observed, relocate or delay the start of firing. • *During the activity:* —Observe the mitigation zone for marine mammals and jellyfish aggregations; if marine mammals and jellyfish aggregations are observed, cease firing. • *Commencement/recommencement conditions after a marine mammal sighting before or during the activity:* —Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following 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 (e.g., prior to maneuvering off station):* —When practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, follow established incident reporting procedures. —If additional platforms are supporting this activity (*e.g.,* providing range clearance), these assets must assist in the visual observation of the area where detonations occurred.

Procedural Mitigation for Medium- and Large-Caliber Projectiles

Procedural mitigation for medium- and large-caliber projectiles is described in Table 52 below.

TABLE 52—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 must be 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 for Weapons Firing Noise. • *If additional platforms are participating in the activity, Navy personnel positioned in those assets (e.g., safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.* *Mitigation Requirements:* • *Mitigation zones:* —200 yd around the intended impact location for air-to-surface activities using explosive medium-caliber projectiles. —600 yd around the intended impact location for surface-to-surface activities using explosive medium-caliber projectiles. —1,000 yd around the intended impact location for surface-to-surface activities using explosive large-caliber projectiles. • *Prior to the initial start of the activity (e.g., when maneuvering on station):* —Observe the mitigation zone for floating vegetation; if floating vegetation is observed, relocate or delay the start until the mitigation zone is clear. —Observe the mitigation zone for marine mammals; if marine mammals are observed, relocate or delay the start of firing. • *During the activity:* —Observe the mitigation zone for marine mammals; if marine mammals are observed, cease firing. • *Commencement/recommencement conditions after a marine mammal sighting before or during the activity:* —Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following 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. • *After completion of the activity (e.g., prior to maneuvering off station):*

TABLE 52—PROCEDURAL MITIGATION FOR EXPLOSIVE MEDIUM-CALIBER AND LARGE-CALIBER PROJECTILES—Continued

Procedural mitigation description
—When practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, follow established incident reporting procedures. —If additional platforms are supporting this activity (*e.g.,* providing range clearance), these assets must assist in the visual observation of the area where detonations occurred.

Procedural Mitigation for Explosive Missiles and Rockets

Procedural mitigation for explosive missiles and rockets is described in Table 53 below.

TABLE 53—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 must be positioned in an aircraft.* • *If additional platforms are participating in the activity, Navy personnel positioned in those assets (e.g., safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.* *Mitigation Requirements:* • *Mitigation zones:* —900 yd around the intended impact location for missiles or rockets with 0.6–20 lb. net explosive weight. —2,000 yd around the intended impact location for missiles with 21–500 lb. net explosive weight. • *Prior to the initial start of the activity (e.g., during a fly-over of the mitigation zone):* —Observe the mitigation zone for floating vegetation; if floating vegetation is observed, relocate or delay the start until the mitigation zone is clear. —Observe the mitigation zone for marine mammals; if marine mammals are observed, relocate or delay the start of firing. • *During the activity:* —Observe the mitigation zone for marine mammals; if marine mammals are observed, cease firing. • *Commencement/recommencement conditions after a marine mammal sighting before or during the activity:* —Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following 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* (*e.g., prior to maneuvering off station):* —When practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, follow established incident reporting procedures. —If additional platforms are supporting this activity (*e.g.,* providing range clearance), these assets must assist in the visual observation of the area where detonations occurred.

Procedural Mitigation for Explosive Bombs

Procedural mitigation for explosive bombs is described in Table 54 below.

TABLE 54—PROCEDURAL MITIGATION FOR EXPLOSIVE BOMBS

Procedural mitigation description
Stressor or Activity: • *Explosive bombs.* *Number of Lookouts and Observation Platform:* • *1 Lookout must be positioned in the aircraft conducting the activity.* • *If additional platforms are participating in the activity, Navy personnel positioned in those assets (e.g., safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.* *Mitigation Requirements:* • *Mitigation zone:* —2,500 yd around the intended target. • *Prior to the initial start of the activity (e.g., when arriving on station):* —Observe the mitigation zone for floating vegetation; if floating vegetation is observed, relocate or delay the start of bomb deployment until the mitigation zone is clear.

TABLE 54—PROCEDURAL MITIGATION FOR EXPLOSIVE BOMBS—Continued

Procedural mitigation description
—Observe the mitigation zone for marine mammals; if marine mammals are observed, relocate or delay the start of bomb deployment. • *During the activity (e.g., during target approach):* —Observe the mitigation zone for marine mammals; if marine mammals are observed, cease bomb deployment. • *Commencement/recommencement conditions after a marine mammal sighting before or during the activity:* —Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing bomb deployment) until one of the following 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. • *After completion of the activity (e.g., prior to maneuvering off station):* —When practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, follow established incident reporting procedures. —If additional platforms are supporting this activity (*e.g.,* providing range clearance), these assets must assist in the visual observation of the area where detonations occurred.

Procedural Mitigation for Sinking Exercises

Procedural mitigation for sinking exercises is described in Table 55 below.

TABLE 55—PROCEDURAL MITIGATION FOR SINKING EXERCISES

Procedural mitigation description
Stressor or Activity: • *Sinking exercises.* *Number of Lookouts and Observation Platform:* • *2 Lookouts (one must be positioned in an aircraft and one must be on a vessel).* • *If additional platforms are participating in the activity, Navy personnel positioned in those assets (e.g., safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.* *Mitigation Requirements:* • *Mitigation zone:* —2.5 nmi around the target ship hulk. • *Prior to the initial start of the activity (90 min. prior to the first firing):* —Conduct aerial observations of the mitigation zone for floating vegetation; delay the start of firing until the mitigation zone is clear. —Conduct aerial observations of the mitigation zone for marine mammals and jellyfish aggregations; if marine mammals or jellyfish aggregations are observed, delay the start of firing. • *During the activity:* —Conduct passive acoustic monitoring for marine mammals; use information from detections to assist visual observations. —Visually observe the mitigation zone for marine mammals from the vessel; if marine mammals are observed, Navy personnel must cease firing. —Immediately after any planned or unplanned breaks in weapons firing of longer than 2 hours, observe the mitigation zone for marine mammals from the aircraft and vessel; if marine mammals are observed, Navy personnel must delay recommencement of firing. • *Commencement/recommencement conditions after a marine mammal sighting before or during the activity:* —The Navy must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following 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. • *After completion of the activity (for 2 hours after sinking the vessel or until sunset, whichever comes first):* —Observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. —If additional platforms are supporting this activity (*e.g.,* providing range clearance), these assets must assist in the visual observation of the area where detonations occurred.

Procedural Mitigation for Explosive Mine Countermeasure and Neutralization Activities

Procedural mitigation for explosive mine countermeasure and neutralization activities is described in Table 56 below.

TABLE 56—PROCEDURAL MITIGATION FOR EXPLOSIVE MINE COUNTERMEASURE AND NEUTRALIZATION ACTIVITIES

Procedural mitigation description
Stressor or Activity:

TABLE 56—PROCEDURAL MITIGATION FOR EXPLOSIVE MINE COUNTERMEASURE AND NEUTRALIZATION ACTIVITIES—Continued

Procedural mitigation description
• *Explosive mine countermeasure and neutralization activities.* *Number of Lookouts and Observation Platform:* • *1 Lookout must be positioned on a vessel or in an aircraft when implementing the smaller mitigation zone.* • *2 Lookouts (one must be positioned in an aircraft and one must be on a small boat) when implementing the larger mitigation zone.* • *If additional platforms are participating in the activity, Navy personnel positioned in those assets (e.g., safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.* *Mitigation Requirements:* • *Mitigation zones:* —600 yd around the detonation site for activities using 0.1–5-lb net explosive weight. —2,100 yd around the detonation site for activities using 6–650 lb net explosive weight (including high explosive target mines). • *Prior to the initial 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 the mitigation zone for floating vegetation; if floating vegetation is observed, relocate or delay the start of detonations until the mitigation zone is clear. —Observe the mitigation zone for marine mammals; if marine mammals are observed, relocate or delay the start of detonations. • *During the activity:* —Observe the mitigation zone for marine mammals, concentrations of seabirds, and individual foraging seabirds; if for marine mammals, concentrations of seabirds, and individual foraging seabirds are observed, cease detonations. • *Commencement/recommencement conditions after a marine mammal sighting before or during the activity or a sighting of seabird concentrations or individual foraging seabirds during the activity:* —Navy personnel must allow a sighted animal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to detonation site; or (3) the mitigation zone has been clear from any additional sightings for 10 min. when the activity involves aircraft that have fuel constraints, or 30 min. when the activity involves aircraft that are not typically fuel constrained. • *After completion of the activity (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 marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, follow established incident reporting procedures. —If additional platforms are supporting this activity (*e.g.,* providing range clearance), these assets must assist in the visual observation of the area where detonations occurred.

Procedural Mitigation for Explosive Mine Neutralization Activities Involving Navy Divers

Procedural mitigation for explosive mine neutralization activities involving Navy divers is described in Table 57 below.

TABLE 57—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 must be on a small boat and one must be 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 must serve as an additional Lookout if aircraft are used during the activity, when implementing the larger mitigation zone. • All divers placing the charges on mines must support the Lookouts while performing their regular duties and must report applicable sightings to their supporting small boat or Range Safety Officer. • If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties. *Mitigation Requirements:* • *Mitigation zones:* —500 yd around the detonation site during activities under positive control using 0.1–20 lb net explosive weight. —1,000 yd around the detonation site during 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. • *Prior to the initial 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 the mitigation zone for floating vegetation; if floating vegetation is observed, relocate or delay the start of detonations or fuse initiation until the mitigation zone is clear. —Observe the mitigation zone for marine mammals; if marine mammals are observed, relocate or delay the start of detonations or fuse initiation. • *During the activity:*

TABLE 57—PROCEDURAL MITIGATION FOR EXPLOSIVE MINE NEUTRALIZATION ACTIVITIES INVOLVING NAVY DIVERS—Continued

Procedural mitigation description
—Observe the mitigation zone for marine mammals, concentrations of seabirds, and individual foraging seabirds (in the water and not on shore); if marine mammals, concentrations of seabirds, and individual foraging seabirds are observed, cease detonations or fuse initiation. —To the maximum extent practicable depending on mission requirements, safety, and environmental conditions, Navy must position boats mustnear the mid-point of the mitigation zone radius (but outside of the detonation plume and human safety zone), must position themselves on opposite sides of the detonation location (when two boats are used), and must 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 must travel in a circular pattern around the detonation location to the maximum extent practicable. —Navy personnel must not set time-delay firing devices (0.1–29 lb. net explosive weight) to exceed 10 min. —During activities conducted in shallow water, a shore-based observer must survey the mitigation zone with binoculars for birds before and after each detonation. If training involves multiple detonations, the second (or third, etc.) detonation must occur either immediately after the preceding detonation (*i.e.,* within 10 seconds) or after 30 min. to avoid potential impacts on birds foraging underwater. • *Commencement/recommencement conditions after a marine mammal sighting before or during the activity or a sighting of seabird concentrations or individual foraging seabirds during the activity:* —Navy personnel must allow a sighted animal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the detonation site; or (3) the mitigation zone has been clear from any additional sightings for 10 min. during activities under positive control with aircraft that have fuel constraints, or 30 min. during activities under positive control with aircraft that are not typically fuel constrained and during activities using time-delay firing devices. • *After completion of an activity (for 30 min):* —Observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, follow established incident reporting procedures. —If additional platforms are supporting this activity (*e.g.,* providing range clearance), these assets must assist in the visual observation of the area where detonations occurred.

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 58 below.

TABLE 58—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 must be on a small boat and one must be on shore from an elevated platform). • If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties. *Mitigation Requirements:* • *Mitigation zone:* —700 yd around the detonation location. • *Prior to the initial start of the activity:* —For 30 min. prior to the first detonation, the Lookout positioned on a small boat must observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, delay the start of detonations. —For 10 min. prior to the first detonation, the Lookout positioned on shore must use binoculars to observe the mitigation zone for marine mammals; if marine mammals are observed, delay the start of detonations until the mitigation zone has been clear of any additional sightings for a minimum of 10 min. • *During the activity:* —Observe the mitigation zone for marine mammals; if marine mammals are observed, cease detonations. • *Commencement/recommencement conditions after a marine mammal sighting before or during the activity:* —Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following 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 location; 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 (for 30 min.):* —The Lookout positioned on a small boat must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. —If additional platforms are supporting this activity (*e.g.,* providing range clearance), these assets must assist in the visual observation of the area where detonations occurred.

Procedural Mitigation for Maritime Security Operations—Anti-Swimmer Grenades

Procedural mitigation for maritime security operations—anti-swimmer grenades is described in Table 59 below.

TABLE 59—PROCEDURAL MITIGATION FOR MARITIME SECURITY OPERATIONS—ANTI-SWIMMER GRENADES

Procedural Mitigation Description
Stressor or Activity: • *Maritime Security Operations—Anti-Swimmer Grenades.* *Number of Lookouts and Observation Platform:* • *1 Lookout must be positioned on the small boat conducting the activity.* • *If additional platforms are participating in the activity, Navy personnel positioned in those assets (e.g., safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.* *Mitigation Requirements:* • *Mitigation zone:* —200 yd around the intended detonation location. • *Prior to the initial start of the activity (e.g., when maneuvering on station):* —Observe the mitigation zone for floating vegetation; if floating vegetation is observed, relocate or delay the start of detonations until the mitigation zone is clear. —Observe the mitigation zone for marine mammals; if marine mammals are observed, relocate or delay the start of detonations. • *During the activity:* —Observe the mitigation zone for marine mammals; if marine mammals are observed, cease detonations. • *Commencement/recommencement conditions after a marine mammal sighting before or during the activity:* —Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following 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. • *After completion of the activity (e.g., prior to maneuvering off station):* —When practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, follow established incident reporting procedures. —If additional platforms are supporting this activity (*e.g.,* providing range clearance), these assets must assist in the visual observation of the area where detonations occurred.

Procedural Mitigation for Physical Disturbance and Strike Stressors

Mitigation measures for physical disturbance and strike stressors are provided in Table 60 through Table 64.

Procedural Mitigation for Vessel Movement

Procedural mitigation for vessel movement is described in Table 60 below.

TABLE 60—PROCEDURAL MITIGATION FOR VESSEL MOVEMENT

Procedural mitigation description
Stressor or Activity: • *Vessel movement:* —The mitigation must 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), (3) the vessel is operated autonomously, or (4) when impractical based on mission requirements (*e.g.,* during Amphibious Assault—Battalion Landing exercises). *Number of Lookouts and Observation Platform:* • *1 Lookout must be on the vessel that is underway.* *Mitigation Requirements:* • *Mitigation zones:* —500 yd around whales. —200 yd around other marine mammals (except bow-riding dolphins and pinnipeds hauled out on man-made navigational structures, port structures, and vessels). • *During the activity:* —When underway, observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must maneuver to maintain distance. • *Additional requirements:* —If a marine mammal vessel strike occurs, Navy personnel must follow the established incident reporting procedures.

Procedural Mitigation for Towed In-Water Devices

Procedural mitigation for towed in-water devices is described in Table 61 below.

TABLE 61—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 must not be applied if the safety of the towing platform or in-water device is threatened. *Number of Lookouts and Observation Platform:* • 1 Lookout must be positioned on the manned towing platform. *Mitigation Requirements:* • *Mitigation zones:* —250 yd around marine mammals. • *During the activity (i.e., when towing an in-water device):* —Observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must 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 62 below.

TABLE 62—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 must be 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. *Mitigation Requirements:* • *Mitigation zone:* —200 yd around the intended impact location. • *Prior to the initial start of the activity (e.g., when maneuvering on station):* —Observe the mitigation zone for floating vegetation; if floating vegetation is observed, relocate or delay the start of firing until the mitigation zone is clear. —Observe the mitigation zone for marine mammals; if marine mammals are observed, relocate or delay the start of firing. • *During the activity:* —Observe the mitigation zone for marine mammals; if marine mammals are observed, cease firing. • *Commencement/recommencement conditions after a marine mammal sighting before or during the activity:* —Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following 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 63 below.

TABLE 63—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 must be positioned in an aircraft.

TABLE 63—PROCEDURAL MITIGATION FOR NON-EXPLOSIVE MISSILES AND ROCKETS—Continued

Procedural mitigation description
Mitigation Requirements: • *Mitigation zone:* —900 yd around the intended impact location. • *Prior to the initial start of the activity (e.g., during a fly-over of the mitigation zone):* —Observe the mitigation zone for floating vegetation; if floating vegetation is observed, relocate or delay the start of firing until the mitigation zone is clear. —Observe the mitigation zone for marine mammals; if marine mammals are observed, relocate or delay the start of firing. • *During the activity:* —Observe the mitigation zone for marine mammals; if marine mammals are observed, cease firing. • *Commencement/recommencement conditions after a marine mammal sighting prior to or during the activity:* —Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following 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 64 below.

TABLE 64—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 must be positioned in an aircraft.* *Mitigation Requirements:* • *Mitigation zone:* —1,000 yd around the intended target. • *Prior to the start of the activity (e.g., when arriving on station):* —Observe the mitigation zone for floating vegetation; if floating vegetation is observed, relocate or delay the start of bomb deployment or mine laying until the mitigation zone is clear. —Observe the mitigation zone for marine mammals; if marine mammals are observed, relocate or delay the start of bomb deployment or mine laying. • *During the activity (e.g., during approach of the target or intended minefield location):* —Observe the mitigation zone for marine mammals and; if marine mammals are observed, cease bomb deployment or mine laying. • *Commencement/recommencement conditions after a marine mammal sighting prior to or during the activity:* —Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing bomb deployment or mine laying) until one of the following 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.

Final 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 Figures 2 and 4 above and the revised figures provided in the HSTT FEIS/OEIS for specific information on the location and boundaries of each mitigation area). 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 FEIS/OEIS. The Navy has taken into account public comments received on the HSTT DEIS/OEIS, best available science, and the practicability of implementing additional mitigation measures and has enhanced its mitigation areas and mitigation measures to further reduce impacts to marine mammals. The Navy has therefore revised their mitigation areas since their application (changes noted at the beginning of this section). The Navy re-analyzed existing mitigation areas and considered new habitat areas suggested by the public, NMFS, and other non-governmental organizations, including main Hawaiian Islands insular false killer whale ESA designated critical habitat, important habitat for large whales in SOCAL, BIAs, and National Marine Sanctuaries. The Navy worked collaboratively with NMFS to develop mitigation areas using inputs from the Navy's operational community, the best available science discussed in Chapter 3 of the HSTT FEIS/OEIS (Affected Environment and Environmental Consequences section), published literature, predicted activity impact footprints, marine species monitoring and density data, and the practicability of implementing additional mitigations.

NMFS conducted an independent analysis of the mitigation areas that the Navy will implement and that are included in this rule, which are described below. NMFS concurs with the Navy's analysis, which indicates that the measures in these mitigation areas are both practicable 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 and this rule. We note that NMFS is

heavily reliant on the Navy's assessment of practicability, since the Navy is best equipped to judge the degree to which a given mitigation measure affects personnel safety or mission effectiveness, and is practical to implement. The Navy considers the measures in this rule to be practicable. We further describe and summarize the manner in which the Area Mitigations in the rule will reduce the likelihood or severity of adverse impacts to marine mammal species or stocks or their habitat below.

Mitigation Areas in Hawaii

Hawaii Island Mitigation Area: The Navy will not use more than 300 hours of MF1 surface hull-mounted MFAS (the source that results in, by far, the highest numbers of take) or 20 hours of MF4 dipping sonar in a year, or explosives across this large area at any time of the year. This mitigation area overlaps the entirety of several small, resident populations (BIAs) of odontocetes that occur only around the island of Hawaii (Hawaii stocks of dwarf sperm whale, pygmy killer whale, short-finned pilot whale, melon-headed whale, bottlenose dolphin, and Blaineville's beaked whale) and about 80 and 90 percent, respectively, of the Hawaii stocks of the rough-toothed dolphin and Cuvier's beaked whale. For small resident populations, we aim to avoid overwhelming small populations (which are more susceptible to certain adverse impacts on population rates of growth and survival, such as Allee effects) with large scale impacts, especially when the population is limited to a small area and less able to access alternative habitat. By minimizing exposure to the most impactful sonar sources and not using explosives, both the magnitude and severity of both behavioral impacts and potential hearing impairment are greatly reduced. There are also several small resident populations (BIAs) of odontocetes that span multiple islands, and this mitigation area overlaps all of the stock's range around the island of Hawaii for false killer whales (Main Hawaiian Island insular stock) and spinner dolphins (Hawaiian Islands stock), and about 90 percent of the range around the island of Hawaii for pantropical spotted dolphins (Hawaii stock). Additionally, critical habitat has been designated, pursuant to the ESA, for false killer whales (Main Hawaiian Island insular stock) in waters between 45 and 3,200 meters depth around all of the main Hawaiian islands, and this mitigation area captures more than 95 percent of this area around the island of Hawaii. Stocks that span multiple islands and have larger total area within their range are generally considered somewhat less vulnerable than those with smaller ranges, but nonetheless, this mitigation area (along with the addition of the 4-Islands Mitigation Area discussed immediately below) offers significant reduction of impacts to these stocks.

This mitigation area also overlaps an important breeding and calving area (BIA) for the Central North Pacific stock of humpback whales (of note, the BIA entirely contains, and is slightly larger than, the Hawaii Humpback Whale National Marine Sanctuary). This BIA includes areas adjacent to all of the Main Hawaiian Islands, and this mitigation area encompasses the important area adjacent to the island of Hawaii. For humpback whales, the reduction of activities and associated impacts (behavioral disturbance or TTS) in this area for individuals that have calves or are potentially breeding is expected to reduce the probability or severity of impacts that would be more likely to adversely impact reproduction or survival of individuals by directly interfering with breeding behaviors or by separating mothers and calves at a time when calves are more susceptible to predators and less able to care for and feed themselves.

Critical habitat has been designated, pursuant to the ESA, for the Hawaiian monk seal from the shore out to the 200-m depth line (but only between the bottom and 10 meters above the bottom) in multiple areas on 10 islands of the Northwestern Hawaiian Islands and six islands of the Main Hawaiian Islands. These areas include: (1) Significant coastal areas where seals haul out for resting, molting, socializing, and avoiding predators; (2) preferred coastal and marine nursery grounds where seals haul out for pupping and nursing, and (3) marine areas where seals hunt and feed. This mitigation area overlaps all of their critical habitat around the Island of Hawaii and, by not using explosives or the most impactful sonar sources in this area, thereby reduces the likelihood that take might impact reproduction or survival by interfering with important feeding or resting behaviors (potentially having adverse impacts on energy budgets) or separating mothers and pups in times when pups are more susceptible to predation and less able to feed or otherwise take care of themselves.

4-Islands Region Mitigation Area: The Navy will not use MF1 surface hull-mounted MFAS (the source that results in, by far, the highest numbers of take) from November 15 through April 15 or use explosives in this area at any time of the year. The Maui/Molokai area (4-Islands Region) is an important reproductive and calving area for humpback whales (another section of the BIA, and including a greater area than the Hawaii island section), and the mitigation area overlaps the entirety of this BIA between the islands of Maui, Molokai, Lanai, and Kaho'alawe. As noted above, the reduction of activities in this area with individuals that have calves or are potentially breeding is expected to reduce the probability or severity of impacts that would be more likely to adversely impact reproduction or survival of individuals by directly interfering with breeding behaviors or by separating mothers and calves at a time when calves are more susceptible to predators and less able to care for and feed themselves.

In addition, as noted above, there are also several small resident populations of marine mammals (BIAs) that span multiple islands, and this mitigation area overlaps about 80 percent of the pantropical spotted dolphin (Hawaii stock) area adjacent to these four islands (one of three discrete areas of the BIA), about 40 percent of the portion of the false killer whale's (Main Hawaiian Island insular stock) range that spans an area north of Molokai and Maui (one of the two significantly larger areas that comprise the false killer whale BIA), and a good portion of the BIA for spinner dolphins (Hawaiian Islands stock), which spans the Main Hawaiian Islands in one large continuous area. As noted above, the critical habitat for false killer whales extends fairly far out (to 3,200 meters depth) around all the Main Hawaiian Islands. As described in the Hawaii Island Mitigation Area section above, by limiting exposure to the most impactful sonar source and explosives for these stocks, in this 4-Islands Region Mitigation Area in addition to the Hawaii Island Mitigation Area both the magnitude and severity of both behavioral impacts and potential hearing impairment are greatly reduced.

Also as noted first above, critical habitat has been designated for the Hawaiian monk seal from the shore out to the 200-m depth line around the four islands targeted with this mitigation area. The mitigation area overlaps more than half of the critical habitat around these four islands and by not using explosives or the most impactful sonar sources in this area, the likelihood that take might impact reproduction or survival by interfering with important feeding or resting behaviors (potentially having adverse impacts on energy budgets) or separating mothers and pups in times when pups are more susceptible to predation and less able to feed or otherwise take care of themselves is greatly reduced.

Humpback Whale Awareness Notification Message Area: The Navy will issue a seasonal awareness notification message that will alert Navy ships and aircraft in the area of the possible presence of whales and instruct them to remain vigilant to the presence of large whales that when seasonally concentrated (like humpbacks) may become vulnerable to vessel strikes. The message is issued to all vessels in Hawaii from November through April. This message will further increase the vigilance of Navy Lookouts in a place and time where humpback whale density is high, which will further reduce the chance that a humpback whale (or other large whale) may be struck.

Humpback Whale Special Reporting Areas: The Navy will report the total hours of surface ship hull-mounted MFAS used between December 15 and April 15 in three special reporting areas, including Penguin Banks and two other much smaller areas that also overlap the humpback whale BIA. These reporting areas are not mitigation areas, however, we describe them here because they were identified in order to inform the adaptive management process. Specifically, Penguin Bank is an area with high humpback whale density that is also critical for Navy training and testing. Because of the impracticability of implementing activity limitations in this important area, we designated this reporting requirement so that NMFS could remain aware of the level of activity in the area and revisit mitigation discussions, if appropriate. To date the Navy's reporting has not lead to changes in NMFS' least practicable adverse impact analysis for the mitigation in this area.

Mitigation Areas Off the U.S. West Coast

Santa Barbara Island Mitigation Area (Year-round): The Navy will not use ship hull-mounted MFAS during training or testing (the source responsible for the most

take), or explosives during medium-calibre or large-calibre gunnery, torpedo, bombing, and missile (including 2.75-inch rockets) activities during training, year-round. The boundary of this mitigation area is conterminous with the boundary of the portion of the Channel Islands NMS that is within the HSTT Study Area, and overlaps the extensive coastal gray whale migration BIA. The Channel Islands NMS is considered a highly productive and diverse area of high-value habitat that is more typically free of anthropogenic stressors (because many activities are prohibited or limited within the Sanctuary boundaries), and, therefore, limiting sonar and explosive activities in this area would be expected to reduce the likelihood that marine mammals feeding or resting in the area (which is more likely because of the higher value habitat) would be disrupted in a manner that would have adverse effects on their energy budgets and potentially impact reproduction or survival, or that marine mammals using the area would incur TTS or PTS. Activity limitations in this mitigation area are considered protection of generally higher quality habitat (because of the diversity of prey species and protected space, including acoustic habitat, that is generally freer from stressors) for the myriad marine mammal species that use it or may pass through the area, which could include any of the species identified as being present in the SOCAL portion of the HSTT Study Area. Though the gray whale migration area primarily consists of a relatively narrow coastal strip, some gray whales migrate through this area, either north or south, in all months of the year except August and September.

San Diego Arc, San Nicolas Island, and Santa Monica/Long Beach Mitigation Areas: From June 1 through October 31, the Navy will not conduct more than 200 hours of surface ship hull-mounted MFAS in these combined areas during training or testing, and will limit explosive use in the three areas as described in Table 66 below. The San Diego Arc Mitigation Area is conterminous with the entirety of a blue whale feeding BIA and the other two mitigation areas are conterminous with the portions of two blue whale feeding BIAs that overlap the HSTT Study Area. One blue whale feeding BIA in SOCAL is not protected by a mitigation area (Tanner-Cortes Banks) because it would be impracticable due to the significant importance of the area for Navy testing and training (described in detail in the HSTT FEIS/OEIS). All of these mitigation areas overlap the gray whale migratory route. Reducing harassing exposures (behavioral disturbance or hearing impairment) 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.

Blue whale (June–October), Gray Whale (November–March), and Fin Whale (November–May) Awareness Notification Message Area: The Navy will issue a seasonal awareness notification message that will alert ships and aircraft in the area of the possible presence of whales and instruct them to remain vigilant to the presence of large whales that, when seasonally concentrated (like blue whales, gray whales, or fin whales) may become vulnerable to vessel strikes. The message is issued to all Navy vessels in SOCAL in the indicated time periods. This message is will further increase the vigilance of Navy Lookouts in a place and time where blue, gray, and fin whale density is high, which will further reduce the chance that one of these species (or other large whale) may be struck.

Information on the mitigation measures that the Navy will implement within mitigation areas is provided in Tables 65 and 66. The mitigation applies year-round unless specified otherwise in the tables.

Mitigation Areas for the Hawaii Range Complex (HRC)

Mitigation areas for the HRC are described in Table 65 below. The location of each mitigation area is depicted in Figures 1 and 2 above and may also be found in Chapter 5 of the 2018 HSTT FEIS/OEIS.

TABLE 65—MITIGATION AREAS FOR MARINE MAMMALS IN THE HAWAII RANGE COMPLEX

Mitigation area description
Stressor or Activity: • Sonar. • Explosives. • Vessel strikes. *Mitigation Area Requirements:* • *Hawaii Island Mitigation Area (year-round):* —Navy personnel must not conduct more than 300 hours of MF1 surface ship hull-mounted mid-frequency active sonar or 20 hours of MF4 dipping sonar, or use explosives that could potentially result in takes of marine mammals during training and testing. Should national security require conduct of more than 300 hours of MF1 surface ship hull-mounted mid-frequency active sonar or 20 hours of MF4 dipping sonar, or use of explosives that could potentially result in the take of marine mammals during training or testing, Naval units must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (*e.g.,* sonar hours or explosives usage) in its annual activity reports submitted to NMFS. • *4-Islands Region Mitigation Area (November 15–April 15 for active sonar; year-round for explosives):* —Navy personnel must not use MF1 surface ship hull-mounted mid-frequency active sonar or explosives that could potentially result in takes of marine mammals during training and testing. Should national security require use of MF1 surface ship hull-mounted mid-frequency active sonar or explosives that could potentially result in the take of marine mammals during training or testing, Naval units must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (*e.g.,* sonar hours or explosives usage) in its annual activity reports submitted to NMFS. • *Humpback Whale Special Reporting Areas (December 15–April 15):* —Navy personnel must report the total hours of surface ship hull-mounted mid-frequency active sonar used in the special reporting areas in its annual training and testing activity reports submitted to NMFS. • *Humpback Whale Awareness Notification Message Area (November–April):* —Navy personnel must 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, Navy personnel must 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. —Platforms must 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.

Mitigation Areas for the SOCAL Portion of the Study Area

Mitigation areas for the SOCAL portion of the Study Area are described in Table 66 below. The location of each mitigation area is depicted in Figures 3 and 4 above and may also be found in Chapter 5 of in the 2018 HSTT FEIS/OEIS.

TABLE 66—MITIGATION AREAS FOR MARINE MAMMALS IN THE SOUTHERN CALIFORNIA PORTION OF THE STUDY AREA

Mitigation area description
Stressor or Activity • Sonar. • Explosives. • Vessel strikes. *Mitigation Area Requirements:* • *San Diego Arc, San Nicolas Island, and Santa Monica/Long Beach Mitigation Areas (June 1–October 31):* —Navy personnel must not conduct more than a total of 200 hours of MF1 surface ship hull-mounted mid-frequency active sonar in the combined areas, excluding normal maintenance and systems checks, during training and testing. Should national security require conduct of more than 200 hours of MF1 surface ship hull-mounted mid-frequency active sonar in the combined areas during training and testing (excluding normal maintenance and systems checks), naval units must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (*e.g.,* sonar hours) in its annual activity reports submitted to NMFS. —Within the San Diego Arc Mitigation Area, Navy personnel must not use explosives that could potentially result in the take of marine mammals during large-caliber gunnery, torpedo, bombing, and missile (including 2.75″ rockets) activities during training and testing. Should national security require use of explosives that could potentially result in the take of marine mammals during large-caliber gunnery, torpedo, bombing, and missile (including 2.75″ rockets) activities during training or testing, naval units must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (*e.g.,* explosives usage) in its annual activity reports submitted to NMFS. —Within the San Nicolas Island Mitigation Area, Navy personnel must not use explosives that could potentially result in the take of marine mammals during mine warfare, large-caliber gunnery, torpedo, bombing, and missile (including 2.75″ rockets) activities during training. Should national security require use of explosives that could potentially result in the take of marine mammals during mine warfare, large-caliber gunnery, torpedo, bombing, and missile (including 2.75″ rockets) activities during training, Naval units must obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy must provide NMFS with advance notification and include the information (*e.g.,* explosives usage) in its annual activity reports submitted to NMFS. —Within the Santa Monica/Long Beach Mitigation Area, Navy personnel must not use explosives that could potentially result in the take of marine mammals during mine warfare, large-caliber gunnery, torpedo, bombing, and missile (including 2.75″ rockets) activities during training and testing. Should national security require use of explosives that could potentially result in the take of marine mammals during mine warfare, large-caliber gunnery, torpedo, bombing, and missile (including 2.75″ rockets) activities during training or testing, Naval units must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy must provide NMFS with advance notification and include the information (*e.g.,* explosives usage) in its annual activity reports submitted to NMFS. • *Santa Barbara Island Mitigation Area (year-round):* —Navy personnel must not use MF1 surface ship hull-mounted mid-frequency active sonar during training or testing, or explosives that could potentially result in the take of marine mammals during medium-caliber or large-caliber gunnery, torpedo, bombing, and missile (including 2.75″ rockets) activities during training. Should national security require use of MF1 surface ship hull-mounted mid-frequency active sonar during training or testing, or explosives that could potentially result in the take of marine mammals during medium-caliber or large-caliber gunnery, torpedo, bombing, and missile (including 2.75″ rockets) activities during training, Naval units must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (*e.g.,* sonar hours or explosives usage) in its annual activity reports submitted to NMFS. • *Blue Whale (June–October), Gray Whale (November–March), and Fin Whale (November–May) Awareness Notification Message Areas:* —Navy personnel must 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, gray whales, or fin whales. —To maintain safety of navigation and to avoid interactions with large whales during transits, Navy personnel must instruct vessels to remain vigilant to the presence of large whale species, that when concentrated seasonally, may become vulnerable to vessel strikes. —Platforms must 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.

Summary of Mitigation

The Navy's mitigation measures are summarized in Tables 67 (Procedural Mitigation) and 68 (Mitigation Areas).

Summary of Procedural Mitigation

TABLE 67—SUMMARY OF PROCEDURAL MITIGATION

Stressor or activity	Mitigation zone sizes and other requirements
Environmental Awareness and Education	• Afloat Environmental Compliance Training program for applicable personnel.
Active Sonar	Depending on sonar source: • 1,000 yd power down, 500 yd power down, and 200 yd shut down • 200 yd shut down.
Air Guns	• 150 yd.
Pile Driving	• 100 yd.
Weapons Firing Noise	• 30° on either side of the firing line out to 70 yd.
Explosive Sonobuoys	• 600 yd.

TABLE 67—SUMMARY OF PROCEDURAL MITIGATION—Continued

Stressor or activity	Mitigation zone sizes and other requirements
Explosive Torpedoes	• 2,100 yd.
Explosive Medium-Caliber and Large-Caliber Projectiles	• 1,000 y. (large-caliber projectiles). • 600 yd (medium-caliber projectiles during surface-to-surface activities). • 200 yd (medium-caliber projectiles during air-to-surface activities).
Explosive Missiles and Rockets	• 2,000 yd (21–500 lb. net explosive weight). • 900 yd (0.6–20 lb. net explosive weight).
Explosive Bombs	• 2,500 yd.
Sinking Exercises	• 2.5 nmi.
Explosive Mine Countermeasure and Neutralization Activities	• 2,100 yd (6–650 lb net explosive weight). • 600 yd (0.1–5 lb net explosive weight).
Explosive Mine Neutralization Activities Involving Navy Divers	• 1,000 yd (21–60 lb net explosive weight for positive control charges and charges using time-delay fuses). • 500 yd (0.1–20 lb net explosive weight for positive control charges).
Underwater Demolition Multiple Charge—Mat Weave and Obstacle Loading.	• 700 yd.
Maritime Security Operations—Anti-Swimmer Grenades	• 200 yd.
Vessel Movement	• 500 yd (whales). • 200 yd (other marine mammals).
Towed In-Water Devices	• 250 yd (marine mammals).
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

TABLE 68—SUMMARY OF MITIGATION AREAS FOR MARINE MAMMALS

Summary of mitigation area requirements
Mitigation Areas for Shallow-water Coral Reefs and Precious Coral Beds (year-round) • The Navy must not conduct precision anchoring (except in designated anchorages), explosive or non-explosive mine countermeasure and neutralization activities, explosive or non-explosive mine neutralization activities involving Navy divers, explosive or non-explosive small-, medium-, and large-caliber gunnery activities using a surface target, explosive or non-explosive missile and rocket activities using a surface target, and explosive or non-explosive bombing or mine laying activities (except in designated locations). • The Navy must not place mine shapes, anchors, or mooring devices on the seafloor (except in designated locations).
Hawaii Island Mitigation Area (year-round) • Navy personnel must not conduct more than 300 hours of MF1 surface ship hull-mounted mid-frequency active sonar or 20 hours of MF4 dipping sonar, or use explosives that could potentially result in takes of marine mammals during training and testing.[1]
4-Islands Region Mitigation Area (November 15–April 15 for active sonar; year-round for explosives) • Navy personnel must not use MF1 surface ship hull-mounted mid-frequency active sonar or explosives that could potentially result in takes of marine mammals during training and testing.[1]
Humpback Whale Special Reporting Areas (December 15–April 15) • Navy personnel must report the total hours of surface ship hull-mounted mid-frequency active sonar used in in the special reporting areas in its annual training and testing activity reports submitted to NMFS.
San Diego Arc, San Nicolas Island, and Santa Monica/Long Beach Mitigation Areas (June 1–October 31) • Navy personnel must not conduct more than a total of 200 hours of MF1 surface ship hull-mounted mid-frequency active sonar in the combined areas, excluding normal maintenance and systems checks, during training and testing.[1] • Within the San Diego Arc Mitigation Area, Navy personnel must not use explosives that could potentially result in the take of marine mammals during large-caliber gunnery, torpedo, bombing, and missile (including 2.75″ rockets) activities during training and testing.[1] • Within the San Nicolas Island Mitigation Area, Navy personnel must not use explosives that could potentially result in the take of marine mammals during mine warfare, large-caliber gunnery, torpedo, bombing, and missile (including 2.75″ rockets) activities during training.[1] • Within the Santa Monica/Long Beach Mitigation Area, Navy personnel must not use explosives that could potentially result in the take of marine mammals during mine warfare, large-caliber gunnery, torpedo, bombing, and missile (including 2.75″ rockets) activities during training and testing.[1]
Santa Barbara Island Mitigation Area (year-round) • Navy personnel must not use MF1 surface ship hull-mounted mid-frequency active sonar during training and testing, or explosives that could potentially result in the take of marine mammals during medium-caliber or large-caliber gunnery, torpedo, bombing, and missile (including 2.75″ rockets) activities during training.[1]
Awareness Notification Message Areas (seasonal according to species) • Navy personnel must issue awareness notification messages to alert ships and aircraft to the possible presence of humpback whales (November–April), blue whales (June–October), gray whales (November–March), or fin whales (November–May).

[1] If Naval units need to conduct more than the specified amount of training or testing, they 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 submitted to NMFS.

Mitigation Conclusions

NMFS has carefully evaluated the Navy's mitigation measures—many of which were developed with NMFS' input during the previous phases of Navy training and testing authorizations, or during the development of the proposed or final rule for these HSTT Phase 3 activities. NMFS and the Navy also considered a broad range of other measures (*i.e.,* the measures considered but eliminated, as discussed in the HSTT FEIS/OEIS, which reflect many of the comments that have arisen via public input in past years) to ensure that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. In particular for this rule, we carefully and thoroughly evaluated those additional measures that were put in place in 2015 as a result of the settlement agreement in *Conservation Council for Hawaii* v. *National Marine Fisheries Service.* Our evaluation of mitigation 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. Ultimately, the Navy adopted all mitigation measures that are practicable by, among other things, not jeopardizing its mission and Title 10 responsibilities. A comprehensive assessment by Navy leadership of the final, entire list of mitigation measures concluded that the inclusion of any further mitigation beyond those measures identified here in the final rule would be entirely impracticable. NMFS independently reviewed the Navy's practicability determinations for specific mitigation areas and concurs with the Navy's analysis.

Based on our evaluation of the Navy's planned measures, as well as other measures considered by the Navy and NMFS, NMFS has determined that the mitigation measures included in this rule are appropriate means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, considering specifically personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Additionally, as described in more detail below, the final rule includes an adaptive management provision, which ensures that mitigation is regularly assessed and provides a mechanism to improve the mitigation, based on the factors above, through modification as appropriate.

Monitoring

Section 101(a)(5)(A) of the MMPA states that in order to authorize incidental take for an activity, NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

Although the Navy has been conducting research and monitoring in the HSTT Study Area for over 20 years, it 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 analyses 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.navymarinespeciesmonitoring.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 will continue collecting monitoring data to inform our understanding of the occurrence of marine mammals in the HSTT Study Area; the likely exposure of marine mammals to stressors of concern in the HSTT Study 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 seeks to leverage and build on existing research efforts whenever possible.

As agreed upon 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.

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 our understanding of the likely occurrence of marine mammals and/or ESA-listed marine species in the vicinity of the action (*i.e.,* presence, abundance, distribution, and/or density of species);
- An increase in our understanding of the nature, scope, or context of the likely exposure of marine mammals and/or ESA-listed species to any of the potential stressor(s) associated with the action (*e.g.,* sound, explosive detonation, or military expended materials) through better understanding of one or more of the following: (1) The action and the environment in which it occurs (*e.g.,* sound source characterization, propagation, and ambient noise levels); (2) the affected species (*e.g.,* life history or dive patterns); (3) the likely co-occurrence of marine mammals and/or ESA-listed marine species with the action (in whole or part); and/or (4) the likely biological or behavioral context of exposure to the stressor for the marine mammal and/or ESA-listed marine species (*e.g.,* age class of exposed animals or known pupping, calving or feeding areas);
- An increase in our understanding of how individual marine mammals or ESA-listed marine species respond (behaviorally or physiologically) to the specific stressors associated with the action (in specific contexts, where possible, *e.g.,* at what distance or received level);
- An increase in our understanding of how anticipated individual responses, to individual stressors or anticipated combinations of stressors, may impact either: (1) The long-term fitness and survival of an individual or (2) the population, species, or stock (*e.g.,* through effects on annual rates of recruitment or survival);
- An increase in our understanding of the effectiveness of mitigation and monitoring measures;
- A better understanding and record of the manner in which the authorized entity complies with the incidental take regulations and LOAs and the ESA Incidental Take Statement;
- An increase in the probability of detecting marine mammals (through

improved technology or methods), both specifically within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general, to better achieve the above goals; and

- Ensuring that adverse impact of activities remains at the least practicable level.

Strategic Planning Process for Marine Species Monitoring

The Navy also developed the Strategic Planning Process for Marine Species Monitoring, which establishes the guidelines and processes necessary to develop, evaluate, and fund individual projects based on objective scientific study questions. The process uses an underlying framework designed around intermediate scientific objectives and a conceptual framework incorporating a progression of knowledge spanning occurrence, exposure, response, and consequence. The Strategic Planning Process for Marine Species Monitoring is used to set overarching intermediate scientific objectives; develop individual monitoring project concepts; identify potential species of interest at a regional scale; evaluate, prioritize and select specific monitoring projects to fund or continue supporting for a given fiscal year; execute and manage selected monitoring projects; and report and evaluate progress and results. This process addresses relative investments to different range complexes based on goals across all range complexes, and monitoring would leverage multiple techniques for data acquisition and analysis whenever possible. The Strategic Planning Process for Marine Species Monitoring is also available online (*http://www.navymarinespeciesmonitoring.us/*).

Past and Current Monitoring in the HSTT Study Area

The monitoring program has undergone significant changes since the first rules were issued for HRC and SOCAL in 2009, which highlights 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 monitoring in the first two MMPA rulemaking periods 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 monitoring under the 2013–2018 regulations has included:

- HRC
  - Long-term Trends in Abundance of Marine Mammals at the Pacific Missile Range Facility (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.navymarinespeciesmonitoring.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 the 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, and 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.

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 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 planned new studies will continue within the HSTT Study Area for either the duration of these 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.navymarinespeciesmonitoring.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 efforts, or one to two year special studies. The Navy's monitoring projects going into 2019 include:

- Long-term Trends in Abundance of Marine Mammals at PMRF (Hawaii)—Analysis of long-term archive of hydrophone recordings from the instrumented range at PMRF to uncover long-term trends in the occurrence of marine mammals on the range, including minke whale, humpback whale, fin whale, Bryde's whale, and Blainville's beaked whale.
- Estimation of Received Levels of MFAS and an opportunistic Behavioral Response Study of Marine Mammals at PMRF (Hawaii)—Estimation of the received level of mid-frequency active sonar (MFAS) of marine mammals (including blackfish species, mysticetes, sperm whale, and beaked whales) near PMRF as well as their short-term behavioral responses. Analysts will perform acoustic propagation modeling from Navy platforms to localized animals. Animals may be localized either acoustically by the range hydrophones, or by a satellite tagging effort. The tagging component will also provide information on spatial movement and habitat-use patterns. Both received-level and behavioral response studies will be an opportunistic protocol performed during actual Navy training deploying MFAS.
- Humpback Whale Tagging at PMRF (Hawaii)—A combination of acoustic pinger and satellite tags will be applied to humpback whales to investigate the movement patterns, habitat use, and behavior of humpback whales (nearshore and offshore) of different age-sex classes on and off the instrumented range at PMRF. The tags will also enable enhanced validation of localization algorithms using the range hydrophones, as well as provide locations of animals when they are not vocalizing.
- Navy Civilian Marine Mammal Observers on guided missile destroyers (DDGs) (Hawaii and Southern California)—Visual survey for marine mammals will be performed by biologist observers embarked aboard Navy DDGs during training exercises involving deployment of MFAS. The acquired data will be incorporated in a long-term project investigating the mitigation effectiveness of Navy Lookouts that spans all Navy at-sea training ranges in both the Atlantic and Pacific oceans.
- Cuvier's Beaked Whale Impact Assessment at SOAR (Southern California)—The instrumented hydrophone range at the Navy's Southern California Antisubmarine Warfare Range (SOAR), combined with concurrent field efforts with satellite tagging and visual surveys will investigate key baseline population demographics and movement patterns for Cuvier's beaked whale. Short-term behavioral and/or vocal responses when Cuvier's beaked whales are exposed to sonar will also be investigated.
- Beaked Whale Occurrence In Southern California From Passive Acoustic Monitoring (Southern California)—This project has three field components. Bottom-moored passive acoustic devices will investigate the seasonality and spatial distribution of beaked whale species in Southern California including new deployments in Baja. Also, ocean profiling gliders outfitted with a high frequency acoustic recording system will perform a survey on a larger geographic scale and across a diverse range of habitats in Southern California to investigate the spatial distribution and occurrence of beaked whale species. Finally, passive acoustic data from towed arrays deployed during quarterly California Cooperative Oceanic Fisheries Investigations surveys will be analyzed for beaked whales across a large geographic scale.
- Guadalupe Fur Seal Population Census and Satellite Tracking (Southern California)—Satellite tagging as well as land-based visual survey will investigate the habitat use by age-sex class of Guadalupe fur seals across both the Southern California Range Complex and Northwest Training and Testing study areas, as well as other areas including epipelagic waters.
- Blue and Fin Whale Satellite Tagging and Genetics (Southern California)—Satellite tagging of blue whales and fin whales at various locations off southern California occurred from 2014–2017. The project investigated movement patterns, occurrence, and residence times of blue and fin whales within Navy training and testing areas along the U.S. West Coast as compared to other areas visited by tagged whales outside of Navy training and testing areas. While field efforts for this project are complete, additional analysis will continue beyond 2018 and include peer-reviewed result publication.

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 HSTT Study Area 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 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. 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 more effectively accomplishing the goals of the mitigation and monitoring and if the measures are practicable. If the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of the planned LOA in the **Federal Register** and solicit public comment.

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. The results from monitoring reports and other studies may be viewed at *https://www.navymarinespeciesmonitoring.us/*.

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. 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.navymarinespeciesmonitoring.us*. Currently, there are several different reporting requirements pursuant to these regulations:

Notification of Injured, Live Stranded or Dead Marine Mammals

The Navy will consult the Notification and Reporting Plan, which sets out notification, reporting, and other requirements when injured, live stranded, or dead marine mammals are detected. The Notification and Reporting Plan is available for review at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities*.

Annual HSTT Monitoring Report

The Navy will 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 will 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 will be treated together so that summaries can be provided for each topic area. The report need not include analyses and content that do 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' 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 will describe progress of knowledge made with respect to monitoring study questions across multiple Navy ranges associated with the ICMP. Similar study questions will be treated together so that progress on each topic will 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.

Annual HSTT Training Exercise Report and Testing Activity Report

Each year, the Navy will submit two preliminary reports (Quick Look Reports) to NMFS detailing the status of authorized sound sources within 21 days after the anniversary of the date of issuance of the LOAs. Each year, the Navy will also submit detailed reports to NMFS within three months after the one-year anniversary of the date of issuance of the LOAs. The annual reports will 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 report will also include the details regarding specific requirements associated with specific mitigation areas. 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. Information included in the classified annual reports may be used to inform future adaptive management of activities within the HSTT Study Area.

The Annual HSTT Training Exercise Report and Testing Activity Navy reports (classified or unclassified versions) 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; and
- HSTT Mitigation Areas (see Chapter 11 of the Navy's rulemaking/LOA application): The Navy will report any use of surface ship hull-mounted mid-frequency active sonar that occurred as specifically described in these areas.
- *Major Training Exercises Notification*

The Navy shall submit an electronic report to NMFS within fifteen calendar days after the completion of any major training exercise indicating: Location of the exercise; beginning and end dates of the exercise; and type of exercise.

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 and the Marine Mammal Commission (currently, every two years a joint Pacific-Atlantic meeting is held); and
- Annual Adaptive Management meetings with the Marine Mammal Commission (recently modified to occur in conjunction with the annual monitoring technical review meeting).

Analysis and Negligible Impact Determination

Negligible Impact Analysis

Introduction

NMFS has defined negligible impact as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through mortality, serious injury, and Level A or Level B harassment (as presented in Tables 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' 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 of Marine Mammals* 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 mortality takes that we believe could occur or harassment takes that are likely to occur 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 a 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 under 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 collectively evaluate this information, as well as other more taxa-specific information and mitigation measure effectiveness, in group-specific discussions that support our negligible impact conclusions for each stock.

Harassment

The Navy's Specified Activities reflect 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 the Navy's activities are conducted over any given year over any given five-year period. Specifically, 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 *Description of the Specified Activity* 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 would be reasonably expected to occur and are being authorized, 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. Organizing our analysis by grouping species or stocks that share common traits or that will respond similarly to effects of the Navy's activities and then providing species- or stock-specific information allows us to avoid duplication while assuring that we have analyzed the effects of the specified activities on each affected 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 maximum 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, independently reviewed, 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 harassment 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 of where a larger portion of a stock is being taken by Navy activities, 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 or more likely sequential. 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, for some individuals of some stocks 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, for some stocks 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 that individuals from most species or stocks would be taken over more than a few sequential days. This means that even where repeated takes of individuals are likely to occur, they are more likely to result from non-sequential exposures from different activities, and, even if sequential, individual animals are not predicted to be taken for more than several 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 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 a significant portion of the days of the year, much less that many of the days of disturbance would be sequential.

Some of the lower level physiological stress responses (*e.g.,* orientation or startle response, change in respiration, change in heart rate) discussed earlier would 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 harassment 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' 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). The Navy 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 Level B behavioral harassment occur in a day. Take estimates alone do not 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 individual animals from sonar and other active sound sources during testing and training activities would be primarily from ASW events. It is important to note that 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 high-power 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 of Level B behavioral harassment (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, 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. More severe effects could occur 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. Such effects 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. However, such severe behavioral effects are expected to occur infrequently.

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 be taken by Level B harassment under each behavioral response function that would occur within 6-dB increments (percentages discussed below in the *Group and Species-Specific Analyses* 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 other contextual factors (such as distance) are important also. The majority of Level B harassment 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. Because stocks belonging to the same species and species belonging to taxa that share common characteristics are likely to respond and be affected in similar ways, these discussions are presented within each species group below in the *Group and Species-Specific Analyses* 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 from Navy activities might necessarily be expected to potentially result in more severe responses (see the *Group and Species-Specific Analyses* section below for more detailed information). 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.,* whether they will occur for a longer duration over sequential days or the comparative sound level that will be received). 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. Additionally 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 (Navy Activity Descriptions) of the HSTT FEIS/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 include 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 typically 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, or demonstrate sustained behavioral responses. 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 encountered. They also have shutdown procedures and rigorous monitoring, *i.e.,* during the activity, the Navy conducts passive acoustic monitoring and visually observes for marine mammals 90 min prior to the first firing, during the event, and 2 hrs after sinking the vessel. All of these factors make it unlikely that individuals would be exposed to the exercise for extended periods or on consecutive days.

Assessing the Number of Individuals Taken and the Likelihood of Repeated Takes

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 by Level B harassment and the number of times those individuals are 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 harassment 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 and expected 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 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. It also 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 several sequential days (with a few possible exceptions discussed in the stock-specific conclusions).

When calculating the proportion of a population affected by takes (*e.g.,* the number of takes divided by population abundance), which can also be helpful in estimating the number of days over which some individuals may be taken, it is important to choose an appropriate population estimate against which 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). When the stock is known to range well outside of U.S. EEZ boundaries, population estimates based on surveys conducted only within the U.S. EEZ are known to be underestimates. In the case of both Hawaii and Southern California (near which mutually exclusive sets of stocks are impacted by Navy activities), the areas of Navy activities across which take is estimated have boundaries that vary significantly from the U.S. EEZ boundaries, and further vary differently in Hawaii versus Southern California. For example, the Study Area encompasses large areas of ocean space outside U.S. waters (*i.e.,* extending seaward beyond the U.S. EEZ) or, separately, many stocks range up and down the U.S., Canada, and/or Mexican West Coast, while Navy activities covered in this rule are confined north-south to the Southern California area included in the Navy study area. Additionally, the information used to estimate take includes the data underlying the SAR abundances, as well as other survey data, used together to model density layers. 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 or an assessment of how many days a year individuals may be taken because of different population baselines. However, when the SAR considers the larger area within which the stock ranges it may contribute to a more appropriate sense of the proportion of the population taken. Accordingly, in calculating the percentage of takes versus abundance for each stock in order to assist in understanding both the percentage of the stock affected, as well as how many days across a year individuals could be taken, we use the data most appropriate for the situation.

For Hawaii, a fair number of stocks range outside of the U.S. EEZ, the majority of the take occurs inside the U.S. EEZ, and a fair number of stocks do not have abundance estimates in the SAR. Therefore, for the purposes of this analytical exercise, the tables included in the group-specific analyses below include percentages calculated for the Navy's take in the U.S. EEZ versus the Navy-estimated abundances within the U.S. EEZ, as well as the take in the whole Study Area versus the Navy-estimated abundances in the whole area. However, where appropriate for a given stock (and the explanation will be provided in the narrative), the SAR abundance may also be used for comparison. For Southern California, while a fair number of stocks range seaward from the U.S. EEZ, many also range significantly north and south outside the Navy Study Area and that abundance is captured by the SAR. Additionally, generally speaking, except where stocks are more coastal, a higher percentage of the take occurs outside of the U.S. EEZ than around Hawaii (though the majority are still inside the U.S. EEZ). Accordingly, rather than focus on the take in the U.S. EEZ, the tables included in the group-specific analyses below include percentages calculated for the Navy's take in the entire Study Area as compared against both the Navy-calculated abundance in the entire Study Area and the SARs.

The estimates found in NMFS' 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' 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.,* populations 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' 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 should be fully understood before drawing conclusions.

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, in general, TTS can last from a few minutes to days, be of varying degree, and occur across various frequency bandwidths, all of which determine the severity of the impacts on the affected individual, which can range from minor to more severe. Tables 72–77 indicate the number of takes by TTS that may be incurred by different stocks from exposure to active sonar and explosives. The modeling predicts that no TTS will result from air guns or pile driving activities. The TTS sustained by an animal is primarily classified by three characteristics:

1. Frequency—Available data (of mid-frequency hearing specialists exposed to mid- or high-frequency sounds; Southall *et al.,* 2007) suggest that most TTS occurs in the frequency range of the source up to one octave higher than the source (with the maximum TTS at ½ octave above). The Navy's MF sources, which are the highest power and most numerous sources and the ones that cause the most take, utilize the 1–10 kHz frequency band, which suggests that if TTS were to be induced by any of these MF sources it would be in a frequency band somewhere between approximately 2 and 20 kHz, which is in the range of communication calls for many odontocetes, but below the range of the echolocation signals used for foraging. 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), which could overlap with the range in which some odontocetes communicate or echolocate. 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 unlikely. There are fewer LF sources and the majority are used in the more readily mitigated testing environment, and TTS from LF sources would most likely occur below 2 kHz, which is in the range where many mysticetes communicate and also where other non-communication auditory cues are located (waves, snapping shrimp, fish prey). TTS from explosives would be broadband. Also of note, the majority of sonar sources from which TTS may be incurred occupy a narrow frequency band, which means that the TTS incurred would also be across a narrower band (*i.e.,* not affecting the majority of an animal's hearing range). This frequency provides information about the cues to which a marine mammal may be temporarily less sensitive, but not the degree or duration of sensitivity loss.

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 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) and the relative motion between the sonar vessel and the animal. In the TTS studies discussed in the proposed rule, some using exposures of almost an hour in duration or up to 217 SEL, most of the TTS induced was 15 dB or less, though Finneran *et al.* (2007) induced 43 dB of TTS with a 64-second exposure to a 20 kHz source. However, since any hull-mounted sonar such as the SQS–53 (MFAS), emits a ping typically every 50 seconds, incurring those levels of TTS is highly unlikely. In short, given the anticipated duration and levels of sound exposure, we would not expect marine mammals to incur more than relatively low levels of TTS (*i.e.,* single digits of sensitivity loss). To add context to this degree of TTS, individual marine mammals may regularly experience variations of 6dB differences in hearing sensitivity across time (Finneran *et al.,* 2000, 2002; Schlundt *et al.,* 2000).

3. Duration of TTS (recovery time)—In the TTS laboratory studies (as discussed in the proposed rule), 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, especially given the fact that the higher power sources resulting in TTS are predominantly intermittent, which have been shown to result in shorter durations of TTS. Also, for the same reasons discussed in the *Analysis and Negligible Impact Determination—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.

Tables 72–77 indicate the number of incidental takes by TTS that are likely to result from the Navy's activities. As a general point, the majority of these TTS takes are the result of exposure to hull-mounted MFAS (MF narrower band sources), with fewer from explosives (broad-band lower frequency sources), and even fewer from LF or HF sonar sources (narrower band). As described above, we expect the majority of these takes to be in the form of mild (single-digit), short-term (minutes to hours), narrower band (only affecting a portion of the animal's hearing range) TTS. This means that for one to several times per year, for several minutes to maybe a few hours (high end) each, a

taken individual will have slightly diminished hearing sensitivity (slightly more than natural variation, but nowhere near total deafness) more often within a narrower mid- to higher frequency band that may overlap part (but not all) of a communication, echolocation, or predator range, but sometimes across a lower or broader bandwidth. The significance of TTS is also related to the auditory cues that are germane within the time period that the animal incurs the TTS—for example, if an odontocete has TTS at echolocation frequencies, but incurs it at night when it is resting and not feeding, for example, it is not impactful. In short, the expected results of any one of these small number of mild TTS occurrences could be that (1) it does not overlap signals that are pertinent to that animal in the given time period, (2) it overlaps parts of signals that are important to the animal, but not in a manner that impairs interpretation, or (3) it reduces detectability of an important signal to a small degree for a short amount of time—in which case the animal may be aware and be able to compensate (but there may be slight energetic cost), or the animal may have some *reduced* opportunities (*e.g.,* to detect prey) or *reduced* capabilities to react with maximum effectiveness (*e.g.,* to detect a predator or navigate optimally). However, given the small number of times that any individual might incur TTS, the low degree of TTS and the short anticipated duration, and the low likelihood that one of these instances would occur in a time period in which the specific TTS overlapped the entirety of a critical signal, it is unlikely that TTS of the nature expected to result from Navy activities would result in behavioral changes or other impacts that would impact any individual's (of any hearing sensitivity) reproduction or survival.

Acoustic Masking or Communication Impairment

The ultimate potential impacts of masking on an individual (if it were to occur) are similar to those discussed for TTS, but an important difference is that 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. Fundamentally, masking is referred to as a chronic effect because one of the key harmful components of masking is its duration—the fact that an animal would have reduced ability to hear or interpret critical cues becomes much more likely to cause a problem the longer it is occurring. Also inherent in the concept of masking is the fact that the potential for the effect is only present during the times that the animal and the source are in close enough proximity for the effect to occur (and further, this time period would need to coincide with a time that the animal was utilizing sounds at the masked frequency). As our analysis has indicated, because of the relative movement of vessels and the species involved in this rule, we do not expect the exposures with the potential for masking to be of a long duration. In addition, masking is fundamentally more of a concern at lower frequencies, because low frequency signals propagate significantly further than higher frequencies and because they are more likely to overlap both the narrower LF calls of mysticetes, as well as many non-communication cues such as fish and invertebrate prey, and geologic sounds that inform navigation. Masking is also more of a concern from continuous sources (versus intermittent sonar signals) where there is no quiet time between pulses within which auditory signals can be detected and interpreted. For these reasons, dense aggregations of, and long exposure to, continuous LF activity, such as shipping or seismic airgun operation (the latter signal changes from intermittent to continuous at distance), are much more of a concern for masking, whereas comparatively short-term exposure to the predominantly intermittent pulses of often narrow frequency range MFAS or HFAS, or explosions are not expected to result in a meaningful amount of masking. While the Navy occasionally uses LF and more continuous sources, it is not in the contemporaneous aggregate amounts that would accrue to a masking concern. Specifically, the nature of the activities and sound sources used by the Navy do not support the likelihood of a level of masking accruing that would have the potential to affect reproductive success or survival. Additional detail is provided below.

Standard hull-mounted MFAS typically ping every 50 seconds for hull-mounted sources. Some 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) where 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 milliseconds. Some of the vocalizations that many marine mammals make are less than one second long, so, for example with hull-mounted sonar, there would be a 1 in 50 chance (only if the source was in close enough proximity for the sound to exceed the signal that is being detected) that a single vocalization might be masked by a ping. However, when vocalizations (or series of vocalizations) are longer than one second, masking would not occur. Additionally, 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. A few systems operate with higher duty cycles or nearly continuously, but they typically use lower power, which means that an animal would have to be closer, or in the vicinity for a longer time, to be masked to the same degree as by a higher level source. Nevertheless, masking could occasionally occur at closer ranges to these high-duty cycle and continuous active sonar systems, but as described previously, it would be expected to be of a short duration when the source and animal are in close proximity. 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. HF signals (above 10 kHz) attenuate more rapidly in the water due to absorption than do lower frequency signals, thus producing only a very small zone of potential masking. If masking or communication impairment were to occur briefly, it would more likely be in the frequency range of MFAS (the more powerful source), which overlaps with some odontocete vocalizations (but few mysticete 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 single marine mammal species' vocalizations.

Masking could occur briefly in mysticetes due to the overlap between their low-frequency vocalizations and the dominant frequencies of airgun pulses. However, masking in odontocetes or pinnipeds is less likely

unless the airgun activity is in close range when the pulses are more broadband. Masking is more likely to occur in the presence of broadband, relatively continuous noise sources such as during vibratory pile driving and from vessels, however, the duration of temporal and spatial overlap with any individual animal and the spatially separated sources that the Navy uses would not be expected to result in more than short-term, low impact masking that would not affect reproduction or survival.

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 72–77 indicate the number of individuals of each of species and stock for which Level A harassment in the form of PTS resulting from exposure to active sonar and/or explosives is estimated to occur. Tables 72–77 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 is for Dall's porpoise), but is more typically 0–10 (with the exception of several other species that range up to 97). Only five stocks (three dolphins and two pinnipeds) have the potential to incur tissue damage from explosives and the number of individuals from any given stock ranges from one to ten.

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. 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. As discussed previously, the Navy utilized a post-modeling quantitative assessment to adjust the take estimates based on avoidance and the likely success of some portion of the mitigation measures. As is typical in predicting biological responses, it is challenging to predict exactly how avoidance and mitigation will affect the take of marine mammals, and therefore the Navy erred on the side of caution in choosing a method that would more likely still overestimate the take by PTS to some degree. Nonetheless, these modified Level A harassment take numbers represent the maximum number of instances in which marine mammals would be reasonably expected to incur either PTS or tissue damage, and we have analyzed them accordingly.

If a marine mammal is able to approach a surface vessel within the distance necessary to incur PTS in spite of the mitigation measures, the likely speed of the vessel (nominally 10–15 kn) and relative motion of the vessel 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 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. The majority of any PTS incurred as a result of exposure to Navy sources would be expected to be in the 2–20 kHz region (resulting from the most powerful hull-mounted sonar) and could overlap a small portion of the communication frequency range of many odontocetes, whereas other marine mammal groups have communication calls at lower frequencies. Regardless of the frequency band though, the more important point in this case is that any PTS accrued as a result of exposure to Navy activities would be expected to be of a small amount (single digits). Permanent loss of some degree of hearing is a normal occurrence for older animals, and many animals are able to compensate for the shift, both in old age or at younger ages as the result of stressor exposure. While a small loss of hearing sensitivity may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, at the expected scale it would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival.

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 Level B 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 that could affect reproduction or survival.

The Navy implements mitigation measures (described in the *Mitigation Measures* section) during explosive activities, including delaying detonations when a marine mammal is observed in the mitigation zone. Nearly all explosive events will occur during daylight hours to improve the sightability of marine mammals and thereby improve mitigation effectiveness. 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 48–57).

We analyze the type and amount of take by Level A harassment in Tables 39 through 41. Generally speaking, tissue damage injuries from explosives could range from minor lung injuries (the most sensitive organ and first to be affected) that consist of some short-term reduction of health and fitness immediately following the injury that heals quickly and will not have any discernible long-term effects, up to more impactful permanent injuries across multiple organs that may cause health problems and negatively impact reproductive success (*i.e.,* increase the time between pregnancies or even render reproduction unlikely) but fall just short of a ''serious injury'' by virtue of the fact that the animal is not expected to die. Nonetheless, due to the Navy's mitigation and detection capabilities, we would not expect marine mammals to typically be exposed to a more severe blast located closer to the source—so the impacts

likely would be on the less severe end. It is still difficult to evaluate how these injuries may or may not impact an animal's fitness, however, these effects are only seen in very small numbers (single digits with the exception of two stocks) and in species of fairly high to very high abundances. In short, it is unlikely that any, much less all, of the small number of injuries accrued to any one stock would result in reduced reproductive success of any individuals, but even if a few did, the status of the affected stocks are such that it would not be expected to adversely impact rates of reproduction (and PTS of the low severity anticipated here is not expected to affect the survival of any individual marine mammals).

Serious Injury and Mortality

NMFS is authorizing 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 worst potential outcome (mortality) is analyzed for the purposes of the negligible impact determination.

In addition, we discuss here the connection, and differences, between the legal mechanisms for authorizing incidental take under section 101(a)(5) for activities such as the 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, 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. In *Conservation Council for Hawaii* v. *National Marine Fisheries Service,* 97 F. Supp.3d 1210 (D. Haw. 2015), which concerned a challenge to NMFS' regulations and LOAs to the Navy for activities assessed in the 2013–2018 HSTT MMPA rulemaking, the Court ruled that NMFS' failure to consider PBR when evaluating lethal takes in the negligible impact analysis under section 101(a)(5)(A) violated the requirement to use the best available science.

PBR is defined in section 3 of the MMPA as ''the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population'' (OSP) and, although not controlling, can be one measure considered among other factors when evaluating the effects of M/SI on a marine mammal species or stock during the section 101(a)(5)(A) process. OSP is defined in section 3 of the MMPA 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.'' Through section 2, an overarching goal of the statute 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 the minimum population estimate (N_{min}) incorporates the level of precision and degree of variability associated with abundance information, while also providing reasonable assurance that the stock size is equal to or greater than the estimate (Barlow *et al.,* 1995), typically by using the 20th percentile of a log-normal distribution of the population estimate. 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).

Congress called for PBR to be applied within the management framework for commercial fishing incidental take under section 118 of the MMPA. As a result, PBR cannot be applied appropriately outside of the section 118 regulatory framework without consideration of how it applies within the section 118 framework, as well as how the other statutory management frameworks in the MMPA differ from the framework in section 118. PBR was not designed and is not used as an absolute threshold limiting commercial fisheries. Rather, it serves 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 in the commercial fishing context under section 118, 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. In other words, under section 118 of the MMPA, PBR does not serve as a strict cap on the operation of commercial fisheries that may incidentally take marine mammals.

Similarly, to the extent PBR may be relevant when considering the impacts of incidental take from activities other than commercial fisheries, using it as the sole reason to deny (or issue) incidental take authorization for those activities would be inconsistent with Congress's intent under section 101(a)(5), NMFS' long-standing regulatory definition of ''negligible impact,'' and the use of PBR under section 118. The standard for authorizing incidental take for activities other than commercial fisheries under section 101(a)(5) continues to be, among other things that are not related to PBR, whether the total taking will have a negligible impact on the species or stock. Nowhere does section 101(a)(5)(A) reference use of PBR to make the negligible impact finding or authorize incidental take through multi-year regulations, nor does its companion provision at 101(a)(5)(D) for authorizing non-lethal incidental take under the same negligible-impact standard. NMFS' MMPA implementing regulations state that take has a negligible impact when it does not ''adversely affect the species or stock through effects on annual rates of recruitment or survival''—likewise without reference to PBR. 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), implicitly acknowledging that the negligible impact standard under section 101(a)(5) is separate from the PBR metric 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 ESA) to add compliance with the new section 118 but retained the standard of the negligible impact finding under section 101(a)(5)(A) (and section 101(a)(5)(D)), showing that Congress understood that the determination of negligible impact and application of PBR may share certain features but are, in fact, different.

Since the introduction of PBR in 1994, NMFS had used the concept almost entirely within the context of implementing sections 117 and 118 and other commercial fisheries management-related provisions of the MMPA. Prior to the Court's ruling in *Conservation Council for Hawaii* v. *National Marine Fisheries Service* and consideration of PBR in a series of section 101(a)(5) rulemakings, there were a few examples where PBR had informed agency deliberations under other MMPA sections and programs, such as playing a role in the issuance of a few scientific research permits and subsistence takings. But as the Court found when reviewing examples of past PBR consideration in *Georgia Aquarium* v. *Pritzker,* 135 F. Supp. 3d 1280 (N.D. Ga. 2015), where NMFS had considered PBR outside the commercial fisheries context, ''it has treated PBR as only one 'quantitative tool' and [has not used it] as the sole basis for its impact analyses.'' Further, the agency's thoughts regarding the appropriate role of PBR in relation to MMPA programs outside the commercial fishing context have evolved since the agency's early application of PBR to section 101(a)(5) decisions. Specifically, NMFS' denial of a request for incidental take authorization for the U.S. Coast Guard in 1996 seemingly was based on the potential for lethal take in relation to PBR and did not appear to consider other factors that might also have informed the potential for ship strike in relation to negligible impact (61 FR 54157; October 17, 1996).

The MMPA requires that PBR be estimated in SARs 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'' as defined in section 3), but nothing in the statute 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 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 requested to be authorized under 101(a)(5)(A). As noted by NMFS and the U.S. Fish and Wildlife Service 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. In this multi-factor analysis, PBR can be a useful indicator for when, and to what extent, the agency should take an especially close look at the circumstances associated with the potential mortality, along with any other factors that could influence annual rates of recruitment or survival.

When considering PBR during evaluation of effects of M/SI under section 101(a)(5)(A), we first calculate a metric for each species or stock that incorporates information regarding ongoing anthropogenic M/SI from all sources into the PBR value (*i.e.,* PBR minus the total annual anthropogenic mortality/serious injury estimate in the SAR), which is called ''residual PBR.'' (Wood *et al.,* 2012). We first focus our analysis on residual PBR because it incorporates anthropogenic mortality occurring from other sources. If the ongoing human-caused mortality from other sources does not exceed PBR, then residual PBR is a positive number, and we consider how the anticipated or potential incidental M/SI from the activities being evaluated compares to residual PBR using the framework in the following paragraph. If the ongoing anthropogenic mortality from other sources already exceeds PBR, then residual PBR is a negative number and we consider the M/SI from the activities being evaluated as described further below.

When ongoing total anthropogenic mortality from the applicant's specified activities does not exceed PBR and residual PBR is a positive number, as a simplifying analytical tool we first consider whether the specified activities could cause incidental M/SI that is less than 10 percent of residual PBR (the ''insignificance threshold,'' see below). If so, we consider M/SI from the specified activities to represent an insignificant incremental increase in ongoing anthropogenic M/SI for the marine mammal stock in question that alone (*i.e.,* in the absence of any other take) will not adversely affect annual rates of recruitment and survival. As such, this amount of M/SI would not be expected to affect rates of recruitment or survival in a manner resulting in more than a negligible impact on the affected stock unless there are other factors that could affect reproduction or survival, such as Level A and/or Level B harassment, or other considerations such as information that illustrates the uncertainty involved in the calculation of PBR for some stocks. In a few prior incidental take rulemakings, this threshold was identified as the ''significance threshold,'' but it is more accurately labeled an insignificance threshold, and so we use that terminology here, as we did in the AFTT Proposed and Final Rules (83 FR 57076; November 14, 2018). Assuming that any additional incidental take by Level A or Level B harassment from the activities in question would not combine with the effects of the authorized M/SI to 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. However, M/SI above the 10 percent insignificance threshold does not indicate that the M/SI associated with the specified activities is approaching a level that would necessarily exceed negligible impact. Rather, the 10 percent insignificance threshold is meant only to identify instances where additional analysis of the anticipated M/SI is not required because the negligible impact standard clearly will not be exceeded on that basis alone.

Where the anticipated M/SI is near, at, or above residual PBR, consideration of other factors (positive or negative), including those outlined above, as well as mitigation is especially important to assessing whether the M/SI will have a negligible impact on the species or stock. PBR is a conservative metric and not sufficiently precise to serve as an absolute predictor of population effects upon which mortality caps would appropriately be based. For example, in some cases stock abundance (which is one of three key inputs into the PBR calculation) is underestimated because marine mammal survey data within the

U.S. EEZ are used to calculate the abundance even when the stock range extends well beyond the U.S. EEZ. An underestimate of abundance could result in an underestimate of PBR. Alternatively, we sometimes may not have complete M/SI data beyond the U.S. EEZ to compare to PBR, which could result in an overestimate of residual PBR. The accuracy and certainty around the data that feed any PBR calculation, such as the abundance estimates, must be carefully considered to evaluate whether the calculated PBR accurately reflects the circumstances of the particular stock. M/SI that exceeds 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.

In *Conservation Council for Hawaii* v. *National Marine Fisheries Service,* which involved the challenge to NMFS' issuance of LOAs to the Navy in 2013 for activities in the HSTT Study Area, the Court reached a different conclusion, stating, ''Because any mortality level that exceeds PBR will not allow the stock to reach or maintain its OSP, such a mortality level could not be said to have only a 'negligible impact' on the stock.'' As described above, the Court's statement fundamentally misunderstands the two terms and incorrectly indicates that these concepts (PBR and ''negligible impact'') are directly connected, when in fact nowhere in the MMPA is it indicated that these two terms are equivalent.

Specifically, PBR was designed as a tool for evaluating mortality and is defined as the number of animals that can be removed while ''allowing that stock to reach or maintain its [OSP].'' OSP is defined as a population that falls within a range from the population level that is the largest supportable within the ecosystem to the population level that results in maximum net productivity, and thus is an aspirational management goal of the overall statute with no specific timeframe by which it should be met. PBR is designed to ensure minimal deviation from this overarching goal, with the formula for PBR typically ensuring that growth towards OSP is not reduced by more than 10 percent (or equilibrates to OSP 95 percent of the time). As PBR is applied by NMFS, it provides that growth toward OSP is not reduced by more than 10 percent, which certainly allows a stock to ''reach or maintain its [OSP]'' in a conservative and precautionary manner—and we can therefore clearly conclude that if PBR were not exceeded, there would not be adverse effects on the affected species or stocks. Nonetheless, it is equally clear that in some cases the time to reach this aspirational OSP level could be slowed by more than 10 percent *(i.e.,* total human-caused mortality in excess of PBR could be allowed) without adversely affecting a species or stock through effects on its rates of recruitment or survival. Thus even in situations where the inputs to calculate PBR are thought to accurately represent factors such as the species' or stock's abundance or productivity rate, it is still possible for incidental take to have a negligible impact on the species or stock even where M/SI exceeds residual PBR or PBR.

As noted above, in some cases the ongoing human-caused mortality from activities other than those being evaluated already exceeds PBR and, therefore, residual PBR is negative. In these cases (such as is specifically discussed for the Eastern North Pacific stock of blue whales and the CA/OR/WA stock of humpback whales), any additional mortality, no matter how small, and no matter how small relative to the mortality caused by other human activities, would result in greater exceedance of PBR. PBR is helpful in informing the analysis of the effects of mortality on a species or stock because it is important from a biological perspective to be able to consider how the total mortality in a given year may affect the population. However, section 101(a)(5)(A) of the MMPA indicates that NMFS shall authorize the requested incidental take from a specified activity if we find that ''the total of such taking [*i.e.,* from the specified activity] will have a negligible impact on such species or stock.'' In other words, the task under the statute is to evaluate the applicant's anticipated take in relation to their take's impact on the species or stock, not other entities' impacts on the species or stock. Neither the MMPA nor NMFS' implementing regulations call for consideration of other unrelated activities and their impacts on the species or stock. In fact, in response to public comments on the implementing regulations NMFS explained that such effects are not considered in making negligible impact findings under section 101(a)(5), although the extent to which a species or stock is being impacted by other anthropogenic activities is not ignored. Such effects are reflected in the baseline of existing impacts as reflected in the species' or stock's abundance, distribution, reproductive rate, and other biological indicators.

NMFS guidance for commercial fisheries provides insight when evaluating the effects of an applicant's incidental take as compared to the incidental take caused by other entities. Parallel to section 101(a)(5)(A), section 101(a)(5)(E) of the MMPA provides that NMFS shall allow the incidental take of ESA-listed endangered or threatened marine mammals by commercial fisheries if, among other things, the incidental M/SI from the commercial fisheries will have a negligible impact on the species or stock. As discussed earlier, the authorization of incidental take resulting from commercial fisheries and authorization for activities other than commercial fisheries are under two separate regulatory frameworks. However when it amended the statute in 1994 to provide a separate incidental take authorization process for commercial fisheries, Congress kept the requirement of a negligible impact determination for this one category of species, thereby applying the standard to both programs. Therefore, while the structure and other standards of the two programs differ such that evaluation of negligible impact under one program may not be fully applicable to the other program (*e.g.,* the regulatory definition of ''negligible impact'' at 50 CFR 216.103 applies only to activities other than commercial fishing), guidance on determining negligible impact for commercial fishing take authorizations can be informative when considering incidental take outside the commercial fishing context. In 1999, NMFS published criteria for making a negligible impact determination pursuant to section 101(a)(5)(E) of the MMPA in a notice of proposed permits for certain fisheries (64 FR 28800; May 27, 1999). Criterion 2 stated ''If total human-related serious injuries and mortalities are greater than PBR, and fisheries-related mortality is less than 0.1 PBR, individual fisheries may be permitted if management measures are being taken to address non-fisheries-related serious injuries and mortalities. When fisheries-related serious injury and mortality is less than 10 percent of the total, the appropriate management action is to address components that account for the major portion of the total.'' This criterion addresses when total human-caused mortality is exceeding PBR, but the activity being assessed is responsible for only a small portion of the mortality. In the HSTT proposed rule and other incidental take authorizations in which NMFS has recently articulated a fuller description of how we consider PBR under section 101(a)(5)(A), this situation had not arisen, and NMFS' description of how we consider PBR in the section 101(a)(5) authorization process did not, therefore, include consideration of this scenario.

However, the analytical framework we use here appropriately incorporates elements of the one developed for use under section 101(a)(5)(E) and because the negligible impact determination under section 101(a)(5)(A) focuses on the activity being evaluated, it is appropriate to utilize the parallel concept from the framework for section 101(a)(5)(E).

Accordingly, we are using a similar criterion in our negligible impact analysis under section 101(a)(5)(A) to evaluate the relative role of an applicant's incidental take when other sources of take are causing PBR to be exceeded, but the take of the specified activity is comparatively small. Where this occurs, we may find that the impacts of the taking from the specified activity may (alone) be negligible even when total human-caused mortality from all activities exceeds PBR if (in the context of a particular species or stock): The authorized mortality or serious injury would be less than or equal to 10 percent of PBR and management measures are being taken to address serious injuries and mortalities from the other activities (*i.e.,* other than the specified activities covered by the incidental take authorization under consideration). We must also determine, though, that impacts on the species or stock from other types of take (*i.e.,* harassment) caused by the applicant do not combine with the impacts from mortality or serious injury to result in adverse effects on the species or stock through effects on annual rates of recruitment or survival.

As discussed above, however, while PBR is useful in informing the evaluation of the effects of M/SI in section 101(a)(5)(A) determinations, it is just one consideration to be assessed in combination with other factors and is not determinative, including because, as explained above, the accuracy and certainty of the data used to calculate PBR for the species or stock must be considered. And we reiterate the considerations discussed above for why it is not appropriate to consider PBR an absolute cap in the application of this guidance. Accordingly, we use PBR as a trigger for concern while also considering other relevant factors to provide a reasonable and appropriate means of evaluating the effects of potential mortality on rates of recruitment and survival, while acknowledging that it is possible to exceed PBR (or exceed 10 percent of PBR in the case where other human-caused mortality is exceeding PBR but the specified activity being evaluated is an incremental contributor, as described in the last paragraph) by some small amount and still make a negligible impact determination under section 101(a)(5)(A).

Our evaluation of the M/SI for each of the species and stocks for which mortality or serious injury could occur follows. No mortalities or serious injuries are anticipated from the Navy's sonar activities. In addition, all mortality authorized for some of the same species or stocks over the next several years pursuant to our final rulemaking for the NMFS Southwest and Pacific Islands Fisheries Science Centers has been incorporated into the residual PBR.

We first consider maximum potential incidental M/SI from the Navy's ship strike analysis for the affected mysticetes and sperm whales (see Table 69) and from the Navy's explosive detonations for California sea lions and short-beaked common dolphin (see Table 70) in consideration of NMFS' threshold for identifying insignificant M/SI take. 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 may occur over the course of the five-year rule. The rule authorizes 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), and humpback whale (Central North Pacific stock). The rule authorizes no more than one mortality from any of the following species/stocks over the five-year period: blue whale (Eastern North Pacific stock), humpback whale (CA/OR/WA stock, Mexico DPS), and sperm whale (Hawaii stock). We do not anticipate, nor authorize, ship strike takes to blue whale (Central North Pacific stock), fin whale (Hawaii stock), gray whale (Western North Pacific stock), minke whale (either CA/OR/WA stock or Hawaii stock), sei whale (either Hawaii stock or Eastern North Pacific stock), Bryde's whale (either Hawaii stock or Eastern Tropical Pacific stock) or sperm whale (CA/OR/WA stock). This means an annual average of 0.2 whales from each species or stock where one mortality may occur and an annual average of 0.4 whales from each species or stock where two mortalities may occur as described in Table 69 (*i.e.,* 1 or 2 takes over 5 years divided by 5 to get the annual number) is authorized.

TABLE 69—SUMMARY INFORMATION RELATED TO MORTALITIES REQUESTED FOR SHIP STRIKE, 2018–2023

Species (stock)	Stock abundance (Nbest) *	Annual authorized 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 [3]	Stock trend * [4]	Recent UME (Y/N); number and year (since 2007)
Fin whale (CA/OR/WA stock).	9,029	0.4	≥43.5	Y; ≥0.5	Y, 1.6	81	37.5	↑	N.
Gray whale (Eastern North Pacific stock).	26,960	0.4	138	Y, 7.7	Y, 0.8	801	663	stable since 2003	N.
Humpback whale (CA/OR/WA stock, Mexico DPS).	2,900	0.2	≥38.6	Y; ≥14.1	Y, 22	16.7	−21.9	↑	N.
Humpback whale (Central North Pacific stock).	10,103	0.4	40.76	Y; 18.76	Y, 22	33.4	−7.36	stable	N.
Sperm whale (Hawaii stock).	5,559	0.2	0.7	Y, 0.7	N	13.9	13.2	?	N.

TABLE 69—SUMMARY INFORMATION RELATED TO MORTALITIES REQUESTED FOR SHIP STRIKE, 2018–2023—Continued

Species (stock)	Stock abundance (Nbest) *	Annual authorized 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 [3]	Stock trend * [4]	Recent UME (Y/N); number and year (since 2007)
Blue whale (Eastern North Pacific Stock).	1,647	0.2	≥19	≥0.96	Y, 18	2.3	−16.7	stable	Y; 3, 2007.

* Presented in the SARS.
[1] This column represents the annual take by serious injury or mortality by vessel collision and was calculated by the number of mortalities 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 NMFS' Southwest Fisheries Science Center (SWFSC) takes in the SARs to ensure not double-counted against PBR. However, for these species, there were no takes from either other Navy activities or SWFSC in the SARs 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 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 70 we used the same method as described for vessel strikes. The annual average is the total number of takes divided by five years to get the annual number. Specifically, NMFS is authorizing the following serious injury or mortality takes from explosions: 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), as described in Table 70.

TABLE 70—SUMMARY INFORMATION RELATED TO MORTALITIES FROM EXPLOSIVES, 2018–2023

Species (stock)	Stock abundance (Nbest) *	Annual authorized 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 (annual) [3]	Residual PBR—PBR minus annual M/SI and SWFSC [4]	Stock trend * [5]	UME (Y/N); number and year
California sea lion (U.S. stock).	257,606	0.8	318.4	Y; 197	14,011	6.6	13,686	↑	Y; 2013.
Short-beaked common dolphin (CA/OR/WA stock).	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 planned 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 activities or NMFS' SWFSC takes in the SARs to ensure not double-counted against PBR. In this case, for California sea lion 0.8 annual M/SI from the U.S. West Coast during scientific trawl and longline operations conducted by NMFS and 1.8 annual M/SI from marine mammal research related mortalities authorized by NMFS was deducted from total annual M/SI (321).
[3] This column represents annual take authorized through NMFS' 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 column and the annual authorized take from the SWFSC column. In the case of California sea lion the M/SI column (318.4) and the annual authorized take from the SWFSC (6.6) were subtracted from the calculated PBR.of 14,011. In the case of Short-beaked common dolphin the M/SI column (40) and the annual authorized take from the SWFSC (2.8) were subtracted from the calculated PBR of 8,393.
[5] See relevant SARs for more information regarding stock status and trends.

Stocks 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 and barring any other unusual circumstances) will clearly not adversely affect annual rates of recruitment and survival. In this case, as shown in Tables 69 and 70, the following species or stocks have potential or estimated (from ship strike and explosive takes, respectively), and authorized, M/SI below their insignificance threshold: fin whale (CA/OR/WA stock), gray whale (Eastern North Pacific stock), humpback whale (Central North Pacific stock), sperm whale (Hawaii stock), California sea lion (U.S stock), and short-beaked common dolphin (CA/OR/WA stock). While the authorized mortality of California sea lions (U.S. stock) are below the insignificance threshold, because of the recent UMEs, we further address how the authorized serious injury or mortality and the UME inform the negligible impact determination immediately below. For the other five stocks with authorized mortality below the insignificance threshold, there are no other known factors, information, or unusual circumstances that indicate anticipated M/SI below the insignificance threshold could have adverse effects on annual rates of recruitment or survival and they are not discussed further. For the remaining two stocks with anticipated potential M/SI above the insignificance threshold, how that M/SI compares to residual PBR, as well as additional factors, as appropriate, are discussed below as well.

California Sea Lion (U.S. Stock)

The estimated (and authorized) lethal take of California sea lions is well below the insignificance threshold (0.8 as compared to a residual PBR of 13,686) and NMFS classifies the stock as ''increasing'' in the SARs. Nonetheless, we consider here how the 2013-present California Sea Lion Unusual Mortality Event informs our negligible impact determination. This UME was confined

to pup and yearling sea lions and many were emaciated, dehydrated, and underweight. Although this UME has not been closed, NMFS staff confirmed that the mortality of pups and yearlings returned to normal in 2017 and 2018 and we plan to present it to the Working Group to discuss closure by the end of 2018 (Deb Fauquier, pers. comm.). NMFS' findings to date indicate that a change in the availability of sea lion prey, especially sardines, a high value food source for nursing mothers, was a likely contributor to the large number of strandings. Sardine spawning grounds shifted further offshore in 2012 and 2013, and while other prey were available (market squid and rockfish), these may not have provided adequate nutrition in the milk of sea lion mothers supporting pups, or for newly-weaned pups foraging on their own. Although the pups showed signs of some viruses and infections, findings indicate that this event was not caused by disease, but rather by the lack of high quality, close-by food sources for nursing mothers. Average mortalities from 2013–2017 averaged about 1,000–3,000 more annually than they had in the previous 10 years. However, even if these unusual mortalities were still occurring (with current data suggesting they are not), combined with other annual human-caused mortalities, and viewed through the PBR lens (for human-caused mortalities), total human-caused mortality (inclusive of the potential for additional UME deaths) would still fall well below residual PBR. Further, the loss of pups and yearlings would not be expected to have as much of an effect on annual population rates as the death of adult females. In conclusion, because of the abundance, population trend, and residual PBR of this stock, as well as the fact that the increased mortality stopped two years ago and the UME is expected to be closed soon, this UME is not expected to have any impacts on individuals in the coming five years, nor is it thought to have had impacts on the population rate when it was occurring that would influence our evaluation of the effects of authorized mortality on the stock.

Stocks With M/SI Above Residual PBR

Humpback Whale (CA/OR/WA Stock, Mexico DPS)

For this stock, PBR is currently set at 33.4 and the total annual M/SI is estimated at greater than or equal to 40.76, yielding a residual PBR of −7.36. NMFS is authorizing one serious injury or mortality over the five-year duration of the rule (indicated as 0.2 annually for the purposes of comparing to PBR), which means that residual PBR is exceeded by 7.56. However, as described previously, in the commercial fisheries setting for ESA-listed marine mammals (which is similar to the non-fisheries incidental take setting, in that a negligible impact determination is required that is based on the assessment of take caused by the activity being analyzed) NMFS may find the impact of the authorized take from a specified activity to be negligible even if total human-caused mortality exceeds PBR, if the authorized mortality is less than 10 percent of PBR and management measures are being taken to address serious injuries and mortalities from the other activities causing mortality (*i.e.,* other than the specified activities covered by the incidental take authorization in consideration). When those considerations are applied in the section 101(a)(5)(A) context, the authorized lethal take (0.2 annually) of humpback whales from the CA/OR/WA stock is significantly less than 10 percent of PBR (in fact less than 1 percent of 33.4) and there are management measures in place to address serious injury and mortality from activities other than those the Navy is conducting (summarized below).

Based on identical simulations as those conducted to identify Recovery Factors for PBR in Wade et al. (1998), but where values less than 0.1 were investigated (P. Wade, pers. comm.), we predict that where the mortality from a specified activity does not exceed Nmin *1/2 Rmax * 0.013, the contemplated mortality for the specific activity will not delay the time to recovery by more than 1 percent. For this stock of humpback whales, Nmin *1/2 Rmax * 0.013 = 1.45 and the annual authorized mortality is 0.2 (*i.e.,* less than 1.45), which means that the mortality authorized in this rule for HSTT activities will not delay the time to recovery by more than 1 percent.

As described previously, NMFS must also ensure that impacts by the applicant on the species or stock from other types of take (*i.e.,* harassment) do not combine with the impacts from mortality and serious injury to adversely affect the species or stock via impacts on annual rates of recruitment or survival, which is discussed further below in the stock-specific conclusion sections.

We discuss here the nature in which the predicted average annual mortality from other sources has changed since the proposed rule. The proposed rule included the information from the 2017 SAR, which indicated that PBR was 11 and the total observed annual average mortality was greater than or equal to 6.5 (one from vessel strikes and >5.5 from fisheries interactions). The total human-caused mortality did not exceed residual PBR, and our analysis, which considered other factors as well, concluded that lethal take, alone, from the Navy's activities would not have more than a negligible impact on humpback whales (CA/OR/WA stock, Mexico DPS) (we also went on to analyze the effects of the potential lethal take in conjunction with the estimated harassment take under the negligible impact standard). In August 2018, NMFS published draft 2018 SARs in which PBR increased to 33.4 and the predicted average annual mortality increased to greater than or equal to 40.76 (22 estimated from vessel collisions, >14.1 observed fisheries interactions, and 2.16 predicted fisheries interactions if unidentified entanglements are prorated based on a model based on known species entanglements). While the observed mortality from vessel strikes remains low at 2.1, the draft 2018 SAR relies on a new method to estimate annual deaths by ship strike utilizing an encounter theory model that combined species distribution models of whale density, vessel traffic characteristics, along with whale movement patterns obtained from satellite-tagged animals in the region to estimate encounters that would result in mortality (Rockwood *et al.,* 2017). The model predicts 22 annual mortalities of humpback whales from vessel strikes. The authors (Rockwood *et al.,* 2017) do not suggest that ship strike suddenly increased to 22 this year. In fact, the model is not specific to a year, but rather offers a generalized prediction of ship strike off the U.S. West Coast. Therefore, if the Rockwood *et al.* (2017) model is an accurate representation of vessel strike, then similar levels of ship strike have been occurring in past years as well. Put another way, if the model is correct, for some number of years total human-caused mortality has been significantly underestimated, and PBR has been similarly exceeded by a notable amount, and yet the CA/OR/WA stock of humpback whales is considered stable nevertheless. We note that as of the date this final rule was signed and transmitted to the Office of the Federal Register, the public comment period for the draft 2018 SAR was still open. This means that NMFS has not yet considered any comments that other experts and the public might have regarding the propriety of the model for identifying annual mortality in the SAR.

The CA/OR/WA stock of humpback whales experienced a steady increase

from the 1990s through approximately 2008, and more recent estimates through 2014 indicate a leveling off of the population size. This stock is comprised of the feeding groups of three DPSs. Two DPSs associated with this stock are listed under the ESA as either endangered (Central America DPS) or threatened (Mexico DPS), while the third is not listed. The mortality authorized by this rule is for an individual from the Mexico DPS only. As described in the Final Rule Identifying 14 DPSs of the Humpback Whale and Revision of Species-Wide Listing (81 FR 62260, September 8, 2016), the Mexico DPS was initially proposed not to be listed as threatened or endangered, but the final decision was changed in consideration of a new abundance estimate using a new methodology that was more accurate (less bias from capture heterogeneity and lower coefficient of variation) and resulted in a lower abundance than was previously estimated. To be clear, the new abundance estimate did not indicate that the numbers had decreased, but rather, the more accurate new abundance estimate (3,264), derived from the same data but based on an integrated spatial multi-strata mark recapture model (Wade *et al.,* 2016) was simply notably lower than earlier estimates, which were 6,000–7,000 from the SPLASH project (Calambokidis *et al.,* 2008) or higher (Barlow et al., 20111). The updated abundance was still higher than 2,000, which is the Biological Review Team's (BRT) threshold between ''not likely to be at risk of extinction due to low abundance alone'' and ''increasing risk from factors associated with low abundance.'' Further, the BRT concluded that the DPS was unlikely to be declining because of the population growth throughout most of its feeding areas, in California/Oregon and the Gulf of Alaska, but they did not have evidence that the Mexico DPS was actually increasing in overall population size.

As discussed, we also take into consideration management measures in place to address serious injury and mortality caused by other activities. The California swordfish and thresher shark drift gillnet fishery is one of the primary causes of M/SI take from fisheries interactions for humpback whales on the West Coast. NMFS established the Pacific Offshore Cetacean Take Reduction Team in 1996 and prepared an associated Plan (PCTRP) to reduce the risk of M/SI via fisheries interactions. In 1997, NMFS published final regulations formalizing the requirements of the PCTRP, including the use of pingers following several specific provisions and the employment of Skipper education workshops.

Crab pot fisheries are also a significant source of mortality for humpback whales and, unfortunately, have increased mortalities over recent years. However, the draft 2018 SAR notes that a recent increase in disentanglement efforts has resulted in an increase in the fraction of cases that are reported as non-serious injuries as a result of successful disentanglement. More importantly, since 2015, NMFS has engaged in a multi-stakeholder process in California (including California State resource managers, fishermen, NGOs, and scientists) to identify and develop solutions and make recommendations to regulators and the fishing industry for reducing whale entanglements (see *http://www.opc.ca.gov/whale-entanglementworking-group/*), referred to as the Whale Entanglement Working Group. More recently, similar efforts to address the entanglement issue have also been initiated in Oregon and Washington. The Whale Entanglement Working Group has made significant progress since 2015 and is tackling the problem from multiple angles, including:

- Development of Fact Sheets and Best Practices for specific Fisheries issues (*e.g.,* California Dungeness Crab Fishing BMPs, or the 2018–2019 Best Fishing Practices Guide);
- 2018–2019 Risk Assessment and Mitigation Program (RAMP) to support the state of California in working collaboratively with experts (fishermen, researchers, NGOs, etc.) to identify and assess elevated levels of entanglement risk and determine the need for management options to reduce risk of entanglement; and
- Support of pilot studies to test new fisheries technologies to reduce take (*e.g.,* Exploring Ropeless Fishing Technologies for the California Dungeness Crab Fishery).

The Working Group meets regularly, posts reports and annual recommendations, and makes all of their products and guidance documents readily accessible for the public. The April 2018 Working Group Report reports on the progress of the RAMP (though there is a separate RAMP report), summarized new ideas for Fisheries BMPs, and indicated next steps.

We also note that on November 26, 2018, NMFS' West Coast Regional Office received a notice of intent from the California Department of Fish and Wildlife to apply for a Section 10 Incidental Take Permit under the ESA to address protected species interactions in certain California state-managed fixed gear fisheries. Any request for such a permit must include a Habitat Conservation Plan that specifies, among other things, what steps the applicant will take to minimize and mitigate the impacts, and the funding that will be available to implement such steps.

Further regarding measures in place to reduce mortality from sources other than the Navy, the Channel Islands NMS staff coordinates, collects, and monitors whale sightings in and around the Whale Advisory Zone and the Channel Islands NMS region, which is within the area of highest strike mortality (90th percentile) for humpback whales on the U.S. West coast (Rockwood *et al.,* 2017). 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 Navy chartered aircraft. Information on seasonal presence, movement, and general distribution patterns of large whales is shared with mariners, NMFS' Office of Protected Resources, the U.S. Coast Guard, the 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.

We also note that in this case, 0.2 M/SI annually means the potential for one mortality in one of the five years and zero mortalities in four of those five years. Therefore, the Navy would not be contributing to the total human-caused mortality at all in four of the five, or 80 percent, of the years covered by this rule. That means that even if a humpback whale from the CA/OR/WA stock were to be struck, in four of the five years there could be no effect on annual rates of recruitment or survival from Navy-caused M/SI. Additionally, as noted previously, the loss of a male would have far less, if any, of an effect on population rates and absent any information suggesting that one sex is more likely to be struck than another, one could reasonably assume that there is a 50 percent chance that the single strike authorized by this rule would be a male, thereby further decreasing the likelihood of impacts on the population

rate. In situations like this where potential M/SI is fractional, consideration must be given to the lessened impacts anticipated due to the absence of mortality or serious injury in four of the five years and due to the fact that a single strike could be a male. Lastly, we reiterate that PBR is a conservative metric and also not sufficiently precise to serve as an absolute predictor of population effects upon which mortality caps would appropriately be based. This is especially important given the minor difference between zero and one across the five-year period covered by this rule, which is the smallest distinction possible when considering mortality. Wade et al. (1998), authors of the paper from which the current PBR equation is derived, note that ''Estimating incidental mortality in one year to be greater than the PBR calculated from a single abundance survey does not prove the mortality will lead to depletion; it identifies a population worthy of careful future monitoring and possibly indicates that mortality-mitigation efforts should be initiated.''

The information included here illustrates that this humpback whale stock is stable, the potential (and authorized) mortality is well below 10 percent (0.6 percent) of PBR, and management actions are in place to minimize both fisheries interactions and ship strike from other vessel activity in the one of the highest-risk areas for strikes. More specifically, although the total human-mortality exceeds PBR, the authorized mortality for the Navy's specified activities would incrementally contribute less than 1 percent of that and, further, given the fact that it would occur in only one of five years and could be comprised of a male (far less impactful to the population), the potential impacts on population rates are even less. Based on the presence of the factors described above, including consideration of the fact that the authorized mortality of 0.2 will not delay the time to recovery by more than 1 percent, we do not expect lethal take from Navy activities, alone, to adversely affect the CA/OR/WA stock of humpback whales through effects on annual rates of recruitment or survival. Nonetheless, the fact that total human-caused mortality exceeds PBR necessitates close attention to the remainder of the impacts (*i.e.,* harassment) on the CA/OR/WA stock of humpback whales from the Navy's activities to ensure that the total authorized takes have a negligible impact on the species and stock. Therefore this information will be considered in combination with our assessment of the impacts of harassment takes later in the section, in the humpback whale conclusion 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 is estimated at greater than or equal to 19, yielding a residual PBR of -16.7. NMFS is authorizing one serious injury or mortality for the Navy over the five-year duration of the rule (indicated as 0.2 annually for the purposes of comparing to PBR), which means that residual PBR is exceeded by 16.9. However, as described previously, in the commercial fisheries setting for ESA-listed marine mammals (which is similar to the incidental take setting, in that the negligible impact determination is based on the assessment of take of the activity being analyzed) NMFS may find the impact of the authorized take from a specified activity to be negligible even if total human-caused mortality exceeds PBR, if the authorized mortality is less than 10 percent of PBR and management measures are being taken to address serious injuries and mortalities from the other activities causing mortality (*i.e.,* other than the specified activities covered by the incidental take authorization in consideration). When those considerations are applied in the section 101(a)(5)(A) context, the authorized lethal take (0.2 annually) of blue whales from the Eastern North Pacific stock is less than 10 percent of PBR (which is 2.3) and there are management measures in place to address serious injury and mortality from activities other than those the Navy is conducting (summarized below). Perhaps more importantly, the population is considered ''stable'' and, specifically, the available data suggests that the current number of ship strikes is not likely to have an adverse impact on the population, despite the fact that it exceeds PBR, with the Navy's minimal additional mortality of one whale in the five years not creating the likelihood of adverse impact. Immediately below, we explain the information that supports our finding that the Navy's authorized mortality is not expected to result in more than a negligible impact on this stock. As described previously, NMFS must also ensure that impacts by the applicant on the species or stock from other types of take (*i.e.,* harassment) do not combine with the impacts from mortality to adversely affect the species or stock via impacts on annual rates of recruitment or survival, which occurs further below in the stock-specific conclusion sections.

We discuss here the nature in which the predicted average annual mortality from other sources has changed since the proposed rule. The proposed rule included the information from the 2017 SAR, which indicated that PBR was 2.3 and the total observed annual average mortality (which was all from ship strike) was 0.9. There were no other observed sources of mortality, the total human-caused mortality did not exceed residual PBR, and our analysis, which considered other factors as well, concluded that lethal take, alone, from the Navy's activities would not have more than a negligible impact on blue whales (Eastern North Pacific stock) (we also went on to analyze the effects of the potential lethal take in conjunction with the estimated harassment take under the negligible impact standard). In August 2018, NMFS published draft 2018 SARs in which PBR remained at 2.3 and observed average annual mortality went down to 0.2 (from ship strike). However, the draft 2018 SAR relies on a new method to estimate annual deaths by ship strike utilizing an encounter theory model that combined species distribution models of whale density, vessel traffic characteristics, along with whale movement patterns obtained from satellite-tagged animals in the region to estimate encounters that would result in mortality (Rockwood *et al.,* 2017). The model predicts 18 annual mortalities of blue whales from vessel strikes, which, with the additional M/SI of 0.96 from fisheries interactions, results in the current estimate of residual PBR being −16.7. We note that as of the date this final rule was signed and transmitted to the Office of Federal Register, the public comment period for the draft 2018 SAR was still open. This means that NMFS has not yet considered any comments that other experts and the public might have regarding the propriety of the model for identifying annual mortality in the SAR.

Although NMFS' Permits and Conservation Division in the Office of Protected Resources has independently reviewed the new ship strike model and its results and agrees that it is appropriate for estimating blue whale mortality by ship strike on the U.S. West Coast, for analytical purposes we also note that if the historical method were used to predict vessel strike (*i.e.,* using observed mortality by vessel strike, or 0.2, instead of 18), then total human-caused mortality including the Navy's potential take would not exceed PBR. We further note that the authors (Rockwood *et al.,* 2017) do not suggest that ship strike suddenly increased to 18

this past year. In fact, the model is not specific to a year, but rather offers a generalized prediction of ship strike off the U.S. West Coast. Therefore, if the Rockwood *et al.* (2017) model is an accurate representation of vessel strike, then similar levels of ship strike have been occurring in past years as well. Put another way, if the model is correct, for some number of years total-human-caused mortality has been significantly underestimated and PBR has been similarly exceeded by a notable amount, and yet the Eastern North Pacific stock of blue whales remains stable nevertheless.

NMFS' draft 2018 SAR states that the stock is ''stable'' and there is no indication of a population size increase in this blue whale population since the early 1990s. The lack of a species' or stock's population increase can have several causes, some of which are positive. The draft SAR further cites to Monnahan *et al.* (2015), which used a population dynamics model to estimate that the Eastern North Pacific blue whale population was at 97 percent of carrying capacity in 2013 and to suggest that the observed lack of a population increase since the early 1990s was explained by density dependence, not impacts from ship strike. This would mean that this stock of blue whales shows signs of stability and is not increasing in population size because the population size is at or nearing carrying capacity for its available habitat. And, in fact, we note that this stable population has maintained this status throughout the years that Navy has consistently tested and trained at similar levels (with similar vessel traffic) in areas that overlap with blue whale occurrence.

Monnahan *et al.* (2015) modeled vessel numbers, ship strikes, and the population of the Eastern North Pacific blue whale population from 1905 out to 2050 using a Bayesian framework to incorporate informative biological information and assign probability distributions to parameters and derived quantities of interest. The authors tested multiple scenarios with differing assumptions, incorporated uncertainty, and further tested the sensitivity of multiple variables. Their results indicated that there is no immediate threat (*i.e.* through 2050) to the population from any of the scenarios tested, which included models with 10 and 35 strike mortalities per year. Broadly, the authors concluded that, unlike other blue whale stocks, the Eastern North Pacific blue whales have recovered from 70 years of whaling and are in no immediate threat from ship strikes. They further noted that their conclusion conflicts with the depleted and strategic designation under the MMPA, as well as PBR specifically.

As discussed, we also take into consideration management measures in place to address serious injury and mortality caused by other activities. The Channel Islands NMS staff coordinates, collects, and monitors whale sightings in and around the Whale Advisory Zone and the Channel Islands NMS region. Redfern *et al.* (2013) note that the most risky area for blue whales is the Santa Barbara Channel, where shipping lanes intersect with common feeding areas. 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.

We also note that in this case, 0.2 M/SI means one mortality in one of the five years and zero mortalities in four of those five years. Therefore, the Navy would not be contributing to the total human-caused mortality at all in four of the five, or 80 percent, of the years covered by this rule. That means that even if a blue whale were to be struck, in four of the five years there could be no effect on annual rates of recruitment or survival from Navy-caused M/SI. Additionally, as noted previously, the loss of a male would have far less, if any, of an effect on population rates and absent any information suggesting that one sex is more likely to be struck than another, one could reasonably assume that there is a 50 percent chance that the single strike authorized by this rule would be a male, thereby further decreasing the likelihood of impacts on the population rate. In situations like this where potential M/SI is fractional, consideration must be given to the lessened impacts anticipated due to the absence of mortality or serious injury in four of the five years and the fact that the single strike could be a male. Lastly, we reiterate that PBR is a conservative metric and also not sufficiently precise to serve as an absolute predictor of population effects upon which mortality caps would appropriately be based. This is especially important given the minor difference between zero and one across the five-year period covered by this rule, which is the smallest distinction possible when considering mortality. Wade *et al.* (1998), authors of the paper from which the current PBR equation is derived, note that ''Estimating incidental mortality in one year to be greater than the PBR calculated from a single abundance survey does not prove the mortality will lead to depletion; it identifies a population worthy of careful future monitoring and possibly indicates that mortality-mitigation efforts should be initiated.'' The information included here illustrates that this blue whale stock is stable, approaching carrying capacity, and has leveled off because of density-dependence, not human-caused mortality, in spite of what might be otherwise indicated from the calculated PBR. Further, potential (and authorized) mortality is below 10 percent of PBR and management actions are in place to minimize ship strike from other vessel activity in the one of the highest-risk areas for strikes. Based on the presence of the factors described above, we do not expect lethal take from Navy activities, alone, to adversely Eastern North Pacific blue whales through effects on recruitment or survival. Nonetheless, the fact that total human-caused mortality exceeds PBR necessitates close attention to the remainder of the impacts (*i.e.,* harassment) on the Eastern Central Pacific stock of blue whales from the Navy's activities to ensure that the total authorized takes have a negligible impact on the species or stock. Therefore, this information will be considered in combination with our assessment of the impacts of harassment takes later in the section.

Group and Species-Specific/Stock-Specific Analyses

The maximum amount and type of incidental take of marine mammals reasonably likely to occur and therefore authorized 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 along with the discussion in the *Estimated Take of Marine Mammals* section on Vessel Strike and Explosives. 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.

As noted previously, the estimated Level B harassment takes represent instances of take, not the number of individuals taken (the much lower and less frequent Level A harassment takes are far more likely to be associated with separate individuals), and in many cases some individuals are expected to be taken more than one time, while in other cases a portion of individuals will not be taken at all. Below, we compare the total take numbers (including PTS, TTS, and behavioral harassment) for stocks to their associated abundance estimates to evaluate the magnitude of impacts across the stock and to individuals. Specifically, when an abundance percentage comparison is below 100, it means that that percentage or less of the individuals in the stock will be affected (*i.e.,* some individuals will not be taken at all), that the average for those taken is one day per year, and that we would not expect any individuals to be taken more than a few times in a year. When it is more than 100 percent, it means there will definitely be some number of repeated takes of individuals. For example, if the percentage is 300, the average would be each individual is taken on three days in a year if all were taken, but it is more likely that some number of individuals will be taken more than three times and some number of individuals fewer or not at all. While it is not possible to know the maximum number of days across which individuals of a stock might be taken, in acknowledgement of the fact that it is more than the average, for the purposes of this analysis, we assume a number approaching twice the average. For example, if the percentage of take compared to the abundance is 800, we estimate that some individuals might be taken as many as 16 times. Those comparisons are included in the sections below. For some stocks these numbers have been adjusted slightly (with these adjustments being in the single digits) since the proposed rule so as to more consistently apply this approach, but these minor changes did not change the analysis or findings.

To assist in understanding what this analysis means, we clarify a few issues related to estimated takes and the analysis here. An individual that incurs a PTS or TTS take may sometimes, for example, also be behaviorally disturbed at the same time. As described in more detail previously, the degree of PTS, and the degree and duration of TTS, expected to be incurred from the Navy's activities are not expected to impact marine mammals such that their reproduction or survival could be affected. Similarly, data do not suggest that a single instance in which an animal accrues PTS or TTS and is also behaviorally harassed would result in impacts to reproduction or survival. Alternately, we recognize that if an individual is behaviorally harassed repeatedly for a longer duration and on consecutive days, effects could accrue to the point that reproductive success is jeopardized (as discussed below in the stock-specific conclusions). Accordingly, as described in the previous paragraph, in analyzing the number of takes and the likelihood of repeated and sequential takes (which could accrue to reproductive impacts), we consider the total takes, not just the behavioral harassment takes, so that individuals exposed to both TS and behavioral harassment are appropriately considered. We note that the same logic applies with the potential addition of behavioral harassment to tissue damage from explosives, the difference being that we do already consider the likelihood of reproductive impacts whenever tissue damage occurs. Further, the number of level A harassment takes by either PTS or tissue damage are so low compared to abundance numbers that it is considered highly unlikely that any individual would be taken at those levels more than once.

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 that although ASW is one of the warfare areas of focus during MTEs, there are significant periods when active ASW sonars are not in use. Nevertheless, behavioral reactions are assumed more likely to be significant during MTEs than during other ASW activities due to the duration (*i.e.,* multiple days) and scale (*i.e.,* multiple sonar platforms) of the MTEs. On the less severe end, exposure to comparatively lower levels of sound at a detectably greater distance from the animal, for a few or several minutes, could result in a behavioral response such as avoiding an area that an animal would otherwise have moved through or fed in, or breaking off one or a few feeding bouts. More severe behavioral effects could occur when an animal gets close enough to the source to receive a comparatively higher level of sound, is exposed continuously to one source for a longer time, or is exposed intermittently to different sources throughout a day. Such effects 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. However, such severe behavioral effects are expected to occur infrequently.

Occasional, milder behavioral reactions are unlikely to cause long-term consequences for individual animals or populations, and even if some smaller subset of the takes are in the form of a longer (several hours or a day) and more severe responses, if they are not expected to be repeated over sequential days, impacts to individual fitness are not anticipated. Nearly all studies and experts agree that infrequent exposures of a single day or less are unlikely to impact an individual's overall energy budget (Farmer *et al.,* 2018; Harris e*t al.,* 2017; King *et al.,* 2015; NAS 2017; New *et al.,* 2014; Southall *et al.,* 2007; Villegas-Amtmann *et al.,* 2015). When impacts to individuals increase in magnitude or severity such that either repeated and sequential higher severity impacts occur (the probability of this goes up for an individual the higher total number of takes it has) or the total number of moderate to more severe impacts increases substantially, especially if occurring across sequential days, then it becomes more likely that the aggregate effects could potentially interfere with feeding enough to reduce energy budgets in a manner that could impact reproductive success via longer cow-calf intervals, terminated pregnancies, or calf mortality. It is important to note that these impacts only accrue to females, which only comprise a portion of the population (typically approximately 50 percent). Based on energetic models, it takes energetic impacts of a significantly greater magnitude to cause the death of an adult marine mammal, and females will always terminate a pregnancy or stop lactating before allowing their health to deteriorate. Also, the death of an adult female has significantly more impact on population growth rates than reductions in reproductive success, and death of males has very little effect on population growth rates. However, as explained earlier, such severe impacts from the Navy's activities would be very infrequent and not likely to occur at all for most species and stocks. Even for those species or stocks where it is possible for a small number of females to experience reproductive effects, we explain below why there still will be no

effect on rates of recruitment or survival.

The analyses below in some cases address species collectively if they occupy the same functional hearing group (*i.e.,* low, mid, and high-frequency cetaceans and pinnipeds in water), share similar life history strategies, and/or are known to behaviorally respond similarly to acoustic stressors. Because some of these groups or species share characteristics that inform the impact analysis similarly, it would be duplicative to repeat the same analysis for each species or stock. In addition, animals belonging to each stock within a species typically have the same hearing capabilities and behaviorally respond in the same manner as animals in other stocks within the species. Thus, our analysis below considers the effects of Navy's activities on each affected stock even where discussion is organized by functional hearing group and/or information is evaluated at the species level. Where there are meaningful differences between stocks within a species that would further differentiate the analysis (*e.g.,* the status of the stock or mitigation related to biologically important areas for the stock), they are either described within the section or the discussion for those species or stocks is included as a separate subsection. Specifically below, we first give broad descriptions of the mysticete, odontocete, and pinniped groups and then differentiate into further groups as appropriate.

Mysticetes

This section builds on the broader discussion above and brings together the discussion of the different types and amounts of take that different stocks will incur, the applicable mitigation for each stock, and the status of the stocks to support the negligible impact determinations for each stock. We have already described above why we believe the incremental addition of the small number of low-level PTS takes will not have any meaningful effect towards inhibiting reproduction or survival. We have also described (above in this section and in the proposed rule, respectively, with no new applicable information received since publication of the proposed rule) the unlikelihood of any masking or habitat impacts having effects that would impact the reproduction or survival of any of the individual marine mammals affected by the Navy's activities. For mysticetes, there is no predicted tissue damage from explosives for any stock. Much of the discussion below focuses on the behavioral effects and the mitigation measures that reduce the probability or severity of effects in biologically important areas. Because there are multiple stock-specific factors in relation to the status of the species, as well as mortality take for several stocks, at the end of the section we break out our findings for most stocks on a stock-specific basis, however we do consider five of the stocks in Hawaii with low-level impacts together.

In Table 71 and Table 72 below, for mysticetes, we indicate the total annual mortality, Level A and Level B harassment, and a number indicating the instances of total take as a percentage of abundance.

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Table 71. Annual takes of Level B and Level A harassment, mortality for mysticetes in the HRC portion 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		Mortality	Total Takes		Abundance		Instance of total take as percent of abundance	
Species	Stock	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	15	33	0	0	0	48	40	43	33	112	121
Bryde's whale	Hawaii	40	106	0	0	0	146	123	108	89	135	138
Fin whale	Hawaii	21	27	0	0	0	48	41	52	40	92	103
Humpback whale	Central North Pacific	2837	6289	3	0	0.4	9129	7389	5078	4595	180	161
Minke whale	Hawaii	1233	3697	2	0	0	4932	4030	3652	2835	135	142
Sei whale	Hawaii	46	121	0	0	0	167	135	138	107	121	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 study area inside the U.S. EEZ is generally concomitant with the 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 mysticetes in the SOCAL portion 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	NMFS SARS	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	0.2	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	0.4	2226	363	9029	613	25
Humpback whale	CA/OR/WA	480	1514	1	0	0.2	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	0.4	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 study 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 study 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 study area, as well as the SARs.

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The majority of takes by harassment of mysticetes in the HSTT Study Area are caused by sources from the MF1 active sonar bin (which includes hull-mounted sonar) because they are high level, narrowband sources in the 1–10 kHz range, which intersect what is estimated to be the most sensitive area of hearing for mysticetes. They also are used in a large portion of exercises (see Table 1.5–5 in the Navy's application). Most of the takes (62 percent) from the MF1 bin in the HSTT Study Area would result from received levels between 154 and 172 dB SPL, while another 35 percent would result from exposure between 172 and 178 dB SPL. For the remaining active sonar bin types, the percentages are as follows: LF3 = 96 percent between 142 and 160 dB SPL, LF5 = 98 percent between 100 and 130 dB SPL, MF4 = 98 percent between 136 and 154 dB SPL, MF5 = 97 percent between 118 and 142 dB SPL, and HF4 = 98 percent between 100 and 148 dB SPL. These values may be derived from the information in Tables 6.4–8 through 6.4–12 in the Navy's rulemaking/LOA application (though they were provided directly to NMFS upon request). For mysticetes, explosive training and testing activities do not result in any Level B behavioral harassment, PTS from explosives is fewer than 3 for every stock, and the TTS takes from explosives comprise a small fraction (approximately 1–10 percent) of those caused by exposure to active sonar. There are only two Level B harassment takes of mysticetes by pile driving and airguns each, one gray whale and one blue whale for each activity type. Based on this information, the majority of the Level B behavioral harassment is expected to be of low to sometimes moderate severity and of a relatively shorter duration.

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 feeding or breeding grounds. Behavioral reactions may include alerting, breaking off feeding dives and surfacing, diving or swimming away, or no response at all (DOD, 2017; Nowacek, 2007; Richardson, 1995; Southall *et al.,* 2007). Overall, mysticetes have been observed to be more reactive to acoustic disturbance when a noise source is located directly on their migration route. Mysticetes disturbed while migrating could pause their migration or route around the disturbance, while males en route to breeding grounds have been shown to be less responsive to disturbances. Although some may pause temporarily, they will resume migration shortly after the exposure ends. 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. Alternately, adult females with calves may be more responsive to stressors. As noted in the *Potential Effects of Specified Activities on Marine Mammals and Their Habitat* section, there are multiple examples from behavioral response studies of odontocetes ceasing their feeding dives when exposed to sonar pulses at certain levels, but alternately, blue whales were less likely to show a visible response to sonar exposures at certain levels when feeding than when traveling. However, Goldbogen *et al.* (2013) indicated some horizontal displacement of deep foraging blue whales in response to simulated MFA sonar. Most Level B behavioral harassment of mysticetes is likely to be short-term and low to moderate severity, with no anticipated effect on reproduction or survival from Level B harassment.

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 do not typically use the same training locations day-after-day during multi-day activities, except periodically in instrumented ranges. Therefore, displaced animals could return quickly after the MTE finishes. Due to the limited number and geographic scope of MTEs, it is unlikely that most mysticetes would encounter a major training exercise more than once per year and additionally, total hull-mounted sonar hours are limited in several areas that are important to mysticetes (described below). In the ocean, the use of sonar and other active acoustic sources is transient and is unlikely to expose the same population of animals repeatedly over a short period of time, especially given the broader-scale movements of mysticetes.

The implementation of procedural mitigation and the sightability of mysticetes (due to their large size) further reduces the potential for a significant behavioral reaction or a threshold shift to occur (*i.e.,* shutdowns are expected to be successfully implemented), though we have analyzed the impacts that are anticipated to occur and that we are therefore authorizing.

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 the vast majority of threshold shifts caused by Navy sonar sources will typically occur in the range of 2–20 kHz (from the 1–10 kHz MF1 bin, though in a specific narrow band within this range as the sources are narrowband), 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. Additionally, many of the other critical sounds that serve as cues for navigation and prey (*e.g.,* waves, fish, invertebrates) occur below a few kHz, which means that detection of these signals will not be inhibited by most threshold shift either. 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 reproduction or survival rates of mysticetes from exposure to sonar and other active acoustic sources.

The Navy will also limit activities and employ other measures in mitigation areas that will avoid or reduce impacts to mysticetes and where BIAs for large whales have been identified in the HSTT Study Area.

In the SOCAL portion of the HSTT Study Area, the Navy will implement the San Diego Arc, San Nicolas Island, and Santa Monica/Long Beach Mitigation Areas from June 1 through October 31, which will reduce impacts primarily to blue whales, but also potentially gray whales and fin whales. These mitigation areas fully overlap the three associated blue whale Feeding Areas (all three of which are BIAs) in the HSTT Study Area both temporally and spatially (see also the HSTT FEIS/OEIS Appendix K (Geographic Mitigation Assessment), Section K.4); only the Tanner-Cortes Bank BIA is not included for practicability reasons discussed previously. Within these three Mitigation Areas, the Navy will not exceed 200 hrs of MFAS sensor MF1 use (with the exception of active sonar maintenance and systems checks) in all three of the areas combined, annually, and will not use explosives during large-caliber gunnery, torpedo, bombing, and missile (including 2.75-inch (in) rockets) activities during training (or for mine warfare in the San Nicolas and Santa Monica areas).

In addition, the Navy will implement the year-round Santa Barbara Island Mitigation Area, which encompasses the portion of the Channel Islands NMS that overlaps with the HSTT Study Area. The Navy will not use MFAS sensor MF1 surface hull-mounted sonar or explosives used in gunnery (all calibers), torpedo, bombing, and missile exercises (including 2.75-in rockets) during training. This Mitigation area overlaps a blue whale feeding BIA and also the Channel Islands NMS is consider a highly productive and diverse area of high-value habitat that is more typically free of anthropogenic stressors, and, therefore, limiting activities in this area is considered habitat protection for the myriad marine mammal species that use it or may pass through the area.

In the HRC portion of the HSTT Study Area, the Navy will implement the 4-Islands Region Mitigation Area, which is expected to reduce impacts to humpback whales (during an important breeding/calving time period), as well as the Main Hawaiian Island Insular stock of false killer whale, monk seals, and several dolphin species. In this area, the Navy will not use MFAS sensor MF1 during training or testing activities from November 15 through April 15 nor will the Navy use any explosives throughout the year that could potentially result in takes of marine mammals. 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 has expanded the size and extended 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 and the Navy has extended it from November 15 through April 15 for the purposes of this mitigation because the peak humpback whale season has expanded. The size of the 4-Islands Region Mitigation Area has also expanded since the last HSTT regulation 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 FEIS/OEIS).

Within the 4-Islands Region Mitigation Area is the Hawaiian Islands Humpback Whale Reproduction Area BIA (4-Islands Region and Penguin Bank). The use of sonar and other transducers primarily occur farther offshore than the delineated 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 mean 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 the takes would be more likely to interfere with cow/calf communication or result in potentially heightened impacts on sensitive or naïve individuals (calves).

The Navy is also implementing the Hawaii Island Mitigation Area. The Hawaii Island Mitigation Area is effective year-round and the Navy will not use more than 300 hrs of MFAS sensory MF1 and will not exceed 20 hrs of MFAS sensory MF4. 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 impacts 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 several small resident populations of dolphins (Baird *et al.,* 2015; Van Parijs, 2015).

The 4-Islands Region Mitigation Area and the Hawaii Island Mitigation Area both also overlap with portions (approximately 55 percent) of the Hawaiian Islands Humpback Whale NMS. 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.

Below we compile and summarize the information that supports our determination that the Navy's activities will not adversely impact rates of recruitment or survival for any of the affected mysticete stocks:

Blue Whale (Eastern North Pacific stock)—The SAR identifies this stock as ''stable'' even though the larger species is listed as endangered under the ESA. We further note that this stock was originally listed under the ESA as a result of the impacts from commercial whaling, which is no longer affecting the species. As discussed above, both the abundance and PBR are likely underestimated to some degree in the SAR. NMFS will authorize one mortality over the five years covered by this rule, or 0.2 mortality annually. With the addition of this 0.2 annual mortality, residual PBR is exceeded, resulting in the total human-caused mortality exceeding PBR by 16.9. However, as described in more detail above in the *Serious Injury and Mortality* subsection, when total human-caused mortality exceeds PBR, we consider whether the incremental addition of a small amount of authorized mortality from the specified activity may still result in a negligible impact, in part by identifying whether it is less than 10 percent of PBR. In this case, the authorized mortality is well below 10 percent of PBR, management measures are in place to reduce mortality from other sources, and the incremental addition of a single mortality over the course of the five-year Navy rule is not expected to, alone, lead to adverse impacts on the stock through effects on annual rates of recruitment or survival.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance (measured against both the Navy-estimated abundance and the SAR) is 253 and 121 percent, respectively (Table 72). Given the range of blue whales, this information suggests that only some portion of individuals in the stock are likely impacted, but that there will likely be some repeat exposure (maybe 5 or 6 days within a year) of some subset of individuals that spend extended time within the SOCAL Range. Regarding the severity of those individual takes by Level B behavioral harassment, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Additionally, the Navy implements time/area mitigation in SOCAL in the majority of the BIAs, which will reduce the severity of impacts to blue whales by reducing interference in feeding that could result in lost feeding opportunities or necessitate additional energy expenditure to find other good opportunities. Regarding the severity of TTS takes, we have explained that they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with blue whale communication or other important low-frequency cues—and that the associated lost opportunities and capabilities are not at a level that would impact reproduction or survival. For similar reasons (described above) the single estimated Level A harassment take by PTS for this stock is unlikely to have any effect on the reproduction or survival of that one individual, even if it were to be experienced by an animal that also experiences one or more Level B harassment behavioral disruptions.

Altogether, only a small portion of the stock is impacted and any individual blue whale is likely to be disturbed at a low-moderate level, with likely many animals exposed only once or twice and a subset potentially disturbed across five or six days, but minimized in biologically important areas. This low magnitude and severity of harassment effects is not expected to result in impacts on the reproduction or survival of any individuals and, therefore, when combined with the authorized mortality (which our earlier analysis indicated would not, alone, have more than a negligible impact on this stock of blue whales), the total take is not expected to adversely affect this stock through impacts on annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on the Eastern North Pacific stock of blue whales.

Bryde's whale (Eastern Tropical Pacific stock)—Little is known about this stock, or its status, and it is not listed under the ESA. No mortality or Level A harassment is anticipated or authorized. Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance is 3,154 percent, however, the abundance upon which this percentage is based (1.3 whales from the Navy estimate, which is extrapolated from density estimates based on very few sightings) is clearly erroneous and the SAR does not include an abundance estimate because all of the survey data is outdated (Table 72). However, the abundance in the early 1980s was estimated as 22,000 to 24,000, a portion of the stock was estimated at 13,000 in 1993, and the minimum number in the Gulf of California was estimated at 160 in 1990. Given this information and the fact that 41 total takes of Bryde's whales were estimated, this information suggests that only a small portion of the individuals in the stock are likely impacted, and few, if any, are likely taken over more than one day. Regarding the severity of those individual takes by Level B behavioral harassment, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Regarding the severity of TTS takes, we have explained that they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with Bryde's whale communication or other important low-frequency cues. Any associated lost opportunities and capabilities are not at a level that would impact reproduction or survival.

Altogether, only a small portion of the stock is impacted and any individual Bryde's whale is likely to be disturbed at a low-moderate level, with few, if

any, individuals exposed over more than one day in the year. This low magnitude and severity of harassment effects is not expected to result in impacts on individual reproduction or survival, much less annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on the Eastern Tropical Pacific stock of Bryde's whales.

Fin whale (CA/OR/WA stock)—The SAR identifies this stock as ''increasing,'' even though the larger species is listed as endangered under the ESA. NMFS will authorize two mortalities over the five years covered by this rule, or 0.4 mortality annually. The addition of this 0.4 annual mortality still leaves the total human-caused mortality well under residual PBR.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance (measured against both the Navy-estimated abundance and the SAR) is 613 and 25 percent, respectively (Table 72). This information suggests that only some portion (less than 25 percent) of individuals in the stock are likely impacted, but that there is likely some repeat exposure (perhaps up to 12 days within a year) of some subset of individuals that spend extended time within the SOCAL complex. Some of these takes could occur on a few sequential days for some small number of individuals, for example, if they resulted from a multi-day exercise on a range while individuals were in the area for multiple days feeding. Regarding the severity of those individual takes by Level B behavioral harassment, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Additionally, while there are no designated BIAs for fin whales in the SOCAL range, the Navy implements time/area mitigation in SOCAL in blue whale BIAs, and fin whales are known to sometimes feed in some of the same areas, which means they could potentially accrue some benefits from the mitigation. Regarding the severity of TTS takes, we have explained that they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with fin whale communication or other important low-frequency cues—and that the associated lost opportunities and capabilities are not at a level that would impact reproduction or survival. For similar reasons (described above) the single estimated Level A harassment take by PTS for this stock is unlikely to have any effects on the reproduction or survival of that one individual.

Altogether, this population is increasing, only a small portion of the stock is impacted, and any individual fin whale is likely to be disturbed at a low-moderate level, with the taken individuals likely exposed between one and twelve days, with a few individuals potentially taken on a few sequential days. This low magnitude and severity of harassment effects is not expected to result in impacts on individual reproduction or survival, nor are these harassment takes combined with the authorized mortality expected to adversely affect this stock through impacts on annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on the CA/OR/WA stock of fin whales.

Humpback whale (CA/OR/WA stock)—The SAR identifies this stock as stable (having shown a long-term increase from 1990 and then leveling off between 2008 and 2014) and the individuals in this stock are associated with three DPSs, one of which is not listed under the ESA (Hawaii), one of which is designated as threatened (Mexico), and one of which is designated as endangered (Central America) (individuals encountered in the SOCAL portion of the HSTT Study Area are likely to come from the latter two). NMFS will authorize one mortality over the five years covered by this rule, or 0.2 mortality annually (Mexico DPS only). With the addition of this 0.2 annual mortality, the total human-caused mortality exceeds PBR by 7.56. However, as described in more detail above in the *Serious Injury and Mortality* subsection, when total human-caused mortality exceeds PBR, we consider whether the incremental addition of a small amount of authorized mortality from the specified activity may still result in a negligible impact, in part by identifying whether it is less than 10 percent of PBR, which is 33.4. In this case, the authorized mortality is well below 10 percent of PBR (less than one percent, in fact) and management measures are in place to reduce mortality from other sources. More importantly, as described above in *Serious Injury and Mortality,* the authorized mortality of 0.2 will not delay the time to recovery by more than 1 percent. Given these factors, the incremental addition of a single mortality over the course of the five-year Navy rule is not expected to, alone, lead to adverse impacts on the stock through effects on annual rates of recruitment or survival.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance (measured against both the Navy-estimated abundance and the SAR) is 808 and 104 percent, respectively (Table 72). Given the range of humpback whales, this information suggests that only some portion of individuals in the stock are likely impacted, but that there is likely some repeat exposure (maybe perhaps up to 16 days within a year) of some subset of individuals that spend extended time within the SOCAL complex. Regarding the severity of those individual takes by Level B behavioral harassment, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Some of these takes could occur on several sequential days for some small number of individuals, for example, if they resulted from a multi-day exercise on a range while individuals were in the area for multiple days feeding, however, in these amounts it would still not be expected to adversely impact reproduction or survival of any individuals.

Regarding the severity of TTS takes, we have explained that they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with humpback whale communication or other important low-frequency cues—and that the associated lost opportunities and capabilities are not at a level that would impact reproduction or survival. For similar reasons (described above) the single estimated Level A harassment take by PTS for this stock is unlikely to have any effects on the reproduction or survival of that one individual.

Altogether, only a small portion of the stock is impacted and any individual humpback whale is likely to be disturbed at a low-moderate level, with likely many animals exposed only once or twice and a subset potentially disturbed up to 16 days, but with no reason to think that more than a few of those days would be sequential. This low magnitude and severity of harassment effects is not expected to

result in impacts on the reproduction or survival of any individuals and, therefore, when combined with the authorized mortality (which our earlier analysis indicated would not, alone, have more than a negligible impact on this stock of humpback whales), the total take is not expected to adversely affect this stock through impacts on annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on the CA/OR/WA stock of humpback whales.

Minke whale (CA/OR/WA stock)—The status of this stock is unknown and it is not listed under the ESA. No mortality from vessel strike or tissue damage from explosive exposure is anticipated or authorized for this species. Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance (measured against both the Navy-estimated abundance and the SAR) is 568 and 146 percent, respectively (Table 72). Based on the behaviors of minke whales, which often occur along continental shelves and sometimes establish home ranges along the West Coast, this information suggests that only a portion of individuals in the stock are likely impacted, but that there is likely some repeat exposure (perhaps up to 11 days within a year) of some subset of individuals that spend extended time within the SOCAL complex. Some of these takes could occur on a few sequential days for some small number of individuals, for example, if they resulted from a multi-day exercise on a range while individuals were in the area for multiple days feeding. Regarding the severity of those individual takes by Level B behavioral harassment, we have explained that the duration of any exposure is expected to be between minutes and hours *(i.e.,* relatively short) and the received sound levels largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Regarding the severity of TTS takes, we have explained that they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with minke whale communication or other important low-frequency cues—and that the associated lost opportunities and capabilities are not at a level that would impact reproduction or survival. For similar reasons (described above) the single estimated Level A harassment take by PTS for this stock is unlikely to have any effects on the reproduction or survival of any individuals.

Altogether, only a portion of the stock is impacted and any individual minke whale is likely to be disturbed at a low-moderate level, with the taken individuals likely exposed between one and eleven days, with a few individuals potentially taken on a few sequential days. This low magnitude and severity of harassment effects is not expected to result in impacts on individual reproduction or survival, much less annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on the CA/OR/WA stock of minke whales.

Sei whale (Eastern North Pacific stock)—The status of this stock is unknown and it is listed under the ESA. No mortality or Level A harassment is anticipated or authorized. Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance (measured against both the Navy-estimated abundance and the SAR) is 2,633 and 15 percent, respectively (Table 72), however, the abundance upon which the Navy percentage is based (3 from the Navy estimate, which is extrapolated from density estimates based on very few sightings) is likely an underestimate of the number of individuals in the HSTT study Area, resulting in an overestimated percentage. Nonetheless, even given this information and the large range of sei whales, and the fact that only 79 total Level B harassment takes of sei whales were estimated, it is likely that some very small number of sei whales is taken repeatedly, potentially up to 15 days in a year (typically 2,633 percent would lead to the estimate of 52 days/year, however, given that there are only 79 sei whale total takes, we used the conservative assumption that five individuals might be taken up to 15 times, with the few remaining takes distributed among other individuals). Regarding the severity of those individual takes by Level B behavioral harassment, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Some of these takes could occur on a few sequential days for some small number of individuals, for example, if they resulted from a multi-day exercise on a range while individuals were in the area for multiple days feeding, however, in these amounts it would still not be expected to adversely impact reproduction or survival of any individuals. Regarding the severity of TTS takes, we have explained that they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with sei whale communication or other important low-frequency cues—and that the associated lost opportunities and capabilities are not at a level that would impact reproduction or survival.

Altogether, only a small portion of the stock is impacted and any individual sei whale is likely to be disturbed at a low-moderate level, with only a few individuals exposed over one to 15 days in a year, with no more than a few sequential days. This low magnitude and severity of harassment effects is not expected to result in impacts on individual reproduction or survival, much less annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on the Eastern North Pacific stock of sei whales.

Gray whale (Eastern North Pacific stock)—The SAR identifies this stock as ''increasing'' and the species is not listed under the ESA. NMFS will authorize two mortalities over the five years covered by this rule, or 0.4 mortality annually. The addition of this 0.4 annual mortality still leaves the total human-caused mortality well under the insignificance threshold of residual PBR.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance (measured against both the Navy-estimated abundance and the SAR) is 2,424 and 22 percent, respectively (Table 72). This information suggests that only some small portion of individuals in the stock are likely impacted (less than 22 percent), but that there is likely some level of repeat exposure of some subset of individuals that spend extended time within the SOCAL complex. Typically 2,424 percent would lead to the estimate of 48 days/year, however, given that a large number of gray whales are known to migrate through the SOCAL complex and the fact that there are only 4,678 total takes, we believe that it is more likely that a large number of individuals are taken one to a few times, while a small number staying in an area to feed for several days may be taken on 5–10

days. Regarding the severity of those individual takes by Level B behavioral harassment, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Some of these takes could occur on a couple of sequential days for some small number of individuals, however, in these amounts it would still not be expected to adversely impact reproduction or survival of any individuals.

Regarding the severity of TTS takes, we have explained that they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with gray whale communication or other important low-frequency cues and that the associated lost opportunities and capabilities are not at a level that would impact reproduction or survival. For these same reasons (low level and frequency band), while a small permanent loss of hearing sensitivity may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, at the expected scale the 7 estimated Level A harassment takes by PTS for gray whales would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individuals.

Altogether, gray whales are not endangered or threatened under the ESA and the Eastern North Pacific stock is increasing. Only a small portion of the stock is impacted and any individual gray whale is likely to be disturbed at a low-moderate level, with likely many animals exposed only once or twice and a subset potentially disturbed across five to ten days. This low magnitude and severity of harassment effects is not expected to result in impacts to reproduction or survival for any individuals and nor are these harassment takes combined with the authorized mortality of two whales over the five year period expected to adversely affect this stock through impacts on annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on the Eastern North Pacific stock of gray whales.

Gray whale (Western North Pacific stock)—The Western North Pacific stock of gray whales is considered ''increasing,'' but is listed as endangered under the ESA. No mortality or Level A harassment is anticipated or authorized. This stock is expected and authorized to incur the very small number of 6 Level B harassment takes (2 behavioral and 4 TTS) to a stock with a SAR-estimated abundance of 140. These takes will likely accrue to different individuals, the behavioral disturbances will be of a low-moderate level, and the TTS instances will be at a low level and short duration. This low magnitude and severity of harassment effects is not expected to result in impacts on individual reproduction or survival, much less to adversely affect this stock through impacts on annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on the Western North Pacific stock of gray whales.

Humpback whale (Central North Pacific stock)—The SAR identifies this stock as ''increasing'' and the DPS is not listed under the ESA. No Level A harassment by tissue damage is authorized. NMFS will authorize two mortalities over the five years covered by this rule, or 0.4 mortalities annually. The addition of this 0.4 annual mortality still leaves the total human-caused mortality well under the insignificance threshold for residual PBR.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances of take compared to the abundance, both throughout the HSTT Study Area and within the U.S. EEZ, respectively, is 180 and 161 percent (Table 71). This information and the complicated far-ranging nature of the stock structure suggests that some portion of the stock (but not all) are likely impacted, over one to several days per year, with little likelihood of take across sequential days. Regarding the severity of those individual takes by Level B behavioral harassment, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Additionally, as noted above, there are two mitigation areas implemented by the Navy that span a large area of this important humpback reproductive area (BIA) and minimize impacts by limiting the use of MF1 active sonar and explosives, thereby reducing both the number and severity of takes of humpback whales. Regarding the severity of TTS takes, we have explained that they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with humpback whale communication or other important low-frequency cues, and that the associated lost opportunities and capabilities are not at a level that would impact reproduction or survival. For these same reasons (low level and frequency band), while a small permanent loss of hearing sensitivity may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, at the expected scale the 3 estimated Level A harassment takes by PTS for humpback whales would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individuals.

Altogether, this stock is increasing and the DPS is not listed as endangered or threatened under the ESA. Only a small portion of the stock is impacted and any individual humpback whale is likely to be disturbed at a low-moderate level, with the taken individuals likely exposed between one and twelve days, with a few individuals potentially taken on a few sequential days. This low magnitude and severity of harassment effects is not expected to result in impacts on individual reproduction or survival, nor are these harassment takes combined with the authorized mortality expected to adversely affect this stock through effects on annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on the Central North Pacific stock of humpback whales.

Blue whale (Central North Pacific stock) and the Hawaii stocks of Bryde's whale, Fin whale, Minke whale, and Sei whale—The status of these stocks are not identified in the SARs. Blue whale (Central North Pacific stock) and the Hawaii stocks of fin whale and sei whale are listed as endangered under the ESA; the Hawaii stocks of minke whales and Bryde's whales are not listed under the ESA. No mortality or Level A harassment by tissue damage is anticipated or authorized for any of these stocks.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances of take compared to the abundance, both throughout the HSTT Study Area and within the U.S. EEZ, respectively, is 92–135 and 103–142

percent (Table 71). This information suggests that some portion of the stocks (but not all) are likely impacted, over one to several days per year, with little likelihood of take across sequential days. Regarding the severity of those individual takes by Level B behavioral harassment, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Regarding the severity of TTS takes, we have explained that they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with mysticete communication or other important low-frequency cues—and that the associated lost opportunities and capabilities are not at a level that would impact reproduction or survival. For similar reasons (described above) the two estimated Level A harassment takes by PTS for the Hawaii stock of minke whales are unlikely to have any effects on the reproduction or survival of any individuals.

Altogether, only a portion of these stocks are impacted and any individuals of these stocks are likely to be disturbed at a low-moderate level, with the taken individuals likely exposed between one and several days, with little chance that any are taken across sequential days. This low magnitude and severity of harassment effects is not expected to result in impacts on individual reproduction or survival, much less impacts on annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on these stocks.

Odontocetes

This section builds on the broader discussion above and brings together the discussion of the different types and amounts of take that different stocks will incur, the applicable mitigation for each stock, and the status of the stocks to support the negligible impact determinations for each stock. We have previously described (above in this section and in the proposed rule, respectively, with no new applicable information received since publication of the proposed rule) the unlikelihood of any masking or habitat impacts having effects that would impact the reproduction or survival of any of the individual marine mammals affected by the Navy's activities. Here, we include information that applies to all of the odontocete species and stocks, which are then further divided and discussed in more detail in the following subsections: Sperm whales, dwarf sperm whales, and pygmy sperm whales; Dolphins and small whales; Beaked whales; and Dall's porpoise. These sub-sections include more specific information about the groups, as well as conclusions for each stock represented.

The majority of takes by harassment of odontocetes in the HSTT Study Area are caused by sources from the MF1 active sonar bin (which includes hull-mounted sonar) because they are high level, typically narrowband sources at a frequency (in the 1–10 kHz range), which overlap a more sensitive portion (though not the most sensitive) of the MF hearing range, and they are used in a large portion of exercises (see Table 1.5–5 in the Navy's rulemaking/LOA application). For odontocetes other than beaked whales (for which these percentages are indicated separately in that section), most of the takes (98 percent) from the MF1 bin in the HSTT Study Area would result from received levels between 154 and 172 dB SPL. For the remaining active sonar bin types, the percentages are as follows: LF3 = 97 percent between 142 and 160 dB SPL, LF5M = 99 percent between 106 and 118 dB SPL, MF4 = 99 percent between 136 and 160 dB SPL, MF5 = 97 percent between 118 and 148 dB SPL, and HF4 = 96 percent between 100 and 148 dB SPL. These values may be derived from the information in Tables 6.4–8 through 6.4–12 in the Navy's rulemaking/LOA application (though they were provided directly to NMFS upon request). Based on this information, the majority of the takes by Level B behavioral harassment are expected to be low to sometimes moderate in nature, but still of a generally shorter duration.

For all odontocetes, takes from explosives (Level B behavioral harassment, TTS, or PTS if present) comprise a very small fraction (and low number) of those caused by exposure to active sonar. Specifically, for all but six odontocete stocks the instances of PTS and TTS from explosives are five or fewer and 12 or fewer per stock, respectively. By virtue of the sheer density and abundance of these two stocks, long-beaked and short-beaked dolphins incur a slightly higher number—13 or fewer and 30 or fewer instances of PTS and TTS, respectively. And, because of the lower threshold for HF species, pygmy and dwarf sperm whales have about 10–20 PTS takes and 30–100 TTS takes from explosives per stock, while Dall's porpoises have about 50 PTS takes and 300 PTS takes from explosives. Only five stocks incur take by harassment in the form of TTS or PTS from exposure to air guns and in all five cases it is limited to fewer than 10 takes each for TTS and PTS. No odontocetes incur PTS from exposure to pile driving, and only two stocks incur TTS in the amounts of one and three takes, respectively, from pile driving.

Because the majority of harassment take of odontocetes results from the sources in the MF1 bin (typically a narrowband source in the 1–10 kHz range), the vast majority of threshold shift caused by Navy sonar sources will typically occur across a narrower band in the range of 2–20 kHz. This frequency range falls directly within the range of most odontocete vocalizations. However, odontocete vocalizations typically span a much wider range than this, and alternately, threshold shift from active sonar will often be in a narrower band (reflecting the narrower band source that caused it), which means that TTS incurred by odontocetes would typically only interfere with communication within a portion of their range (if it occurred during a time when communication with conspecifics was occurring) and as discussed earlier, it would only be expected to be of a short duration and relatively small degree. Odontocete echolocation occurs predominantly at frequencies significantly higher than 20 kHz, though there may be some small overlap at the lower part of their echolocating range for some species, which means that there is little likelihood that threshold shift, either temporary or permanent would interfere with feeding behaviors. Many of the other critical sounds that serve as cues for navigation and prey (*e.g.,* waves, fish, invertebrates) occur below a few kHz, which means that detection of these signals will not be inhibited by most threshold shift either. The low number of takes by threshold shifts that might be incurred by individuals exposed to explosives, pile driving, or air guns would likely be lower frequency (5 kHz or less) and spanning a wider frequency range, which could slightly lower an individual's sensitivity to navigational or prey cues, or a small portion of communication calls, for several minutes to hours (if temporary) or permanently. There is no reason to think that any of the individual odontocetes taken by TTS would incur these types of takes over more than a few days of the year (with the exception of a few stocks, which are explicitly discussed below), at the most, and therefore they are unlikely to incur impacts on reproduction or survival.

PTS takes from these sources are very low, and while spanning a wider frequency band, are still expected to be of a low degree (*i.e.,* low amount of hearing sensitivity loss).

The range of potential behavioral effects of sound exposure on marine mammals generally, and odontocetes specifically, has been discussed in detail previously. There are behavioral patterns that differentiate the likely impacts on odontocetes as compared to mysticetes. First, odontocetes echolocate to find prey, which means that they actively send out sounds to detect their prey. While there are many strategies for hunting, one common pattern, especially for deeper diving species, is many repeated deep dives within a bout, and multiple bouts within a day, to find and catch prey. As discussed above, studies demonstrate that odontocetes cease their foraging dives in response to sound exposure. If enough foraging interruptions occur over multiple sequential days, and the individual either does not take in the necessary food, or must exert significant effort to find necessary food elsewhere, energy budget deficits can occur that could potentially result in impacts to reproductive success, such as increased cow/calf intervals (the time between successive calving). Second, many mysticetes rely on seasonal migratory patterns that position them in a geographic location at a specific time of the year to take advantage of ephemeral large abundances of prey (*i.e.,* invertebrates or small fish, which they eat by the thousands), whereas odontocetes forage more homogeneously on one fish or squid at a time. Therefore, if odontocetes are interrupted while feeding, it is often possible to find more prey relatively nearby.

Sperm Whales, Dwarf Sperm Whales, and Pygmy Sperm Whales

In this section, we bring together the discussion of marine mammals generally and odontocetes in particular regarding the different types and amounts of take that different stocks will incur, the applicable mitigation for each stock, and the status of the stocks to support the negligible impact determinations for each. We have also previously described the unlikelihood of any masking or habitat impacts to any marine mammals that would rise to the level of affecting individual fitness. The discussion in this section fairly narrowly focuses information that applies specifically to the sperm whale group, and then because there are multiple stock-specific factors in relation to differential Level B harassment effects and potential (and authorized) mortality, we break out specific findings into a few groups—CA/OR/WA stocks of sperm whales, dwarf sperm whales, and pygmy sperm whales; sperm whale (Hawaii stock); and Pygmy and dwarf sperm whales (Hawaii stocks).

In Table 73 and Table 74 below, for sperm whales, dwarf sperm whales, and pygmy sperm whales, we indicate the total annual mortality, Level A and Level B harassment, and a number indicating the instances of total take as a percentage of abundance. No tissue damage is anticipated.

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Table 73. 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		Mortality	Total Takes		Abundance		Instances of total take as percent of abundance	
Species	Stock	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	Total take as percentage of total Navy abundance (HRC)	EEZ take as percentage of EEZ abundance (HRC)
Dwarf sperm whale	Hawaii	5870	14550	64	0	0	20484	15310	8218	6379	249	240
Pygmy sperm whale	Hawaii	2329	5822	29	0	0	8180	6098	3349	2600	244	235
Sperm Whale	Hawaii	2466	30	0	0	0.2	2496	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 74. Annual takes of Level B and Level A harassment, mortality for sperm whales in SOCAL portion 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		Instances 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	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
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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As discussed above, the majority of Level B harassment behavioral takes of odontocetes, and thereby sperm whales, is expected to be in the form of low to occasionally moderate severity of a generally shorter duration. As mentioned earlier in this section, we anticipate more severe effects from takes when animals are exposed to higher received levels or for longer durations. Occasional milder Level B behavioral harassment is unlikely to cause long-term consequences for individual animals or populations, even if some smaller subset of the takes are in the form of a longer (several hours or a day) and more moderate response. However, impacts across higher numbers of days, especially where sequential, have an increased probability of resulting in energetic deficits that could accrue to effects on reproductive success.

We note here that dwarf and pygmy sperm whales, as HF-sensitive species, have a lower PTS threshold than all other groups and therefore are likely to experience larger amounts of TTS and PTS, and NMFS will accordingly authorize higher numbers. However, *Kogia* whales are still likely to avoid sound levels that would cause higher levels of TTS (greater than 20 dB) or PTS. Even though the number of TTS and PTS takes are relatively high, all of the reasons described above for why TTS and PTS are not expected to impact reproduction or survival still apply.

We also note that impacts to dwarf sperm whale stocks will be reduced through the Hawaii Island Mitigation Area, which overlaps (but is larger than) the entirety of two BIAs for small resident populations of dwarf and pygmy sperm whales. In this mitigation area, the Navy will not conduct more than 300 hours of MF1 surface ship hull-mounted mid-frequency active sonar or 20 hours of MF4 dipping sonar and will not use explosives during testing and training.

Below we compile and summarize the information that supports our determination that the Navy's activities will not adversely impact recruitment or survival for any of the affected stocks addressed in this section.

Sperm whale, dwarf sperm whale, and pygmy sperm whale (CA/OR/WA stocks)—The SAR identifies the CA/OR/WA stock of sperm whales as ''stable'' and the species is listed as endangered under the ESA. The status of the CA/OR/WA stocks of pygmy and dwarf sperm whales is unknown and neither are listed under the ESA. Neither mortality nor Level A harassment by tissue damage from exposure to explosives is expected or authorized for any of these three stocks.

Due to their pelagic distribution, small size, and cryptic behavior, pygmy sperm whales and dwarf sperm whales are rarely sighted during at-sea surveys and difficult to distinguish between when visually observed in the field. Many of the relatively few observations of Kogia spp. off the U.S. West Coast were not identified to species. All at-sea sightings of Kogia spp. have been identified as pygmy sperm whales or Kogia spp. Stranded dwarf sperm and pygmy sperm whales have been found on the U.S. West Coast, however dwarf sperm whale strandings are rare. NMFS SARs suggest that the majority of Kogia sighted off the U.S. West Coast were likely pygmy sperm whales. As such, the stock estimate in the NMFS SAR for pygmy sperm whales is the estimate derived for all Kogia spp. in the region (Barlow 2016), and no separate abundance estimate can be determined for dwarf sperm whales, though some low number likely reside in the U.S. EEZ. Due to the lack of abundance estimate it is not possible to predict the take of dwarf sperm whales and take estimates are identified as Kogia spp. (including both pygmy and dwarf sperm whales). We assume only a small portion of those takes are likely to be dwarf sperm whales as the density and abundance in the U.S. EEZ is thought to be low.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance (measured against both the Navy-estimated abundance and the SAR) is, respectively, 913 and 125 for sperm whales and 1,211 and 223 for Kogia spp., with a large proportion of these anticipated to be pygmy sperm whales due to the low abundance and density of dwarf sperm whales in the HSTT Study Area. (Table 74). Given the range of these stocks (which extends the entire length of the West Coast, as well as beyond the U.S. EEZ boundary), this information suggests that some portion of the individuals in these stocks will not be impacted, but that there is likely some repeat exposure (perhaps up to 24 days within a year for Kogia spp. and 18 days a year for sperm whales) of some small subset of individuals that spend extended time within the SOCAL Range. Additionally, while interrupted feeding bouts are a known response and concern for odontocetes, we also know that there are often viable alternative habitat options in the relative vicinity. Regarding the severity of those individual takes by Level B behavioral harassment, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB (*i.e.,* of a

lower, to occasionally moderate, level and less likely to evoke a severe response). However, some of these takes could occur on a fair number of sequential days for some number on individuals.

Regarding the severity of TTS takes, we have explained that they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with sperm whale communication or other important low-frequency cues, and that the associated lost opportunities and capabilities are not at a level that would impact reproduction or survival. For these same reasons (low level and frequency band), while a small permanent loss of hearing sensitivity (PTS) may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, at the expected scale the estimated Level A harassment takes by PTS for the dwarf and pygmy whale stocks would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individuals. Thus the 38 total Level A harassment takes by PTS for these two stocks would be unlikely to affect rates of recruitment and survival for the stocks.

Altogether, most members of the stocks will likely be taken by Level B harassment (at a low to occasionally moderate level) over several days a year, and some smaller portion of the stocks are expected to be taken on a relatively moderate to high number of days (up to 18 or 24) across the year, some of which could be sequential days. Though the majority of impacts are expected to be of a lower to sometimes moderate severity, the larger number of takes for a subset of individuals makes it more likely that a small number of individuals could be interrupted during foraging in a manner and amount such that impacts to the energy budgets of females (from either losing feeding opportunities or expending considerable energy to find alternative feeding options) could cause them to forego reproduction for a year. Energetic impacts to males are generally meaningless to population rates unless they cause death, and it takes extreme energy deficits beyond what would ever be likely to result from these activities to cause the death of an adult marine mammal. As noted previously, however, foregone reproduction (especially for one year, which is the maximum predicted because the small number anticipated in any one year makes the probability that any individual would be impacted in this way twice in five years very low) has far less of an impact on population rates than mortality and a small number of instances of foregone reproduction would not be expected to adversely affect these stocks through effects on annual rates of recruitment or survival, and we note that residual PBR is 19 for pygmy dwarf sperm whales and 1.6 for sperm whales. Both the abundance and PBR are unknown for dwarf sperm whales, however, we know that take of this stock is likely significantly lower in magnitude and severity (*i.e.,* lower number of total takes and repeated takes any individual) than pygmy sperm whales. For these reasons, in consideration of all of the effects of the Navy's activities combined, we have determined that the authorized take will have a negligible impact on the CA/OR/WA stocks of sperm whales and pygmy and dwarf sperm whales.

Sperm whale (Hawaii stock)—The SAR does not identify a trend for this stock and the species is listed as endangered under the ESA. No Level A harassment by PTS or tissue damage is expected or authorized. NMFS will authorize one mortality over the 5 years covered by this rule, which is 0.2 mortalities annually. The addition of this 0.2 annual mortality still leaves the total human-caused mortality well under the insignificance threshold for residual PBR.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances of take compared to the abundance, both throughout the HSTT Study Area and within the U.S. EEZ, respectively, is 151 and 147 percent (Table 73). This information and the sperm whale stock range suggest that likely only a smaller portion of the stock is impacted, over one to several days per year, with little likelihood of take across sequential days. Regarding the severity of those individual takes by Level B behavioral harassment, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB (*i.e.,* of a lower, to occasionally moderate, level and less likely to evoke a severe response). Regarding the severity of TTS takes, we have explained that they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with sperm whale communication or other important low-frequency cues, and that the associated lost opportunities and capabilities are not at a level that would impact reproduction or survival.

Altogether, a relatively small portion of this stock is impacted and any individuals are likely to be disturbed at a low-moderate level, with the taken individuals likely exposed between one and several days, with little chance that any are taken across sequential days. This low magnitude and severity of harassment effects is not expected to result in impacts on individual reproduction or survival, nor are these harassment takes combined with the single authorized mortality expected to adversely affect the stock through annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on the Hawaii stock of sperm whales.

Pygmy and dwarf sperm whales (Hawaii stocks)—The SAR does not identify a trend for these stocks and the species are not listed under the ESA. No Level A harassment by tissue damage is authorized. Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances of take compared to the abundance, both throughout the HSTT Study Area and within the U.S. EEZ, respectively, is 244–249 and 235–240 percent (Table 73). This information and the pygmy and dwarf sperm whale stock ranges (at least throughout the U.S. EEZ around the entire Hawaiian Islands) suggest that likely a fair portion of each stock is not impacted, but that a subset of individuals may be over one to perhaps five days per year, with little likelihood of take across sequential days. Regarding the severity of those individual takes by Level B behavioral harassment, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB (*i.e.,* of a lower, to occasionally moderate, level and less likely to evoke a severe response). Additionally, as noted earlier, within the Hawaii Island Mitigation Area, explosives are not used and the use of MF1 and MF4 active sonar is limited, greatly reducing the severity of impacts within the small resident population BIA for dwarf sperm whales, which is entirely contained within this mitigation area.

Regarding the severity of TTS takes, we have explained that they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with sperm whale communication or other important low-frequency cues—and that the associated lost opportunities and capabilities are not at a level that would impact reproduction or survival. For these same reasons (low

level and frequency band), while a small permanent loss of hearing sensitivity may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, at the expected scale, estimated Level A harassment takes by PTS for dwarf and pygmy sperm whales would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individuals, even if it were to be experienced by an animal that also experiences one or more Level B harassment behavioral disruptions. Thus the 29 and 64 total Level A harassment takes by PTS for dwarf and pygmy sperm whales, respectively, would be unlikely to affect rates of recruitment and survival for these stocks.

Altogether, a portion of these stocks are likely to be impacted and any individuals are likely to be disturbed at a low-moderate level, with the taken individuals likely exposed between one and five days, with little chance that any are taken across sequential days. This low magnitude and severity of Level A and Level B harassment effects is not expected to result in impacts on individual reproduction or survival, much less impacts on annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the expected (and authorized) take will have a negligible impact on the Hawaii stocks of pygmy and dwarf sperm whales.

Beaked Whales

In this section, we build on the broader odontocete discussion above (*i.e.,* that information applies to beaked whales as well), except where we offer alternative information about the received levels for beaked whale Level B behavioral harassment. We bring together the discussion of the different types and amounts of take that different stocks will incur, the applicable mitigation for each stock, and the status of the stocks to support the negligible impact determinations for each stock. None of these species are listed as endangered or threatened under the ESA. For beaked whales, there is no predicted mortality or tissue damage for any stock. We have also described the unlikelihood of any masking or habitat impacts to any groups that would rise to the level of affecting individual fitness. The discussion below focuses on additional information that is specific to beaked whales (in addition to the general information on odontocetes provided above, which is relevant to these species) to support the conclusions for each stock. Because there are differential magnitudes of effect to the Hawaii stocks of beaked whales versus the CA/OR/WA stocks of beaked whales, we break out specific findings into those two groups.

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 or authorized.

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Table 75. Annual takes of Level B and Level A harassment, mortality for beaked whales in 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		Instances 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)	Takes (within NAVY EEZ)	Total Navy Abundance in and out EEZ (HRC)	Within Navy EEZ Abundance	Total take as percentage of total Navy abundance (HRC)	EEZ take as percentage of EEZ abundance (HRC)
Blainville's beaked whale	Hawaii	5369	16	0	0	0	5385	4140	989	768	545	539
Cuvier's beaked whale	Hawaii	1792	4	0	0	0	1796	1377	345	268	521	514
Longman's beaked whale	Hawaii	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 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 portion 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		Instances 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	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	11373	127	1	0	0	11501	520	3274	2212	351
Mesoplodon spp.	CA/OR/WA	6125	68	1	0	0	6194	89	3044	6960	203

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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This first paragraph provides specific information that is in lieu of the parallel information provided for odontocetes as a whole. The majority of takes by harassment of beaked whales in the HSTT Study Area are caused by sources from the MF1 active sonar bin (which includes hull-mounted sonar) because they are high level narrowband sources in the 1–10 kHz range, which overlap a more sensitive portion (though not the most sensitive) of the MF hearing range, and of the sources expected to result in take, they are used in a large portion of exercises (see Table 1.5–5 in the Navy's rulemaking/LOA application). Most of the takes (94 percent) from the MF1 bin in the HSTT Study Area would result from received levels between 154 and 160 dB SPL. For the remaining active sonar bin types, the percentages are as follows: LF3 = 90 percent between 136 and 148 dB SPL, LF5M = 99 percent between 100 and 118 dB SPL, MF4 = 95 percent between 130 and 148 dB SPL, MF5 = 95 percent between 100 and 142 dB SPL, and HF4 = 96 percent between 100 and 148 dB SPL. These values may be derived from the information in Tables 6.4–8 through 6.4–12 in the Navy's rulemaking/LOA application (though they were provided directly to NMFS upon request). Given the levels they are exposed to and their sensitivity, some responses would be of a lower severity, but many would likely be considered moderate.

As is the case with harbor porpoises, research has shown that beaked whales are especially sensitive to the presence of human activity (Pirotta *et al.,* 2012; Tyack *et al.,* 2011) 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).

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). 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, although few definitive causal relationships between MFAS use and strandings have been documented, and no such findings have been documented with Navy use in Hawaii and Southern California.

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 1 μPa. 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; McCarthy *et al.,* 2011; Moretti *et al.,* 2009, 2010; Tyack *et al.,* 2010, 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 (De Ruiter *et al.,* 2013; Manzano-Roth *et al.,* 2013; Moretti *et al.,* 2014; Tyack *et al.,* 2011). 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. Over eight years of passive acoustic monitoring on the Navy's instrumented range west of San Clemente Island documented no significant changes in annual and monthly beaked whale echolocation clicks, with the exception of repeated fall declines likely driven by a natural beaked whale life history functions (DiMarzio *et al.,* 2018). Finally, results from passive acoustic monitoring estimated regional Cuvier's beaked whale densities were higher than indicated by the NMFS' broad scale visual surveys for the U.S. west coast (Hildebrand and McDonald, 2009).

As mentioned earlier in the odontocete overview, we anticipate more severe effects from takes when animals are exposed to higher received levels or sequential days of impacts. Occasional instances of take by Level B behavioral harassment of a low to moderate severity are unlikely to affect reproduction or survival. Here, some small number of takes by Level B behavioral harassment could be in the form of a longer (several hours or a day) and more moderate response, and/or some small number could be repeated over more than several sequential days. Impacts to reproduction could be possible for some small number of individuals, but given the information presented regarding beaked whale movement patterns, their return to areas within hours to a few days after a disturbance, and their continued presence and abundance in the area of instrumented Navy ranges, these impacts seem somewhat less likely. Nonetheless, even where some smaller number of animals could experience effects on reproduction, those responses would not be expected to adversely affect rates of recruitment or survival.

We also note that impacts to beaked whale stocks will be reduced through the Hawaii Island Mitigation Area, which overlaps (but is larger than) almost the entirety of two BIAs for small resident populations of Blainville's and Cuvier's beaked whales (the mitigation area covers all of the BIA for Blainville's and all but a very small portion of the BIA for Cuvier's). In this mitigation area, the Navy will not conduct more than 300 hours of MF1 surface ship hull-mounted mid-frequency active sonar and not more than 20 hours of MF4 dipping sonar and will not use explosives during testing and training.

Below we synthesize and summarize the information that supports our determination that the Navy's activities will not adversely impact recruitment or survival rates for any of the affected stocks addressed in this section:

Blainville's, Cuvier's, and Longman's beaked whales (Hawaii stocks)—The SAR does not identify a trend for these stocks and the species are not listed under the ESA. No mortality or Level A harassment are expected or authorized for any of these three stocks. Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances of take compared to the abundance, both throughout the HSTT Study Area and within the U.S. EEZ, respectively, is 521–545 and 514–539 percent (Table 75). This information and the stock ranges (at least of the small, resident Island associated stocks around Hawaii) suggest that likely a fair portion of the stocks (but not all) will be impacted, over one to perhaps eleven days per year, with little likelihood of much take across sequential days. Regarding the severity of those individual takes by Level B behavioral harassment, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 160 dB, though with beaked whales, which are considered somewhat more sensitive, this could mean that some individuals will leave preferred habitat for a day or two (*i.e.,* moderate level takes). However, while interrupted feeding bouts are a known response and concern for odontocetes, we also know that there are often viable alternative habitat options nearby. Additionally, as noted earlier, within the Hawaii Island mitigation area (which entirely contains the BIAs for Cuvier's and Blainville's beaked whales), explosives are not used and the use of MF1 and MF4 active sonar is limited, greatly reducing the severity of impacts within these two small resident populations.

Regarding the severity of TTS takes, we have explained that they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with beaked whale communication or other important low-frequency cues, and that the associated lost opportunities and capabilities are not at a level that would impact reproduction or survival.

Altogether, a fair portion of these stocks are impacted and any individuals are likely to be disturbed at a moderate level, with the taken individuals likely exposed between one and eleven days, with little chance that individuals are taken across more than a few sequential days. This low, to occasionally moderate, magnitude and severity of harassment effects is not expected to result in impacts on individual reproduction or survival, much less impacts on annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on the Hawaii stocks of beaked whales.

Baird's and Cuvier's beaked whales and Mesoplodon species (all CA/OR/WA stocks)—The species are not listed under the ESA and their populations have been identified as ''stable,'' ''decreasing,'' and ''increasing,'' respectively. No mortality or Level A harassment are expected or authorized for any of these three stocks.

No methods are available to distinguish between the six species of Mesoplodon beaked whale CA/OR/WA stocks (Blainville's beaked whale (*M. densirostris*), Perrin's beaked whale (*M. perrini*), Lesser beaked whale (*M.*

peruvianus), Stejneger's beaked whale (*M. stejnegeri*), Gingko-toothed beaked whale (*M. gingkodens*), and Hubbs' beaked whale (*M. carlhubbsi*) when observed during at-sea surveys (Carretta *et al.,* 2018). Bycatch and stranding records from the region indicate that the Hubb's beaked whale is most commonly encountered (Carretta *et al.,* 2008, Moore and Barlow, 2013). As indicated in the SAR, no species-specific abundance estimates are available, the abundance estimate includes all CA/OR/WA Mesoplodon spp, and the six species are managed as one unit. Due to the lack of species-specific abundance estimates it is not possible to predict the take of individual species and take estimates are identified as Mesoplodon spp.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance for these stocks is 2762, 2212, and 6960 percent (measured against Navy-estimated abundance) and 76, 351, and 203 percent (measured against the SAR) for Baird's beaked whales, Cuvier's beaked whales, and Mesoplodon spp., respectively (Table 76). Given the ranges of these stocks, this information suggests that some smaller portion of the individuals of these stocks will be taken, and that some subset of individuals within the stock will be taken repeatedly within the year (perhaps up to 20–25 days)—potentially over a fair number of sequential days, especially where individuals spend extensive time in the SOCAL Range (note that we predicted lower days of repeated exposure for these stocks than their percentages might have suggested because of the lower overall number of takes). While interrupted feeding bouts are a known response and concern for odontocetes, we also know that there are often viable alternative habitat options in the relative vicinity. Regarding the severity of those individual takes by Level B behavioral harassment, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 160 dB, though with beaked whales, which are considered somewhat more sensitive, this could mean that some individuals will leave preferred habitat for a day or two (*i.e.,* of a moderate level). However, as noted, some of these takes could occur on a fair number of sequential days for these stocks.

As described previously, the severity of TTS takes, is expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere significantly with conspecific communication, echolocation, or other important low-frequency cues. Therefore, the associated lost opportunities and capabilities would not be expected to impact reproduction or survival. For similar reasons (described above) the single estimated Level A harassment take by PTS for this stock is unlikely to have any effects on the reproduction or survival of any individuals.

Altogether, a portion of these stocks will likely be taken (at a moderate or sometimes low level) over several days a year, and some smaller portion of the stock is expected to be taken on a relatively moderate to high number of days across the year, some of which could be sequential days. Though the majority of impacts are expected to be of a moderate severity, the repeated takes over a potentially fair number of sequential days for some individuals makes it more likely that a small number of individuals could be interrupted during foraging in a manner and amount such that impacts to the energy budgets of females (from either losing feeding opportunities or expending considerable energy to find alternative feeding options) could cause them to forego reproduction for a year. Energetic impacts to males are generally meaningless to population rates unless they cause death, and it takes extreme energy deficits beyond what would ever be likely to result from these activities to cause the death of an adult marine mammal). As noted previously, however, foregone reproduction (especially for only one year in five, as discussed previously) has far less of an impact on population rates than mortality and a small number of instances of foregone reproduction would not be expected to adversely affect these stocks through effects on annual rates of recruitment or survival, especially given the residual PBR of these three beaked whale stocks (16, 21, and 20, respectively).

Further, Navy activities have been conducted in SOCAL for many years at similar levels and the SAR considers Mesoplodon spp. as increasing and Baird's beaked whales as stable. While NMFS' SAR indicates that Cuvier's beaked whales on the U.S. West Coast are declining based on a Bayesian trend analysis of NMFS' survey data collected from 1991 through 2014, results from passive acoustic monitoring and other research have estimated regional Cuvier's beaked whale densities that were higher than indicated by NMFS' broad-scale visual surveys for the U.S. West Coast (Debich *et al.,* 2015a; Debich *et al.,* 2015b; Falcone and Schorr, 2012, 2014; Hildebrand *et al.,* 2009; Moretti, 2016; Širović *et al.,* 2016; Smultea and Jefferson, 2014). Research also indicates higher than expected residency in the Navy's instrumented Southern California Anti-Submarine Warfare Range in particular (Falcone and Schorr, 2012) and photo identification studies in the SOCAL have identified approximately 100 individual Cuvier's beaked whale individuals with 40 percent having been seen in one or more prior years, with re-sightings up to 7 years apart (Falcone and Schorr, 2014). The documented residency by many Cuvier's beaked whales over multiple years suggest that a stable population may exist in that small portion of the stock's overall range (Falcone *et al.,* 2009; Falcone and Schorr, 2014; Schorr *et al.,* 2017).

For these reasons, in consideration of all of the effects of the Navy's activities combined, we have determined that the authorized take will have a negligible impact on the CA/OR/WA stocks of Baird's and Cuvier's beaked whales, as well as all six species included within the Mesoplodon spp.

Small Whales and Dolphins

This section builds on the broader discussion above and compiles the discussion of the different types and amounts of take that different stocks will incur, the applicable mitigation for each stock, and the status of the stocks to support the negligible impact determinations for each stock. None of these species are listed as endangered or threatened under the ESA. We also have described the unlikelihood of any masking or habitat impacts to any groups that would rise to the level of affecting individual fitness. The discussion below focuses on additional information that is specific to the dolphin taxa (in addition to the general information on odontocetes provided above, which is relevant to these species) and to support the summarized group-specific conclusions in the subsequent sections. Because of several factors, we break out specific findings into three groups: 1) long-beaked common dolphin (California stock), Northern right whale dolphin, and short-beaked common dolphin (CA/OR/WA stocks), which all have authorized mortality or tissue damage; 2) all other SOCAL dolphin stocks except those identified in 1; and 3) all HRC dolphin stocks.

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.

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Table 77. Annual takes of Level B and Level A harassment, mortality for odontocetes 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		Mortality	Total Takes		Abundance		Instance of total take as percent of abundance	
Species	Stock	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	Total take as percentage of total Navy abundance	EEZ take as percentage of EEZ abundance (HRC)
Bottlenose dolphin	Hawaii Pelagic	3196	132	0	0	0	3328	2481	1528	1442	218	172
Bottlenose dolphin	Kauai & Niihau	534	31	0	0	0	565	264	184	184	307	143
Bottlenose dolphin	Oahu	8600	61	1	0	0	8662	8376	743	743	1169	1130
Bottlenose dolphin	4-Island	349	10	0	0	0	359	316	189	189	190	167
Bottlenose dolphin	Hawaii	74	6	0	0	0	80	42	131	131	61	32
False killer whale	Hawaii Pelagic	999	42	0	0	0	1041	766	645	507	161	151
False killer whale	Main Hawaiian Islands Insular	572	17	0	0	0	589	476	147	147	400	324
False killer whale	Northwestern Hawaiian Islands	365	16	0	0	0	381	280	215	169	177	166
Fraser's dolphin	Hawaii	39784	1289	2	0	0	41075	31120	5408	18763	760	166
Killer whale	Hawaii	118	6	0	0	0	124	93	69	54	180	172
Melon-headed whale	Hawaii Islands	3261	231	0	0	0	3492	2557	1782	1782	196	143
Melon-headed whale	Kohala Resident	341	9	0	0	0	350	182	447	447	78	41
Pantropical spotted dolphin	Hawaii Island	3767	227	0	0	0	3994	2576	2405	2405	166	107
Pantropical spotted dolphin	Hawaii Pelagic	9973	476	0	0	0	10449	7600	5462	4637	191	164
Pantropical spotted dolphin	Oahu	4284	45	0	0	0	4329	4194	372	372	1164	1127
Pantropical spotted dolphin	4-Island	701	17	0	0	0	718	634	657	657	109	96
Pygmy killer whale	Hawaii	8122	402	0	0	0	8524	6538	4928	3931	173	166
Pygmy killer whale	Tropical	710	50	0	0	0	760	490	159	23	478	2130
Risso's dolphin	Hawaii	8950	448	0	0	0	9398	7318	1210	4199	777	174
Rough-toothed dolphin	Hawaii	6112	373	0	0	0	6485	4859	3054	2808	212	173
Short-finned pilot whale	Hawaii	12499	433	0	0	0	12932	9946	6433	5784	201	172
Spinner dolphin	Hawaii Island	279	12	0	0	0	291	89	629	629	46	14
Spinner dolphin	Hawaii Pelagic	4332	202	0	0	0	4534	3491	2885	2229	157	157
Spinner dolphin	Kauai & Niihau	1683	63	0	0	0	1746	812	604	604	289	134
Spinner dolphin	Oahu & 4-Island	1790	34	1	0	0	1825	1708	354	354	516	482
Striped dolphin	Hawaii	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 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 portion 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	NMFS SARS Abundance	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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As described above, the large majority of Level B behavioral harassments to odontocetes, and thereby dolphins and small whales, from hull-mounted sonar (MF1) in the HSTT Study Area would result from received levels between 160 and 172 dB SPL. Therefore, the majority of Level B harassment takes are expected to be in the form of low to occasionally moderate responses of a generally shorter duration. As mentioned earlier in this section, we anticipate more severe effects from takes when animals are exposed to higher received levels. Occasional milder occurrences of Level B behavioral harassment are unlikely to cause long-term consequences for individual animals or populations that have any effect on reproduction or survival. Some behavioral responses could be in the form of a longer (several hours or a day) and more moderate response, but because they are not expected to be repeated over more than several sequential days at the most, impacts to reproduction or survival for most animals are not anticipated. Even where a few animals could experience effects on reproduction, for the reasons explained below this would not affect rates of recruitment or survival.

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. Some dolphin species (the more surface-dwelling taxa—typically those with ''dolphin'' in the common name, such as bottlenose dolphins, spotted dolphins, common dolphins, spinner dolphins, rough-toothed dolphins, etc., but not Risso's dolphin), especially those residing in more industrialized or busy areas, have demonstrated more tolerance for disturbance and loud sounds and many of these species are known to approach vessels to bow-ride. These species are often considered generally less sensitive to disturbance. Deep-diving dolphins that reside in deeper waters and generally have fewer interactions with human activities are more likely to demonstrate more typical avoidance reactions and foraging interruptions as described above in the odontocete overview.

Identified important areas for odontocetes (BIAs for small resident populations) will be protected by the Navy's mitigation areas. The size of the 4-Islands Region Mitigation Area has been expanded 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 whale (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 FEIS/OEIS). The 4-Islands Region Mitigation Area provides partial protection for identified biologically important areas that span multiple islands for four species (small and resident populations) including false killer whales, common bottlenose dolphin, pantropical spotted dolphin, and spinner dolphin, by not using mid-frequency active anti-submarine warfare sensor MF1 in the area during testing or training.

The Navy's Hawaii Island Mitigation Area also provides additional protection for identified biologically important areas (small and resident populations) for multiple Main Hawaii Island species by not conducting more than 300 hours of MF1 surface ship hull-mounted mid-frequency active sonar or 20 hours of MF4 dipping sonar and not using explosives during testing and training. Specifically, this Mitigation Area entirely encompasses the BIAs for insular pygmy killer whales, melon-headed whales, short-finned pilot whales, and the Hawaii population of pantropical spotted dolphins; encompasses a large portion of the rough-toothed dolphin BIA; and overlaps the Hawaii Island portion of the multi-Island BIAs for false killer whales, common bottlenose dolphin, and spinner dolphin.

Below we synthesize and summarize the information that supports our

determination that the Navy's activities will not adversely impact recruitment or survival for any of the affected stocks addressed in this section:

Long-beaked common dolphin (California stock), northern right whale dolphin (CA/OR/WA stock), and short-beaked common dolphin (CA/OR/WA stock)—None of these stocks is listed under the ESA and their stock statuses are considered ''increasing,'' ''unknown,'' and ''stable,'' respectively. Short-beaked common dolphins are authorized for six takes by mortality over the five-year rule, or 1.2 M/SI annually. The addition of this 1.2 annual mortality still leaves the total human-caused mortality well under the insignificance threshold for residual PBR. The three stocks are expected and authorized to accrue 2, 1, and 10 Level A harassment takes from tissue damage resulting from exposure to explosives, respectively. As described in greater detail previously, the impacts of a Level A harassment take by tissue damage could range in impact from minor to something just less than M/SI that could seriously impact fitness. However, given the Navy's procedural mitigation, exposure at the closer to the source and more severe end of the spectrum is less likely and we cautiously assume some moderate impact for these takes that could lower the affected individual's fitness within the year such that a female (assuming a 50 percent chance of it being a female) might forego reproduction for one year. As noted previously, foregone reproduction has less of an impact on population rates than death (especially for only one year in five), and 1 to 10 instances would not be expected to impact annual rates of recruitment or survival for these stocks.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance (measured against both the Navy-estimated abundance and the SAR) is 2411, 1273, and 571 (respective to the stocks listed in the heading) and 244, 369, and 229 (respective to the stocks listed in the heading) percent (Table 78). Given the range of these stocks, this information suggests that likely some portion (but not all or even the majority) of the individuals in the Northern right whale dolphin and short-beaked common dolphin stocks are likely impacted, while it is entirely possible that most or all of the range-limited long-beaked common dolphin is taken. All three stocks likely will experience some repeat Level B harassment exposure (perhaps up to 48, 25, or 11 days within a year, respective to the stocks listed in the heading) of some subset of individuals that spend extended time within the SOCAL range complex. While interrupted feeding bouts are a known response and concern for odontocetes, we also know that there are often viable alternative habitat options in the relative vicinity. Regarding the severity of those individual takes by Level B behavioral harassment, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). However, some of these takes could occur on a fair number of sequential days for long-beaked common dolphins or northern right whale dolphins, or even some number of short-beaked common dolphins, given the high number of total takes (*i.e.,* the probability that some number of individuals get taken on a higher number of sequential days is higher, because the total take number is relatively high, even though percentage not that high).

As described previously, the severity of TTS takes, is expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere significantly with conspecific communication, echolocation, or other important low-frequency cues, and the associated lost opportunities and capabilities would not be expected to impact reproduction or survival. For these same reasons (low level and frequency band), while a small permanent loss of hearing sensitivity may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, as discussed above, it would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individuals.

Altogether and as described in more detail immediately above, short-beaked common dolphins are authorized for 1.2 annual lethal takes, all three stocks may experience a very small number of takes by tissue damage or PTS (relative to the stock abundance and PBR), and a moderate to large portion of all three stocks will likely be taken (at a low to occasionally moderate level) over several days a year, and some smaller portion of these stocks is expected to be taken on a relatively moderate to high number of days across the year, some of which could be sequential days. Though the majority of impacts are expected to be of a lower to sometimes moderate severity, the larger number of takes (in total and for certain individuals) makes it more likely (probabilistically) that a small number of individuals could be interrupted during foraging in a manner and amount such that impacts to the energy budgets of females (from either losing feeding opportunities or expending considerable energy to find alternative feeding options) could cause them to forego reproduction for a year. Energetic impacts to males are generally meaningless to population rates unless they cause death, and it takes extreme energy deficits beyond what would ever be likely to result from these activities to cause the death of an adult marine mammal. As noted previously, however, foregone reproduction (especially for only one year out of five) has far less of an impact on population rates than mortality and a small number of instances of foregone reproduction (including in combination with that which might result from the small number of tissue damage takes) would not be expected to adversely affect the stocks through effects on annual rates of recruitment or survival, especially given the very high residual PBRs of these stocks (621, 175, and 8353, respectively). For these reasons, in consideration of all of the effects of the Navy's activities combined (mortality, Level A harassment, and Level B harassment), we have determined that the authorized take will have a negligible impact on these three stocks of dolphins.

All other SOCAL dolphin stocks (except Long-beaked common dolphin, Northern right whale dolphin, and short-beaked common dolphin)—None of these stocks is listed under the ESA and their stock statuses are considered ''unknown,'' except for the bottlenose dolphin (California coastal stock) and killer whale (Eastern North Pacific stock), which are considered ''stable.'' No M/SI or Level A harassment via tissue damage from exposure to explosives is expected or authorized for these stocks.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance (measured against both the Navy-estimated abundance and the SAR) is from 440–2675 and 45 to 2881, respectively (Table 78). Given the range of these stocks (along the entire U.S. West Coast, or even beyond, with some also extending seaward of the HSTT Study Area boundaries), this information suggests that some portion (but not all or even the majority) of the individuals of any of these stocks will be taken, with the exception that most or all of the individuals of the more

range-limited California coastal stock of bottlenose dolphin may be taken. It is also likely that some subset of individuals within most of these stocks will be taken repeatedly within the year (perhaps up to 10–15 days within a year), but with no more than several potentially sequential days, although the CA/OR/WA stocks of bottlenose dolphins, Pacific white-sided dolphins, and Risso's dolphins may include individuals that are taken repeatedly within the year over a higher number of days (up to 57, 22, and 40 days, respectively) and potentially over a fair number of sequential days, especially where individuals spend extensive time in the SOCAL range complex. Note that though percentages are high for the Eastern North Pacific stock of killer whales and short-finned pilot whales, given the low overall number of takes, it is highly unlikely that any individuals would be taken across the number of days their percentages would suggest. While interrupted feeding bouts are a known response and concern for odontocetes, we also know that there are often viable alternative habitat options in the relative vicinity. Regarding the severity of those individual takes by Level B behavioral harassment, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB (*i.e.,* of a lower, or sometimes moderate level, less likely to evoke a severe response). However, as noted, some of these takes could occur on a fair number of sequential days for the three stocks listed earlier.

As described previously, regarding the severity of TTS takes, is expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere significantly with conspecific communication, echolocation, or other important low-frequency cues. For these same reasons (low level and frequency band), while a small permanent loss of hearing sensitivity may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, it would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individuals.

Altogether, a portion of all of these stocks will likely be taken (at a low to occasionally moderate level) over several days a year, and some smaller portion of CA/OR/WA stocks of bottlenose dolphins, Pacific white-sided dolphins, and Risso's dolphins, specifically, are expected to be taken on a relatively moderate to high number of days across the year, some of which could be sequential days. Though the majority of impacts are expected to be of a lower to sometimes moderate severity, the larger number of takes (in total and for certain individuals) for the CA/OR/WA stocks of bottlenose dolphins, Pacific white-sided dolphins, and Risso's dolphins makes it more likely (probabilistically) that a small number of individuals could be interrupted during foraging in a manner and amount such that impacts to the energy budgets of females (from either losing feeding opportunities or expending considerable energy to find alternative feeding options) could cause them to forego reproduction for a year. Energetic impacts to males are generally meaningless to population rates unless they cause death, and it takes extreme energy deficits beyond what would ever be likely to result from these activities to cause the death of an adult marine mammal. As noted previously, however, foregone reproduction (especially for only one year in five) has far less of an impact on population rates than mortality and a small number of instances of foregone reproduction would not be expected to adversely affect the stocks through effects on annual rates of recruitment or survival, especially given the residual PBRs of the CA/OR/WA stocks of bottlenose dolphins, Pacific white-sided dolphins, and Risso's dolphins (9.4, 183, and 84, respectively). For these reasons, in consideration of all of the effects of the Navy's activities combined, we have determined that the authorized take will have a negligible impact on these stocks of dolphins.

All HRC dolphin stocks—With the exception of the Main Hawaiian Island stock of false killer whales (listed as endangered under the ESA, with the MMPA stock identified as ''decreasing''), none of these stocks are listed under the ESA and their stock statuses are considered ''unknown.'' No M/SI or Level A harassment via tissue damage from exposure to explosives is expected or authorized for these stocks.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance (measured against both the Navy-estimated abundance and the SAR) is from 46–1169 percent and 41 to 2130 percent, respectively (Table 77). Given the ranges of these stocks (many of them are small, resident, island-associated stocks), this information suggests that a fairly large portion of the individuals of many of these stocks will be taken, but that most individuals will only be impacted across a smaller to moderate number of days within the year (1–15), and with no more than several potentially sequential days, although two stocks (the Oahu stocks of bottlenose dolphin and pantropical spotted dolphin) have a slightly higher percentage, suggesting they could be taken up to 23 days within a year, with perhaps a few more of those days being sequential. We note that although the percentage is higher for the tropical stock of pygmy killer whale within the U.S. EEZ (2130), given (1) the low overall number of takes (760) and (2) the fact that the small within-U.S. EEZ abundance is not a static set of individuals, but rather individuals moving in and out of the U.S. EEZ making it more appropriate to use the percentage comparison for the total takes versus total abundance—it is highly unlikely that any individuals would be taken across the number of days the within-U.S. EEZ percentage suggests (42). While interrupted feeding bouts are a known response and concern for odontocetes, we also know that there are often viable alternative habitat options in the relative vicinity. Regarding the severity of those individual takes by Level B behavioral harassment, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB (*i.e.,* of a lower, or sometimes moderate level, less likely to evoke a severe response). However, as noted, some of these takes could occur on a fair number of sequential days for the Oahu stocks of bottlenose dolphin and pantropical spotted dolphins.

Regarding the severity of TTS takes, as described previously they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere significantly with conspecific communication, echolocation, or other important low-frequency cues. For these same reasons (low level and frequency band), while a small permanent loss of hearing sensitivity may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, they would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individuals, even if accrued to individuals that are also taken by behavioral harassment at the same time.

Altogether, most of these stocks (all but the Oahu stocks of bottlenose dolphin and pantropical spotted

dolphins) will likely be taken (at a low to occasionally moderate level) over several days a year, with some smaller portion of the stock potentially taken on a more moderate number of days across the year (perhaps up to 15 days for Fraser's dolphin, though others notably less), some of which could be across a few sequential days, which is not expected to affect the reproductive success or survival of individuals. For the Oahu stocks of bottlenose dolphin and pantropical spotted dolphins, some subset of individuals could be taken up to 23 days in a year, with some small number being taken across several sequential days, such that a small number of individuals could be interrupted during foraging in a manner and amount such that impacts to the energy budgets of females (from either losing feeding opportunities or expending considerable energy to find alternative feeding options) could cause them to forego reproduction for a year. Energetic impacts to males are generally meaningless to population rates unless they cause death, and it takes extreme energy deficits beyond what would ever be likely to result from these activities to cause the death of an adult marine mammal. As noted previously, however, foregone reproduction (especially for one year, which is the maximum predicted because the small number anticipated in any one year makes the probability that any individual would be impacted in this way twice in five years very low) has far less of an impact on population rates than mortality and a small number of instances of foregone reproduction would not be expected to adversely affect these two stocks through effects on annual rates of recruitment or survival.

For these reasons, in consideration of all of the effects of the Navy's activities combined, we have determined that the authorized take will have a negligible impact on all of the stocks of dolphins found in the vicinity of the HRC (Table 77).

Dall's Porpoise

In this section, we build on the broader odontocete discussion above (*i.e.,* that information applies to Dall's porpoises as well), except where we offer alternative information about the received levels for Dall's porpoise Level B behavioral harassment. We discuss the different types and amounts of take that the stock will incur, the applicable mitigation for the stock, and the status of the stock to support the negligible impact determination. The discussion below focuses on additional information that is specific to porpoises (in addition to the general information on odontocetes provided above, which is relevant to this species) to support the conclusion for this stock. We have described previously (above in this section and in the proposed rule, respectively, with no new applicable information received since publication of the proposed rule) the unlikelihood of any masking or habitat impacts to Dall's porpoises that would affect reproduction or survival.

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.

Table 79: Annual takes of Level B and Level A harassment, mortality for porpoises 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		Instances 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	NMFS SARS Abundance	Total take as percentage of total Navy abundance	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.

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). While harbor porpoises have been observed to be especially sensitive to human activity, the same types of responses have not been observed in Dall's porpoises. Dall's porpoises are typically notably longer than, and weigh more than twice as much as, harbor porpoises, making them generally less likely to be preyed upon and likely differentiating their behavioral repertoire somewhat from harbor porpoises. Further, they are typically seen in large groups and feeding aggregations, or exhibiting bow-riding behaviors, which is very different from the group dynamics observed in the more typically solitary, cryptic harbor porpoises, which are not often seen bow-riding. For these reasons, Dall's porpoises are not treated as especially sensitive species (versus harbor porpoises which have a lower behavioral harassment threshold and more distant cutoff) but, rather, are analyzed similarly to other odontocetes. 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.

Dall's porpoise is not listed under the ESA and the stock status is considered ''unknown.'' No M/SI or Level A harassment via tissue damage from exposure to explosives is expected or authorized for this stock.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance (measured against both the Navy-estimated abundance and the SAR) is 2170 and 173, respectively (Table 79). Given the range of this stock (up the U.S. West Coast through Washington and sometimes beyond the U.S. EEZ), this information suggests that some smaller portion of the individuals of these stocks will be taken, and that

some subset of individuals within the stock will be taken repeatedly within the year (perhaps up to 42 days)—potentially over a fair number of sequential days, especially where individuals spend extensive time in the SOCAL range complex. While interrupted feeding bouts are a known response and concern for odontocetes, we also know that there are often viable alternative habitat options in the relative vicinity. Regarding the severity of those individual takes by Level B behavioral harassment, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB (*i.e.,* of a lower, or sometimes moderate level, less likely to evoke a severe response). However, as noted, some of these takes could occur on a fair number of sequential days for this stock.

As described previously, the severity of TTS takes, is expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere significantly with conspecific communication, echolocation, or other important low-frequency cues. Therefore, the associated lost opportunities and capabilities would not be expected to impact reproduction or survival. For these same reasons (low level and the likely frequency band), while a small permanent loss of hearing sensitivity may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, the estimated 209 Level A harassment takes by PTS for Dall's porpoise would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival for most individuals. Because of the high number of PTS takes, however, we acknowledge that a few animals could potentially incur permanent hearing loss of a higher degree that could potentially interfere with their successful reproduction and growth. Given the status of the stock, even if this occurred, it would not adversely impact rates of recruitment or survival.

Altogether, a portion of this stock will likely be taken (at a low to occasionally moderate level) over several days a year, and some smaller portion of the stock is expected to be taken on a relatively moderate to high number of days across the year, some of which could be sequential days. Though the majority of impacts are expected to be of a lower to sometimes moderate severity, the larger number of takes (in total and for certain individuals) for the Dall's porpoise makes it more likely (probabilistically) that a small number of individuals could be interrupted during foraging in a manner and amount such that impacts to the energy budgets of females (from either losing feeding opportunities or expending considerable energy to find alternative feeding options) could cause them to forego reproduction for a year. Energetic impacts to males are generally meaningless to population rates unless they cause death, and it takes extreme energy deficits beyond what would ever be likely to result from these activities to cause the death of an adult marine mammal. Similarly, we acknowledge the potential for this to occur to a few individuals out of the 209 total that might incur a higher degree of PTS. As noted previously, however, foregone reproduction (especially for only one year in five) has far less of an impact on population rates than mortality. Further, the small number of instances of foregone reproduction that could potentially result from PTS and/or the few repeated, more severe behavioral harassment takes would not be expected to adversely affect the stock through effects on annual rates of recruitment or survival, especially given the status of the species (not endangered or threatened; minimum population of 25,170 just within the U.S. EEZ) and residual PBR of Dall's porpoise (171.4). For these reasons, in consideration of all of the effects of the Navy's activities combined, we have determined that the authorized take will have a negligible impact on Dall's porpoise.

Pinnipeds

In this section, we build on the broader discussion above and bring together the discussion of the different types and amounts of take that different species and stocks will incur, the applicable mitigation for each stock, and the status of the stocks to support the negligible impact determinations for each stock. Of these stocks, only Hawaiian monk seals and Guadalupe fur seals are listed under the ESA (endangered and threatened, respectively) and the SARs identify both stocks as ''increasing.'' The other stocks are not ESA-listed. All of the pinniped stocks are considered ''increasing,'' except for harbor seal (California stock), which is considered stable, and Hawaiian monk seals, which are increasing in the main Hawaiian islands, but decreasing in the Northwest Hawaiian islands (the SAR says that therefore they are not certain whether to consider the whole stock as decreasing, stable, or possible increasing). Broadly, we have already described above why we believe the incremental addition of the comparatively small number of low-level PTS takes in predominantly narrow frequency bands will not have any meaningful effect towards inhibiting reproduction or survival. Other than for California sea lions, no mortality is expected or authorized. We have described (above in this section and in the proposed rule, respectively, with no new applicable information received since publication of the proposed rule) the unlikelihood of any masking or habitat impacts to any groups that would rise to the level of affecting reproduction or survival.

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.

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Table 80. Annual takes of Level B and Level A harassment, mortality for pinnipeds 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	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	Total take as percentage of total Navy abundance (HRC)	EEZ take as percentage of EEZ abundance (HRC)
Hawaiian monk seal	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 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 in the SOCAL portion 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	NMFS SARS Abundance	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	0.8	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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The majority of takes by harassment of pinnipeds in the HSTT Study Area are caused by sources from the MF1 active sonar bin (which includes hull-mounted sonar) because they are high level sources at a frequency (1–10 kHz) which overlaps the most sensitive portion of the pinniped hearing range, and of the sources expected to result in take, they are used in a large portion of exercises (see Table 1.5–5 in the Navy's rulemaking/LOA application). Most of the takes (83 percent) from the MF1 bin in the HSTT Study Area would result from received levels between 160 and 172 dB SPL, while another 16 percent would result from exposure between 172 and 178 dB SPL. For the remaining active sonar bin types, the percentages are as follows: LF3 = 92 percent between 154 and 166 dB SPL, LF5M = 99 percent between 112 and 124 dB SPL, MF4 = 98 percent between 148 and 166 dB SPL, MF5 = 97 percent between 130 and 160 dB SPL, and HF4 = 96 percent between 100 and 160 dB SPL. These values may be derived from the information in Tables 6.4–8 through 6.4–12 in the Navy's rulemaking/LOA application (though they were provided directly to NMFS upon request). Exposures at these levels would be considered of low to occasionally moderate severity. As mentioned earlier in this section, we anticipate more severe effects from takes when animals are exposed to higher received levels. Occasional milder takes by Level B behavioral harassment are unlikely to cause long-term consequences for individual animals or populations, especially when they are not expected to be repeated over sequential multiple days. For all pinnipeds, harassment takes from explosives (behavioral, TTS, or PTS if present) comprise a very small fraction of those caused by exposure to active sonar. No PTS is expected to result from pile driving or air guns for pinnipeds and TTS from pile driving and air guns is limited to single digits for elephant seals.

Because the majority of harassment take of pinnipeds results from narrowband sources in the range of 1–10 kHz, the vast majority of threshold shift caused by Navy sonar sources will typically occur in the range of 2–20 kHz. This frequency range falls within the range of pinniped hearing, however, pinniped vocalizations typically span a somewhat lower range than this (<0.2 to 10 kHz) and threshold shift from active sonar will often be in a narrower band (reflecting the narrower band source that caused it), which means that TTS incurred by pinnipeds would typically only interfere with communication within a portion of a pinniped's range (if it occurred during a time when communication with conspecifics was

occurring). As discussed earlier, it would only be expected to be of a short duration and relatively small degree. Many of the other critical sounds that serve as cues for navigation and prey (*e.g.,* waves, fish, invertebrates) occur below a few kHz, which means that detection of these signals will not be inhibited by most threshold shifts either. The very low number of takes by threshold shifts that might be incurred by individuals exposed to explosives or air guns would likely be lower frequency (5 kHz or less) and spanning a wider frequency range, which could slightly lower an individual's sensitivity to navigational or prey cues, or a small portion of communication calls, for several minutes to hours (if temporary) or permanently.

We note that as described previously, the Hawaii and 4-Islands mitigation areas protect (by not using explosives and limiting MFAS within) a significant portion of the designated critical habitat for Hawaiian monk seals in the Main Hawaiian Islands, including all of it around the islands of Hawaii and Lanai, most around Maui, and good portions around Molokai and Kaho'olawe. As discussed, this protection reduces the overall number of takes, and further reduces the severity of effects by minimizing impacts near pupping beaches and in important foraging habitat.

Regarding behavioral disturbance, 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 (Costa *et al.,* 2003; Jacobs and Terhune, 2002; 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 (Blackwell *et al.,* 2004; Harris *et al.,* 2001; 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, which would have no effect on reproduction or survival. 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 of any of these species to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior.

Thus, even repeated Level B harassment of some small subset of individuals of an overall stock is unlikely to result in any significant realized decrease in fitness to those individuals that would result in any adverse impact on rates of recruitment or survival for the stock as a whole.

The Navy is authorized for four M/SI takes of California sea lions and when this mortality is combined with the other human-caused mortality from other sources, it still falls well below the insignificance threshold for residual PBR. A small number of Level A harassment takes by tissue damage will also be authorized (9 and 2 for California sea lions and northern elephant seals, respectively), which, as noted previously, could range in impact from minor to something just less than M/SI that could seriously impact fitness. However, given the Navy's mitigation, exposure at the closer to the source and more severe end of the spectrum is less likely. Nevertheless, we cautiously assume some moderate impact on the individuals that experience these small numbers of take that could lower the individual's fitness within the year such that a female (assuming a 50 percent chance of it being a female) might forego reproduction for one year. As noted previously, foregone reproduction has less of an impact on population rates than death (especially for only one within five years) and these low numbers of instances (especially assuming the likelihood that only 50 percent of the takes would affect females) would not be expected to impact annual rates of recruitment or survival, especially given the population sizes of these species.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), for Hawaiian monk seals and Guadalupe fur seals, the two species listed under the ESA, the estimated instances of takes as compared to the stock abundance does not exceed 124 percent, which suggests that some portion of these two stocks would be taken on one to a few days per year. For the remaining stocks, the number of estimated total instances of take compared to the abundance (measured against both the Navy-estimated abundance and the SAR) for these stocks is 1,484–2,896 percent and 18–40 percent, respectively (Table 81). Given the ranges of these stocks (*i.e.,* very large ranges, but with individuals often staying in the vicinity of haulouts), this information suggests that some very small portion of the individuals of these stocks will be taken, but that some subset of individuals within the stock will be taken repeatedly within the year (perhaps up to 58 days)—potentially over a fair number of sequential days. Regarding the severity of those individual takes by Level B behavioral harassment, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB, which is considered a relatively low to occasionally moderate level for pinnipeds. However, as noted, some of these takes could occur on a fair number of sequential days for this stock.

As described previously, the severity of TTS takes, expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere significantly with conspecific communication, echolocation, or other important low-frequency cues that would affect the individual's reproduction or survival. For these same reasons (low level and frequency band), while a small permanent loss of hearing sensitivity may include some degree of energetic costs for compensating or may mean

some small loss of opportunities or detection capabilities, the one to eight estimated Level A harassment takes by PTS for monk seals, northern fur seals, and harbor seals would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individuals. Because of the high number of PTS takes for California sea lions and northern elephant seals (87 and 97, respectively); however, we acknowledge that a few animals could potentially incur permanent hearing loss of a higher degree that could potentially interfere with their successful reproduction and growth. Given the status of the stock, even if this occurred, it would not adversely impact rates of recruitment or survival (residual PBR of 13,686 and 4,873, respectively).

Altogether, Hawaiian monk seals and Guadalupe fur seals individuals will be taken no more than a few days in any year, with none of the expected take anticipated to affect individual reproduction or survival, let alone annual rates of recruitment and survival. With all other stocks, only a very small portion of the stock will be taken in any manner. Of those taken, some individuals will be taken by Level B harassment (at a moderate or sometimes low level) over several days a year, and some smaller portion of those taken will be on a relatively moderate to high number of days across the year (up to 58), a fair number of which would likely be sequential days. Though the majority of impacts are expected to be of a lower to sometimes moderate severity, the repeated takes over a potentially fair number of sequential days for some individuals makes it more likely that some number of individuals could be interrupted during foraging in a manner and amount such that impacts to the energy budgets of females (from either losing feeding opportunities or expending considerable energy to find alternative feeding options) could cause them to forego reproduction for a year (energetic impacts to males are generally meaningless to population rates unless they cause death, and it takes extreme energy deficits beyond what would ever be likely to result from these activities to cause the death of an adult marine mammal). As noted previously, however, foregone reproduction (especially for only one year within five) has far less of an impact on population rates than mortality and a relatively small number of instances of foregone reproduction (as compared to the stock abundance and residual PBR) would not be expected to adversely affect the stock through effects on annual rates of recruitment or survival, especially given the status of these stocks. Accordingly, we do not anticipate the relatively small number of individual Northern fur seals or harbor seals that might be taken over repeated days within the year in a manner that results in one year of foregone reproduction to adversely affect the stocks through effects on rates of recruitment or survival, given the status of the stocks, which are respectively increasing and stable with abundances and residual PBRs of 14,050/30,968 and 449/1,598.

For California sea lions, given the very high abundance and residual PBR (296,750 and 13,686), as well as the increasing status of the stock in the presence of similar levels of Navy activities over past years—the impacts of 0.2 annual mortalities, potential foregone reproduction for up to nine individuals in a year taken by tissue damage and some relatively small number of individuals taken as a result of repeated behavioral harassment over a fair number of sequential days are not expected to adversely affect the stock through effects on annual rates of recruitment or survival. similarly, for Northern elephant seals, given the very high abundance and residual PBR (179,000 and 4,873), as well as the increasing status of the stock in the presence of similar levels of Navy activities over past years—the impacts of potential foregone reproduction for up to two individuals in a year taken by tissue damage and some relatively small number of individuals taken as a result of repeated behavioral harassment over a fair number of sequential days are not expected to adversely affect the stock through effects on annual rates of recruitment or survival. For these reasons, in consideration of all of the effects of the Navy's activities combined (mortality, Level A harassment, and Level B harassment), we have determined that the authorized take will have a negligible impact on all pinniped species and stocks (Tables 80 and 81).

Determination

Based on the analysis contained herein of the likely effects of the specified activities 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 specified activities will have a negligible impact on all affected marine mammal species and stocks.

Subsistence Harvest of Marine Mammals

There are no relevant subsistence uses or harvest of marine mammals implicated by this action. Therefore, NMFS has 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 HSTT Study Area: Blue whale (Eastern and Central North Pacific stocks), fin whale (CA/OR/WA and Hawaii stocks), gray whale (Western North Pacific stock), humpback whale (Mexico and Central America DPSs), sei whale (Eastern North Pacific and Hawaii stocks), sperm whale (CA/OR/WA and Hawaii stocks), false killer whale (Main Hawaii Islands Insular), Hawaiian monk seal (Hawaii stock), and Guadalupe fur seal (Mexico to California). There is also ESA-designated critical habitat for Hawaiian monk seals and Main Hawaiian Island insular false killer whales. The Navy consulted with NMFS pursuant to section 7 of the ESA, and NMFS also consulted internally on the issuance of these regulations and LOAs under section 101(a)(5)(A) of the MMPA for HSTT activities. NMFS issued a Biological Opinion concluding that the issuance of the rule and subsequent LOAs is not likely to jeopardize the continued existence of the threatened and endangered species under NMFS' jurisdiction and are not likely to result in the destruction or adverse modification of critical habitat in the HSTT Study Area. The Biological Opinion for this action is available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities*.

National Marine Sanctuaries Act

Federal agencies are subject to the National Marine Sanctuaries Act (NMSA), as applicable. NMFS has fulfilled its responsibilities and completed all requirements under the NMSA.

National Environmental Policy Act

NMFS participated as a cooperating agency on the HSTT FEIS/OEIS, which was published on October 26, 2018, and is available at *https://www.hstteis.com/*. In accordance with 40 CFR 1506.3, NMFS independently reviewed and

evaluated the HSTT FEIS/OEIS and determined that it is adequate and sufficient to meet our responsibilities under NEPA for the issuance of this rule and associated LOAs. NOAA therefore adopted the Navy's HSTT FEIS/OEIS. NMFS has prepared a separate Record of Decision. NMFS' Record of Decision for adoption of the HSTT FEIS/OEIS and issuance of this final rule and subsequent LOAs can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.*

Classification

The Office of Management and Budget has determined that this final 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 final rule will 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. Because this action will directly affect the Navy and not a small entity, NMFS concludes the action will not result in a significant economic impact on a substantial number of small entities.

Waiver of Delay in Effective Date

NMFS has determined that there is good cause under the Administrative Procedure Act (5 U.S.C 553(d)(3)) to waive the 30-day delay in the effective date of this final rule. No individual or entity other than the Navy is affected by the provisions of these regulations. The Navy has informed NMFS that it requests that this final rule take effect on or by December 21, 2018, to accommodate the Navy's current LOAs expiring December 24, 2018, so as to not cause a disruption in training and testing activities. NMFS was unable to accommodate the 30-day delay of effectiveness period due to the need for additional time to consider additional mitigation measures presented by the Navy as well as new analysis of information showing that incidental mortality and serious injury of seven stocks previously analyzed is unlikely to occur. The waiver of the 30-day delay of the effective date of the final rule will ensure that the MMPA final rule and LOAs are in place by the time the previous authorizations expire. Any delay in finalizing the rule would result in either: (1) A suspension of planned naval training and testing, which would disrupt vital training and testing essential to national security; or (2) the Navy's procedural non-compliance with the MMPA (should the Navy conduct training and testing without LOAs), thereby resulting in the potential for unauthorized takes of marine mammals. Moreover, the Navy is ready to implement the rule immediately. For these reasons, NMFS finds good cause to waive the 30-day delay in the effective date. In addition, the rule authorizes incidental take of marine mammals that would otherwise be prohibited under the statute. Therefore the rule is granting an exception to the Navy and relieving restrictions under the MMPA, which is a separate basis for waiving the 30-day effective date for the rule.

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: December 13, 2018.

Alan D. Risenhoover,

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

For reasons set forth in the preamble, 50 CFR part 218 is amended as follows:

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 218 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.,* unless otherwise noted.

■ 2. Revise subpart H to part 218 to read as follows:

Subpart H—Taking and Importing Marine Mammals; U.S. Navy's Hawaii-Southern California Training and Testing (HSTT)

Sec.

218.70 Specified activity and 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 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 described in paragraph (b) of this section and that occurs incidental to the activities listed in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy under this subpart 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 conducting training and testing activities, including:

(1) *Training.* (i) Amphibious warfare;

(ii) Anti-submarine warfare;

(iii) Electronic warfare;

(iv) Expeditionary warfare;

(v) Mine warfare; and

(vi) Surface warfare.

(2) *Testing.* (i) Naval Air Systems Command Testing Activities;

(ii) Naval Sea System Command Testing Activities; and

(iii) Office of Naval Research Testing Activities.

§ 218.71 Effective dates.

Regulations in this subpart are effective December 21, 2018 through December 20, 2023.

§ 218.72 Permissible methods of taking.

(a) Under LOAs issued pursuant to §§ 216.106 of this chapter and 218.76, 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 and explosives, provided the activity is in compliance with all terms, conditions, and requirements of these regulations in this subpart and the applicable LOAs.

(b) The incidental take of marine mammals by the activities listed in § 218.80(c) is limited to the following species:

TABLE 1 TO § 218.72

Species	Stock
Blue whale	Central North Pacific.
Blue whale	Eastern North Pacific.
Bryde's whale	Eastern Tropical Pacific.
Bryde's whale	Hawaii.
Fin whale	CA/OR/WA.
Fin whale	Hawaiian.
Humpback whale	CA/OR/WA.
Humpback whale	Central North Pacific.
Minke whale	CA/OR/WA.
Minke whale	Hawaii.
Sei whale	Eastern North Pacific.
Sei whale	Hawaii.
Gray whale	Eastern North Pacific.
Gray whale	Western North Pacific.
Sperm whale	CA/OR/WA.
Sperm whale	Hawaii.
Dwarf sperm whale	Hawaii.
Pygmy sperm whale	Hawaii.
Kogia whales	CA/OR/WA.
Baird's beaked whale	CA/OR/WA.
Blainville's beaked whale	Hawaii.
Cuvier's beaked whale	CA/OR/WA.
Cuvier's beaked whale	Hawaii.
Longman's beaked whale	Hawaii.
Mesoplodon spp	CA/OR/WA.
Bottlenose dolphin	California Coastal.
Bottlenose dolphin	CA/OR/WA Offshore.
Bottlenose dolphin	Hawaii Pelagic.
Bottlenose dolphin	Kauai & Niihau.
Bottlenose dolphin	Oahu.
Bottlenose dolphin	4-Island.
Bottlenose dolphin	Hawaii.
False killer whale	Hawaii Pelagic.
False killer whale	Main Hawaiian Islands Insular.
False killer whale	Northwestern Hawaiian Islands.
Fraser's dolphin	Hawaii.
Killer whale	Eastern North Pacific (ENP) Offshore.
Killer whale	ENP Transient/West Coast Transient.
Killer whale	Hawaii.
Long-beaked common dolphin	California.
Melon-headed whale	Hawaiian Islands.
Melon-headed whale	Kohala Resident.
Northern right whale dolphin	CA/OR/WA.
Pacific white-sided dolphin	CA/OR/WA.
Pantropical spotted dolphin	Hawaii Island.
Pantropical spotted dolphin	Hawaii Pelagic.
Pantropical spotted dolphin	Oahu.
Pantropical spotted dolphin	4-Island.
Pygmy killer whale	Hawaii.
Pygmy killer whale	Tropical.
Risso's dolphin	CA/OR/WA.
Risso's dolphin	Hawaii.
Rough-toothed dolphin	Hawaii.
Short-beaked common dolphin	CA/OR/WA.
Short-finned pilot whale	CA/OR/WA.
Short-finned pilot whale	Hawaii.
Spinner dolphin	Hawaii Island.
Spinner dolphin	Hawaii Pelagic.
Spinner dolphin	Kauai & Niihau.
Spinner dolphin	Oahu & 4-Island.
Striped dolphin	CA/OR/WA.

TABLE 1 TO § 218.72—Continued

Species	Stock
Striped dolphin	Hawaii.
Dall's porpoise	CA/OR/WA.
California sea lion	U.S.
Guadalupe fur seal	Mexico.
Northern fur seal	California.
Harbor seal	California.
Hawaiian monk seal	Hawaii.
Northern elephant seal	California.

Note to Table 1: CA/OR/WA = California/Oregon/Washington.

§ 218.73 Prohibitions.

Notwithstanding incidental takings contemplated in § 218.72(a) and authorized by LOAs issued under §§ 216.106 of this chapter and 218.76, no person in connection with the activities listed in § 218.70(c) 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 § 218.72(b);

(c) Take any marine mammal specified in § 218.72(b) in any manner other than as specified in the LOAs; or

(d) Take a marine mammal specified in § 218.72(b) if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal.

§ 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 include, but are not limited to:

(a) *Procedural mitigation.* Procedural mitigation is mitigation that the Navy must 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; and non-explosive bombs and mine shapes).

(1) *Environmental awareness and education.* Appropriate Navy personnel (including civilian personnel) involved in mitigation and training or testing activity reporting under the specified activities must complete one or more modules of the U.S Navy Afloat Environmental Compliance Training Series, as identified in their career path training plan. Modules include: Introduction to the U.S. Navy Afloat Environmental Compliance Training Series, Marine Species Awareness Training; U.S. Navy Protective Measures Assessment Protocol; and U.S. Navy Sonar Positional Reporting System and Marine Mammal Incident Reporting.

(2) *Active sonar.* Active sonar includes low-frequency active sonar, mid-frequency active sonar, and high-frequency active sonar. For vessel-based 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 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).

(i) *Number of Lookouts and observation platform*—(A) *Hull-mounted sources.* One Lookout for platforms with space or manning restrictions while underway (at the forward part of a small boat or ship) and platforms using active sonar while moored or at anchor (including pierside); and two Lookouts for platforms without space or manning restrictions while underway (at the forward part of the ship).

(B) *Sources that are not hull-mounted sources.* One Lookout on the ship or aircraft conducting the activity.

(ii) *Mitigation zone and requirements.* During the activity, at 1,000 yards (yd) Navy personnel must power down 6 decibels (dB), at 500 yd Navy personnel must power down an additional 4 dB (for a total of 10 dB), and 200 yd Navy personnel must shut down for low-frequency active sonar ≥200 dB and hull-mounted mid-frequency active sonar; or at 200 yd Navy personnel must shut down for low-frequency active sonar <200 dB, mid-frequency active sonar sources that are not hull-mounted, and high-frequency active sonar.

(A) Prior to the start of the activity (*e.g.,* when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of active sonar transmission until the mitigation zone is clear. Navy personnel must also observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of active sonar transmission.

(B) During the activity for low-frequency active sonar at or above 200 dB and hull-mounted mid-frequency active sonar, Navy personnel must observe the mitigation zone for marine mammals and power down active sonar transmission by 6 dB if marine mammals are observed within 1,000 yd of the sonar source; power down by an additional 4 dB (for a total of 10 dB total) if marine mammals are observed within 500 yd of the sonar source; and cease transmission if marine mammals are observed within 200 yd of the sonar source.

(C) During the activity for low-frequency active sonar below 200 dB, mid-frequency active sonar sources that are not hull mounted, and high-frequency active sonar, Navy personnel must observe the mitigation zone for marine mammals and cease active sonar transmission if marine mammals are observed within 200 yd of the sonar source.

(D) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing or

powering up active sonar transmission) until one of the following 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 minutes (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 where a dolphin(s) is observed in the mitigation zone, the Lookout concludes that the dolphin(s) 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 initial start of the activity (*e.g.,* when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel must also observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of air gun use.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease air gun use.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing air gun use) until one of the following 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 must be positioned on the shore, the elevated causeway, or a small boat.

(ii) *Mitigation zone and requirements.* 100 yd around the pile driver.

(A) Prior to the initial start of the activity (for 30 min), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must delay the start of pile driving or vibratory pile extraction.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease impact pile driving or vibratory pile extraction.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. The Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing pile driving or pile extraction) until one of the following 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 must be positioned on the ship conducting the firing. Depending on the activity, the Lookout could be the same as the one provided for under ''Explosive medium-caliber and large-caliber projectiles'' or under ''Small-, medium-, and large-caliber non-explosive practice munitions'' in paragraphs (a)(8)(i) and (a)(18)(i) of this section.

(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, Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of weapons firing until the mitigation zone is clear. Navy personnel must also observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of weapons firing.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease weapons firing.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing weapons firing) until one of the following 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 must be positioned in an aircraft or on small boat. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 600 yd around an explosive sonobuoy.

(A) Prior to the initial start of the activity (*e.g.,* during deployment of a sonobuoy field, which typically lasts 20–30 min), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of sonobuoy or source/receiver pair detonations until the mitigation zone is clear. Navy personnel must conduct passive acoustic monitoring for marine mammals and use information from detections to assist visual observations. Navy personnel also must visually observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of sonobuoy or source/receiver pair detonations.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine

mammals are observed, Navy personnel must cease sonobuoy or source/receiver pair detonations.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following 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 (*e.g.,* helicopter), or 30 min when the activity involves aircraft that are not typically fuel constrained.

(D) After completion of the activity (*e.g.,* prior to maneuvering off station), when practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(7) *Explosive torpedoes*—(i) *Number of Lookouts and observation platform.* One Lookout positioned in an aircraft. If additional platforms are participating in the activity, Navy personnel positioned in those assets *(e.g.,* safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 2,100 yd around the intended impact location.

(A) Prior to the initial start of the activity (*e.g.,* during deployment of the target), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of firing until the mitigation zone is clear. Navy personnel must conduct passive acoustic monitoring for marine mammals and use the information from detections to assist visual observations. Navy personnel must visually observe the mitigation zone for marine mammals and jellyfish aggregations; if marine mammals or jellyfish aggregations are observed, Navy personnel must relocate or delay the start of firing.

(B) During the activity, Navy personnel must observe for marine mammals and jellyfish aggregations; if marine mammals or jellyfish aggregation are observed, Navy personnel must cease firing.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity, Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following 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.

(D) After completion of the activity (*e.g.,* prior to maneuvering off station), Navy personnel must when practical *(e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(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 must be 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. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(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.

(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), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of firing until the mitigation zone is clear. Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(E) During the activity, Navy personnel must observe for marine mammals; if marine mammals are observed, Navy personnel must cease firing.

(F) Commencement/recommencement conditions after a marine mammal sighting before or during the activity, Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following 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.

(G) After completion of the activity (*e.g.,* prior to maneuvering off station), Navy personnel must, when practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this

activity (*e.g.,* providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(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 must be positioned in an aircraft. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(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.

(B) 2,000 yd around the intended impact location for missiles with 21–500 lb net explosive weight.

(C) Prior to the initial start of the activity (*e.g.,* during a fly-over of the mitigation zone), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of firing until the mitigation zone is clear. Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(D) During the activity, Navy personnel must observe for marine mammals; if marine mammals are observed, Navy personnel must cease firing.

(E) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following 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.

(F) After completion of the activity (*e.g.,* prior to maneuvering off station), Navy personnel must, when practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets will assist in the visual observation of the area where detonations occurred.

(10) *Explosive bombs*—(i) *Number of Lookouts and observation platform.* One Lookout must be positioned in an aircraft conducting the activity. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 2,500 yd around the intended target.

(A) Prior to the initial start of the activity (*e.g.,* when arriving on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of bomb deployment until the mitigation zone is clear. Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of bomb deployment.

(B) During the activity (*e.g.,* during target approach), Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease bomb deployment.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing bomb deployment) until one of the following 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.

(D) After completion of the activity (*e.g.,* prior to maneuvering off station), Navy personnel must, when practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(11) *Sinking exercises*—(i) *Number of Lookouts and observation platform.* Two Lookouts (one must be positioned in an aircraft and one must be positioned on a vessel). If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 2.5 nautical miles (nmi) around the target ship hulk.

(A) Prior to the initial start of the activity (90 min prior to the first firing), Navy personnel must conduct aerial observations of the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must delay the start of firing until the mitigation zone is clear. Navy personnel also must conduct aerial observations of the mitigation zone for marine mammals and jellyfish aggregations; if marine mammals or jellyfish aggregations are observed, Navy personnel must delay the start of firing.

(B) During the activity, Navy personnel must conduct passive acoustic monitoring for marine mammals and use the information from detections to assist visual observations. Navy personnel must visually observe the mitigation zone for marine mammals from the vessel; if marine mammals are observed, Navy personnel must cease firing. Immediately after any planned or unplanned breaks in weapons firing of longer than two hours, Navy personnel must observe the mitigation zone for marine mammals from the aircraft and vessel; if marine mammals are observed, Navy personnel must delay recommencement of firing.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following

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.

(D) After completion of the activity (for two hours after sinking the vessel or until sunset, whichever comes first), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets will assist in the visual observation of the area where detonations occurred.

(12) *Explosive mine countermeasure and neutralization activities*—(i) *Number of Lookouts and observation platform.* (A) One Lookout must be positioned on a vessel or in an aircraft when implementing the smaller mitigation zone.

(B) Two Lookouts (one must be positioned in an aircraft and one must be on a small boat) when implementing the larger mitigation zone.

(C) If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* (A) 600 yd around the detonation site for activities using 0.1–5 lb net explosive weight.

(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 initial 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), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of detonations until the mitigation zone is clear. Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of detonations.

(D) During the activity, Navy personnel must observe the mitigation zone for marine mammals, concentrations of seabirds, and individual foraging seabirds; if marine mammals, concentrations of seabirds, and individual foraging seabirds are observed, Navy personnel must cease detonations.

(E) Commencement/recommencement conditions after a marine mammal sighting before or during the activity or a sighting of seabird concentrations or individual foraging seabirds during the activity. Navy personnel must allow a sighted animal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following 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 (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), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(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 must be on a small boat and one must be 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 must serve as an additional Lookout if aircraft are used during the activity, when implementing the larger mitigation zone.

(C) All divers placing the charges on mines will support the Lookouts while performing their regular duties and will report applicable sightings to their supporting small boat or Range Safety Officer.

(D) If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* (A) 500 yd around the detonation site during activities under positive control using 0.1–20 lb net explosive weight.

(B) 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.

(C) Prior to the initial start of the activity (*e.g.,* when maneuvering on station for activities under positive control; 30 min for activities using time-delay firing devices), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of detonations or fuse initiation until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of detonations or fuse initiation.

(D) During the activity, Navy personnel must observe the mitigation zone for marine mammals, concentrations of seabirds, and individual foraging seabirds (in the water and not on shore); if marine mammals, concentrations of seabirds, and individual foraging seabirds are observed, Navy personnel must cease detonations or fuse initiation. To the maximum extent practicable depending on mission requirements, safety, and environmental conditions, Navy personnel must position boats near the mid-point of the mitigation zone radius (but outside of the detonation plume and human safety zone), must position themselves on opposite sides of the detonation location (when two boats are used), and must 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, Navy aircraft must travel in a circular pattern around the detonation location to the maximum extent practicable. Navy personnel must not set time-delay firing devices (0.1–29 lb. net explosive weight) to exceed 10 min.

(E) During activities conducted in shallow water, a shore-based Navy observer must survey the mitigation zone with binoculars for birds before and after each detonation. If training involves multiple detonations, the second (or third, etc.) detonation will occur either immediately after the

preceding detonation (*i.e.,* within 10 seconds) or after 30 min to avoid potential impacts on birds foraging underwater.

(F) Commencement/recommencement conditions after a marine mammal sighting before or during the activity or a sighting of seabird concentrations or individual foraging seabirds during the activity. Navy personnel must allow a sighted animal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following 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 (for 30 min), the Navy must observe for marine mammals for 30 min. Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(14) *Maritime security operations—anti-swimmer grenades*—(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on the small boat conducting the activity. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 200 yd around the intended detonation location.

(A) Prior to the initial start of the activity (*e.g.,* when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of detonations until the mitigation zone is clear. Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of detonations.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease detonations.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following 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.

(D) After completion of the activity (*e.g.,* prior to maneuvering off station), Navy personnel must, when practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets will assist in the visual observation of the area where detonations occurred.

(15) *Underwater demolition multiple charge—mat weave and obstacle loading exercises*—(i) *Number of Lookouts and observation platform.* Two Lookouts (one must be positioned on a small boat and one must be positioned on shore from an elevated platform). If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 700 yd around the intended detonation location.

(A) Prior to the initial start of the activity, or 30 min prior to the first detonation, the Lookout positioned on a small boat must observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel must delay the start of detonations. For 10 min prior to the first detonation, the Lookout positioned on shore must use binoculars to observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must delay the start of detonations until the mitigation zone has been clear of any additional sightings for a minimum of 10 min.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease detonations.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following 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 location; or the mitigation zone has been clear from any additional sightings for 10 min (as determined by the Navy shore observer).

(D) After completion of the activity (for 30 min), the Lookout positioned on a small boat must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(16) *Vessel movement.* The mitigation will 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); 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 must be on the vessel that is underway.

(ii) *Mitigation zone and requirements.* (A) 500 yd around whales.

(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).

(iii) *During the activity.* When underway Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must maneuver to maintain distance.

(iv) *Incident reporting procedures.* Additionally, if a marine mammal vessel strike occurs, Navy personnel must follow the established incident reporting procedures.

(17) *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.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on a manned towing platform.

(ii) *Mitigation zone and requirements.* 250 yd around marine mammals.

(iii) *During the activity.* During the activity (*i.e.,* when towing an in-water device), Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must 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 must be 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), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of firing until the mitigation zone is clear. Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease firing.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following 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 must be positioned in an aircraft.

(ii) *Mitigation zone and requirements.* 900 yd around the intended impact location.

(A) Prior to the initial start of the activity (*e.g.,* during a fly-over of the mitigation zone), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of firing until the mitigation zone is clear. Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease firing.

(C) Commencement/recommencement conditions after a marine mammal sighting prior to or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following 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 must be positioned in an aircraft.

(ii) *Mitigation zone and requirements.* 1,000 yd around the intended target.

(A) Prior to the initial start of the activity (*e.g.,* when arriving on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of bomb deployment or mine laying until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of bomb deployment or mine laying.

(B) During the activity (*e.g.,* during approach of the target or intended minefield location), Navy personnel must observe the mitigation zone for marine mammals and, if marine mammals are observed, Navy personnel must cease bomb deployment or mine laying.

(C) Commencement/recommencement conditions after a marine mammal sighting prior to or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing bomb deployment or mine laying) until one of the following 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, Navy personnel must implement mitigation measures within mitigation areas to avoid or reduce potential impacts on marine mammals.

(1) *Mitigation areas for marine mammals in the Hawaii Range Complex for sonar, explosives, and vessel strikes*—(i) *Mitigation area requirements*—(A) *Hawaii Island Mitigation Area (year-round).* (*1*) Except as provided in paragraph (b)(1)(i)(A)(*2*)

of this section, Navy personnel must not conduct more than 300 hours of MF1 surface ship hull-mounted mid-frequency active sonar or 20 hours of MF4 dipping sonar annually, or use explosives that could potentially result in takes of marine mammals during training and testing.

(*2*) Should national security require conduct of more than 300 hours of MF1 surface ship hull-mounted mid-frequency active sonar or 20 hours of MF4 dipping sonar, or use of explosives that could potentially result in the take of marine mammals during training or testing, Naval units must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (*e.g.,* sonar hours or explosives usage) in its annual activity reports submitted to NMFS.

(B) *4-Islands Region Mitigation Area (November 15–April 15 for active sonar; year-round for explosives).* (*1*) Except as provided in paragraph (b)(1)(i)(B)(*2*) of this section, Navy personnel must not use MF1 surface ship hull-mounted mid-frequency active sonar or explosives that could potentially result in takes of marine mammals during training and testing.

(*2*) Should national security require use of MF1 surface ship hull-mounted mid-frequency active sonar or explosives that could potentially result in the take of marine mammals during training or testing, Naval units must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (*e.g.,* sonar hours or explosives usage) in its annual activity reports submitted to NMFS.

(C) *Humpback Whale Special Reporting Areas (December 15–April 15).* Navy personnel must report the total hours of surface ship hull-mounted mid-frequency active sonar used in the special reporting areas in its annual training and testing activity reports submitted to NMFS.

(D) *Humpback Whale Awareness Notification Message Area (November–April).* (*1*) Navy personnel must 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.

(*2*) To maintain safety of navigation and to avoid interactions with large whales during transits, Navy personnel must 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.

(*3*) Platforms must 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) [Reserved]

(2) *Mitigation areas for marine mammals in the Southern California portion of the study area for sonar, explosives, and vessel strikes*—(i) *Mitigation area requirements*—(A) *San Diego Arc, San Nicolas Island, and Santa Monica/Long Beach Mitigation Areas (June 1–October 31).* (*1*) Except as provided in paragraph (b)(2)(i)(A)(*2*) of this section, Navy personnel must not conduct more than a total of 200 hours of MF1 surface ship hull-mounted mid-frequency active sonar in the combined areas, excluding normal maintenance and systems checks, during training and testing.

(*2*) Should national security require conduct of more than 200 hours of MF1 surface ship hull-mounted mid-frequency active sonar in the combined areas during training and testing (excluding normal maintenance and systems checks), Naval units must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (*e.g.,* sonar hours) in its annual activity reports submitted to NMFS.

(*3*) Except as provided in paragraph (b)(2)(i)(A)(*4*) of this section, within the San Diego Arc Mitigation Area, Navy personnel must not use explosives that could potentially result in the take of marine mammals during large-caliber gunnery, torpedo, bombing, and missile (including 2.75-inch rockets) activities during training and testing.

(*4*) Should national security require use of explosives that could potentially result in the take of marine mammals during large-caliber gunnery, torpedo, bombing, and missile (including 2.75-inch rockets) activities during training or testing within the San Diego Arc Mitigation Area, Naval units must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (*e.g.,* explosives usage) in its annual activity reports submitted to NMFS.

(*5*) Except as provided in paragraph (b)(2)(i)(A)(*6*) of this section, within the San Nicolas Island Mitigation Area, Navy personnel must not use explosives that could potentially result in the take of marine mammals during mine warfare, large-caliber gunnery, torpedo, bombing, and missile (including 2.75-inch rockets) activities during training.

(*6*) Should national security require use of explosives that could potentially result in the take of marine mammals during mine warfare, large-caliber gunnery, torpedo, bombing, and missile (including 2.75-inch rockets) activities during training in the San Nicolas Island Mitigation Area, Naval units must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (*e.g.,* explosives usage) in its annual activity reports submitted to NMFS.

(*7*) Except as provided in paragraph (b)(2)(i)(A)(*8*) of this section, within the Santa Monica/Long Beach Mitigation Area, Navy personnel must not use explosives that could potentially result in the take of marine mammals during mine warfare, large-caliber gunnery, torpedo, bombing, and missile (including 2.75-inch rockets) activities during training and testing.

(*8*) Should national security require use of explosives that could potentially result in the take of marine mammals during mine warfare, large-caliber gunnery, torpedo, bombing, and missile (including 2.75-inch rockets) activities during training or testing in the Santa Monica/Long Beach Mitigation Area, Naval units must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (*e.g.,* explosives usage) in its annual activity reports submitted to NMFS.

(B) *Santa Barbara Island Mitigation Area (year-round).* (*1*) Except as provided in paragraph (b)(2)(i)(B)(*2*) of this section, Navy personnel must not use MF1 surface ship hull-mounted mid-frequency active sonar during training or testing, or explosives that could potentially result in the take of marine mammals during medium-caliber or large-caliber gunnery, torpedo, bombing, and missile (including 2.75-inch rockets) activities during training.

(*2*) Should national security require use of MF1 surface ship hull-mounted mid-frequency active sonar during training or testing, or explosives that

could potentially result in the take of marine mammals during medium-caliber or large-caliber gunnery, torpedo, bombing, and missile (including 2.75-inch rockets) activities during training, Naval units must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (*e.g.,* sonar hours or explosives usage) in its annual activity reports submitted to NMFS.

(C) *Blue Whale (June–October), Gray Whale (November–March), and Fin Whale (November–May) Awareness Notification Message Areas.* (*1*) Navy personnel must 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, gray whales, and fin whales.

(*2*) To maintain safety of navigation and to avoid interactions with large whales during transits, Navy personnel must instruct vessels to remain vigilant to the presence of large whale species, that when concentrated seasonally, may become vulnerable to vessel strikes.

(*3*) Platforms must 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.

(ii) [Reserved]

§ 218.75 Requirements for monitoring and reporting.

(a) *Unauthorized take.* Navy personnel 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 serious injury of any marine mammals, or in any Level A or Level B harassment take of marine mammals not identified in this subpart.

(b) *Monitoring and reporting under the LOAs.* The Navy must conduct all monitoring and reporting required under the LOAs, including abiding by the HSTT Study Area monitoring program. Details on program goals, objectives, project selection process, and current projects are available at *www.navymarinespeciesmonitoring.us*.

(c) *Notification of injured, live stranded, or dead marine mammals.* The Navy must consult the Notification and Reporting Plan, which sets out notification, reporting, and other requirements when dead, injured, or live stranded marine mammals are detected. The Notification and Reporting Plan is available at *www.fisheries.noaa.gov/national/marine-mammal-protection/incidentaltake-authorizations-military-readinessactivities*.

(d) *Annual HSTT Study Area marine species monitoring report.* The Navy must submit an annual report of the HSTT Study Area monitoring describing the implementation and results from the previous calendar year. Data collection methods must be standardized across range complexes and study areas to allow for comparison in different geographic locations. The report must be submitted to the Director, Office of Protected Resources, NMFS, either three months after the end of the calendar year, or three months after the conclusion of the monitoring year, to be determined by the Adaptive Management process. This report will describe progress of knowledge made with respect to intermediate scientific objectives within the HSTT Study Area associated with the Integrated Comprehensive Monitoring Program (ICMP). Similar study questions must be treated together so that progress on each topic must 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 will describe progress of knowledge made with respect to monitoring study questions across multiple Navy ranges associated with the ICMP. Similar study questions must be treated together so that progress on each topic can 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 the 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 Northwest Study Areas.

(e) *Annual HSTT Study Area training exercise report and testing activity report.* Each year, the Navy must 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 must submit detailed reports to the Director, Office of Protected Resources, NMFS, within 3 months after the one-year anniversary of the date of issuance of the LOA. The HSTT annual Training Exercise Report and Testing Activity Report 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 must contain information on major training exercises (MTEs), Sinking Exercise (SINKEX) events, and a summary of all sound sources used, including within specific mitigation reporting areas as described in paragraph (e)(3) of this section. The analysis in the detailed reports must be based on the accumulation of data from the current year's report and data collected from previous reports. The detailed reports must contain information identified in paragraphs (e)(1) through (7) of this section.

(1) *MTEs.* This section of the report must 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, and other platforms participating in exercise.

(G) Total hours of all active sonar source operation.

(H) Total hours of each active sonar source bin.

(I) 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.g.,* sonar, Lookout).

(E) Indication of specific type of platform observation was 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 was less than 200 yd, 200 to 500 yd, 500 to 1,000 yd, 1,000 to 2,000 yd, or greater than 2,000 yd from sonar source.

(K) Whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay.

(L) If source in use was hull-mounted, true bearing of animal from the vessel, true direction of vessel's travel, and estimation of animal's motion relative to vessel (opening, closing, parallel).

(M) Lookouts must 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.) and if any calves were 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 must identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

(2) *SINKEXs.* This section of the report must 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, and other platforms, participating in exercise.

(H) Wave height in feet (high, low, and average) during exercise.

(I) 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.g.,* sonar or Lookout).

(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 (or target spot if not yet detonated): Less than 200 yd, 200 to 500 yd, 500 to 1,000 yd, 1,000 to 2,000 yd, or greater than 2,000 yd.

(J) Lookouts must 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 were present.

(K) The report must indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long.

(L) If observation occurred while explosives were detonating in the water, indicate munition type in use at time of marine mammal detection.

(3) *Summary of sources used.* This section of the report must 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 *(e.g.,* pile driving and air gun activities); and

(ii) Total annual expended/detonated ordinance (missiles, bombs, sonobuoys, etc.) for each explosive bin.

(4) *Humpback Whale Special Reporting Area (December 15—April 15).* The Navy must report the total hours of operation of surface ship hull-mounted mid-frequency active sonar used in the special reporting area.

(5) *HSTT Study Area Mitigation Areas.* The Navy must 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 must present an annual (and seasonal, where practical) depiction of training and testing bin usage (as well as pile driving activities) geographically across the HSTT Study Area.

(7) *Sonar exercise notification.* The Navy must submit to NMFS (contact as specified in the LOA) an electronic report within fifteen calendar days after the completion of any MTE indicating:

(i) Location of the exercise;

(ii) Beginning and end dates of the exercise; and

(iii) Type of exercise.

§ 218.76 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to the regulations in this subpart, the Navy must apply for and obtain LOAs in accordance with § 216.106 of this chapter.

(b) LOAs, unless suspended or revoked, may be effective for a period of time not to exceed December 20, 2023.

(c) If an LOA expires prior to December 20, 2023, the Navy may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision of § 218.77(c)(1)) required by an LOA issued under this subpart, the Navy must apply for and obtain a modification of the LOA as described in § 218.77.

(e) Each LOA must set forth:

(1) Permissible methods of incidental taking;

(2) Geographic areas for incidental taking;

(3) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species or stocks of marine mammals and their habitat; and

(4) Requirements for monitoring and reporting.

(f) Issuance of the LOA(s) must be based on a determination that the level of taking must be consistent with the findings made for the total taking allowable under the regulations in this subpart.

(g) Notice of issuance or denial of the LOA(s) must 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 chapter and 218.76 for the activity identified in § 218.70(c) may be renewed or modified upon request by the applicant, provided that:

(1) The planned specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for the 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) were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or to 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 stock or years), NMFS may publish a notice of planned 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 chapter and 218.76 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.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA include:

(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 the regulations in this subpart or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of planned LOA in the **Federal Register** and solicit public comment.

(2) *Emergencies.* If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 of this chapter and 218.76, 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]

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