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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

[Docket No. CFPB–2018–0042]

Policy on No-Action Letters

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Policy guidance.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing its revised Policy on No-Action Letters (Policy), which is intended to carry out certain of the Bureau's authorities under Federal consumer financial law.

DATES: This Policy is applicable on September 10, 2019.

FOR FURTHER INFORMATION CONTACT: For additional information about the Policy, contact Paul Watkins, Assistant Director; Edward Blatnik, Deputy Counsel; Albert Chang, Counsel; Thomas L. Devlin, Senior Counsel; Will Wade-Gery, Senior Advisor; Office of Innovation, at *officeofinnovation@cfpb.gov* or 202–435–7000. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In section 1021(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Congress established the Bureau's statutory purpose as ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.[1] Relatedly, the Bureau's objectives include exercising its authorities under Federal consumer financial law[2] for the purposes of ensuring that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation, and that outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens.[3]

As these provisions make clear, the Bureau's statutory mission of protecting consumers is not limited to vigorously enforcing the law. It includes facilitating innovation in markets for consumer financial products and services, as innovation drives competition, which in turn lowers prices and promotes access to more and better products and services. Innovation holds the promise of benefitting consumers in numerous ways, including by creating or expanding access to products and services; increasing the range of products and services; improving the functionality of existing products and services; reducing prices; increasing consumer understanding and control; and enhancing safety and security.[4]

A primary means of facilitating innovation is removing barriers to innovation. This can be accomplished in a variety of ways. As noted, Congress expressly identified one of these: reducing unwarranted regulatory burdens. Another consists in reducing uncertainty regarding the meaning or application of statutory and regulatory provisions. Faced with such regulatory uncertainty, some companies may hesitate to develop and offer potentially beneficial products and services, not wishing to run the risk of supervisory findings, enforcement actions, or private lawsuits. Reducing this uncertainty may encourage these companies to offer these products and thereby benefit consumers.

Such regulatory uncertainty may be particularly acute in the case of innovative products and services, as such products and services may not have existed, or even been contemplated, at the time potentially applicable statutes and regulations were promulgated. In such circumstances, companies with innovative financial products or services may find it difficult to attract sufficient investment, business partners, or other support, and bring innovative ideas to market in a timely fashion.

Given that there are a variety of different impediments to innovation, a variety of different regulatory tools are needed to reduce such impediments. Congress has given the Bureau a variety of authorities under title X of the Dodd-Frank Act and the enumerated consumer laws[5] that it can exercise to promote its purpose and objectives, including facilitating innovation. These authorities include supervision and enforcement authority, and the authority to issue orders and guidance.[6] These authorities provide the basis for the Policy on No-Action Letters (Policy) and the No-Action Letters issued pursuant to the Policy. Issuing such No-Action Letters is also a means through which the Bureau can further its understanding of the legal and policy implications of innovative products and services to help support official interpretations and rulemakings.

The Bureau proposed the original version of its Policy on No-Action Letters in October 2014[7] and finalized it in February 2016 (2016 Policy).[8] In the preamble of the 2016 Policy, the Bureau anticipated that No-Action Letters would be provided rarely and on the basis of exceptional circumstances, and estimated that the Bureau would on average receive one to three actionable applications per year. This estimate was based on the features built into the 2016 Policy; *i.e.,* the 2016 Policy was *designed* to result in no more than three No-Action Letters per year. The Bureau issued only one No-Action Letter under

[1] 12 U.S.C. 5511(a).

[2] 12 U.S.C. 5481(14).

[3] 12 U.S.C. 5511(b)(3), (5).

[4] *See, e.g.,* United Nations Secretary-General's Special Advocate for Inclusive Finance for Development and Cambridge Centre for Alternative Finance, *Early Lessons on Regulatory Innovations to Enable Inclusive FinTech: Innovation Offices, Regulatory Sandboxes, and RegTech* (2019), *available at https://www.unsgsa.org/resources/publications* (''Innovation offices decrease barriers to entry by reducing regulatory uncertainty, which promotes the entry, capitalization, and growth of new firms in financial services markets. New entrants, in turn, promote innovation and competition. Increased competition can result in lower prices for consumers, a greater range of products, and better services, all of which promote financial inclusion.'') (citation omitted).

[5] 12 U.S.C. 5481(12).

[6] *See* 12 U.S.C. 5561 *et seq.* (enforcement authority); 12 U.S.C. 5531(a) (Unfair, Deceptive, or Abusive Acts or Practices (UDAAP) enforcement authority); 12 U.S.C. 5514, 5515 (supervision authority); 12 U.S.C. 5511(a) (''The Bureau shall seek to implement and, *where applicable,* enforce Federal consumer financial law . . .'') (emphasis added); 12 U.S.C. 5512(b)(1). *See also Heckler* v. *Chaney,* 470 U.S. 821, 832 (1985); *Board of Trade* v. *SEC,* 883 F.2d 525, 530–31 (7th Cir. 1989) (SEC no-action letter).

[7] 79 FR 62118 (Oct. 16, 2014).

[8] 81 FR 8686 (Feb. 22, 2016).

the 2016 Policy in the nearly three-year period between its issuance and publication of the proposed Policy in December 2018.[9]

The Bureau has determined that the approach to facilitating consumer-beneficial innovation through No-Action Letters built into the 2016 Policy is not an adequate response to the extent of innovation occurring in markets for consumer financial products and services. Given that the 2016 Policy was designed to result in a small number of No-Action Letters per year, the Bureau determined that the 2016 Policy required modification. Accordingly, in December 2018, the Bureau proposed to revise the 2016 Policy in order to more effectively carry out the Bureau's statutory purpose and objectives.[10]

II. Overview of Comments

The Bureau received 31 unique comments in response to the December 2018 proposal. Industry trade associations and other industry groups submitted 12 comments. Individual financial services providers submitted three comments. Four comments were submitted by consumer groups and civil rights organizations. There were six comments from research and advocacy organizations, two from groups of State Attorneys General, one from a group of State regulators, one from an academic, one from a law firm, and one from an individual.[11]

Industry commenters uniformly supported the proposed Policy, and stated that it is more likely to incent companies to apply for a No-Action Letter than the 2016 Policy. One of the two groups of State Attorneys General likewise supported the proposed Policy. Although generally supportive of the proposed Policy, industry commenters recommended discrete changes to certain provisions of the proposed Policy.

In contrast, all but one of the consumer group commenters opposed the proposed Policy on numerous grounds, and stated that it marks a step backwards vis-à-vis the 2016 Policy. The second group of State Attorneys General were of the same opinion. One consumer group stated that provision of compliance assistance[12] by the Bureau is not really needed because (i) few technologies lead to products where the application of a well-established law or regulation is in question, and (ii) the vast majority of fintech innovation falls within known product categories and rarely raises novel questions of law and policy. The Bureau disagrees with this assessment.

The other consumer groups and the group of State Attorneys General appear to agree with the Bureau's view that innovative products and services face regulatory uncertainty, but disagreed with the Bureau's approach in the proposed Policy to address it. Instead, these commenters generally supported the approach taken in the 2016 Policy, and thus opposed virtually every revision of the 2016 Policy proposed by the Bureau.

This disagreement between the Bureau and these commenters regarding the optimal level of facilitation of consumer-beneficial innovation may be based, in turn, on a disagreement about the Bureau's consumer protection mission under title X of the Dodd-Frank Act. As these commenters emphasized, Congress gave the Bureau supervisory and enforcement authority to protect consumers from unfair, deceptive, and abusive acts and practices, as well as other violations of Federal consumer financial law.[13] As noted above, however, the Bureau reads the purpose and objectives Congress set for the Bureau as clearly signaling that the Bureau should *also* exercise its numerous authorities to facilitate access and innovation in markets for consumer financial products and services. These commenters, in contrast, appear to diminish this aspect of the Bureau's consumer protection mission. For example, one consumer group letter states that facilitating consumer-beneficial innovation falls outside the Bureau's ''core mission.''

Many comments from stakeholders across the spectrum requested greater specificity or detail regarding various provisions of the proposed Policy. The Bureau notes in this regard that the Securities and Exchange Commission's (SEC) procedures regarding no-action letters are significantly shorter and less detailed than the proposed Policy.[14] Nonetheless, the SEC has managed to provide scores of no-action letters per year over the course of many decades in a manner that is widely viewed as promoting the interests of regulated entities, shareholders, and the public more generally.[15] Indeed, a number of the streamlining revisions in the proposed Policy were designed to move the Policy in the direction of the SEC model.

The Policy is designed to apprise potential applicants and other stakeholders of one way in which the Bureau plans to exercise its supervision and enforcement discretion, namely, through the issuance of No-Action Letters under the Policy. The Policy is necessarily relatively general as compared to particular No-Action Letters issued under it. Moreover, given that the Policy is being issued based on relatively little practical experience in issuing No-Action Letters, the Bureau is concerned that an attempt to provide significantly more detail and specificity at this time would be counterproductive. Nevertheless, the Bureau has provided additional specificity and detail in a number of instances, as explained below. As the Bureau gains experience implementing the Policy and engages in additional stakeholder outreach, it will consider the extent to which additional clarifications or adjustments are necessary or appropriate.

Finally, the Bureau voluntarily sought public comment on the proposed Policy

[9] *See* Bureau of Consumer Financial Protection, CFPB Announces First No-Action Letter to Upstart Network (Sept. 14, 2017), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-first-no-action-letter-upstart-network/.*

[10] Policy on No-Action Letters and the BCFP Product Sandbox, 83 FR 64036 (Dec. 13, 2018). As indicated by the title of that proposal, it consisted of two parts. The first part, concerning No-Action Letters exclusively, is being finalized in the instant document. The second part, concerning the creation of the Product Sandbox, is being finalized simultaneously in a separate document as the Compliance Assistance Sandbox Policy. The Bureau has determined that finalizing the two policies in separate documents will be less confusing for potential applicants, and better serve the public interest.

[11] One of the four consumer group and civil rights organization comment letters was a lengthy, detailed letter by a consortium of nine consumer groups. Many of the comments in that letter were echoed in four shorter letters: One from a consortium of 80 other consumer groups and civil rights organizations; one from an individual consumer group; one from an individual civil rights organization; and one from a law firm. In light of this overlap, and for the sake of brevity, the term ''consumer groups'' is used in the discussion of comments in section III to refer to comments included in the lengthy letter, as well as the same comments included in the four shorter letters.

[12] As did the 2016 Policy, the proposed Policy used the concept of statutory/regulatory ''relief'' as a generic term for describing agency mechanisms for addressing regulatory uncertainty and barriers. The CFTC uses the same term for this purpose in its procedures governing various such mechanisms. *See* 17 CFR 140.99. However, a number of commenters that generally opposed the proposed Policy read the term ''relief'' as signaling an intention by the Bureau to assist applicants in evading the law. That was not the Bureau's intention. Rather, the relief intended was relief from statutory/regulatory uncertainty, not relief from statutory or regulatory requirements. To clarify this point, the final Policy uses ''compliance assistance'' as the generic term for such mechanisms.

[13] 12 U.S.C. 5511(b)(2); 5536(a).

[14] Securities and Exchange Commission, Procedures Applicable to Requests for No-Action and Interpretive Letters, Securities Act Release No. 6269 (Dec. 23, 1980) (*available at: http://www.sec.gov/rules/other/33-6269.pdf*).

[15] *See, e.g.,* Donna M. Nagy, *Judicial Reliance on Regulatory Interpretations in SEC No-Action Letters: Current Problems and a Proposed Framework,* 83 Cornell L. Rev. 921, 934 n.45 (1998).

because it recognizes that facilitating consumer-beneficial innovation is a topic in which many stakeholders have a keen interest, and because it anticipated receiving comments that would enable it to improve the proposed Policy. The Bureau appreciates all of the comments received and has given each of them careful consideration. In the proposal, the Bureau strove to facilitate consumer-beneficial innovation, while minimizing the risk of consumer harm. Based on the many constructive, and instructive, comments received, the Bureau has further revised the Final Policy in line with these goals.

III. Summary of Comments, Bureau Responses, and Resulting Policy Changes

This section provides a summary of the significant comments received by subject matter. It also summarizes the Bureau's assessment of such comments by subject matter and, where applicable, describes the resulting changes that the Bureau is making in the final Policy.[16]

A. Compliance With Administrative Law

The Bureau received a number of comments claiming that the proposed Policy violates applicable rulemaking requirements as well as other requirements of administrative law. Relatedly, some commenters argued that individual No-Action Letters could violate applicable rulemaking requirements.

1. Legal Status of the Policy

In section III of the document published in the **Federal Register** on December 13, 2018, the Bureau stated that, if finalized, the two-part proposed Policy would constitute an agency general statement of policy and a rule of agency organization, procedure, or practice exempt from the notice and comment rulemaking requirements under the Administrative Procedure Act (APA). Due to the types of compliance assistance that would be available under Part II of the two-part proposed Policy, the Bureau deemed it appropriate to treat Part II as both a general statement of policy and a procedural rule. It was largely for this reason that section III stated that the entire proposal (*i.e.,* both parts), if finalized, would constitute a general statement of policy and a procedural rule. Now that the Bureau is separately finalizing the No-Action Letter Policy, it has determined that the Policy is more appropriately characterized solely as a general statement of policy.

Consumer groups disagreed with the Bureau's characterization of the proposed Policy as a general statement of policy, arguing that the proposed Policy, if finalized, would be a *de facto* legislative rule because (i) it would limit the Bureau's discretion to take a supervision or enforcement action once it issues a No-Action Letter; and (ii) it would replace staff-issued No-Action Letters with Bureau-issued No-Action Letters.[17] Each of these claims concerns the binding nature of particular No-Action Letters, rather than the proposed Policy—a topic addressed in section III.A.2 below.

As finalized, the Policy is a non-binding general statement of policy under applicable law.[18] As stated in section IV below, the Policy is intended to provide information to interested parties regarding the Bureau's plans to exercise its enforcement and supervisory discretion to provide No-Action Letters.[19] The Bureau retains the discretion to change these plans as it gains experience in operating the Policy—just as it had done in the 2016 Policy.[20]

2. Legal Status of No-Action Letters

As noted above, and in the proposal, a particular No-Action Letter would constitute an exercise of the Bureau's supervisory and enforcement discretion. Consumer groups appeared to accept this characterization as to some No-Action Letters, but argued that other No-Action Letters could be *de facto* legislative rules issued in contravention of applicable law because they could change, in a binding manner, and broadly, whether and how consumer protection laws apply in the future. The claim that such No-Action Letters would be binding and have future effect is based on their claim that No-Action Letters would restrict the Bureau's ability to take enforcement or supervision action in the future. That claim was based, in turn, on two features of the proposal: (1) The Bureau's statement that, whereas a No-Action Letter under the 2016 Policy was a staff recommendation of no-action, a No-Action Letter under the proposed Policy would be issued by duly authorized officials of the Bureau in order to provide recipients greater assurance that the Bureau itself stands behind the No-Action Letters; and (2) the Bureau's proposal to omit from No-Action Letters a statement that the letter is subject to modification or revocation at any time at the discretion of the staff for any reason.

As regards the first feature, the shift from staff-issued No-Action Letters to Bureau-issued No-Action Letters was proposed to address concerns that a no-action recommendation by some Bureau staff would be reversed sometime later by other Bureau staff with a different view of the matter, and to provide applicants with a reasonable basis for believing that this ''whiplash'' scenario would not occur under the proposed Policy. The commenters' apparent argument that a no-action position issued by an agency, as opposed to a staff recommendation of no-action, transforms an exercise of enforcement discretion into a legislative rule is without basis. It is well-settled that agency-level exercise of enforcement discretion, even if stated in binding terms, does not constitute legislative rulemaking.[21]

As regards the second feature, the Bureau proposed omitting the ''any time/any reason'' statement because it was concerned that this statement may create a false impression about the Bureau's intent regarding revocation, and thus may deter entities with potentially beneficial products and services from applying for a No-Action Letter. It could mistakenly be understood to suggest that the Bureau plans to modify or revoke No-Action Letters *ad libitum.* As the Bureau noted in the proposal, other Federal agencies with no-action letter programs have terminated no-action letters very rarely. The Bureau anticipates that revocations would be equally rare under the Policy. Accordingly, section C.7 of the final Policy replaces the ''any time/any reason'' statement with the more

[16] The Bureau has also made a number of technical changes to the final Policy to accommodate the revisions described below and to increase clarity.

[17] The same commenters also took issue with the Bureau's characterization of the proposed Policy as a procedural rule. In light of the Bureau's determination that it is more appropriate to characterize the Policy as a general statement of policy only—and not also a procedural rule—the Bureau is not responding to this line of comment in the instant document. Rather, the Bureau is responding to this line of comment in the document finalizing Part II of the proposed Policy as the Compliance Assistance Sandbox Policy.

[18] *See, e.g., Syncor Int'l* v. *Shalala,* 127 F.3d 90, 94 (D.C. Cir. 1997) (''By issuing a policy statement, an agency simply lets the public know its current . . . approach. The agency retains the discretion and the authority to change its position—even abruptly—in any specific case because a change in its policy does not affect the legal norm.'').

[19] *See, e.g.,* Attorney General's Manual on the Administrative Procedure Act 30 n.3 (1947) (providing that policy statements are issued ''to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power.'')

[20] 81 FR 8686, 8687 (Feb. 22, 2016).

[21] *See, e.g., Ass'n of Irritated Residents* v. *E.P.A.,* 494 F.3d 1027 (D.C. Cir. 2007); *Schering Corp.* v. *Heckler,* 779 F.2d 683 (D.C. Cir. 1985); *New York State Dept. of Law* v. *F.C.C.,* 984 F.2d 1209 (D.C. Cir. 1993).

accurate statement that the Bureau may terminate [22] a No-Action Letter if it determines that doing so is necessary or appropriate to promote the primary purposes of the Policy as stated therein, and gives three examples of such circumstances.

As noted, the consumer groups also identified effecting a change in existing law or regulations as an element of No-Action Letters that could be legislative rules. *Prima facie,* an exercise of discretion not to enforce a particular statutory or regulatory provision against a particular entity does not effect a change in the agency's substantive interpretation or implementation of the provision. The provision remains unchanged, and the agency may decide to bring an enforcement action against another entity based on a violation of the provision.

Finally, as noted, the consumer groups also identified breadth or generality as a feature of No-Action Letters that could be legislative rules. They identified several types of generality: (i) No-Action Letters that would apply generally to all consumers that might use a given company's product or service; (ii) No-Action Letters that would apply to all members of an industry association; and (iii) No-Action Letters that would apply to all customers of a software provider. These commenters indicated that No-Action Letters of the second two types could result from the proposed alternative process for applications by third parties, under which an industry association or service provider could apply for a provisional No-Action Letter on behalf of their member or customers, and additional members or customers could be added to the letter over time.

The Bureau proposed this alternative process to address circumstances in which the standard process of applying for a No-Action Letter might not work for one reason or another. As explained in section III.F below, the Bureau is finalizing this aspect of the proposal by adding a new section E to the Policy, which provides greater detail and clarity regarding alternative application, assessment, and issuance procedures. Like the standard process described in sections A through C, these alternative procedures are necessarily somewhat general and open-ended. Not only is the Policy a general statement of policy, but, as noted in section II above, the Bureau has relatively little experience in implementing this type of policy. And this is *a fortiori* the case as regards the alternative application procedures, which were not a feature of the 2016 Policy. The Bureau is mindful of the concerns raised by commenters and intends to implement these procedures in a manner consistent with the APA's procedural and substantive requirements.

3. Arbitrary and Capricious

The proposed Policy stated that its main purpose is to provide a mechanism through which the Bureau may more effectively carry out its statutory purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive; and its statutory objectives, which include exercising its authorities under Federal consumer financial law for the purposes of ensuring that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation. In the preamble of the proposed Policy, the Bureau described various changes it was proposing to make to the 2016 Policy and explained that those changes were designed, *inter alia,* to streamline the application and review process and to bring the Policy more in line with certain aspects of no-action letter programs operated by other Federal agencies.

Consumer groups claimed that the proposed Policy, if finalized, would be arbitrary and capricious for several reasons. The Bureau notes that a determination of whether the Policy is arbitrary or capricious would be based on the content of the final Policy, not the proposed Policy. Accordingly, the discussion below references the final Policy as well as the proposed Policy.

First, consumer groups contended that the proposed Policy entirely fails to consider an important aspect of the problem the proposed Policy was intended to address by making no mention of its impact on consumers. The Bureau disagrees. As noted in the proposed Policy and in section II above, the main purpose of the Policy is to more effectively carry out the Bureau's consumer-focused purpose and objectives. In addition, the Bureau expects that (i) applications for a No-Action Letter under the Policy will include a discussion of both consumer benefit and consumer risk, and (ii) the Bureau's assessment of applications will place particular emphasis on these aspects of the application.

Second, consumer groups claimed that the Bureau failed to give adequate reasons for the proposed revisions of the 2016 Policy. More specifically, they stated that the only rationale the Bureau provided was that more incentives need to be provided to companies to apply for a No-Action Letter in light of the fact that the Bureau issued only one No-Action Letter under the 2016 Policy. As noted above, however, the Bureau provided other rationales, including streamlining the application and review processes and bringing the Policy more in line with certain features of no-action letter programs operated by other Federal agencies.

Third, these commenters asserted that the proposed Policy offers ''virtually no explanation'' of the proposed revisions to the 2016 Policy. As noted above, however, such explanations were provided in the proposed Policy. Moreover, additional explanations of the revisions are provided throughout the instant preamble.

B. Scope of the Proposed Policy

A number of comments from stakeholders across the spectrum addressed the subject matter scope of the proposed Policy, *i.e.,* the types of products or services that could be included in an application. Section A.3 of the 2016 Policy provided that No-Action Letters were not intended for either well-established products or purely hypothetical products that are not close to being able to be offered. And in response to comments on the proposed 2016 Policy regarding the types of products or services within its scope, the Bureau noted that the 2016 Policy was limited to emerging products. The proposed Policy omitted the statement regarding well-established products and hypothetical products, and likewise did not state that No-Action Letters would be limited to emerging products and services.

Consumer groups opposed these proposed changes, and interpreted them as signaling the Bureau's intention to provide No-Action Letters for well-established products that do not need a No-Action Letter, and to give companies a ''back-door channel'' to obtain outcomes they failed to obtain through the notice-and-comment process. This was not the Bureau's intent in proposing these changes. As noted above, one of the primary bases of the Policy is to more effectively implement the Bureau's statutory objective of facilitating innovation. Innovation is a broad concept, and not limited to new or emerging products and services. As regards the concern that the Bureau intends to grant No-Action Letters in cases where they are not needed, it is unclear why an entity would take the

[22] As explained below, the Bureau is replacing the term ''revocation,'' which was used in the proposed Policy, with the term ''termination'' in the final Policy.

trouble to apply for a No-Action Letter in such a case. In any event, the Bureau has no intention to issue No-Action Letters in such circumstances.

The Bureau proposed to omit the statement about hypothetical products because it was concerned that the statement might discourage applications regarding products and services under development that could benefit consumers. Indeed, it is for this reason that the Bureau proposed accepting applications from service providers and is including a process for such applications in section E.1 of the final Policy (as discussed in section III.F below).

Industry commenters generally understood the Bureau's intent in proposing to omit the above statements, but asked the Bureau to state more expressly in the final Policy that the Policy is not intended to be limited to new or emerging products. That is indeed the case, and the text of the final Policy is consistent with that position.

C. Application Elements

In finalizing the 2016 Policy, the Bureau addressed two types of comments on the application section of the proposed 2016 Policy: (i) Comments that the proposal would have required applicants to submit an unduly burdensome volume of information; and (ii) comments that the information requirements be minimized specifically for smaller organizations that may have relatively fewer resources to devote to the No-Action Letter process. The Bureau declined to reduce the volume of information to be included in applications for a No-Action Letter based on its belief that the volume was not unduly burdensome. The Bureau's main rationale in this regard was its expectation that any conscientious firm intending to launch a consumer financial product or service that would raise substantial regulatory questions would compile the same information on its own, apart from an application for a No-Action Letter.

In addition, the Bureau stated that it planned to monitor the effectiveness of the 2016 Policy and to assess periodically whether changes to the Policy would better effectuate the purposes of facilitating innovation and otherwise substantially enhancing consumer benefit. In the proposed Policy, the Bureau explained that it was proposing to revise the 2016 Policy in various respects for a number of reasons. Most generally, the Bureau explained the proposed changes were designed to increase utilization of the Policy, thereby enabling the Bureau to more effectively carry out its statutory purpose and objectives. More specifically, the Bureau explained that certain proposed changes were designed to (i) streamline the application and review process by eliminating redundant and unduly burdensome elements; and (ii) more closely align the Policy with certain elements of no-action letter programs operated by other Federal agencies.

The Bureau believes that the low level of interest in applying for a No-Action Letter under the 2016 Policy indicates that the application elements included in the 2016 Policy were in fact unduly burdensome, particularly when viewed as a total package. In addition, the Bureau believes that a more streamlined set of application elements will ensure that smaller entities are not disadvantaged relative to larger entities in being able to take advantage of the Policy. The Bureau also believes that the rationale provided in the 2016 Policy for why the package of application information was not unduly burdensome is inapplicable or overstated as regards certain application elements in the 2016 Policy, as explained below.

Industry commenters generally supported the proposed revisions of the application section of the 2016 Policy. Consumer groups opposed each proposed revision, and in some cases urged the Bureau to request more information from applicants than is specified in the 2016 Policy.

1. Explanation of Consumer Risk

Section A.5 of the 2016 Policy instructed applicants to include a candid explanation of potential consumer risks posed by the product—particularly as compared to other products available in the marketplace—and undertakings by the applicant to address and minimize such risks. Section A.14 of the 2016 Policy instructed applicants to include a description of any particular consumer safeguards the applicant will employ, although they may not be required by law, if a No-Action Letter is issued, including any mitigation of potential for or consequences of consumer injury. It went on to say that the description should specify the requester's basis for asserting and considering that such safeguards are effective, and should also address any future study the requester will undertake to further evaluate the effectiveness of such safeguards.

The Bureau proposed replacing section A.5 with a similar instruction to include an explanation of the potential consumer risks posed by the product or service and/or the manner in which it is offered or provided, and how the applicant(s) intends to mitigate such risks. The Bureau proposed omitting section A.14 altogether. Consumer groups asserted that these proposed revisions would lead to the Bureau granting No-Action Letters without any reliable assessment of risks to consumers, and urged the Bureau not to finalize the proposed revisions. The Bureau believes that proposed revisions to section A.5, as finalized, retain the core information needed for the Bureau to assess consumer risk. The information to be provided in applications for no-action letters provided by other Federal agencies typically does not include a comparison to risks posed by competitors' offerings.[23] Nor does the Bureau believe that potential applicants typically have such information ready to hand, including especially smaller entities. The same is true of the ''future study'' portion of section A.14. The Bureau thus remains of the view that these elements of the 2016 Policy are unduly burdensome.

The Bureau likewise continues to believe that the remainder of section A.14 of the 2016 Policy is largely redundant vis-à-vis section A.5. A description of any particular consumer safeguards the requester will employ, including any mitigation of potential for or consequences of consumer injury, and a specification of the requester's basis for asserting and considering that such safeguards are effective (per section A.14) is substantially similar to a candid explanation of potential consumer risks posed by the product and undertakings by the requester to address and minimize such risks (per section A.5).

More generally, section B of the final Policy specifies that the Bureau intends to base its assessment of applications, *inter alia,* on the quality and persuasiveness of the application, with particular emphasis on the consumer risk element. This should incent applicants to ensure that the information they submit regarding consumer risk is of high quality and persuasive.

[23] *See, e.g.,* Securities and Exchange Commission, Procedures Applicable to Requests for No-Action and Interpretive Letters, Securities Act Release No. 6269 (Dec. 5, 1980) (available at: *http://www.sec.gov/rules/other/33-6269.pdf*); Commodity Futures Trading Commission, Requests for Exemptive, No-Action and Interpretative Letters, 17 CFR 140.99; Federal Housing Finance Agency, 12 CFR 1211.1, 1211.4, 1211.6; Federal Energy Regulatory Commission, Informal Staff Advice on Regulatory Requirements; Interpretive Order Regarding No-Action Letter Process, 70 FR 71487 (Nov. 29, 2005).

2. Substantial Consumer Benefit and Substantial Legal Uncertainty

The 2016 Policy instructed applicants to explain how the product in question is likely to provide ''substantial'' consumer benefit to consumers, and to identify the ''substantial'' regulatory uncertainty on which the request for a No-Action Letter is based. These were key features of a policy designed to result in one to three actionable No-Action Letter applications per year. The Bureau thus proposed to eliminate these limitations as part of its general policy shift toward increasing the level of support for consumer-beneficial innovation. Industry commenters and advisory/research organizations supported these proposed changes. Consumer groups opposed them.

Regarding the proposed elimination of ''substantial'' as to consumer benefit, consumer groups' opposition appears to be based on their general support of the approach to innovation-facilitation taken in the 2016 Policy. The Bureau is finalizing the revised application element as proposed, *i.e.,* as instructing applicants to include an explanation of the potential consumer benefits of the product or service and/or the manner in which it is offered or provided, because it continues to believe this change vis-à-vis the 2016 Policy is needed to increase use of the Policy.

The Bureau is finalizing the proposed elimination of ''substantial'' as to legal uncertainty for the same reason. Consumer groups noted that the proposed Policy instructs applicants instead to identify ''potential'' uncertainty for which a No-Action Letter is needed. The Bureau acknowledges that use of the term ''potential'' in this context can be improved. The Bureau's use of this term was driven by its recognition that the full extent of uncertainty may not be apparent at the time an application is submitted. To allow for this circumstance, the proposed Policy includes a footnote explaining that the Bureau recognizes that in some cases it may be difficult to determine precisely which provisions would apply, in the normal course, to the product or service in question; that, in other cases, the applicant may lack the legal resources to make a fully precise determination; and that, in such circumstances, the applicant should provide the maximum specification practicable under the circumstances and explain the limits on further specification. It is thus unnecessary to attempt to make the same point using the term ''potential,'' and that term is not included in section A.5 of the final Policy.

3. Compliance With Other Law

The Bureau proposed eliminating three elements of section A of the 2016 Policy that concerned compliance with other law in some manner. Section A.6.c required a showing of the product's compliance with other relevant Federal and State regulatory requirements. Section A.10 required an affirmation that, to the requester's knowledge (except as specifically disclosed in the request), neither the requester nor any other party with substantial ties to transactions involving the product is the subject of an ongoing, imminent, or threatened governmental investigation, supervisory review, enforcement action, or private civil action respecting the product, or any related or similar product. Section A.11 required an affirmation that (except as specifically disclosed in the request) the principals of the requester have not been subject to license discipline, adverse supervisory action, or enforcement action with respect to any financial product, license, or transaction within the past ten years. Relatedly, section C.7 of the 2016 Policy—which the Bureau also proposed eliminating—provided that one of the considerations Bureau staff would use in assessing applications was whether the applicant is demonstrably in compliance with other relevant Federal and State regulatory requirements.

Industry commenters were generally supportive of these proposed revisions. Consumer groups worried that these proposed revisions signaled the Bureau's intent to short-circuit enforcement of the law by other government agencies or consumers and to interfere in ongoing disputes, and urged the Bureau to reinstate them. The Bureau declines to do so for a number of reasons. First, the Bureau is concerned that these elements of section A of the 2016 Policy, in combination with section C.7 of the 2016 Policy, unnecessarily discouraged viable applications. Potential applicants could have interpreted these provisions to mean that No-Action Letters would only be provided to entities, individuals, and products/services that had never been so much as threatened with some type of governmental action or private lawsuit. Indeed, potential applicants could have interpreted section A.10 to mean that there would be no point in submitting an application for a No-Action Letter if other entities with ''substantial ties'' to transactions involving the product or service, or even ''related or similar'' products or services, had been threatened with such action or suits.

Second, the Bureau is concerned that these provisions are unduly burdensome—as suggested by commenters on the proposed 2016 Policy. An applicant would have to ''show'' or ''demonstrate'' that the product or service was compliant with all relevant law. An applicant would have to list not only ongoing investigations or lawsuits, but also ''threatened'' investigations and suits. And the list would have to contain not only actions and suits targeted at the applicant, but also those targeted at any entity with ''substantial ties'' to ''related or similar'' products or services. An application would have to list all types of adverse actions against the principals of the applicant during the prior ten years. Finally, the applicant effectively would have to attest that these lists are full and complete.[24]

Third, the Bureau believes that the more effective and efficient means of handling the concerns raised by consumer groups is to clarify that the Bureau expects its assessment of applications (described in section B of the final Policy) to include due diligence regarding the applicant, its principals, and the product or service in question. Despite not including sections A.7, A.10, and A.11 of the 2016 Policy in the final Policy for the reasons set forth above, the Bureau does not intend to allow the Policy to be used—or rather abused—by entities seeking to evade investigations or actions by other regulators. On the contrary, the Bureau intends to conduct necessary and appropriate due diligence on applicants—including consulting with other regulators—to ensure that the Policy is used for its intended purposes.

4. Duration and Data Sharing

The 2016 Policy did not expressly provide that No-Action Letters would be of limited duration. But section A.13 instructed applicants to specify whether the request is limited to a particular time period. And section C.8 provided that the Bureau would base its assessment of applications, in part, on the extent to which the application is sufficiently limited in time, volume of transactions, or otherwise, to allow the Bureau to learn about the product and the aspects in question while minimizing any consumer risk. There was thus a suggestion that applications for No-Action Letters of unlimited duration might be disfavored.

[24] The Bureau notes that procedures governing applications for no-action letters issued by other Federal regulators typically do not include this type of listing of ongoing or threatened actions by other regulators and private litigants. *See* n.22, *supra.*

Section A.9 of the 2016 Policy instructed applicants to include an undertaking, if the request is granted, to share appropriate data regarding the product with the Bureau, including data regarding the impact of the product on consumers, and its plans for development of additional data. Section C.9 provided that the Bureau's assessment of applications would be based, in part, on the extent to which any data that the entity has provided and agrees to provide to the Bureau regarding the operation of the product's aspects in question will be expected to further consumer protection.

In the proposed Policy, the Bureau stated that the default assumption under the proposed Policy would be that No-Action Letters would be of unlimited duration and that there would be no expectation of data sharing. The Bureau explained that it was proposing these changes in order to bring the Policy more in line with certain elements of the no-action letter programs of other agencies.

Industry commenters generally supported these proposed shifts, while consumer groups opposed them. In consumer groups' view, the duration of No-Action Letters should be determined on a case-by-case basis. If a No-Action Letter addresses a narrow technical issue there may be no reason for an end date. But UDAAP-focused No-Action Letters, for example, should be of short duration. Similarly, consumer groups advised the Bureau to at least require No-Action Letter recipients to submit data on the consumer impact of the products or services in question.

The Bureau believes there is some merit to the consumer groups' point that a one-size-fits-all approach to the duration of No-Action Letters is inadvisable. In certain cases, it may be appropriate to limit the duration of a No-Action Letter. Indeed, in some cases an applicant itself might wish the No-Action Letter to be of limited duration. However, the Bureau believes that, to account for such variation, it is not necessary to change the Policy as proposed. Nothing in the final Policy prevents No-Action Letters of limited duration. In a given case, if the Bureau and/or the applicant believes that a temporal limitation is appropriate, such a limitation can be included in the No-Action Letter.

The Bureau declines the specific request to require recipients of a No-Action Letter under the Policy to routinely submit data regarding consumer impact. However, the Bureau agrees with the general concern behind this specific request: If the product or service covered by a No-Action Letter is not performing as anticipated in the application—including especially by injuring consumers—it is important for the Bureau to become aware of that fact as soon as reasonably possible. To address this general concern, a No-Action Letters under the proposed Policy would have required recipients to inform the Bureau of material changes to information included in the application that would materially increase the risk of material, tangible harm to consumers. As noted below in section III.H.1, commenters found this ''material, tangible harm'' standard to be vague and subjective. To address this issue, and to increase the likelihood that the Bureau will learn of any consumer injury caused by the product or service covered by a No-Action Letter in a timely manner, the Bureau is revising this provision (section C.4 in the final Policy) to include the Bureau's expectation that a No-Action Letter will require recipients ''to apprise the Bureau of (a) material changes to information included in the application and (b) material information indicating that the described aspects of the product or service are not performing as anticipated in the application.'' In addition, the Bureau is adding a footnote to section C.4 explaining that ''not performing as anticipated'' includes the materialization of consumer risks identified in the application, and the materialization of other consumer risks not identified in the application.

5. Non-Endorsement

Section A.10 of the 2016 Policy advised applicants to include a commitment that, if the application is granted, the recipient will not represent that the Bureau or its staff has licensed, authorized or endorsed the product, or its permissibility or appropriateness, in any way. In the proposed Policy, the Bureau proposed deleting this element as part of its general streamlining effort.

Consumer groups urged the Bureau to retain this element. The Bureau declines to do so, but agrees with the commenters' more general point that receipt of a No-Action Letter should not be misconstrued to be the Bureau's endorsement of the product or service in question—which could potentially give the recipient an unfair advantage over its competitors or mislead consumers. Accordingly, the Bureau is adding to the list of statements that would be included in a No-Action Letter a statement that the No-Action Letter does not constitute an endorsement of the product or service that is the subject of the letter, or of any other product or service offered or provided by the recipient(s).[25]

D. Bureau Assessment of Applications

1. Assessment Factors

Consistent with the Bureau's proposed streamlining of the application elements of the 2016 Policy, the Bureau proposed streamlining section C of the 2016 Policy to focus the Bureau's assessment on the core application elements: The potential benefits of the product or service, its potential consumer risks, and the need for a No-Action Letter. Industry commenters generally supported these proposed changes. Consumer groups opposed these proposed changes, and asserted that they would result in vague assessment criteria and demand no accountability to the Bureau or to the public. They accordingly urged the Bureau to retain all of the assessment criteria in the 2016 Policy.

The Bureau emphasizes that it did not propose a wholesale replacement of the assessment elements of the 2016 Policy. Rather, as noted, the Bureau proposed retaining what it viewed as the core assessment elements, and discarding only those falling outside the core. More specifically, the proposal would have largely retained sections C.2 (consumer benefit); C.4 (consumer risk); and C.5 (regulatory uncertainty). The Bureau believes that section C.1, regarding consumer understanding, was largely redundant vis-à-vis sections C.2 and C.4; that section C.3, regarding the availability of benefits in the existing marketplace, was largely redundant vis-à-vis section C.2; and that section C.6, regarding whether the identified regulatory uncertainty may be better addressed by other means, was largely redundant vis-à-vis section C.5. As for section C.7, regarding compliance with other law, it is addressed above in section III.C.3. Similarly, sections C.8 and C.9, regarding temporal duration and data sharing, are addressed above in section III.C.4. The same is true to some extent of section C.10, regarding the applicant's amenability to public disclosure of relevant data. Since the default assumption under the final Policy is that no data sharing will be required, the applicant's amenability to public disclosure of shared data is generally not a relevant assessment element.

More generally, the Bureau acknowledges that the assessment section of the proposal may have sketched an incomplete picture of the Bureau's intended assessment of

[25] *See* section C.3(e) of the final Policy.

applications. The Bureau intended to apprise potential applicants and other interested stakeholders that its assessment of applications would focus on the quality and persuasiveness of the applications, particularly the elements concerning consumer benefit, consumer risk, and regulatory uncertainty. The Bureau did not intend to suggest that other factors will not play a role in its decisions. To remove any such misimpression, the Bureau is revising section C of the final Policy to clarify that it expects its assessment of applications to involve a complicated balancing of many factors, including an assessment of the quality and persuasiveness of the application, with particular emphasis on the information specified in sections A.3, A.4, and A.5; as well as information about the applicant and the product or service in question derived through Bureau due diligence processes; the extent to which granting the application would be consistent with Bureau enforcement and supervision priorities; an assessment of litigation risk; and available Bureau resources.

2. Assessment Timeframe

The proposed Policy stated the Bureau's intention to grant or deny an application within 60 days of notifying the applicant that the Bureau has deemed the application to be complete. The Bureau received a range of comments on this new provision. Consumer groups stated that a 60-day review period is unreasonably short and will encourage hasty and flawed reviews of applications, resulting in harm to consumers. They recommended that the Bureau not make any assurances regarding the time it will take to review an application, and that any specific time period should be much longer and more flexible than 60 days. A trade association stated that 60 days is too long, and encouraged the Bureau to commit to completing its assessment of applications within 30 days. An advisory/research organization opined that while 60 days should generally be sufficient, the Bureau should afford itself the option of taking an additional 30 days, provided notice is given to the applicant.

The Bureau is finalizing the 60-day provision as proposed because it believes that this period strikes the optimal balance between permitting sufficient time for a thorough review of applications and encouraging entities to submit applications. Consumer groups' concerns may be based somewhat on a misunderstanding of the provision. Their comments appear to envision a scenario in which no more than 60 days will elapse between the Bureau first setting eyes on a potential application and the Bureau granting or denying a formal application. The proposed Policy encouraged potential applicants to contact the Bureau for informal, preliminary discussion of a proposal before submitting a formal application. The final Policy strongly encourages such informal, preliminary discussion. Thus, in a typical case, the Bureau's review of a proposal likely would take place over a period longer than 60 days. The new 60-day provision is designed to give an applicant reasonable assurance that, once an application is deemed to be complete, the Bureau intends to grant or deny it within 60 days. That said, the final Policy indicates that certain circumstances may lead to a longer processing time, such as a request that the Bureau coordinate with other regulators prior to granting or denying an application.

More generally, the Bureau has no intention of permitting the 60-day review goal to trump its goal of thoroughly assessing applications before granting them, as the latter is more integral to the long-term success of the Policy and the consumer benefit the Bureau expects the Policy to yield. Moreover, if experience operating the Policy indicates that the 60-day review period is not working as intended, the Bureau intends to adjust it in an appropriate manner.

E. Issuance and Content of No-Action Letters

The Bureau proposed a number of revisions to section D of the 2016 Policy, which concerned the Bureau's intended procedures for issuing No-Action Letters, including the expected content of such letters. Industry commenters generally supported these proposed revisions. Consumer groups opposed each proposed revision.

1. UDAAP

As noted, in the preamble of the 2016 Policy, the Bureau estimated that only one to three actionable No-Action Letter applications would be received each year. The Bureau also stated that No-Action Letters focused on the UDAAP prohibition in the Dodd-Frank Act [26] are expected to be particularly uncommon. In the proposed Policy, the Bureau stated that there would be no such expectation under the proposed Policy.

Industry commenters uniformly supported this policy shift. For example, a group of trade associations stated that a No-Action Letter that does not include assurance against UDAAP liability has limited value due to the subjectivity of such claims. Similarly, a trade association commented that the fact that the majority of enforcement actions are brought under UDAAP authority makes clear that entities are in need of guidance in a gray area that is principle based rather than rule based.

In contrast, consumer groups opposed this policy shift. The consumer groups stated that, under the proposed Policy, the Bureau would give a stamp of approval that a company is not committing UDAAPs. This is not correct. Rather, the proposal provided that a No-Action letter would include a statement that, subject to good faith, substantial compliance with the terms and conditions of the letter, and in the exercise of its discretion, the Bureau will not make supervisory findings or bring a supervisory or enforcement action against the recipient predicated on the recipient's offering or providing the described aspects of the product or service under its authority to prevent unfair, deceptive, or abusive acts or practices. The proposal noted that this statement implies that the Bureau has not determined that the acts or practices in question are unfair, deceptive, or abusive. A statement that the Bureau has not made a UDAAP determination is different than a statement that the Bureau has determined that the acts or practices in question do not constitute a UDAAP. The final Policy retains this ''implication'' statement.

The consumer groups also opposed this policy shift on the more general ground that many aspects of the way a product or service works in practice or is implemented could be poorly understood or could change from the time an application is granted, and unfair, deceptive or abusive aspects of a product or service ''might only become apparent in the future.'' A group of State Attorneys General made essentially the same point.

The Bureau is not persuaded that such considerations warrant placing a categorical limitation on UDAAP-focused No-Action Letters. The proposed Policy stated that No-Action Letters would be based on particular facts and circumstances and be limited to the recipient's offering or providing the ''described aspects of the product or service.'' The proposal explained that the term ''described aspects of the product or service'' is a short-hand term used in the proposed Policy to encompass the subject matter scope of a No-Action Letter, including both the particular aspects of the product or service in question, and the particular manner in which it is offered or provided. These aspects of the proposal

[26] 12 U.S.C. 5531, 5536.

are being finalized as proposed. The Bureau intends that a particular No-Action Letter issued under the Policy will include a description of this subject matter scope. Indeed, it is in the interest of both the Bureau and the recipient that the subject matter scope is described with as much precision as possible. To the extent the recipient significantly changes the ''described aspects of the product or service'' without seeking a modification of the No-Action Letter under section D.1 of the Policy, the recipient would risk exceeding the subject matter scope of the letter, and thus would expose itself to a potential Bureau supervisory or enforcement action. Relatedly, to the extent the recipient fails to apprise the Bureau of material changes to information included in the application, as required by section C.4 of the Policy, the recipient would risk failing to substantially comply in good faith with one of the terms of the letter—which could be a ground for termination or even a retroactive enforcement action under section D.2 of the Policy.

As regards consumer groups' speculative scenario in which the recipient does not significantly change the described aspects of the product or service but a UDAAP ''becomes apparent in the future,'' the Bureau could terminate the No-Action Letter on the ground that the described aspects of the product or service failed to perform as anticipated in the Policy, as specified in sections C.7 and D.2 of the Policy.

2. Interpretations

Under section D.4 of the 2016 Policy, No-Action Letters were expected to include a lengthy disclaimer that the letter does not constitute an interpretation, exception, waiver, or safe harbor. As part of the Bureau's general streamlining effort, the proposed Policy would not have included this statement in No-Action Letters. Commenters interpreted the proposed omission of this statement to mean that the Bureau now intends to provide interpretations in No-Action Letters.

More specifically, consumer groups stated that the deletion suggests that the Bureau may include legal interpretations in No-Action Letters in the hope that they will be viewed as official interpretations to which courts will defer, and strongly opposed such a shift. In contrast, a group of trade associations urged the Bureau to include in a No-Action Letter an affirmation that its issuance represents the Bureau's conclusion that the product or service in question, implemented consistently with the terms and conditions of the letter, does not violate applicable Federal consumer financial law, including the prohibition on UDAAP. Relatedly, these commenters requested that the final Policy emphasize the deference assigned by Congress to the Bureau's interpretation of Federal consumer financial law in order to encourage courts, other regulators, and private litigants to defer to Bureau No-Action Letters. Similarly, an advisory/research organization recommended that No-Action Letters include an explanation of the Bureau's rationale for granting the application, and provide assurances that the Bureau views the conduct in question as being consistent with relevant statutory or regulatory requirements.

The proposed deletion of the ''no interpretation'' disclaimer was not intended to signal a shift to including official interpretations in No-Action Letters, or any lesser types of interpretation for that matter. To clarify this point, the Bureau is adding to the list of statements expected to be included in a No-Action Letter, a statement that the letter does not purport to express any legal conclusions regarding the meaning or application of the laws and/or regulations within the scope of the letter.

While the Bureau appreciates the desire for liability protection greater than that provided by No-Action Letters, it believes that the better means to this end is making available forms of compliance assistance that provide a high-degree of such protection. This is one reason why the Bureau proposed the Product Sandbox Policy and is finalizing certain aspects of it, as the Compliance Assistance Sandbox Policy (CASP), contemporaneously with the finalization of the Policy. The Bureau also appreciates the need and desire for the type of compliance assistance provided by interpretations. Accordingly, the Bureau intends to separately propose an interpretive letter program as soon as practicable.

3. Limitation to the Application Information

Section D.3 of the 2016 Policy provided that the expected contents of a No-Action Letter include a statement that the letter is based on the facts stated and factual representations made in the request, and is contingent on the correctness of such facts and factual representations. As part of its general effort to streamline the Policy, the Bureau did not include this statement in the proposed Policy. However, section I.A of the proposed Policy, which provided a general description of No-Action Letters, stated that such letters are based on particular facts and circumstances. To clarify this point, section C.3(c) of the final Policy provides that a No-Action Letter is expected to include a statement that the No-Action Letter is based on the factual representations made in the application, which may be incorporated by reference.

F. Alternative Procedures

The proposed Policy would have permitted No-Action Letter applications from trade associations, service providers, and other third parties. The proposal recognized that third parties, which generally do not themselves provide consumer financial products or services, may face challenges when attempting to submit an application pursuant to the standard process contemplated in the proposal. Accordingly, the Bureau proposed an alternative process for third parties: The Bureau would issue a provisional No-Action Letter based on the information available to the third party at the time of application and then issue a non-provisional letter once necessary information became available about the entities intending to use the product or service in question and how they intended to offer or provide it.

Comments from trade associations were generally supportive of the proposed third-party application procedures. Some of these comments noted that group applications by trade associations would equalize access to No-Action Letters and allow smaller financial institutions to participate in the program. Other trade association commenters explained that third-party applications would increase use of the Policy and thereby provide the Bureau with greater evidence of unnecessary regulatory barriers and potential methods to address those barriers. Another trade association stated that third-party applications would correctly focus on the product or service at issue rather than the entity or entities involved in the provision of the product or service. While supportive of the overall process, some trade associations sought greater clarity regarding the specific steps of the application and issuance process, including those related to provisional No-Action Letters.

Comments from consumer groups and a law firm expressed significant concerns about allowing trade associations and service providers to apply for No-Action Letters. These commenters stated that permitting such applications would mean that a No-Action Letter could cover entire markets or thousands of clients and potentially affect millions of consumers. These types of applications would also,

according to the same commenters, afford the Bureau no ability to evaluate the practices of the company that provides the product or service in question. These commenters further asserted that allowing parties other than the applicant to come forward later and automatically join a No-Action Letter, without additional review or approval by the Bureau, would shirk the Bureau's duty to protect consumers.[27]

A comment from a group of State Attorneys General likewise raised the possibility that third-party applications could lead to blanket coverage of entire industries while making it difficult for the Bureau to enforce No-Action Letter conditions. The comment also questioned how the Bureau could ensure the veracity and accuracy of an application submitted by a party other than the party that would ultimately be the recipient of a No-Action Letter.

Finally, an academic commenter noted that, while No-Action Letter applications should not be granted without particularized analysis, trade association applications could help ensure that similarly situated competitors receive consistent treatment and that no single No-Action Letter recipient receives an undue competitive advantage. Comments by some trade associations also encouraged the Bureau to implement application processes that would help ensure consistent treatment of competitors providing a product or service similar to one that is already the subject of a No-Action Letter.

As regards the proposed procedures for third-party applications, the Bureau was not proposing to issue a No-Action Letter to a company without knowing *who* is requesting it and without conducting a particularized analysis of *how* the company intends to offer or provide the product or service. This is the reason why the proposed Policy limited third-party applicants to *provisional* No-Action Letters until information necessary for a complete application is submitted. Nor would there be an ''automatic'' process under the proposed Policy that would allow a non-applicant to subsequently join a No-Action Letter without additional individualized assessment by the Bureau.

The final Policy seeks to clarify the alternative application process that service providers, trade associations, consumer groups, and other third parties may use. This clarification includes adding a separate section to the Policy on this topic and providing greater detail and specificity regarding the various steps of the process. In particular, under new section E.1 of the final Policy, a service provider or facilitator (*e.g.,* a trade association, consumer group, or other third party) could provide the application information specified in section A with appropriate adjustments given that the applicant itself will not be offering or providing the consumer financial product or service in question. The section also describes the manner in which the Bureau intends to assess the application information provided and the type of document successful applicants should expect to receive from the Bureau. The final Policy refers to this type of document as a ''No-Action Letter Template'' instead of a ''provisional'' No-Action Letter in order to more accurately describe the intended purpose of this document and clarify that it would be non-operative and non-binding on the Bureau. New section E.1 also describes the Bureau's anticipated application, assessment, and issuance procedures for applications for a standard No-Action Letter based on a No-Action Template.

New section E.2 addresses comments regarding applications involving products or services that are substantially similar to those that are the subject of an existing No-Action Letter. The Bureau believes applications involving a product or service that is substantially similar to the product or service that is the subject of an existing No-Action Letter warrant an alternative application procedure that focuses on similarities in the product or service itself and the manner in which it is offered or provided. While the Bureau intends to assess this applicant-specific information in a particularized manner, it anticipates being able to process such applications in a timeframe shorter than that specified in section B given that the underlying No-Action Letter has already been granted.

Finally, consistent with the fact that the Policy is a general statement of policy under the APA, new section E includes a final footnote explaining that, in circumstances where neither the Standard Process nor the alternative procedures described in section E (Alternative Process) are appropriate, the Bureau may utilize other procedures that diverge in one or more respects from the Standard Process or the Alternative Process, consistent with the purposes of the Policy.

G. Compliance With No-Action Letter Terms and Conditions

Section D.1 of the 2016 Policy provided that the no-action statement included in a No-Action Letter does not mean that the Bureau will not conduct supervisory activities or engage in enforcement investigation to evaluate the requester's compliance with the terms of the No-Action Letter or to evaluate other matters. Consumer groups opposed this change, arguing that the Policy should include, at the very least, a statement that the Bureau retains this investigation and supervision authority. It appears that these commenters did not notice that the proposed Policy included a proviso that the Bureau maintains the right to obtain information relating to the consumer financial product or service subject to a No-Action Letter under its applicable supervision and enforcement authorities. The final Policy modifies this proviso somewhat, as explained below.

Several industry commenters expressed concern that the Bureau's reliance on its supervisory authority to evaluate compliance with a No-Action Letter would create an unlevel playing field between recipients that are supervised by the Bureau and recipients that are not. To address this circumstance, an industry policy organization suggested that No-Action Letters issued to firms not subject to the Bureau's supervisory authority include a term requiring affirmative consent to the submission of data to and review by the Bureau with respect to compliance with the other terms and conditions of the letter.

The Bureau declines to make the recommended change to the Policy. Although the Bureau maintains the right to obtain information about the product or service subject to a No-Action Letter using its supervisory authority, it does not follow that the Bureau intends to routinely do so. Moreover, the Bureau has authorities other than supervisory authority that can be used for this purpose. To clarify this issue, the Bureau is amending the proviso that was included in the proposal to state that the Bureau maintains the authority to obtain information relating to the consumer financial product or service subject to a No-Action Letter under its applicable supervision, enforcement, and other authorities in the same manner and frequency that it obtains information relating to consumer financial products or services not subject to a No-Action Letter.

Furthermore, under section C.4 of the final Policy, all recipients of a No-

[27] Some of the same commenters contended that such broad No-Action Letters would be legislative rules. These comments are addressed in section III.A.2, *supra.*

Action Letter—regardless of their supervisory status—are required to apprise the Bureau of (a) material changes to information included in the application and (b) material information indicating that the described aspects of the product or service are not performing as anticipated in the application.

H. Modification and Termination

The 2016 Policy provided that a No-Action Letter would include a statement that the letter is subject to modification or revocation at any time at the discretion of Bureau staff for any reason. The 2016 Policy also stated that a No-Action Letter would include a statement that, to the extent that the facts and representations in the request are materially inaccurate, or the requester fails to satisfy conditions or violates limitations specified in the No-Action Letter, and in other similar circumstances, the No-Action Letter is by its own terms inapplicable (even without modification or revocation); and the staff may recommend initiating a retrospective enforcement or supervisory action if appropriate. The 2016 Policy also anticipated that No-Action Letter recipients would be given the grounds for a potential modification or revocation and an opportunity to respond.

The Bureau proposed revising this aspect of the 2016 Policy in various respects. The proposed Policy stated that the Bureau might revoke a No-Action Letter in whole or in part, in certain circumstances—but that the Bureau expected revocation to be quite rare. The proposal also stated that the Bureau expects a No-Action Letter to specify the grounds for revocation, and that the Bureau anticipates specifying three such grounds. A No-Action Letter under the proposed Policy would also include a statement that, if the letter is revoked for a reason other than the recipient's (or recipients') failure to substantially comply in good faith with the terms and conditions of the letter, the revocation is prospective only; *i.e.,* that the Bureau would not pursue an action to impose retroactive liability in such circumstances. In addition, the proposed Policy described the steps the Bureau intended to take prior to revoking a No-Action Letter. These steps included providing recipients with notice of the ground(s) for revocation, an opportunity to respond (including an opportunity to cure a failure to substantially comply in good-faith with the terms and conditions of the No-Action Letter), and a period for winding down the offering or providing of the product or service in question in most circumstances.

While generally supportive of these proposed changes, trade association commenters and a research/advisory organization requested greater clarity on the anticipated grounds for revocation and certain portions of the proposed revocation procedures. Consumer group commenters urged the Bureau to provide additional grounds for revocation and retroactive liability, and had concerns about certain steps of the proposed revocation procedures.

1. Grounds for Termination and Retroactive Liability

The Bureau received a number of comments regarding the three anticipated grounds for revocation identified in the proposal. The first such ground was failure to substantially comply in good faith with the terms and conditions of the No-Action Letter. A research/advisory organization urged the Bureau to clarify this standard, particularly regarding its application to technical deficiencies, harmless compliance failures, and the like. The same commenter also requested more clarity on the second ground for revocation identified in the proposal: A determination by the Bureau that the recipient's offering or providing the described aspects of the product or service is causing material, tangible, harm to consumers. A group of trade associations asserted that the second ground is undefined and subjective, and expressed concern that revocation based on this ground would constitute a finding of fault against the recipient. These commenters recommended that the second ground be replaced with a determination by the Bureau that the product or service did not perform as intended.

The Bureau also received a comment on the third ground for revocation identified in the proposal: A change in the legal context within which the letter was granted as a result of statutory amendments or Supreme Court opinions. Consumer groups asserted that this ground is too narrow because the Supreme Court weighs in on fewer than 100 cases a year—most of which do not involve consumer financial products or services, and lower courts create binding law that should guide the Bureau's revocation decisions.

More generally, consumer groups found the three anticipated grounds for revocation to be too narrow individually and, taken together, too limiting on the Bureau. These groups contended that the inclusion of these anticipated grounds in the Policy would place a high burden on the Bureau to revoke a No-Action Letter in order to protect consumers.

Finally, comments were submitted on the statement regarding retroactive liability in the proposed Policy. Industry commenters generally supported this statement. Consumer groups urged the Bureau to retain material inaccuracy of facts and representations in an application as an additional ground for retroactive liability. A research/advisory group recommended that the Bureau list consumer harm caused by the product or service in question as an additional basis for retroactive liability.

Based on these comments and other considerations, the Bureau is revising the discussion of revocation in the final Policy in certain respects (and locating these changes in a new section (section D) concerning Modification and Termination). First, in the proposal, the Bureau stated that it expected revocation of a No-Action Letter to be quite rare. To clarify this point, the Bureau is adding an express statement that the Bureau intends that the recipient of a No-Action Letter should be able to reasonably rely on the No-Action Letter, including especially the no-action statement.

Second, the Bureau agrees that the proposed ''material, tangible harm'' ground may not be sufficiently clear and objective and accordingly is replacing it with the ground recommended by commenters: Failure to perform as anticipated in the application. The Bureau is also adding a footnote explaining that this ground includes the materialization of consumer risks identified in the application, or the materialization of other consumer risks not identified in the application.

Third, as noted, the proposed Policy simply identified three anticipated grounds for revocation, but failed to identify a more general standard or principle underlying them. To clarify this point, the final Policy states that a No-Action Letter will include a statement that the Bureau may terminate the letter if it determines that it is necessary or appropriate to do so to advance the primary purposes of the Policy, such as where the recipient fails to substantially comply in good faith with the terms and conditions of the letter; the described aspects of the product or service do not perform as anticipated in the application; or controlling law changes as a result of a statutory change or a Supreme Court decision that clearly permits or clearly prohibits conduct covered by the letter.

Fourth, as recommended by a group of trade associations, the Bureau is replacing the term ''revocation'' with

the term ''termination'' because it is concerned that ''revocation'' misleadingly suggests that any termination would involve a Bureau determination of wrongdoing on the part of the recipient.

Fifth, the Bureau is revising the retroactive liability statement to provide that a failure to substantially comply in good faith with the terms and conditions of the No-Action Letter that causes ''Dodd-Frank Act actionable substantial injury,'' under 12 U.S.C. 5531(c), would provide the basis for termination and an action to impose retroactive liability.[28]

The Bureau declines to adopt the recommendation to identify material inaccuracy of facts and representations in an application as a separate potential basis for a retroactive action because it believes doing so is unnecessary. As noted above, the Bureau expects that a No-Action Letter issued under the final Policy will include a statement that the letter is based on factual representations made in the application. Relatedly, pursuant to section C.4 of the Policy, a No-Action Letter is expected to include a requirement to apprise the Bureau of material (a) changes to information included in the application and (b) information indicating that the described aspects of the product or service are not performing as anticipated in the application. A recipient's failure to substantially comply in good faith with this requirement would provide a necessary condition for retroactive liability under the Policy.

The Bureau also declines to provide additional clarity regarding the ''good-faith substantial compliance'' standard because it believes these terms have a sufficiently established meaning in the law.

2. Termination Procedures

The Bureau received a number of comments about the revocation procedures described in the proposed Policy. Consumer groups raised concerns about the statement that, if the Bureau determines that the recipient failed to substantially comply in good faith with the terms and conditions of the No-Action Letter, it will offer the recipient an opportunity to cure the failure within a reasonable period of time before revoking the No-Action Letter. In their view, companies that act in bad faith or violate the terms of a No-Action Letter should have no second chance at complying with those terms. The Bureau is persuaded by this comment. Although the Bureau anticipates that there will be few, if any, cases in which a recipient fails to comply in good-faith with the terms and conditions of the No-Action Letter, in such cases an opportunity to cure would be inappropriate. However, there may be cases in which an opportunity to cure may be appropriate, such as when the recipient attempts to comply in good faith, but fails to comply with relatively technical terms and conditions. Accordingly, in the final Policy, this statement has been revised to provide that the Bureau intends to offer an opportunity to cure in appropriate circumstances. In addition, the Bureau notes that a request for modification under section D.1 of the final Policy may be more appropriate in some cases than providing an opportunity to cure.

The proposed Policy also stated that, in most cases, the Bureau expects to allow the recipient of a No-Action Letter to wind-down the offering or providing of the described aspects of the product or service during an appropriate period after revocation. Consumer groups contended that the proposed Policy provided the Bureau too little flexibility to revoke a No-Action Letter *without* a wind-down period. The Bureau disagrees. While the Bureau expects a wind-down period to be afforded in the rare instance that a No-Action Letter is terminated, the proposed Policy does not *guarantee* a wind-down period. Thus, in appropriate cases, the Bureau has the flexibility to terminate without providing a wind-down period.

A group of trade associations noted that the proposed Policy's provision regarding a wind-down period, which stated that the wind-down period would be an appropriate period after revocation, differed from the parallel provision in the proposed Product Sandbox Policy, which stated that the wind-down period would be six months. A nonpartisan public policy organization likewise identified this discrepancy. This discrepancy was inadvertent. The Bureau believes that a six-month period is equally appropriate for No-Action Letters and has accordingly specified such a six month period in the final Policy.

A research/advisory group urged the Bureau to provide greater detail and a more formalized process respecting how the Bureau will (i) determine a reasonable time frame for a recipient to cure a failure to comply with the terms of a No-Action Letter, (ii) offer an opportunity to respond to a revocation, as well as the period of time provided for a response, and (iii) issue a revocation and whether such a revocation would be made public. The Bureau generally declines to provide additional detail regarding the termination process for the reasons set forth in section II above. However, the Bureau is including in the final Policy a statement that termination information will be published on the Bureau's website.

3. Modification

As indicated above, the ''any time/any reason'' statement in the 2016 Policy covered modification of a No-Action Letter as well as revocation. The Bureau proposed omitting this statement, and did not propose alternative language concerning modification. Consumer groups noted this silence about modification, and suggested that the final Policy should provide for modification. A trade association suggested that modification procedures should be included in the final Policy because some innovative consumer financial products and services depend on machine learning and artificial intelligence and will therefore evolve through continuous ''learning'' and routine re-evaluation of data and models. The commenter recommended that the Bureau develop a framework that allows for slight and graduated deviations from the product or service described in the application, rather than require the recipient to submit an entirely new application each time there is a change.

The Bureau generally agrees that the Policy should include anticipated procedures for modifying No-Action Letters. Accordingly, the final Policy includes a new section (D.1) that specifies the Bureau's anticipated procedures regarding requests for modification of a No-Action Letter.

I. Coordination With Other Regulators

Section G of the proposed Policy stated that the Bureau is interested in entering into agreements with State authorities that issue similar forms of no-action relief that would provide for an alternative means of receiving a No-Action Letter from the Bureau. Consumer groups read this statement as implying that a company that obtained a no-action letter from a State would ''automatically'' receive one from the Bureau. That is not the Bureau's intent. Rather, the Bureau anticipates that such agreements would include provisions designed to ensure that the Bureau's issuance of a No-Action Letter in such

[28] The Bureau expects that termination on this ground will be especially rare. The Bureau believes that bad actors intent on evading the law, and the terms and conditions of a No-Action Letter, are the least likely type of entity to apply for a letter. To the extent such entities express interest in a No-Action Letter or apply for one, they are likely to be weeded out through the Bureau's anticipated due diligence process and thus not receive a letter in the first place.

circumstances would be consistent with its statutory authority and duties, as well as applicable law more generally. The Bureau has no intention of issuing a No-Action Letter though this type of alternative means if it believes that consumers would be injured.

The proposed Policy also would have permitted applicants to request that the Bureau coordinate with other regulators with respect to the application. A group of trade associations commented that the Bureau should not put the onus on the applicant to identify other governmental authorities with which the Bureau may coordinate. Rather, the Bureau should lead the coordination effort among Federal and State regulators, as it is better positioned to do so than the applicant. More broadly, these commenters urged the Bureau to ensure that other regulators understand the Policy and to request that other regulators defer to the Bureau's No-Action Letters. These comments were seconded by an industry policy organization.

As evidenced by the inclusion in the Policy of a separate section headed Regulatory Coordination, the Bureau very much appreciates the need for coordination with other regulators for purposes of operating the Policy. However, such coordination must be balanced against other considerations. For example, as the Policy notes, if an applicant wishes the Bureau to coordinate with other regulators, the Bureau may need more time to process the application, depending on the degree of coordination requested. Moreover, the degree of coordination needed likely will vary from case to case. The Bureau intends to use its best efforts to find the optimal balance between coordination and other considerations for each No-Action Letter issued under the Policy. For the reasons discussed above, the Bureau is finalizing the section on regulatory coordination largely as proposed.

J. Confidentiality and Disclosure

Section E of the 2016 Policy, headed Bureau Disclosure of Entity Data, was quite brief. The primary statement made was that the Bureau's disclosure of a version or summary of the application and any data received from the applicant in connection with a request for a No-Action Letter is governed by the Bureau's Rule on Disclosure of Records and Information (Disclosure Rule). The Bureau subsequently received requests that the Bureau provide a more detailed explanation of its plans relating to disclosure of information received from applicants for and recipients of No-Action Letters. In response, the Bureau proposed expanding this section to include the Bureau's expectations regarding which types of data and information submitted by applicants and recipients would qualify as business information and confidential supervisory information under the Disclosure Rule.

Industry commenters generally supported the proposed expansion. Consumer groups stated that the revised section is in tension with the requirements of the Freedom of Information Act (FOIA), and questioned how the Bureau can forecast that certain aspects of applications will satisfy applicable FOIA exemption requirements. The Bureau is basing its expectations, in part, on the nature of the information requested from applicants and recipients, and the final Policy notes that information submitted that is not actually responsive to a particular request may not be protected from disclosure.

The Bureau is not finalizing the proposed language regarding confidential supervisory information because it has determined it to be unnecessary. The Bureau believes that potential applicants' main concern is that trade secrets and proprietary business information submitted to the Bureau by applicants and recipients not be publicly disclosed. This concern can be adequately addressed by the statements in section G of the final Policy that the Bureau anticipates that much of this information will qualify as confidential information, and, more specifically, business information exempt from public disclosure.

In addition, in light of a recent Supreme Court opinion concerning FOIA Exemption 4,[29] the Bureau is adding to section G a statement making clear that where information submitted to the Bureau is both customarily and actually treated as private by the submitter, the Bureau intends to treat it as confidential in accordance with the Disclosure Rule.

The proposed Policy stated that the Bureau may publish denials of applications for a No-Action Letter on its website, including an explanation of why the application was denied, particularly if it determined that doing so would be in the public interest. The Bureau received divergent comments on this aspect of the proposal. A group of trade associations supported the publication of denials on the ground that such transparency will inform market participants about the types of proposals that are more or less likely to receive approval, and the accompanying reasons for approval or denial will promote agency accountability for the No-Action Letter Policy. In contrast, a trade association stated that it sees no utility in publishing denials. The Bureau is finalizing the statement about denials as proposed. The Bureau notes that the final Policy, as did the proposal, includes two related statements about denials: (1) The Bureau intends to publish denials only after the applicant is given an opportunity to request reconsideration of the denial, and (2) upon request, and if disclosure is not required by 5 U.S.C. 552(a)(2) or other applicable law, the Bureau does not intend to release identifying information from published denials, and intends to redact such information from the denials published on its website.

More generally, the Bureau expects denials to be quite rare, for at least two reasons. First, the Policy strongly encourages potential applicants to contact the Office of Innovation for informal, preliminary discussion of a contemplated proposal prior to submitting a formal application. If it appears during such discussions that an application is not likely to be granted, the potential applicant may choose not to submit an application in the first place. Second, the Policy provides that an application may be withdrawn at any time. If the applicant has reason to believe its application may not be granted, it can withdraw the application prior to a denial.

K. Relation to Other Bureau Innovation Policies

A group of trade associations requested clarity on which of the Bureau's three proposed innovation policies to apply under in a given case. The same commenter requested that, during the preliminary, informal discussions, which the proposed Policy would have encouraged potential applicants to have with the Bureau, the Bureau discuss with the potential applicant which process will be best suited for the product or service in question. Given the necessarily general nature of the three policies and the necessarily particular nature of a given proposal, the answer to the first request is provided by a positive answer to the second request. That is, the Bureau does intend to discuss with potential applicants during the preliminary, informal discussion phase which of the policies is best suited for the product or service in question.

L. Public Input

In comments on the proposed 2016 Policy, certain consumer group

[29] *See Food Mktg. Inst.* v. *Argus Leader Media,* 139 S.Ct. 2356 (June 24, 2019).

commenters requested that the Bureau modify the proposed 2016 Policy to provide that any No-Action Letter would be subject to a 30-day notice-and-comment period, preferably in advance of No-Action Letter issuance. These commenters asserted that such a process is advisable to balance an applicant's self-interested submissions by bringing to bear other viewpoints through a public process. The Bureau declined to adopt the comment period suggestion because (i) comment periods are not typical of other agencies' no-action letter programs; and (ii) the Bureau believed that imposing such a comment period requirement in advance of issuance would unnecessarily discourage No-Action Letter applications, delay the process of granting or denying applications, and thus inhibit the intended benefits of the proposed 2016 Policy.

The comments on the proposed Policy did not include such an express comment for a notice-and-comment process for No-Action Letters issued under the proposed Policy. Rather, consumer groups noted the lack of public input on particular No-Action Letters in the course of expressing other concerns about the proposed Policy. In response to this implied request for public input, the Bureau reiterates the points it made in its response to the express request for public input in the comments on the proposed 2016 Policy.

IV. Regulatory Requirements

The Bureau has concluded that this Policy Guidance constitutes an agency general statement of policy exempt from the notice and comment rulemaking requirements under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(b). The Policy is intended to provide information regarding the Bureau's plans to exercise its enforcement and supervisory discretion to provide No-Action Letters. The Policy does not impose any legal requirements on external parties, nor does it create or confer any substantive rights on external parties that could be enforceable in any administrative or civil proceeding. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[30]

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau plans to submit a report containing this Policy and other required information to each House of Congress and the Comptroller General prior to the Policy's applicability date. The Office of Information and Regulatory Affairs has designated this Policy as not a ''major rule'' as defined by 5 U.S.C. 804(2).

VI. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C 3501 *et seq.*) requires that federal agencies may not conduct or sponsor, and notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The information collection requirements as contained in this final Policy and identified below have been approved by OMB and assigned the OMB control number 3170–0059 OMB's approval will expire on September 30, 2022.

The information collections contained in this Policy include Application for a No Action Letter.

The Bureau's proposed Policy, published December 13, 2018, 83 FR 64036, sought comment on these information collection requirements. While the Bureau received numerous comments on the Proposed Policy, which are addressed above, the Bureau received no comments specifically regarding the burden estimates for these information collections, utility or appropriateness. Additional details on comments received can be found in the Supporting Statement for the related 30-day notice published as required under the PRA.[31]

A complete description of the information collection requirements, including the burden estimate methods, is provided in the information collection request (ICR) that the Bureau submitted to OMB under the requirements of the PRA. The ICR submitted to OMB requesting approval under the PRA for the information collection requirements contained herein is available at OMB's public-facing docket at *www.reginfo.gov*.

VII. Final Policy

The text of the final Policy is as follows:

Policy on No-Action Letters

In section 1021(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Congress established the Bureau of Consumer Financial Protection's (Bureau's) statutory purpose as ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.[32] Relatedly, the Bureau's objectives include exercising its authorities under Federal consumer financial law for the purposes of ensuring that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation, and that outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens.[33]

Congress has given the Bureau a variety of authorities under title X of the Dodd-Frank Act and the enumerated consumer laws [34] that it can exercise to promote this purpose and these objectives. These authorities include supervision and enforcement authority, and the authority to issue orders and guidance.[35] These authorities provide the basis for the Policy on No-Action Letters (Policy) and the No-Action Letters issued pursuant to the Policy.

The primary purposes of the Policy are to provide a mechanism through which the Bureau may more effectively carry out its statutory purpose and objectives and to facilitate compliance with applicable Federal consumer financial laws. The Bureau believes that the No-Action Letters issued pursuant to the Policy will benefit consumers, entities that offer or provide consumer financial products and services, and the public interest more generally. The Bureau expects that implementation of the Policy will also inform the exercise of its other authorities, including rulemaking.[36]

The Policy consists of seven sections:

[30] 5 U.S.C. 603(a), 604(a).

[31] *See https://www.regulations.gov/docket?D=CFPB-2019-0043.*

[32] 12 U.S.C. 5511(a).

[33] 12 U.S.C. 5511(b)(3), (5).

[34] 12 U.S.C. 5481(12).

[35] *See* 12 U.S.C. 5561 *et seq.* (enforcement authority); 12 U.S.C. 5531(a) (Unfair, Deceptive, or Abusive Acts or Practices (UDAAP) enforcement authority); 12 U.S.C. 5514, 5515 (supervision authority); 12 U.S.C. 5511(a) (''The Bureau shall seek to implement and, *where applicable,* enforce Federal consumer financial law . . .'') (emphasis added); 12 U.S.C. 5512(b)(1). *See also Heckler* v. *Chaney,* 470 U.S. 821, 832 (1985); *Board of Trade* v. *SEC,* 883 F.2d 525, 530–31 (7th Cir. 1989) (SEC no-action letter).

[36] The Policy is not intended to, nor should it be construed to: (1) Restrict or limit in any way the Bureau's discretion in exercising its authorities, including the provision of no-action or similar compliance assistance other than pursuant to the Policy; (2) constitute an interpretation of law; or (3) create or confer upon any covered person, consumer, or other external party any substantive or procedural rights, obligations, or defenses that are enforceable in any manner. In contrast, a particular No-Action Letter involves the Bureau's exercise of its supervision and enforcement discretion in a particular manner.

• Section A describes information to be included in an application for a No-Action Letter.
• Section B describes the factors the Bureau intends to consider in assessing applications for a No-Action Letter.
• Section C describes the standard procedures the Bureau intends to use in issuing No-Action Letters.
• Section D describes the procedures the Bureau intends to use for modification and termination of No-Action Letters.
• Section E describes alternative application, assessment, and issuing procedures that the Bureau may use for certain circumstances.
• Section F describes how the Bureau intends to coordinate with other regulators with respect to No-Action Letters.
• Section G describes the Bureau's intentions relating to disclosure of information relating to No-Action Letters.

A. Submitting Applications for No-Action Letters

Potential applicants are strongly encouraged to contact the Office of Innovation at *officeofinnovation@cfpb.gov* for informal, preliminary discussion of a contemplated proposal prior to submitting a formal application.[37]

Applications for a No-Action Letter should include the following:

1. The identity of the applicant;[38]
2. A description of the consumer financial product or service in question, including (a) how the product or service functions; (b) the terms on which it will be offered; and (c) the manner in which it is offered or provided, including any consumer disclosures;
3. An explanation of the potential consumer benefits associated with the product or service;
4. An explanation of the potential consumer risks associated with the product or service, and how the applicant intends to mitigate such risks;
5. An identification of the statutory and/or regulatory provisions as to which the applicant seeks a No-Action Letter and an explanation of why a No-Action Letter is needed, such as uncertainty or ambiguity regarding the application of the identified statutory and/or regulatory provisions to the product or service in question;[39]
6. If the applicant wishes to request confidential treatment under the Freedom of Information Act (FOIA),[40] the Bureau's rule on Disclosure of Records and Information (Disclosure Rule),[41] or other applicable law, this request and the basis therefor should be included in a separate letter and submitted with the application.[42] The applicant should specifically identify the information for which confidential treatment is requested, and may reference the Bureau's intentions regarding confidentiality under section G of the Policy; and
7. If the applicant wishes the Bureau to coordinate with other regulators, the applicant should identify those regulators, including but not limited to those the applicant has contacted about offering or providing the product or service in question.[43]

Applications may be submitted via email to: *officeofinnovation@cfpb.gov* or through other means designated by the Office of Innovation.[44] Submitted applications may be withdrawn at any time.

B. Bureau Assessment of Applications for No-Action Letters

In deciding whether to grant an application for a No-Action Letter, the Bureau intends to balance a variety of factors, including an assessment of the quality and persuasiveness of the application, with particular emphasis on the information specified in sections A.3, A.4, and A.5; information about the applicant and the product or service in question derived through Bureau due diligence processes; the extent to which granting the application would be consistent with Bureau enforcement and supervision priorities; an assessment of litigation risk; and available Bureau resources.[45]

The Bureau intends to grant or deny an application within 60 days of notifying the applicant that the Bureau deems the application to be complete.

C. Bureau Procedures for Issuing No-Action Letters

When the Bureau decides to grant an application for a No-Action Letter, it intends to provide the recipient(s) with a No-Action Letter signed by the Assistant Director of the Office of Innovation (pursuant to authority delegated by the Director of the Bureau) that sets forth the specific terms and conditions of the No-Action Letter provided.[46] The Bureau expects a No-Action Letter will:

1. Identify the recipient;[47]
2. Specify the subject matter scope of the letter, *i.e.,* the described aspects of the product or service;[48]
3. State that the letter:

(a) Is limited to the recipient, and does not apply to any other persons or entities;

(b) is limited to the recipient's offering or providing the described aspects of the product or service, and does not apply to the recipient's offering or providing different aspects of the product or service;

(c) is based on the factual representations made in the application, which may be incorporated by reference;

(d) does not purport to express any legal conclusions regarding the meaning or application of the laws and/or regulations within the scope of the letter; and

(e) does not constitute the Bureau's endorsement of the product or service that is the subject of the letter, or any other product or service offered or provided by the recipient;

4. Require the recipient to apprise the Bureau of (a) material changes to

[37] The email subject line should include: ''No-Action Letter.''

[38] For convenience, the term ''applicant'' is used in the Policy to refer both to single applicants and joint applicants.

[39] Applicants should describe the relevant provisions with as much specificity as practicable, in part to enable the Bureau to respond expeditiously to the application. The Bureau recognizes that in some cases it may be difficult to determine precisely which provisions would apply, in the normal course, to the product or service in question. In other cases, the applicant may lack the legal resources to make a fully precise determination. In such circumstances, the applicant should provide the maximum specification practicable under the circumstances and explain the limits on further specification.

[40] 5 U.S.C. 552.

[41] 12 CFR part 1070.

[42] Applicants should describe the relevant legal bases for confidentiality with as much specificity as practicable. The Bureau recognizes that some applicants may lack the legal resources to provide a detailed and complete showing. In such circumstances, the applicant should provide the maximum specification practicable under the circumstances and explain the limits on further specification.

[43] When requested by an applicant, the Bureau intends to coordinate with other Federal and State regulators identified by the applicant, as appropriate. However, depending on the extent of coordination requested, the Bureau may not be able to respond to the application within the time frame specified in section B.

[44] Except as provided in section A.1 and A.7, applications should not include any personally identifiable information (PII).

[45] The decision whether to grant an application for a No-Action Letter will be within the Bureau's sole discretion.

[46] If the Bureau decides to deny an application, it intends to inform the applicant of its decision. The Bureau intends to respond to reasonable requests to reconsider its denial of an application within 30 days of such requests. Applicants may also withdraw, modify, and/or re-submit applications at any time.

[47] For convenience, the term ''recipient'' is used in the Policy to refer both to an individual recipient and joint recipients.

[48] For convenience, ''described aspects of the product or service'' is used in the Policy to capture the subject matter scope of a No-Action Letter, including both the particular aspects of the product or service in question, and the particular manner in which it is offered or provided.

information included in the application and (b) material information indicating that the described aspects of the product or service are not performing as anticipated in the application;[49]

5. Specify any other limitations or conditions, and the extent to which the Bureau intends to publicly disclose information about the No-Action Letter;[50]

6. State that, unless or until terminated by the Bureau as described in section C.7, the Bureau will not make supervisory findings or bring a supervisory or enforcement action against the recipient predicated on the recipient's offering or providing the described aspects of the product or service under (a) its authority to prevent unfair, deceptive, or abusive acts or practices;[51] or (b) any other described statutory or regulatory authority within the Bureau's jurisdiction.[52]

7. State that, (i) the recipient may reasonably rely on any Bureau commitments made in the letter; (ii) the Bureau may terminate the letter if it determines that it is necessary or appropriate to do so to advance the primary purposes of the Policy, such as where the recipient fails to substantially comply in good faith with the terms and conditions of the letter; the described aspects of the product or service do not perform as anticipated in the application;[53] or controlling law changes as a result of a statutory change or a Supreme Court decision that clearly permits or clearly prohibits conduct covered by the letter;[54] and (iii) upon termination, the Bureau will not bring an action to impose retroactive liability with respect to conduct covered by the letter, except where a failure to substantially comply in good faith with the terms and conditions of the letter caused Dodd-Frank Act actionable substantial injury.[55]

D. Procedures for Modification and Termination of No-Action Letters

1. Modification Procedures

A recipient of a No-Action Letter may apply for a modification of the letter. The recipient may seek modification to address an anticipated or unanticipated change in circumstances, such as iterations of the underlying product or service or changes to the information included in the No-Action Letter application. Applications for a modification should include the following:

a. Any material changes to the information included in the original application;

b. The specific requested modification(s) to the No-Action Letter;

c. The ground(s) for modifying the No-Action Letter; and

d. Any other information the recipient wishes to provide in support of the modification application.

In deciding whether to grant an application for modification of a No-Action Letter, the Bureau intends to balance a variety of factors, including the quality and persuasiveness of the application. The Bureau expects to grant or deny such applications within 30 days of notifying the applicant that the Bureau has deemed the application to be complete. When the Bureau grants an application for modification, it intends to provide the recipient with a modified No-Action Letter in accordance with the procedures specified in section C.

2. Termination Procedures

The Bureau intends that the recipient of a No-Action Letter should be able to reasonably rely on any Bureau commitments made in the letter. The Bureau expects termination of a No-Action Letter to be quite rare based, in part, on its knowledge of no-action letter programs operated by other Federal agencies. Such agencies appear to terminate no-action letters very infrequently.[56] The Bureau expects that its practice with respect to termination will be in line with the practices of these agencies.

The Bureau expects a No-Action Letter will state that, (i) the recipient may reasonably rely on any Bureau commitments made in the letter; (ii) the Bureau may terminate the letter if it determines that it is necessary or appropriate to do so to advance the primary purposes of the Policy, such as where the recipient fails to substantially comply in good faith with the terms and conditions of the letter; the described aspects of the product or service do not perform as anticipated in the application;[57] or controlling law changes as a result of a statutory change or a Supreme Court decision that clearly permits or clearly prohibits conduct covered by the letter;[58] and (iii) upon termination, the Bureau will not bring an action to impose retroactive liability with respect to conduct covered by the letter, except where a failure to substantially comply in good faith with the terms and conditions of the letter caused Dodd-Frank Act actionable substantial injury.[59]

The Bureau anticipates that such retroactive actions will be exceedingly

[49] ''Not performing as anticipated'' includes the materialization of consumer risks identified in the application, and the materialization of other consumer risks not identified in the application.

[50] If an applicant objects to the disclosure of certain information and the Bureau insists that the information must be publicly disclosed if a No-Action Letter is issued, the applicant may withdraw the application and the Bureau intends to treat all information related to the application as confidential to the full extent permitted by law.

[51] Implicit in the statement under clause (a) is that the Bureau has not determined that the acts or practices in question are unfair, deceptive, or abusive.

[52] The Bureau maintains the authority to obtain information relating to the consumer financial product or service subject to a No-Action Letter under its applicable supervision, enforcement, and other authorities in the same manner and frequency that it obtains information relating to consumer financial products or services not subject to a No-Action Letter.

[53] Such ground includes the materialization of consumer risks identified in the application, and the materialization of other consumer risks not identified in the application.

[54] If a Circuit Court of Appeals decision clearly prohibits conduct covered by the letter, the Bureau may consider modifying the letter so that it is inoperative within that Circuit.

[55] ''Dodd-Frank Act actionable substantial injury'' means substantial injury that is not reasonably avoidable by the consumer, where such substantial injury is not outweighed by countervailing benefits to consumers or to competition. *See* 12 U.S.C. 5531(c); *see also* 12 U.S.C. 5536(a)(1)(B). Such a retroactive action would be particularly likely where conduct covered by the letter caused Dodd-Frank Act actionable substantial injury without the Bureau's knowledge due to the recipient's failure to substantially comply in good faith with the requirement under section C.4 to apprise the Bureau of (a) material changes to information included in the application and (b) material information indicating that the described aspects of the product or service are not performing as anticipated in the application.

[56] The SEC's website indicates that SEC staff has issued over 2,500 no-action letters since 1971. *See https://www.sec.gov/corpfin/corpfin-no-action-letters#chron; https://www.sec.gov/divisions/investment/im-noaction.shtml; https://www.sec.gov/divisions/marketreg/mr-noaction.shtml.* It appears that less than 1% of these letters have been terminated, withdrawn, or revoked. The CFTC's website indicates that CFTC staff has issued over 1,500 no-action letters since 1975. *See https://www.cftc.gov/LawRegulation/CFTCStaffLetters/letters.htm; https://www.cftc.gov/LawRegulation/CFTCStaffLetters/archive.htm.* It appears that less than 1% of these letters have been terminated, withdrawn, or revoked.

[57] Such ground includes the materialization of consumer risks identified in the application, or the materialization of other consumer risks not identified in the application.

[58] If a Circuit Court of Appeals decision clearly prohibits conduct covered by the letter, the Bureau may consider modifying the letter so that it is inoperative within that Circuit.

[59] ''Dodd-Frank Act actionable substantial injury'' means substantial injury that is not reasonably avoidable by the consumer, where such substantial injury is not outweighed by countervailing benefits to consumers or to competition. *See* 12 U.S.C. 5531(c); *see also* 12 U.S.C. 5536(a)(1)(B). Such a retroactive action would be particularly likely where conduct covered by the letter caused Dodd-Frank Act actionable substantial injury without the Bureau's knowledge due to the recipient's failure to substantially comply in good faith with the requirement under section C.4 to apprise the Bureau of (a) material changes to information included in the application and (b) material information indicating that the described aspects of the product or service are not performing as anticipated in the application.

rare based, in part, on its knowledge of the practices of other Federal agencies that operate no-action letters programs. It appears that, in the very small percentage of cases in which such agencies have terminated no-action letters, they have not initiated actions to impose retroactive liability.[60] The Bureau expects its practice regarding such retroactive actions to be in line with the practices of these agencies.

In accordance with principles of fair notice, before terminating a No-Action Letter, the Bureau intends to notify the recipient of the possible grounds for termination, and permit an opportunity to respond within a reasonable period of time. In appropriate cases, the Bureau intends to offer the recipient an opportunity to modify its conduct to avoid termination. The Bureau intends to allow the recipient to wind-down the offering or providing of the described aspects of the product or service during a period of six months before termination, unless the described aspects of the product or service are causing Dodd-Frank Act actionable substantial injury to consumers, and a wind-down period would permit such injury to continue. If the Bureau terminates a No-Action Letter, it intends to do so in writing and specify the reasons for its decision. The Bureau intends to publish termination decisions on its website.

E. Alternative Application, Assessment, and Issuing Procedures

The Bureau recognizes that the process described in sections A, B, and C (Standard Process) may not be appropriate in certain circumstances. These include applications by service providers that develop products or services for use by covered persons that offer or provide consumer financial products or services; applications facilitated by trade associations, consumer groups, or other third parties that are not themselves covered persons that offer or provide consumer financial products or services; and applications involving a consumer financial product or service that is substantially similar to one that is the subject of an existing No-Action Letter.

1. Service Provider and Facilitator Applications

Service providers that develop products or services for use by covered persons that offer or provide consumer financial products or services may use the Standard Process if they have secured an applicant that intends to use the service provider's product or service in connection with offering or providing a consumer financial product or service. Similarly, No-Action Letter applications facilitated by trade associations, consumer groups, or other third parties that are not covered persons that offer or provide consumer financial products or services may use the Standard Process if the third party has secured an applicant that intends to offer or provide the consumer financial product or service in question.

a. *No-Action Letter Template.* As an alternative to using the Standard Process, a service provider or facilitator may apply for a No-Action Letter Template. A No-Action Letter Template is (i) non-operative, *i.e.,* it itself is not a No-Action Letter, and (ii) non-binding on the Bureau.[61]

i. Application Information. Such applications should include the information specified in section A, as applicable and with appropriate adjustments given that the applicant itself will not be offering or providing the consumer financial product or service in question. In particular, a service provider applicant should describe how it anticipates its product or service will be used by a provider of consumer financial products or services.

ii. Assessment. In deciding whether to grant an application for a No-Action Letter Template, the Bureau intends to balance a variety of factors, as described in section B, with appropriate adjustments given the alternative nature of the application. The Bureau intends to grant or deny an application within 60 days of notifying the applicant that the Bureau has deemed the application to be complete.

iii. Issuance. The Bureau expects that a No-Action Letter Template will include many of the elements specified in section C, with appropriate adjustments based, in part, on the non-operative, non-binding nature of a No-Action Letter Template. In addition, a No-Action Letter Template will include a statement that the Bureau intends to grant applications for a No-Action Letter based on the No-Action Letter Template, under section E.1.b, in appropriate cases.

b. *No-Action Letter Based on a No-Action Letter Template.* A covered person that intends to offer or provide a consumer financial product or service covered by a No-Action Letter Template (whether using a service provider product or service, or otherwise) may apply for a No-Action Letter based on the No-Action Letter Template.

i. Application Information. Such applications should include the information specified in section A, with appropriate adjustments. In particular, the applicant should include (i) a statement that the application is based on a No-Action Letter Template and an identification of the No-Action Letter Template on which it is based; and (ii) a statement describing how the applicant's offering or providing its product or service is consistent with the framework described in the No-Action Letter Template. The application may cross reference any relevant information contained in the application for the No-Action Letter Template or the No-Action Letter Template itself.

ii. Assessment. In deciding whether to grant an application for a No-Action Letter under section E.1.b, the Bureau intends to balance a variety of factors, as described in section B, with appropriate adjustments. In particular, the Bureau intends to include in its assessment the additional factor of the degree to which the applicant's offering or providing its product or service is consistent with the framework described in the No-Action Letter Template. The Bureau anticipates being able to process such applications in a timeframe shorter than that specified in section B given that the underlying No-Action Letter Template has already been granted.

iii. Issuance. When the Bureau grants an application for a No-Action Letter under section E.1.b, it intends to provide the recipient with a No-Action Letter in accordance with the procedures specified in section C.

2. Applications for Substantially Similar Products or Services

If an applicant offers or provides a consumer financial product or service that it believes is substantially similar to the consumer financial product or service that is the subject of an existing No-Action Letter, it may apply for a No-Action Letter based on the existing No-Action Letter.

a. Application Information. Such applications should include the information specified in section A, with appropriate adjustments. In particular, the applicant should include (i) a

[60] *See* n.56, *supra;* Nicholas R. Parillo, Admin. Conf. of the U.S., *Federal Agency Guidance: An Institutional Perspective* 134 (2017), *available at https://www.acus.gov/report/agency-guidance-final-report* (''regulated parties highly value [SEC] no-action letters, undoubtedly because the Commission appears to have *never* proceeded against the recipient of a no-action letter who acted in good faith on the letter's advice'') (citations omitted) (emphasis in the original).

[61] In particular, the Bureau may modify a No-Action Letter Template in light of the additional information provided in an application for a No-Action Letter under section E.1.b of the final Policy based on a No-Action Letter Template.

statement that the application is based on an existing No-Action Letter and an identification of the No-Action Letter on which it is based; and (ii) a statement describing how the consumer financial product or service in question and the manner in which it is offered or provided is substantially similar to the consumer financial product or service that is the subject of the existing No-Action Letter and the manner in which it is offered or provided. The application may cross reference any relevant information contained in the application for the existing No-Action Letter or the existing No-Action Letter itself.

b. Assessment. In deciding whether to grant an application for such a No-Action Letter, the Bureau intends to balance a variety of factors, as described in section B, with appropriate adjustments. In particular, the Bureau intends to include in its assessment the additional factor of the degree to which the consumer financial product or service in question, and the manner in which it is offered or provided, is substantially similar to these aspects of the existing No-Action Letter. The Bureau anticipates being able to process such applications in a timeframe shorter than that specified in section B given that the underlying No-Action Letter has already been granted.

c. Issuance. When the Bureau grants an application for such a No-Action Letter, it intends to provide the recipient with a No-Action Letter in accordance with the procedures specified in section C.[62]

F. Regulatory Coordination

Section 1015 of the Dodd-Frank Act instructs the Bureau to coordinate with Federal agencies and State regulators, as appropriate, to promote consistent regulatory treatment of consumer financial and investment products and services.[63] Similarly, section 1042(c) of the Dodd-Frank Act instructs the Bureau to provide guidance in order to further coordinate actions with the State attorneys general and other regulators.[64] Such coordination includes coordinating in circumstances where other regulators have chosen to limit their enforcement or other regulatory authority. The Bureau is interested in entering into agreements with State authorities that issue similar forms of no-action compliance assistance that would provide for an alternative means of receiving a No-Action Letter from the Bureau, *i.e.,* alternative to the process described in sections A through D.

Furthermore, the Bureau is interested in coordinating with other regulators more generally. To this end, the Bureau intends to enter into agreements whenever practicable to coordinate No-Action Letters issued under the Policy with similar forms of compliance assistance offered by State, Federal, or international regulators.

G. Bureau Disclosure of Information Regarding No-Action Letters

Public disclosure of information regarding No-Action Letters is governed by applicable law, including the Dodd-Frank Act,[65] the FOIA, and the Disclosure Rule. The Disclosure Rule generally prohibits the Bureau from disclosing confidential information,[66] and defines confidential information to include information that may be exempt from disclosure under the FOIA[67]—including FOIA Exemption 4 regarding trade secrets and confidential commercial or financial information that is privileged or confidential.[68] Relatedly, the Disclosure Rule defines business information as commercial or financial information obtained by the Bureau from a submitter that may be protected from disclosure under FOIA Exemption 4, and generally provides that such business information shall not be disclosed pursuant to a FOIA request except in accordance with section 1070.20 of the rule.[69]

Consistent with applicable law, the Bureau intends to publish No-Action Letters and No-Action Letter Templates on its website, as well as a version or summary of the application. The Bureau also may publish denials of applications on its website, including an explanation of why the application was denied, particularly if it determines that doing so would be in the public interest.[70]

Where information submitted to the Bureau is both customarily and actually treated as private by the submitter, the Bureau intends to treat it as confidential in accordance with the Disclosure Rule.[71] The Bureau anticipates that much of the information submitted by applicants in their applications, and by recipients during the pendency of the No-Action Letter, will qualify as confidential information under the Disclosure Rule.[72] In particular, the Bureau expects that information submitted that is responsive to sections A.2, A.3, A.4, C.4, and parallel information under sections E.1.a and E.2.a, will qualify as business information under the Disclosure Rule.[73] Other information submitted by applicants or recipients may also qualify as confidential information.

Disclosure of information or data provided to the Bureau under the Policy to other Federal and State agencies is governed by applicable law, including the Dodd-Frank Act[74] and the Disclosure Rule.

To the extent the Bureau wishes to publicly disclose non-confidential information regarding a No-Action Letter, the Bureau intends to include the terms of such disclosure in the letter. The Bureau intends to draft the No-Action Letter in a manner such that confidential information is not disclosed. Consistent with applicable law and its own rules, the Bureau does not intend to publicly disclose any information that would conflict with consumers' privacy interests.

Dated: September 6, 2019.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2019–19763 Filed 9–12–19; 8:45 am]

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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

[Docket No. CFPB–2018–0042]

Policy on the Compliance Assistance Sandbox

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Policy guidance and procedural rule.

[62] In circumstances where neither the Standard Process nor the alternative procedures described in section E (Alternative Process) are appropriate, the Bureau may utilize other procedures that diverge in one or more respects from the Standard Process or the Alternative Process, consistent with the purposes of the Policy.

[63] 12 U.S.C. 5495.

[64] 12 U.S.C. 5552(c).

[65] *See, e.g.,* 12 U.S.C. 5512(c)(8).

[66] 12 CFR 1070.41.

[67] 12 CFR 1070.2(f).

[68] 5 U.S.C. 552(b)(4).

[69] 12 CFR 1070.20(a), (b).

[70] The Bureau intends to publish denials only after the applicant is given an opportunity to request reconsideration of the denial. Upon request, and if disclosure is not required by 5 U.S.C. 552(a)(2) or other applicable law, the Bureau does not intend to release identifying information from published denials, and to instead redact such information from denials published on its website.

[71] *See Food Mktg. Inst.* v. *Argus Leader Media,* 139 S.Ct. 2356 (June 24, 2019).

[72] To the extent associated communications include the same information, that information would have the same status. But other information in associated communications may be subject to disclosure.

[73] To the extent an applicant or recipient submits information in connection with any of the identified sections that is not actually responsive to these sections, such information may be subject to disclosure.

[74] *See, e.g.,* 12 U.S.C. 5512(c)(8).

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing its final Policy on the Compliance Assistance Sandbox (Policy), which is intended to carry out certain of the Bureau's authorities under Federal consumer financial law.

DATES: The Policy is applicable on September 10, 2019.

FOR FURTHER INFORMATION CONTACT: For additional information about the Policy, contact Paul Watkins, Assistant Director; Edward Blatnik, Deputy Counsel; Albert Chang, Counsel; Thomas L. Devlin, Senior Counsel; Will Wade-Gery, Senior Advisor; Office of Innovation, at *officeofinnovation@cfpb.gov* or 202–435–7000. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 13, 2018, the Bureau proposed a Policy on No-Action Letters and the BCFP Product Sandbox (Proposed Policy).[1] The Proposed Policy had two parts. The first concerned No-Action Letters exclusively. The resulting No-Action Letter Policy (NAL Policy) has been finalized and published elsewhere in this issue of the **Federal Register**. The second part concerned the Sandbox (Proposed Sandbox Policy). This document finalizes the Proposed Sandbox Policy as the Compliance Assistance Sandbox Policy (CAS Policy or Policy). It reflects adjustments to the Proposed Sandbox Policy that the Bureau is making in response to comments on that proposal. The differences between the Proposed Sandbox Policy and the CAS Policy are discussed in detail in section IV below, which reviews the Bureau's consideration of comments received on the Proposed Sandbox Policy.

In section 1021(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Congress established the Bureau's statutory purpose as ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.[2] Relatedly, the Bureau's objectives include exercising its authorities under Federal consumer financial law for the purposes of ensuring that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation, and that outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens.[3]

Congress has given the Bureau a variety of authorities under title X of the Dodd-Frank Act and the enumerated consumer laws that it can exercise to promote this purpose and these objectives.[4] These authorities include the authority to implement the Federal consumer financial laws through rules, orders, guidance, and interpretations, and to establish general policies with respect to such functions.[5] As discussed in the Proposed Sandbox Policy and explained further below, three of the enumerated consumer laws describe the safe harbor effect of Bureau approvals[6] issued to a particular entity or entities.[7]

II. Summary of the Compliance Assistance Sandbox Policy

The primary purpose of the CAS Policy is to provide a mechanism through which the Bureau may more effectively carry out its statutory purpose and objectives by better enabling compliance in the face of regulatory uncertainty. One of the Bureau's core statutory functions is to issue guidance implementing Federal consumer financial law,[8] and the Director is authorized to issue such guidance as may be necessary or appropriate to carry out that law and to prevent regulated entities from evading it.[9] To that end, Congress has instructed courts to treat Bureau determinations on the meaning and interpretation of such law as those of an agency with exclusive authority to interpret it.[10]

The Bureau uses the Official Interpretations (Commentary) as its primary means of fulfilling its interpretive mission. Like other forms of guidance that the Bureau uses, the CAS Policy is intended to supplement the Commentary. The Policy does this by helping regulated entities better understand, in conditions of regulatory uncertainty, how Federal consumer financial law applies to specific aspects of particular products and services. It is for this reason that the Bureau is finalizing the Policy as the Compliance Assistance Sandbox Policy. The Policy, as finalized, provides for the issuance of approvals. Approvals offer a regulated entity that confronts regulatory uncertainty the binding assurance that specific aspects of a product or service are compliant with specified legal provisions. (Applicants to the Sandbox can also apply for a No-Action Letter under the Bureau's NAL Policy.[11] As discussed in the Bureau's NAL Policy published in this issue of the **Federal Register**, No-Action Letters provide an entity with the Bureau's discretionary determination not to exercise supervisory or enforcement activity against specific aspects of a product or service.)

The Bureau expects that approvals will usually be time limited, typically to two years, but recipients may apply for extensions under specified procedures.[12] A given approval may ultimately be used to help support an amendment to a regulation or Commentary, negating the need for further extensions of one-off assistance.[13] The Policy commits approval recipients to specified forms of data sharing with the Bureau.

Applicants for compliance assistance under the Policy follow a streamlined application and review process.[14] The Bureau expects to grant or deny an application within 60 days of notifying the applicant that its application is deemed complete.[15] The Policy also lays out mechanisms for Bureau coordination with other regulators that maintain similar programs designed to facilitate innovation.[16]

The Bureau plans to propose further forms of assistance that may be of value to innovators. The Proposed Sandbox Policy would have provided for the issuance of exemptions by order from regulatory and certain statutory requirements. As explained further below, the final CAS Policy does not include such exemptions, but the

[1] 83 FR 64036 (Dec. 13, 2018).

[2] *See* 12 U.S.C. 5511(a).

[3] *See* 12 U.S.C. 5511(b)(3), (5). Facilitating innovation has a number of important benefits for consumers, which are described further in the NAL Policy. The NAL Policy also explains why reducing regulatory uncertainty is particularly important to the facilitation of innovation. That analysis is incorporated herein by reference.

[4] The enumerated consumer laws are listed at 12 U.S.C. 5481(12).

[5] *See* 12 U.S.C. 5492(a)(10); *see also* 12 U.S.C. 5512(b)(4)(B).

[6] These are the Truth in Lending Act (TILA), the Electronic Fund Transfer Act (EFTA), and the Equal Credit Opportunity Act (ECOA). *See* 15 U.S.C. 1640(f); 15 U.S.C. 1691e(e); 15 U.S.C. 1693m(d).

[7] In this preamble and the final Policy, the Bureau uses the term ''entity'' to include ''entities,'' as appropriate and unless explicitly noted otherwise.

[8] *See* 12 U.S.C. 5511(c)(5).

[9] *See* 12 U.S.C. 5512(b)(1).

[10] 12 U.S.C. 5512(b)(4)(B).

[11] The Bureau will accept a single application seeking both compliance assistance under the CAS Policy and a No-Action Letter under the No-Action Policy. If an applicant only seeks a No-Action Letter, it should proceed under the No-Action Policy.

[12] See section E.1 of the final Policy.

[13] See section E.1 of the final Policy.

[14] See sections B and C of the final Policy.

[15] Section D of the final Policy describes Bureau procedures for providing compliance assistance in particular cases.

[16] See section G of the final Policy.

Bureau does intend to propose a legislative rule providing for the issuance, by order, of exemptions from regulatory requirements, as well as other categories of exemptions, as an additional form of assistance. The Bureau also intends to issue a proposal regarding the issuance of interpretive letters, and other forms of interpretive guidance. These developments have been informed by comments received in response to the Proposed Sandbox Policy.

III. Overview of Sandbox-Related Comments

The Bureau received 29 unique comments covering the Proposed Sandbox Policy. Industry associations and individual financial services providers together submitted 17 of these. Consumer and civil rights organizations submitted five comments covering the Proposed Sandbox Policy. Government actors submitted three such comments. The remaining Proposed Sandbox Policy comments were provided by law firms (one), research centers (two), and members of the public (one).

Industry commenters uniformly supported the Proposed Sandbox Policy. One of two groups of State Attorneys General also did so. These supporters generally agree that legal and regulatory uncertainties pose a barrier to innovations being developed in the marketplace. In their view, the Proposed Sandbox Policy, along with other Office of Innovation policies and programs, can help lower that barrier. Industry stakeholders made a number of comments intended to improve the functioning of the Proposed Sandbox Policy in that respect.

Some of the most significant such comments, in the Bureau's view, requested that the Bureau add interpretive guidance to the available forms of compliance assistance. For example, one industry think tank called for the Bureau to further compliance by issuing interpretive legal opinions in circumstances warranting further legal clarity on a particular practice or activity. The commenter noted that other regulatory agencies—including the Office of the Comptroller of the Currency, the FTC, the Securities and Exchange Commission, and the Commodity Futures Trading Commission—provide for opinions of this kind. Another group of industry commenters requested that, to bring the proposal closer into line with similar programs offered by other regulators, issuance of compliance assistance under the Policy should represent the Bureau's conclusion that the proposed product or service does not violate applicable Federal consumer financial law.[17] A trade association commenter suggested that the Bureau should use its authority to issue advisory opinions under the Fair Debt Collection Practices Act (FDCPA) to clarify regulatory expectations by providing clear legal interpretations for debt collectors that want to use newer technologies.[18] Another commenter called for the Bureau to clarify the interpretive activity associated with approvals, in part so that third parties would better understand what reliance they could place on Bureau action under the Sandbox. These kinds of comments on the importance of interpretive guidance build on earlier comments submitted in response to the Bureau's 2018 Request for Information on Guidance and Implementation Support (Guidance RFI).[19]

This feedback is informing the Bureau's present consideration of a proposal to implement an interpretive letter program that could benefit innovators and other regulated entities confronting regulatory uncertainty. The Bureau agrees with these commenters that the present lack of an interpretive letter or advisory opinion policy represents a gap in the Bureau's plans for providing compliance assistance to stakeholders under the Federal consumer financial laws. Because the Bureau did not propose an interpretive letter or advisory opinion program in the Proposed Sandbox Policy, and because of the significant public interest in how such a program might be structured, the Bureau believes it would be appropriate to provide an opportunity for public comment before establishing an interpretive letter or advisory opinion program. Accordingly, the Bureau intends to separately propose an interpretive letter program as soon as practicable.[20]

With one exception, consumer and civil rights organizations—together with a second group of State Attorneys General, and a group of State financial regulators—opposed the Proposed Sandbox Policy.[21] Their predominant objection was that it would permit regulated entities to evade their legal responsibilities. The Bureau believes this objection is ultimately misplaced, but acknowledges that the proposal may not have been sufficiently clear on this point. Approvals are intended to facilitate compliance in the face of regulatory uncertainty. The relief they provide is from regulatory uncertainty, not from regulatory obligation. This central purpose is why the Proposed Sandbox Policy is being finalized as the Compliance Assistance Sandbox Policy. It is also why the Policy refers to assistance rather than relief. Plainly, Congress gave the Bureau authority to issue orders to advance this compliance goal.[22]

To the extent that some stakeholders continue to disagree with the Policy, the Bureau believes that their differences will primarily be about the *practical* importance of resolving specific regulatory uncertainties for regulated entities that seek to innovate and improve access to financial services, consistent with the requirements of Federal consumer financial law.[23] Other agencies show steady demand for their interpretive and No-Action Letter programs and there is no reason to believe the Bureau's experience will be any different.[24]

IV. Summary of Comments, Bureau Responses, and Resulting Policy Changes

This section provides a summary of significant comments received on the Proposed Sandbox Policy. It covers the Bureau's assessment of such comments by subject matter and, where applicable, describes the resulting changes that the Bureau is making in the Compliance Assistance Sandbox Policy.[25] Comments addressed to the Bureau's proposed issuance of No-Action Letters have been

[17] This group of commenters supported the Proposed Sandbox Policy's indication that assistance would not disclaim any intention to be an interpretation of statutes or rules identified in an application.

[18] The FDCPA provides a safe harbor for acts done or omitted in good faith in conformity with a Bureau advisory opinion. *See* 15 U.S.C. 1692k(e).

[19] The Guidance RFI was published in the **Federal Register** on April 2, 2018. *See* 83 FR 13959 (Apr. 2, 2018). It asked, among other things, whether the Bureau should consider an advisory opinion program to provide interpretations on which regulated entities could rely. In response, numerous stakeholders urged the Bureau to issue advisory opinions.

[20] This proposal would not limit the Bureau's existing authority to issue interpretive rules.

[21] Some of these commenters acknowledged the importance of the Proposed Sandbox Policy's goals. For example, one State Attorneys General group agreed on the importance of encouraging responsible innovation in the consumer financial marketplace because of its potential to provide consumers with more choice, lower costs, and expanded access to credit.

[22] *See* 12 U.S.C. 5512(b)(1), 5492(a)(10); *see also* 12 U.S.C. 5512(b)(4)(B).

[23] Only one commenter expressed the view that innovation in consumer financial markets rarely confronts regulatory uncertainty. According to this commenter, most such innovations are within established product categories to which the application of existing law is manifestly clear. The Bureau respectfully disagrees with this view.

[24] Commenters appear not to cite any instances in which these programs harmed consumers.

[25] The Bureau has also made a number of technical changes to the Policy to accommodate the revisions described below and to increase clarity.

addressed in the process of finalizing the NAL Policy published elsewhere in today's issue of the **Federal Register**. That review is incorporated herein by reference.

A. Liability Protection

Section II.A of the Proposed Policy provided a high-level description of the types of compliance assistance available under the Proposed Sandbox Policy. Section II.A.1 explained that an approval issued under the Proposed Sandbox Policy would be based on one or more of three statutory safe harbor provisions, and would include a statement that, subject to good faith compliance with specified terms and conditions, the Bureau approves the recipient's offering or providing the described aspects of the product or service in question. It further explained that, by operation of the applicable statutory provision, the recipient would have a safe harbor from liability under the applicable statute to the fullest extent permitted by the applicable provision as to any act done or omitted in good faith in conformity with the approval.

Section II.A.2 of the Proposed Policy explained that an exemption issued under the Proposed Sandbox Policy would include a statement that, subject to good faith compliance with specified terms and conditions, the Bureau exempts the recipient from complying with or deems it to be in compliance with specified statutory or regulatory provisions in connection with its offering or providing the described aspects of the product or service in question. The exemption would be based on authority to grant exemptions by order: (i) From statutory provisions (as well as provisions of regulations implementing the statute in question) under statutory exemption-by-order provisions (statutory exemptions); or (ii) from regulatory provisions that do not mirror statutory provisions under rulemaking authority or other general authority (regulatory exemptions). Section II.A.2 further explained that, where the Bureau provides such an exemption, the recipient would be immune from enforcement actions by any Federal or State authorities, as well as from lawsuits brought by private parties, based on the relevant statutory or regulatory provisions and on the recipient's offering or providing the described aspects of the product or service.

The Bureau received a number of comments about State-level effects of these two sections. They fall into two categories: (1) Comments regarding the effect of an approval or exemption on the ability of States to enforce Federal consumer financial law under section 1042(a) of the Dodd-Frank Act; and (2) comments about the effect of an approval or exemption on State law. The CAS Policy, as finalized, no longer includes statutory or regulatory exemptions by order. As a result, comments on exemptions are addressed further below rather than in this section.[26]

1. Dodd-Frank Act Section 1042(a)

A group of State financial regulators, a group of State Attorneys General, and a group of consumer advocates asserted that the approvals available under the Proposed Sandbox Policy would exceed the Bureau's authority under title X of the Dodd-Frank Act. Specifically, they argued that the Bureau cannot provide this degree of liability protection because section 1042(a) of the Dodd-Frank Act gives the States authority to enforce Federal consumer financial law.[27] The Bureau disagrees.

The basic operation of the statutory provisions that describe a safe harbor for Bureau approvals and Bureau interpretations is straightforward. For example, section 130(f) of TILA provides that various liability provisions of TILA do not apply to any act done or omitted in good faith in conformity with any approval or interpretation by an official or employee of the Bureau duly authorized by the Bureau to issue such interpretations or approvals under such procedures as the Bureau may prescribe. The CAS Policy prescribes such procedures for approvals (and the Bureau's planned interpretive letter proposal will propose to prescribe them for interpretations). Under those procedures, the Assistant Director, Office of Innovation, is authorized to issue approvals with respect to specific provisions of—for example—TILA and Regulation Z. At that point, no party, including a State, can override the statutorily conferred safe harbor.[28]

State authority to enforce Federal consumer financial law does not invalidate the Bureau's exclusive authority to give meaning to that same law. The Dodd-Frank Act is clear that the Bureau has such authority.[29] Thus, the Commentaries for Regulations Z, E, and B inform regulated entities that they can be relied upon for safe harbor effect. They do not observe any exception for State enforcement actions that purport to rely on contrary interpretations of TILA, EFTA, and ECOA, and no State has ever suggested that they should. Similarly, the Bureau has also used its authority to grant exemptions by rule from various statutory or regulatory provisions. For example, section 1026.41 of Regulation Z requires mortgage servicers to provide periodic statements.[30] Using its authority under TILA to grant exemptions by rule,[31] the Bureau exempted small servicers from the periodic statement requirement.[32] No one would suggest, however, that States could now state a claim under TILA against exempted small servicers for failing to provide periodic statements.

2. State Law

A group of State Attorneys General observed that the Proposed Sandbox Policy appears not to contemplate the preemption of State law.[33] One consumer group urged the Bureau not to preempt state regulators until sufficient time has passed for states to establish their own financial services regulatory sandboxes. A research organization stated that the Bureau has a strong case for preemption under the Proposed Sandbox Policy. The compliance assistance available under the Policy, however, concerns Federal consumer financial law, not State law, and the Bureau does not foresee that such assistance would preempt State law.

B. Approvals

The Bureau received a number of comments specific to approvals. A consortium of consumer groups made several points. Their main concern was that the Bureau might issue *de facto* exemptions as approvals. This concern appears to derive from the Bureau's description of an approval as a form of ''relief'' from statutory and regulatory provisions. The Proposed Sandbox Policy used the term ''relief'' as a generic term that encompasses exemptions, but also other actions that are designed to reduce regulatory

[26] *See infra* sections IV.C.1 & 2.

[27] 12 U.S.C. 5552(a).

[28] A consortium of consumer groups claimed that approvals issued under the Proposed Sandbox Policy would be in severe tension with section 1042(a), thereby apparently acknowledging that the latter does not actually override Sandbox approvals. In any event, for the reasons set forth above, the Bureau does not see any tension between approvals and section 1042.

[29] *See* 12 U.S.C. 5512(b)(4)(B); *see also* 12 U.S.C. 5512(b)(1), 5492(a)(10).

[30] 12 CFR 1026.41.

[31] *See* 15 U.S.C. 1604(a), (f); 78 FR 10901, 10977 (Feb. 14, 2013).

[32] 12 CFR 1026.41(e)(4).

[33] Some commenters used preemption terminology to cover the impact of the Proposed Sandbox Policy on State enforcement of Federal consumer financial law. Those comments concern the impact of section 1042(a) of the Dodd-Frank Act, and are covered in the previous subsection. The present subsection only covers the issue of preemption of State law.

uncertainty and facilitate compliance. The Bureau did not—and does not—intend to issue approvals that are *de facto* exemptions. The Bureau intends to provide approvals with respect to products, services, and practices that are compliant with identified statutory and regulatory provisions.[34] To avoid further confusion on this point, the Bureau is finalizing the proposal as the Compliance Assistance Sandbox Policy, which now refers to compliance assistance rather than relief.

Second, the consumer groups pointed out that the Commentary applicable to regulations implementing TILA, EFTA, and ECOA include statements indicating that, except in unusual circumstances, Bureau interpretations that trigger the safe harbor provisions of the respective statutes will be included in the Commentary.[35] The commenters stated that the Proposed Sandbox Policy did not mention these statements or purport to change them. The main reason it did not do so is that these statements concern interpretations, not approvals that apply to specific entities. In addition, the Bureau has already issued several standalone interpretations that offer safe harbor protection even though they did not follow the general practice of being issued after notice-and-comment as part of the Commentary.[36]

Third, the consumer groups took issue with the Bureau's description of the safe harbor effect of an approval. They objected, in particular, to the term ''immunity'' as overstating the impact of an approval because: (i) An entity must have relied on the approval in good faith; (ii) a court must find that the approval was issued prior to the time of the entity's action; (iii) the entity is not protected from liability for future acts in conformance with the approval after a court invalidates the approval; and (iv) an approval only protects a recipient from liability, and does not prevent a plaintiff from obtaining declaratory or injunctive relief. Similarly, a group of State Attorneys General objected that the safe harbor provisions do not confer ''absolute immunity,'' but instead provide entities an affirmative defense to liability when entities can demonstrate they acted in good faith and in conformity with the approval in question.

This objection reflects a semantic difference. The legislative history of the TILA safe harbor provision uses the term ''immunity'' from civil liability.[37] In addition, the Bureau's statements on the safe harbor made clear that the liability protection provided by an approval depends on the recipient's good faith conformity with its terms. As a result, the Bureau believes that immunity from liability is a reasonable description for the protection against liability that Congress provided under section 130(f) of TILA, section 706(e) of ECOA, and section 916(d) of EFTA. By the same token, however, the Bureau has no objection to referring to safe harbors from liability rather than immunity from liability, and the CAS Policy has been adjusted accordingly.

C. Exemptions

Section II.A.2 of the Proposed Policy indicated that exemptions by order would be available in two forms: (1) Exemptions from statutory provisions (as well as provisions of regulations necessitated by the statute in question) under statutory exemption-by-order provisions (statutory exemptions);[38] or (2) exemptions from regulatory provisions that are not specifically necessitated by statutory provisions under rulemaking authority or other general authority (regulatory exemptions).[39] The Bureau received comments about both types.

1. Statutory Exemptions

Consumer groups and one group of State Attorneys General observed that the Bureau has limited authority to provide statutory exemptions by order. In light of the comments received, the Bureau has concluded that the purposes of the specific statutory exemption by order provisions described in the Proposed Sandbox Policy are sufficiently distinct from the purposes of the Compliance Assistance Sandbox Policy that they do not need to be included in it. The exclusion of statutory exemptions from the Policy does not affect the Bureau's authority to issue such exemptions pursuant to these specific statutory provisions.

2. Regulatory Exemptions

A number of industry and trade association commenters, among others, supported the Bureau's proposal to provide regulatory exemptions, generally arguing that regulatory exemptions would allow companies and service providers to test innovative products and services in a controlled environment, without incurring the risk of a lawsuit or enforcement action.

Consumer groups and a group of State Attorneys General asserted that the Bureau lacks authority to provide regulatory exemptions. In their view, apart from the very limited authority to grant statutory exemptions by order, the Bureau only has authority to grant exemptions by rule. These commenters contend that such exemption-by-rule provisions typically include standards that the Bureau must satisfy when prescribing such exemptions, and that the Proposed Sandbox Policy impermissibly sought to circumvent what they asserted was the Bureau's obligation to grant regulatory exemptions only through a rulemaking process.

The Bureau believes that regulatory exemptions—*i.e.,* exemptions from regulatory provisions that are not specifically necessitated by statute—would be an important component of the CAS Policy. Regulatory exemptions would enable the Bureau to learn, from real-world experience, whether technological or other developments since current rules were issued warrant a change in discretionary aspects of Bureau rules. As contemplated in the Proposed Sandbox Policy, regulatory exemptions would allow the Bureau, in a controlled environment, to learn whether a new aspect of a product or service that was not fully contemplated when existing rules were promulgated nonetheless advances the purposes and objectives of the underlying statute.

The Bureau appreciates the comments emphasizing the value of additional public feedback before proceeding with an exemption program. Thus, the Bureau will at a later date issue a proposal to establish a program for exemptions by order through a separate notice-and-comment rulemaking.

D. Administrative Procedure Act Requirements

Consumer groups and one of the State Attorneys General groups contended

[34] The finalized Policy describes one procedure through which the Bureau may issue approvals, but, as the Policy notes, the Bureau retains discretion to issue approvals outside that procedure as well.

[35] *See, e.g.,* 12 CFR part 1026, appendix C.

[36] *See, e.g.,* 79 FR 41631, 41632 (July 17, 2014) (''A creditor may rely on this interpretation as a safe harbor under section 130(f) of TILA.''); 81 FR 71977, 71978 (Oct. 19, 2016) (Bureau advisory opinion provides safe harbor protection under section 813(e) of the FDCPA).

[37] *See* S. Rep. 93–278 at 13–14.

[38] *See, e.g.,* 15 U.S.C. 1691c–2(g)(2) (ECOA); 15 U.S.C. 1639(p)(2) (HOEPA); 12 U.S.C. 1831t(d) (FDIA).

[39] *See, e.g., United States* v. *Allegheny-Ludlum Steel Corp.,* 406 U.S. 742, 755 (1972) (''It is well established that an agency's authority to proceed in a complex area . . . by means of rules of general application entails a concomitant authority to provide exemption procedures in order to allow for special circumstances.''); *Brodsky* v. *U.S. Nuclear Reg. Comm'n,* 783 F. Supp. 2d 448, 455–56 (S.D.N.Y. 2011) (same), *vacated in part,* 704 F.3d 113 (2d Cir. 2013); *see also* 15 U.S.C. 5512(b)(1) (authorizing the Director of the Bureau to ''prescribe rules and issue orders and guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof'').

that the Proposed Sandbox Policy fails to comply with the Administrative Procedure Act (APA) in various respects. The Bureau disagrees.[40]

1. The Policy Is Not a Legislative Rule

A number of commenters asserted that the Proposed Sandbox Policy, if finalized, would be a legislative rule and accordingly subject to notice-and-comment (and other) requirements under the APA. The Policy is intended as a policy statement and procedural rule that provides the public with information regarding the Bureau's plans to exercise its discretion to issue approvals under the Policy, and to describe the procedural components of such discretion. It does not purport to impose on any regulated entity any legally-binding obligations or prohibitions. It does not create substantive rights in any party, but rather describes procedures for how compliance assistance can be sought under the Policy and how the Bureau intends to resolve such applications. Whether an individual approval impacts substantive legal rights is a separate question that is addressed in subsection D.3 below. But the fact that such compliance assistance may change substantive rights does not convert into a substantive legislative rule the procedures that describe how the Bureau intends to exercise its discretion to provide compliance assistance.

2. The Policy Is Not Arbitrary and Capricious

Consumer groups claimed that the Proposed Sandbox Policy, if finalized, would be arbitrary and capricious for several reasons. The Bureau notes that a determination of whether the Policy is arbitrary or capricious would be based on the content of the final Policy, not the proposed Policy. Accordingly, the discussion below references the final Policy as well as the proposed Policy.

First, consumer groups characterized the Proposed Sandbox Policy as arbitrary and capricious for not considering impacts on consumers. The Bureau believes this characterization is incorrect. The proposed Policy advised applicants for compliance assistance to describe consumer benefits and risks associated with the product or service. It also stated that the Bureau intends to place particular reliance on those elements of an application when assessing the merits of any application for assistance. The final Policy confirms the point. Moreover, under the Proposed Sandbox Policy, regulated entities granted an approval were to: (i) Report information about the effects of the described aspects of the product or service on complaint patterns, default rates, or similar metrics that will enable the Bureau to determine if such aspects are causing material, tangible harm to consumers; and (ii) compensate consumers for any material, quantifiable, economic harm caused by the described aspects of the product or service. As described further below, these provisions have been adjusted in the final Policy to track more established standards of consumer injury, but their core focus on detecting and mitigating consumer risks remains.[41]

Second, consumer groups claimed that the Bureau failed to give adequate reasons for developing the Proposed Sandbox Policy. As explained further above, the Bureau's immediate aim here is to better enable compliance in circumstances of regulatory uncertainty—and thereby serve a number of the Bureau's statutory objectives. Building new mechanisms to improve adherence to consumer protection laws benefits consumers directly—by improving compliance—and indirectly—by lowering compliance costs and helping innovators to provide new products and services to compete for consumer demand. In addition, the Bureau explained in the Proposed Sandbox Policy how it expected information obtained thereunder to inform the Bureau's exercise of related authorities, such as market monitoring and rulemaking.

3. Approvals Are Not Legislative Rules

Commenters opposed to the Proposed Sandbox Policy made two broad arguments that approvals would amount to legislative rules. One group of State Attorneys General suggested that the Bureau lacks authority to issue approvals absent notice-and-comment rule-making. However, the case they cite to support this proposition discusses whether a generally applicable policy document is a legislative rule that requires notice-and-comment rulemaking.[42] It does not address particularized determinations like the approvals contemplated by the Policy.

Some consumer groups asserted that particular approvals could be legislative rules requiring notice-and-comment rulemaking—even as the procedures specified in the Proposed Sandbox Policy for providing approvals do not contemplate such rulemaking. Particular approvals could be legislative rules, they contend, because they could change, in a binding manner, and broadly, whether or how consumer protection laws apply in the future, and affect the future action and future rights of consumers and other State and Federal agencies, as well as the Bureau.

Approvals issued under the Policy will be based on one or more of three statutory safe harbor provisions. These state that approvals will be issued by duly authorized Bureau officials or employees. The provisions do not indicate that such personnel must do so by rule or regulation.[43] The Bureau acknowledges that simply labeling a Bureau action as an approval does not render it immune from challenge as a *de facto* legislative rule; the question is one of substance, not form.[44] But the Bureau's intention under the Policy is that approvals will be particularized determinations based on the application of existing law to specific factual scenarios. Approvals will issue only when they are a rational product of existing law, and they will be expressly limited to the particularized facts and circumstances of the described aspects of the product or service identified by the applicant. As such, they are not subject to notice and comment requirements under the APA.

E. Application Elements and Bureau Assessment of Applications

Section II.B of the Proposed Policy listed nine items that should be included in an application under the Proposed Sandbox Policy, as appropriate, including: (1) The identity of the applicant; (2) a description of the product or service at issue; (3) the requested duration of participation; (4) any other limits on participation; (5) explanations of the potential consumer benefits and risks of the application; (6) an identification of the relevant statutory and regulatory provisions; (7) a description of data that would be shared with the Bureau; (8) any request

[40] The analysis in this section addresses comments about approvals because the Bureau now intends to propose exemption procedures by legislative rule, and not through the CAS Policy as finalized today. *See supra* section IV.C.2. Comments concerning the APA-sufficiency of the NAL Policy and of No-Action Letters issued under it are addressed in section III.A.3 of the NAL Policy published separately in today's **Federal Register**. Because comments concerning these APA points were not always readily separable into those directed at No-Action Letters and those directed at the Proposed Sandbox Policy, the analysis in section III.A.3 of the NAL Policy should be considered incorporated herein.

[41] See sections D.5 & D.6 of the final Policy. Section D.4 also requires recipients of compliance assistance to report on materialization of consumer risk.

[42] *See Gen. Elec. Co.* v. *E.P.A.,* 290 F.3d 377, 382 (D.C. Cir. 2002).

[43] *See* 15 U.S.C. 1640(f); 15 U.S.C. 1691e(e); 15 U.S.C. 1693m(d).

[44] *See, e.g., Truckers United for Safety* v. *Fed. Highway Admin.,* 139 F.3d 934 (D.C. Cir. 1998).

for confidential treatment of information; and (9) an identification of any regulators the applicant wished the Bureau to coordinate with. Section II.C of the Proposed Policy stated that the Bureau would consider the quality and persuasiveness of the application in deciding whether to grant the application, with a particular emphasis on the potential risks and benefits, as well as an analysis of the relevant statutory and regulatory provisions. Section II.C also stated that the Bureau intended to grant or deny an application within 60 days of notifying the applicant that the Bureau deemed the application to be complete.

A coalition of consumer groups argued that the application and assessment procedures described in the Proposed Sandbox Policy were inadequate, for a variety of reasons. Specifically, these commenters argued that: The information to be included in an application was insufficient for the Bureau to properly evaluate applications; certain specific items (such as a showing of the product or service's compliance with existing State and Federal law) proposed to be deleted from the application requirements were necessary for the Bureau to provide an adequate review; and that the Bureau should add certain evaluation criteria from the prior NAL policy to the Proposed Sandbox Policy.

The Policy finalizes the application requirements largely as proposed.[45] The Bureau appreciates these commenters' concern about the importance of adequately reviewing applications for compliance assistance. The Bureau intends in many cases for the issues raised by these commenters to be addressed as part of the Bureau's assessment of applications. However, as discussed in the preamble to the Proposed Policy, the Bureau's experience with the initial 2016 version of its NAL policy suggests that those application criteria were so burdensome as to deter potentially meritorious applications. By replacing the previous prescriptive application requirements with more flexible mechanisms (which can be tailored based on pre-application discussions between an applicant and relevant Bureau staff), applicants will be able to provide the Bureau with information necessary to evaluate an application without unduly burdening potential applicants. Ultimately, the Bureau believes that the most effective and efficient means of handling the concerns raised by consumer groups is to clarify that the Bureau expects its assessment of applications to include due diligence regarding the applicant, its principals, and the product or service in question.

With specific respect to concerns about removing requirements to show compliance with State and Federal law more generally, and to certify that all information in the application is true and accurate, the Bureau believes that these requirements are either unnecessary or redundant. As stated in the final Policy, compliance assistance provided under the Policy will be limited to specific applications of Federal law, as well as limited to the facts stated in the application. To the extent that a product or service violates a provision of law outside the scope of the Bureau's compliance assistance, it will be unaffected by the Bureau's compliance assistance. Similarly, if an applicant misstates or misrepresents to the Bureau material facts about the product or service at issue, it will not obtain the benefit of the Bureau's compliance assistance.[46] The final CAS Policy reflects revisions intended to make clear that each form of compliance assistance attaches only to specifically described aspects of a given product or service and only to the legal provisions encompassed under that form of assistance.

As described in the Policy, in assessing applications the Bureau will place a particular emphasis on the potential consumer benefits and risks of the product or service at issue. The Policy makes clear that the Bureau will focus on the nature of the ambiguity or uncertainty identified in the application, and the manner in which the requested approval would resolve that ambiguity or uncertainty. The final Policy indicates that an approval granted under the Policy will include a statement of the Bureau's basis for providing the compliance assistance at issue.[47]

Several trade associations requested that the Bureau clarify that the proposal was not limited to ''emerging'' or ''fintech'' firms, but extend to any firm interested in testing innovative products and services. The Bureau agrees that compliance assistance should be generally available to entities offering (or contemplating offering) an innovative product or service that is subject to regulatory uncertainty, and the final Policy reflects that intent. Thus, the application procedures, as finalized, call for the applicant to describe how an intended product or service may further innovation, but they do not restrict the kinds of providers that may apply for compliance assistance.[48]

Several commenters expressed concern about the Bureau's intent to grant or deny an application within 60 days of the application being deemed complete. These commenters believed that a 60-day review period would be insufficient for the Bureau to evaluate the application adequately, conduct appropriate due diligence, and coordinate with other regulators, among other things. Under the final Policy, potential applicants are strongly encouraged to discuss their application with the Bureau prior to filing a formal application; the Bureau understands that this is common practice among other Federal agencies with similar

[45] As with APA-focused comments, comments concerning application elements and assessment procedures were not easily separable into those directed at No-Action Letters and those directed at the Proposed Sandbox Policy. As a result, the analyses in sections III.C and III.D of the preamble to the NAL Policy are incorporated herein.

[46] A coalition of consumer groups expressed concern that the Bureau would not be able to monitor compliance with the terms of compliance assistance if applicants do not precisely specify the regulatory or statutory provisions with respect to which the applicant is seeking compliance assistance. The Bureau notes that while the Policy states that an *applicant* may not be able to precisely identify the appropriate statutory or regulatory provisions for which it seeks compliance assistance, any compliance assistance provided by the Bureau will be limited to specified statutory and regulatory provisions.

[47] No-Action Letters granted with approvals will have the same content as those granted under the NAL Policy.

[48] The Bureau is not defining innovation for purposes of the Policy because a rigid definition is unlikely to be helpful to stakeholders, and because the Bureau retains the discretion to decline to issue compliance assistance under the CAS Policy if it does not believe that doing so will further innovation in the markets for consumer financial products and services. Other regulators have similarly avoided a prescriptive definition of ''innovation.'' For example, in considering eligibility for its own regulatory sandbox, the United Kingdom's Financial Conduct Authority (FCA) relies on ''key questions'' with positive and negative indicators, rather than a strict framework. *See* ''Applying to the regulatory sandbox'', *available at https://www.fca.org.uk/firms/regulatory-sandbox/prepare-application* (last accessed June 11, 2019).

The Bureau notes that some practices may remain innovative *relative to a given regulatory framework* even as they may no longer be innovative in a wider sense. For example, the use of mobile phones to communicate written information is a well-established practice—but the use of such devices to deliver mandatory disclosures remains innovative. Accordingly, applicants for compliance assistance may properly ask the Bureau for approvals about particular electronic disclosure practices. In addition, innovation can encompass product or service changes made in response to rapid changes in the market even if the product or service change is not otherwise innovative. For example, if regulated entities must suddenly end reliance on a given technology or market standard, the resulting need for change may create the potential for regulatory uncertainty even if those entities switch to established technologies or standards. That form of uncertainty, too, would be an appropriate subject for compliance assistance.

programs. This pre-application period typically will allow Bureau staff to conduct a preliminary evaluation of an application (and the applicant) before its formal submission to the Bureau. Thus, the final Policy retains language stating that the Bureau intends to grant or deny an application within 60 days of notifying the applicant that the Bureau has deemed the application to be complete. The final Policy also notes that while the 60-day review period will be the Bureau's general expectation, particular circumstances—in particular the potential need to coordinate with other regulators—may lengthen that timeline.

F. Scope, Duration, Extension, Termination and Modification

Sections II.A and II.B of the Proposed Sandbox Policy described the particularized scope of approvals to be issued under the Policy. Section II.D.7 noted that approvals would normally be limited to two years. Section II.E described extension procedures and stated that extensions would be based on the quality and persuasiveness of the data provided to the Bureau under Section II.D. Section D.10 described potential revocation grounds and procedures.

Several commenters noted that compliance assistance is made more valuable when generally applicable. As noted above, however, approvals are intended to be particularized determinations based on the application of existing law to specific factual scenarios. The Bureau recognizes that there is some tension between the value of generally applicable assistance and the practicality of particularized assistance. It believes that the best way to resolve that tension is by reevaluating an approval after an appropriate period of time to determine whether: (a) It should be confirmed in the Bureau's regulations or incorporated in the Commentary (or other generally applicable interpretative guidance);[49] (b) it is of sufficiently narrow applicability that maintaining it as a particularized approval is appropriate; or (c) data received from the recipient indicates that the approval should be modified or terminated. Accordingly, the Bureau is not changing the Policy to make approvals of broader applicability.

The Bureau continues to believe that two years will generally be an appropriate length of time to gather and analyze data to determine appropriate follow-on action. Several commenters objected to this time period as too long. They also objected to the potential for extensions, particularly in the context of follow-on rulemaking. The Bureau believes, however, that this concern does not fully take into account that approvals are used to provide compliance assistance to recipients. The Bureau is not waiving licensing requirements or taking similar steps to enable innovators to operate outside of the regulatory environment for some start-up period. Rather, it is providing assistance, beyond the existing Commentary and non-rule guidance offered, to innovators to comply with legal requirements in conditions of regulatory uncertainty. Any time limits would be calculated to enable the Bureau to make a considered decision about how to tackle that uncertainty over the longer term.

Industry commenters generally supported the proposed procedures for revocations of assistance, although some objected that the Bureau's focus on material, tangible harm to consumers was an unclear standard for revocation and compensation. Some consumer group commenters argued that the proposal's revocation procedures failed to reserve to the Bureau sufficient discretion to modify or end assistance without notice or an opportunity to respond or cure any failure to comply with the terms under which the Bureau provided assistance. Consumer groups also saw the standards for revocation as too limited. In particular, they objected to the Bureau's focus on material, tangible harm to consumers as too narrow a ground for revocation and compensation.

In response to these comments, the Bureau is revising the Policy's termination procedures in part. The Bureau agrees that it retains authority to end an approval when it deems that necessary in light of the purposes of the Policy. The Policy identifies the three circumstances in which it intends to effect termination on that basis: (i) The recipient fails to substantially comply in good faith with the specified terms and conditions of the approval; (ii) the described aspects of the product or service do not perform as anticipated in the application;[50] or (iii) a statutory amendment or Federal judicial holding cause the Bureau to conclude that the recipient can no longer rely in good faith on the Bureau's approval as the safe harbor provisions require. At the same time, precisely because it retains the authority to end approvals, the Bureau believes that it is important to provide notice of an intended termination, explaining the grounds for that proposed action, providing an opportunity to respond, and, in appropriate circumstances, take corrective action to address the stated grounds for termination.

The Bureau is revising the Policy to refer to termination rather than revocation because the effect of approvals for the period that they are provided by the Bureau cannot be revoked.[51] The Bureau is also revising the Policy to use standards for consumer harm that come directly from the Dodd-Frank Act and accordingly reflect well-understood and established legal norms. Finally, the Bureau is adding procedures under which recipients of compliance assistance can apply for modifications to an approval to address unanticipated changes in circumstances, such as potential changes to the described aspects of a product or service.

G. Confidentiality

Section II.G of the Proposed Policy listed types of information that the Bureau intended to publicly disclose about entities receiving compliance assistance, including the identity of the recipient and the subject matter, rationale, and legal authority for the compliance assistance provided. It also noted that the Bureau intended to publish certain information about denials. Section II.G identified a number of legal authorities—including the Freedom of Information Act (FOIA) and the Bureau's rule on Disclosure of Records and Information (Disclosure Rule)—that would govern the disclosure of any other information about applications for compliance assistance, and noted that much of the information submitted by applicants and recipients would be protected from disclosure under these authorities.

Industry commenters were broadly supportive of this approach. One trade association objected, however, to the proposed publication of denials. The Bureau is finalizing the statement about denials as proposed. The Bureau notes that the final Policy, as did the proposal, includes two related statements about

[49] When this occurs, the Bureau anticipates granting an extension for the period prior to the finalization of regulatory change. During the time period pending such change, the Bureau intends to consider alternative means of providing similar assistance to other covered entities that engage in the same or similar conduct in offering or providing comparable products.

[50] This includes the materialization of consumer risks identified in the application, or the materialization of other consumer risks not identified in the application.

[51] Approvals apply only to the described aspects of the product or service. An approval has no application to conduct that departs from the relevant described aspects, regardless of whether or not that approval is terminated.

denials: First, that the Bureau intends to publish denials only after the applicant is given an opportunity to request reconsideration of the denial; and second, that upon request, and if disclosure is not required by 5 U.S.C. 552(a)(2) or other applicable law, the Bureau does not intend to release identifying information from published denials, and to instead redact such information from denials published on its website. More generally, the Bureau expects denials to be relatively unusual. The Policy strongly encourages potential applicants to contact the Office of Innovation for informal, preliminary discussion of a contemplated proposal prior to submitting a formal application. If it appears during such discussions that an application is not likely to be granted, the potential applicant may choose not to submit an application in the first place. Applicants are free to withdraw applications at any time prior to denial.

A number of consumer groups and a law firm commenter saw the described disclosures as too limited. However, the Bureau merely intends to redact or withhold information to the extent that it is protected from disclosure by the FOIA. While the Bureau anticipates that much information submitted by applicants would be exempt from disclosure under the FOIA, it will disclose information consistent with the FOIA's requirements. In light of a recent Supreme Court opinion concerning FOIA Exemption 4,[52] the Bureau is adding a statement in the final Policy making clear that where information submitted to the Bureau is both customarily and actually treated as private by the submitter, the Bureau intends to treat it as confidential in accordance with the Disclosure Rule.

H. Third-Party Applications

Section II.B of the Proposed Policy stated that the Bureau invites applications from trade associations, service providers, and other third-parties; however, the Proposed Policy noted that such third parties might not be able to submit a complete application. In such cases, the Proposed Policy stated that the Bureau may grant provisional assistance, subject to the submission of additional information and the Bureau's subsequent grant of non-provisional assistance. The Proposed Policy further stated that additional entities identified by the third-party may be granted assistance at the same or later time by informing the Bureau that they wish to be granted admission and providing the necessary information.

Trade association commenters generally supported the Bureau's proposal to allow third parties to apply for compliance assistance under the Policy. These commenters stated that allowing third parties to facilitate applications would increase access to compliance assistance, in particular for smaller entities that might otherwise lack the resources to obtain compliance assistance.

Consumer groups and a group of State Attorneys General opposed the proposal to allow applications from third parties. These commenters raised concerns that the Bureau's granting of an application from a trade association in particular could amount to rulemaking by the Bureau that would require notice and comment under the APA. These commenters also expressed concerns that under the Proposed Policy the Bureau would not be able to adequately evaluate applications from individual applicants that might seek compliance assistance under the auspices of previously-granted compliance assistance.

The Bureau continues to believe that in some cases it will be valuable for a third party to apply for a version of compliance assistance on behalf of another entity.[53] To cite two examples: (1) A service provider may need preliminary compliance assistance from the Bureau before the service provider is able to find a partner willing to test an innovative product or service, and that partner could in turn apply for compliance assistance under the same terms; or (2), as noted by commenters, a trade association could facilitate participation in the Policy by smaller entities that otherwise would lack the resources to obtain compliance assistance directly from the Bureau.

In response to concerns about the Bureau's assessment of such applications, however, the Bureau has revised the structure of such third-party applications under the Policy. The final Policy contemplates that a third party (such as a service provider, trade association, or consumer group) could apply for and receive a ''template'' approval. The template itself is non-operative, meaning that no party can rely on it to trigger the statutory safe harbor, and the Bureau retains discretion at any time thereafter to reevaluate preliminary factual or legal findings reflected in the template. But as a statement of how the Bureau plans to interpret the law under certain circumstances, entities may use the template as a basis to apply for compliance assistance under substantially the same terms as those contemplated in the template. The Bureau would evaluate each application on an individual basis. The Bureau believes that this approach will still allow the benefits of third-party facilitation, while ensuring sufficient review of additional applicants.

The Bureau has also made provision for a third party to apply for compliance assistance based on offering a consumer financial product or service that has substantial similarity to an aspect of another product or service, offered by a first-party, that is already the subject of Bureau compliance assistance under the CAS Policy. This procedure closely resembles the procedures for ''template''-based applications, but is adjusted to reflect the fact that the first party did not apply for any form of assistance on behalf of the third-party.

I. Regulatory Coordination

Section II.F of the Proposed Policy stated that the Bureau is interested in entering into agreements with State authorities that issue similar forms of assistance that would provide for an alternative means of receiving assistance from the Bureau. Some consumer advocacy group commenters read this statement as implying that a company that obtained assistance from a State would ''automatically'' receive compliance assistance from the Bureau. That is not the Bureau's intent. The Bureau anticipates that such agreements would include provisions designed to ensure that the Bureau's provision of compliance assistance in such circumstances would be consistent with its legal authority and duty to protect consumers, as well as with other applicable law. Approvals issued under the Policy will conform with the Bureau's statutory obligations regardless of how the application is presented to the Bureau.[54]

The Proposed Policy also permits applicants to request that the Bureau coordinate with other regulators with respect to the application. A group of

[52] *See Food Mktg. Inst.* v. *Argus Leader Media,* 139 S.Ct. 2356 (June 24, 2019).

[53] For the same reasons as noted earlier, *see supra* notes 40 & 45, the analysis in section III.F of the preamble to the NAL Policy is incorporated herein.

[54] Coordination between the Bureau and other regulators will generally take a different form under the CAS Policy than under the NAL Policy. That is because approvals generally will not rely on authorities shared between the Bureau and State or other Federal regulators. For example, an entity may seek exemption from State licensing requirements from a State sandbox, while simultaneously seeking an approval from the Bureau. By contrast, No-Action Letters generally concern a type of discretion—*i.e.,* enforcement discretion—possessed by the Bureau and by other regulators, albeit under different statutory schemes.

trade associations commented that the Bureau should not put the onus on the applicant to identify other governmental authorities with which the Bureau may coordinate. Rather, the Bureau should lead the coordination among Federal and State regulators, as it is better positioned to do so than the applicant. More broadly, these commenters urged the Bureau to ensure that other regulators understand the Policy and to request that other regulators defer to actions taken under its terms. These comments were seconded by an industry policy organization.

As evidenced by the inclusion in the Policy of a separate section headed Regulatory Coordination, the Bureau fully appreciates the need for coordination with other regulators for purposes of administering the Policy. However, such coordination must be balanced against other considerations. For example, as the Policy notes, if an applicant wishes the Bureau to coordinate with other regulators, the Bureau may need more time to process the application, depending on the degree of coordination requested. Moreover, the degree of coordination needed likely will vary from case to case. The Bureau intends to use its best efforts to find the optimal balance between coordination and other considerations for each approval issued under the Policy. For the reasons discussed above, the Bureau is finalizing the section on regulatory coordination largely as proposed.

V. Regulatory Requirements

The Bureau has concluded that the Policy constitutes an agency general statement of policy and a rule of agency organization, procedure, or practice exempt from the notice and comment rulemaking requirements under the APA, pursuant to 5 U.S.C. 553(b). Because the Policy relates solely to agency procedure and practice, it is not substantive, and therefore is not subject to the 30-day delayed effective date for substantive rules under section 553(d) of the APA. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[55]

VI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau plans to submit a report containing this Policy and other required information to each House of Congress and the Comptroller General prior to the Policy's applicability date. The Office of Information and Regulatory Affairs has designated this Policy as not being a ''major rule,'' as defined by 5 U.S.C. 804(2).

VII. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C 3501 *et seq.*) requires that Federal agencies may not conduct or sponsor, and notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements as contained in this final Policy and identified below have been approved by OMB and assigned the OMB control number 3170–0059. OMB's approval will expire on September 30, 2022.

The information collections contained in this Policy include Application for an Approval and Data Provided Pursuant to an Approval.

The Bureau's Proposed Policy, published December 13, 2018, 83 FR 64036, sought comment on these information collection requirements. While the Bureau received numerous comments on the Proposed Policy, which are addressed above, the Bureau received no comments specifically regarding the burden estimates for these information collections, utility or appropriateness. Additional details on comments received can be found in the Supporting Statement for the related 30-day notice published as required under the PRA.[56]

A complete description of the information collection requirements, including the burden estimate methods, is provided in the information collection request (ICR) that the Bureau submitted to OMB under the requirements of the PRA. The ICR submitted to OMB requesting approval under the PRA for the information collection requirements contained herein is available at OMB's public-facing docket at *www.reginfo.gov.*

VIII. Compliance Assistance Sandbox Policy

The text of the final CAS Policy is as follows:

Compliance Assistance Sandbox Policy

In section 1021(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Congress established the Bureau of Consumer Financial Protection's (Bureau's) statutory purpose as ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.[57] Relatedly, the Bureau's objectives include exercising its authorities under Federal consumer financial law for the purposes of ensuring that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation, and that outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens.[58]

Congress has given the Bureau a variety of authorities under title X of the Dodd-Frank Act and the enumerated consumer laws [59] that it can exercise to promote this purpose and these objectives. These authorities include the authority to implement the Federal consumer financial laws through rules, orders, guidance, and interpretations, and to establish policies with respect to such functions.[60] Three of the enumerated consumer laws describe the safe harbor effect of Bureau approvals [61] issued to particular entities.[62] Providing compliance assistance of the type described in this Policy may not only benefit consumers and entities that offer or provide consumer financial products or services, but it may also inform the Bureau's exercise of other authorities with respect to such products or services, such as market monitoring and rulemaking.[63]

The Compliance Assistance Sandbox Policy (CAS Policy or Policy) sets forth the Bureau's policy and procedures regarding compliance assistance. The Bureau's policy and procedures regarding No-Action Letters (NAL Policy) are also incorporated by reference.[64] The Policy's main purpose is to provide a mechanism through

[55] 5 U.S.C. 603(a), 604(a).

[56] *See https://www.regulations.gov/docket?D=CFPB-2019-0043.*

[57] 12 U.S.C. 5511(a).

[58] 12 U.S.C. 5511(b)(3), (5).

[59] *See* 12 U.S.C. 5481(12) (listing the enumerated consumer laws).

[60] *See* 12 U.S.C. 5492(a)(10); *see also* 12 U.S.C. 5512(b)(4)(B).

[61] These are the Truth in Lending Act (TILA), the Electronic Fund Transfer Act (EFTA), and the Equal Credit Opportunity Act (ECOA). *See* 15 U.S.C. 1640(f); 15 U.S.C. 1691e(e); 15 U.S.C. 1693m(d).

[62] For convenience, ''entity'' and ''recipient'' are used in the Policy to cover single and multiple parties, as applicable.

[63] The Bureau also has supervision and enforcement authority, and the Bureau's Policy on No-Action Letters (NAL Policy) sets forth how that discretionary authority underlies the Bureau's intended issuance of No-Action Letters and the purposes served thereby.

[64] With respect to No-Action Letters, the Bureau's policy and procedures are set forth in the NAL Policy.

which the Bureau may more effectively carry out its statutory purpose and objectives by better enabling compliance in the face of regulatory uncertainty.[65]

The Policy consists of eight sections:

- Section A describes the compliance assistance available under the Policy;
- Section B describes information to be included in an application for compliance assistance;
- Section C describes factors the Bureau intends to consider in deciding whether to grant an application for compliance assistance;
- Section D describes the standard procedures the Bureau intends to use in providing compliance assistance;
- Section E describes procedures the Bureau intends to use for granting extensions of, modifying, and terminating compliance assistance;
- Section F describes alternative application, assessment, and issuing procedures that the Bureau may use for certain circumstances;
- Section G describes how the Bureau intends to coordinate with other regulators with respect to compliance assistance; and
- Section H describes the Bureau's intentions regarding disclosure of information relating to approvals.

A. Types of Compliance Assistance Available

1. Approvals

An approval is provided by the Bureau to a particular entity under one or more of three statutory safe harbor provisions, based on the application of existing law to particular facts and circumstances.[66] An approval issued to a particular entity will state that, subject to good faith compliance with specified terms and conditions, the Bureau concludes for the reasons stated therein that offering or providing the described aspects of the product or service complies with the Federal consumer financial law identified therein.[67] By operation of the applicable statutory provision, the recipient has a safe harbor from liability under the relevant statute, to the fullest extent permitted by these provisions, as to any act done or omitted in good faith in conformity with the approval.[68]

2. No-Action Letters

No-Action Letters available to recipients of compliance assistance under the Policy will be issued in accordance with the NAL Policy. Applicants for compliance assistance under the CAS Policy may use a single application to cover their request for compliance assistance and any accompanying request for a No-Action Letter. (If an applicant wishes to receive only a No-Action Letter, no application should be submitted under the CAS Policy.)

B. Submitting Applications for Compliance Assistance

Potential applicants are strongly encouraged to contact the Office of Innovation at *officeofinnovation@cfpb.gov* for informal, preliminary discussion of a contemplated proposal prior to submitting a formal application.[69] An application for compliance assistance under the Policy should include the following:

1. The identity of the applicant;[70]
2. A description of the consumer financial product or service to be offered or provided, including (a) how the product or service functions; (b) the terms on which it will be offered; (c) the manner in which it is offered or provided, including any consumer disclosures; and (d) an identification of how the product or service, or the manner in which it is offered or provided to consumers, may further innovation;
3. An explanation of the potential consumer benefits associated with the product or service, and suggested metrics for evaluating whether such benefits are realized, such as consumer utilization numbers;
4. An explanation of the potential consumer risks associated with the product or service, and how the applicant intends to mitigate such risks, including plans for addressing unanticipated consumer harms;
5. (a) An identification of the described aspects of the product or service as to which the applicant seeks an approval; an identification of the statutory and regulatory provisions as to which the applicant seeks that approval;[71] an identification of the potential uncertainty or ambiguity that such approval would address; and an explanation of why the requested approval is an appropriate resolution of that uncertainty or ambiguity, including an explanation of why the described aspect of the product or service complies with the applicable statutory and regulatory provisions;

(b) If the applicant also seeks a No-Action Letter, it should consult the NAL Policy for information about what to include for that aspect of its application;

6. The requested duration of compliance assistance,[72] and a description of other limitations on the scope of such assistance, such as limits on the volume of transactions, the number of consumers to which the product or service is to be offered or provided, or geographic scope;
7. A description of data on consumer impacts associated with the described aspects of the product or service that the applicant possesses or intends to develop and that will be shared with the Bureau if the application is granted, and a proposed schedule for sharing this data with the Bureau;[73]
8. If the applicant wishes to request confidential treatment under the Freedom of Information Act (FOIA),[74]

[65] The Policy is not intended to, nor should it be construed to: (1) restrict or limit in any way the Bureau's discretion in exercising its authorities; (2) constitute an interpretation of law; or (3) create or confer any substantive or procedural rights or defenses that are enforceable in any manner. In contrast, the provision of compliance assistance in a specific instance may involve interpretive activity, the creation of safe harbors, and the exercise of discretionary authorities in a particular manner.

[66] 15 U.S.C. 1640(f) (TILA); 15 U.S.C. 1691e(e) (ECOA); 15 U.S.C. 1693m(d) (EFTA).

[67] For convenience, the Policy uses the term ''described aspects of the product or service'' to refer to the subject matter scope of a particular form of compliance assistance, including both the particular aspects of the product or service in question and the particular manner in which it is offered or provided. If a Sandbox applicant seeks more than one form of assistance under the Policy (for example, an approval under one statute and an approval under another statute), it is possible that these different forms may relate to *different* described aspects of the same product or service. If so, in order to enable the Bureau to respond expeditiously to the application, the applicant should make its best efforts to specify the described aspects that relate to each form sought. The Bureau recognizes that in some cases it may be difficult to determine precisely which aspects of a product or service implicate different legal provisions, particularly for applicants that lack the legal resources for a fully precise determination. In such circumstances, the applicant should provide the maximum specification practicable under the circumstances and explain the limits on further specification.

[68] *See* 15 U.S.C. 1640(f); 15 U.S.C. 1691e(e); 15 U.S.C. 1693m(d).

[69] The email subject line should begin ''Compliance Assistance.''

[70] For convenience, applicant is used in the Policy to refer both to single applicants and joint applicants. If an application is submitted by multiple applicants, each applicant should provide the information required by section B.2 with respect to its product or service.

[71] Applicants should describe relevant legal provisions with as much specificity as practicable, in part to enable the Bureau to respond expeditiously to the application. The Bureau recognizes that in some cases it may be difficult to determine precisely which provisions would apply, in the normal course, to the product or service in question. In other cases, the applicant may lack the legal resources to make a fully precise determination. In such circumstances, the applicant should provide the maximum specification practicable under the circumstances and explain the limits on further specification.

[72] The Bureau expects two years to be appropriate for most approvals.

[73] The data the applicant expects to share with the Bureau should be limited to aggregate data.

[74] 5 U.S.C. 552.

the Bureau's rule on Disclosure of Records and Information (Disclosure Rule),[75] or other applicable law, this request and the basis therefor should be included in a separate letter and submitted with the application.[76] The applicant should specifically identify the information for which confidential treatment is requested, and may reference the Bureau's intentions regarding confidentiality under section H of the Policy; and

9. If the applicant wishes the Bureau to coordinate with other regulators, the applicant should identify those regulators, including but not limited to those that the applicant has contacted about offering or providing the product or service in question.[77]

Applications may be submitted via email to: *officeofinnovation@cfpb.gov* or through other means designated by the Office of Innovation.[78] Submitted applications may be withdrawn by the applicant at any time.

C. Assessment of Applications for Compliance Assistance

The Bureau may grant or deny a compliance assistance application in its sole discretion. If it chooses to grant an application, the Bureau also has discretion to grant the application in whole or only in part. In deciding whether to grant an application for compliance assistance, the Bureau intends to balance a variety of factors in considering the quality and persuasiveness of the application, with particular emphasis on the information specified in sections B.2(d) through B.5, as well as information about the applicant and the product or service in question derived through Bureau due diligence processes. The Bureau intends to grant or deny applications for No-Action Letters pursuant to the NAL Policy. The Bureau intends to grant or deny an application within 60 days of notifying the applicant that the Bureau deems the application to be complete.

D. Procedures for Providing Compliance Assistance[79]

When the Bureau decides to grant an application for compliance assistance, it intends to provide the recipient with a Compliance Assistance Statement of Terms (CAST) setting forth the terms under which compliance assistance is provided, including the types and scope of assistance provided to the recipient. The CAST will be signed by the Assistant Director of the Office of Innovation, and by an officer of the recipient.[80] The Bureau expects that the CAST will:

1. Identify the recipient;

2. Specify the subject matter scope of the CAST, *i.e.,* the described aspects of the product or service;[81]

3. State that the CAST and the compliance assistance provided:

(a) Is limited to the recipient, and does not apply to any other persons or entities;

(b) Is limited to the recipient's offering or providing the described aspects of the product or service, and does not apply to the recipient's offering or providing different aspects of the product or service;

(c) Is based on the factual representations made in the application, which may be incorporated by reference; and

(d) Does not constitute the Bureau's endorsement of the product or service that is the subject of the CAST, or any other product or service offered or provided by the recipient.

4. Require the recipient to inform the Bureau of: (a) Material changes to information included in the application; and (b) material information indicating that the described aspects of the product or service are not performing as anticipated in the application;[82]

5. Require the recipient to report information about the effects of offering or providing the described aspects of the product or service, including with respect to complaint patterns, default rates, or similar metrics that will enable the Bureau to identify material increase in any risk of injury to consumers;

6. Where appropriate, include a commitment by the recipient to compensate consumers for Dodd-Frank Act actionable substantial injury caused by the recipient's offering or providing the described aspects of the product or service;[83]

7. Specify any other limitations or conditions, such as the duration of the compliance assistance,[84] the nature and extent of the recipient's data-sharing, and the extent to which the Bureau intends to publicly disclose information about the recipient's participation;[85]

8. With respect to any approval the Bureau is providing the recipient: (a) State that, subject to good faith compliance with the CAST, the Bureau approves the recipient's offering or providing the described aspects of the product or service under the relevant law identified therein;[86] and (b) explain the Bureau's basis for issuing the approval;

9. State that: (a) the recipient may reasonably rely on any Bureau commitments made in the CAST; and (b) the Bureau may terminate[87] any approval described in the CAST if: (i) The recipient fails to substantially comply in good faith with the specified terms and conditions of the CAST; (ii) the described aspects of the product or service do not perform as anticipated in the application;[88] or (iii) a statutory change or Federal judicial holding causes the Bureau to conclude that the recipient can no longer rely in good

[75] 12 CFR part 1070.

[76] Applicants should describe the relevant legal bases for confidentiality with as much specificity as practicable. The Bureau recognizes that some applicants may lack the legal resources to provide a detailed and complete showing. In such circumstances, the applicant should provide the maximum specification practicable under the circumstances and explain the limits on further specification.

[77] When requested by an applicant, the Bureau intends to coordinate with other Federal and State regulators identified by the applicant, as appropriate. However, depending on the extent of coordination requested, the Bureau may not be able to respond to the application within the time frame specified in section C.

[78] Except as provided in section B.1 and B.9, applications should not include any personally identifiable information (PII).

[79] These procedures may be modified based on coordination efforts with other regulators, as specified in section G.

[80] If the Bureau decides to deny an application, it will inform the applicant of its decision. The Bureau intends to respond to reasonable requests to reconsider its denial of an application within 60 days of such requests. Applicants may withdraw, modify, and re-submit applications at any time.

[81] If these vary by the form of assistance sought, the document will specify the relevant aspects separately.

[82] ''Not performing as anticipated'' includes the materialization of consumer risks identified in the application, and the materialization of other consumer risks not identified in the application.

[83] Dodd-Frank Act actionable substantial injury, as used in this Policy, means substantial injury that is not reasonably avoidable by the consumer, where such substantial injury is not outweighed by countervailing benefits to consumers or competition. *See* 12 U.S.C. 5531(c); *see also* 12 U.S.C. 5536(a)(1)(B).

[84] The Bureau expects two years to be an appropriate duration for approvals in most cases, but recipients may apply for extensions. *See* section E.1.

[85] If an applicant objects to the disclosure of certain information and the Bureau insists that the information must be publicly disclosed for compliance assistance to be provided, the applicant may withdraw the application and the Bureau intends to treat all information related to the application as confidential to the full extent permitted by law.

[86] As noted in section A.1, the safe harbor associated with an approval only applies to acts done or omitted in good faith in conformity with the approval, and the approval will so state.

[87] No retroactive action premised on the described aspects of the product or service will lie under provisions covered by an approval. Actions that are not premised on the described aspects of the product or service associated with a particular approval are, by definition, not subject to any such restriction.

[88] Such ground includes the materialization of consumer risks identified in the application, or the materialization of other consumer risks not identified in the application.

faith on the Bureau's approval as the safe harbor provisions require; and

10. If the applicant also applied for a No-Action Letter using their application under the CAS Policy for compliance assistance, incorporate any No-Action Letter that the Bureau is issuing pursuant to the terms of the NAL Policy.[89]

E. Procedures for Extension, Modification, and Termination

1. Extension Procedures

Recipients of compliance assistance may apply for an extension of a specified period of time. In considering applications for extensions, the Bureau expects to place particular weight on the extent to which the data provided to the Bureau under the terms of the CAST shows that the described aspects of the product or service are benefitting consumers, not causing unanticipated harms, and not materially increasing the risk of substantial injury. Such applications for an extension should include the proposed duration of the extension and should be submitted no later than 90 days prior to the expiration of the compliance assistance under the terms of the CAST.[90] The recipient should explain the reasons for the requested extension, such as whether it is intended to last until a possible amendment to Bureau regulations or the Commentary, or is instead intended for more particularized compliance assistance purposes.

Upon the presentation of persuasive data, the Bureau anticipates granting such extension applications for a period at least as long as the period of the applicant's original receipt of assistance. The Bureau anticipates permitting longer extensions where the Bureau is considering amending applicable regulatory requirements or the relevant Commentary.[91] During the time period pending a rule or Commentary amendment, the Bureau intends to consider means of providing similar assistance to other covered entities that engage in the same or similar conduct in offering or providing comparable products.

2. Modification Procedures

A recipient of compliance assistance may apply for a modification of the CAST. The recipient may seek modification to address an anticipated or unanticipated change in circumstances, such as iterations of the underlying product or service or changes to the information included in the application for assistance. Applications for a modification should include the following:

a. Any material changes to the information included in the original application;

b. The specific requested modification to the CAST;

c. The grounds for modifying the CAST; and

d. Any other information the recipient wishes to provide in support of the modification application.

In deciding whether to grant an application for modification, the Bureau intends to balance a variety of factors, including the quality and persuasiveness of the application. The Bureau expects to grant or deny such applications within 30 days of notifying the applicant that the Bureau has deemed the application to be complete. When the Bureau grants an application for modification, it intends to provide the recipient with a modified CAST in accordance with the procedures specified in Section D.

3. Termination Procedures

The Bureau intends that the recipient of compliance assistance should be able to reasonably rely on any Bureau commitments made in the associated CAST. The Bureau expects terminations prior to any pre-determined expiration date to be quite rare based, in part, on its knowledge of similar programs of compliance assistance operated by other Federal agencies. The Bureau expects that its practice with respect to termination will be in line with the practices of these agencies.

The Bureau expects that a CAST will state that: (a) The recipient may reasonably rely on any Bureau commitments made in the CAST; and (b) the Bureau may terminate any approval described in the CAST if: (i) The recipient fails to substantially comply in good faith with the specified terms and conditions of the CAST; (ii) the described aspects of the product or service do not perform as anticipated in the application;[92] or (iii) a statutory amendment or federal judicial holding causes the Bureau to conclude that the recipient can no longer rely in good faith on the Bureau's approval as the safe harbor provisions require. By operation of law, no retroactive action premised on the described aspects of the product or service will lie under provisions within the scope of an approval. If the Bureau is also providing a No-Action Letter to the recipient, termination will be in accordance with the NAL Policy.

In accordance with principles of fair notice, before terminating any approval provided under the Policy, the Bureau intends to notify the recipient of the possible grounds for termination, and permit an opportunity to respond within a reasonable period of time. In appropriate cases, the Bureau intends to offer the recipient an opportunity to modify its conduct to avoid termination. The Bureau intends to allow the recipient to wind-down the offering or providing of the described aspects of the product or service during a period of six months before termination is effective, unless the described aspects of the product or service are causing Dodd-Frank Act actionable substantial injury to consumers, and a wind-down period would permit such injury to continue. If the Bureau terminates any approval provided under this Policy, it intends to do so in writing and specify the reasons for its decision. The Bureau intends to publish termination decisions on its website.

F. Alternative Application, Assessment, and Issuance Procedures

The Bureau recognizes that the process described in sections B, C, and D (Standard Process) may not be appropriate in certain circumstances. These include applications by service providers that develop products or services for use by covered persons that offer or provide consumer financial products or services; applications facilitated by trade associations, consumer groups, or other third parties that are not themselves covered parties; and applications involving a consumer financial product or service that is substantially similar to one that is the subject of an existing CAST.

1. Service Provider and Facilitated Applications

Service providers that develop products or services for use by covered persons that offer or provide consumer

[89] If the Bureau is providing a No-Action Letter to the recipient, any termination of the No-Action Letter will be in accordance with the NAL Policy.

[90] Assuming the two-year period the Bureau expects to be appropriate in most cases, the Bureau believes recipients would have sufficient time to gather evidence supportive of an extension request. For periods of one year or less, the Bureau may consider an extension deadline appropriate for the period in question.

[91] The Bureau's plans regarding rulemaking activity are set forth in its Semiannual Regulatory Agenda, published in full on *www.reginfo.gov.* If the period of an extension were tied to the Bureau's consideration of amending relevant regulatory provisions and the Bureau announced it was discontinuing its plans to amend the provisions in question, the extension period would be adjusted accordingly, *e.g.,* to end on a specific date.

[92] Such ground includes the materialization of consumer risks identified in the application, or the materialization of other consumer risks not identified in the application.

financial products or services may use the Standard Process if they have secured an applicant that intends to use the service provider's product or service in connection with offering or providing a consumer financial product or service. Similarly, compliance assistance applications facilitated by trade associations, consumer groups, or other third parties that are not covered persons that offer or provide consumer financial products or services may use the Standard Process if the third party has secured an applicant that intends to offer or provide the consumer financial product or service in question.

a. *CAST Template.* As an alternative to using the Standard Process, a service provider, trade association, consumer group, or other third party may apply for a CAST Template. A CAST Template is (i) non-operative, *i.e.,* it does not provide compliance assistance to any party, and (ii) non-binding on the Bureau.[93]

i. *Application Information.* Such applications should include the information specified in section B, as applicable and with appropriate adjustments given that the applicant itself will not be offering or providing the consumer financial product or service in question. In particular, for service provider applications the applicant should describe how it anticipates its product or service will be used by a provider of consumer financial products or services.

ii. *Assessment.* In deciding whether to grant an application for a CAST Template, the Bureau intends to balance a variety of factors, as described in section C, with appropriate adjustments given the alternative nature of the application. The Bureau intends to grant or deny an application within 60 days of notifying the applicant that the Bureau has deemed the application to be complete.

iii. *Issuance.* The Bureau expects that a CAST Template will include many of the elements specified in section D, with appropriate adjustments based, in part, on the non-operative, non-binding nature of a CAST Template. In addition, a CAST Template will include a statement that the Bureau intends to grant applications for a CAST based on the CAST Template, under subsection F.1.b, in appropriate cases.

b. *CAST Based on a CAST Template.* A covered person that intends to offer or provide a consumer financial product or service using the product or service covered by a CAST Template (whether using a service provider product or service, or otherwise) may apply for compliance assistance based on the CAST Template.

i. *Application Information.* Such applications should include the information specified in section B, with appropriate adjustments. In particular, the applicant should include: (i) A statement that the application is based on a CAST Template and an identification of the CAST Template on which it is based; and (ii) a statement identifying the aspects of the product or service for which a CAST is being sought describing how the applicant's offering or providing those aspects of its product or service is consistent with the framework described in the CAST Template. The application may cross reference any relevant information contained in the application for the CAST Template or the CAST Template itself.

ii. *Assessment.* In deciding whether to grant an application for such compliance assistance, the Bureau intends to balance a variety of factors, as described in section C, with appropriate adjustments. In particular, the Bureau intends to include in its assessment the additional factor of the degree to which the applicant's offering or providing the described aspect of its product or service is consistent with the framework described in the CAST Template. The Bureau anticipates being able to process such applications in a timeframe shorter than that specified in section C given that the underlying CAST Template has already been granted.

iii. *Issuance.* When the Bureau grants an application for such compliance assistance, it intends to provide the recipient with a CAST in accordance with the procedures specified in section D.

2. Applications for Substantially Similar Products or Services

If an applicant offers or provides a consumer financial product or service that it believes is substantially similar to an aspect of a consumer financial product or service that is the subject of an existing CAST,[94] it may apply for compliance assistance based on public information about the existing CAST.

a. *Application Information.* Such applications should include the information specified in section B, with appropriate adjustments. In particular, the applicant should include (i) a statement that the application is based on an existing grant of compliance assistance and an identification of that grant; and (ii) a statement describing how the consumer financial product or service in question and the manner in which it is offered or provided is substantially similar to the described aspects of the product or service that are the subject of the existing CAST. The application may cross reference any relevant information contained in public disclosures on the existing grant.

b. *Assessment.* In deciding whether to grant an application for such compliance assistance, the Bureau intends to balance a variety of factors, as described in section C, with appropriate adjustments. In particular, the Bureau intends to include in its assessment the additional factor of the degree to which the consumer financial product or service in question, and the manner in which it is offered or provided, is substantially similar to these aspects of the existing CAST. The Bureau anticipates being able to process such applications in a timeframe shorter than that specified in section C given that the existing CAST has already been granted.

c. *Issuance.* When the Bureau grants an application for such compliance assistance, it intends to provide the recipient with a CAST in accordance with the procedures specified in section D.[95]

G. Regulatory Coordination

Section 1015 of the Dodd-Frank Act instructs the Bureau to coordinate with Federal agencies and State regulators, as appropriate, to promote consistent regulatory treatment of consumer financial and investment products and services.[96] Similarly, section 1042(c) of the Dodd-Frank Act instructs the Bureau to provide guidance in order to further coordinate actions with the State attorneys general and other regulators.[97] Such coordination includes coordinating in circumstances where other regulators have chosen to offer assistance to entities offering innovative products and services. One method of providing such assistance is through a State sandbox, or group of State sandboxes, or other limited scope State authorization program (State

[93] In particular, the Bureau may modify a CAST Template in light of the additional information provided in an application for a CAST under subsection F.1.b.

[94] Such an existing CAST may have been issued under the Standard Process or the alternative processes described in section F.1.b.

[95] In unusual circumstances, the Bureau may utilize other procedures that diverge in one or more respects from the Standard Process or the alternative procedures described in section F, consistent with the purposes of the Policy.

[96] 12 U.S.C. 5495.

[97] 12 U.S.C. 5552(c).

sandbox).[98] The Bureau is interested in entering into agreements with State authorities that operate or plan to operate a State sandbox, which may include a process to receive compliance assistance under this Policy in a coordinated manner with assistance from the State sandbox.

Furthermore, the Bureau is interested in coordinating with other regulators more generally regarding this Policy. To this end, the Bureau intends to enter into agreements whenever practicable to coordinate compliance assistance under the Policy with assistance offered by State, Federal, or international regulators.

H. Bureau Disclosure of Information Relating to Approvals

Public disclosure of information regarding approvals under this Policy is governed by applicable law, including the Dodd-Frank Act,[99] FOIA, and the Disclosure Rule. The Disclosure Rule generally prohibits the Bureau from disclosing confidential information,[100] and defines confidential information to include information that may be exempt from disclosure under the FOIA [101]—including Exemption 4 regarding trade secrets and confidential commercial or financial information that is privileged or confidential.[102] Relatedly, the Disclosure Rule defines business information as commercial or financial information obtained by the Bureau from a submitter that may be protected from disclosure under Exemption 4 of FOIA, and generally provides that such business information shall not be disclosed pursuant to a FOIA request except in accordance with section 1070.20 of the rule.[103]

Consistent with applicable law, the Bureau intends to publish on its website its final disposition of applications for approvals processed pursuant to sections B, C, D, E.1, E.2, F.1.b, and F.2. If the Bureau decides to grant an application, it intends to publish an order regarding the decision on its website as soon as practicable. The Bureau expects that the order will overlap with the CAST provided to the recipient, but will contain other information and will not include information protected from public disclosure under applicable law. The Bureau expects the order to include: (i) The identity of the recipient; (ii) the described aspects of the product or service to which the approval applies; (iii) the approval's specified duration, basis, and legal authority; and (iv) in appropriate cases, a version of the summary of the application.[104] The Bureau also intends to publish denials of applications on its website, including an explanation of why the application was denied in whole or in part.[105] When the Bureau grants an application for a CAST Template under section F.1.a, the Bureau expects to publish on its website the CAST Template and a summary of the application.

Where information submitted to the Bureau is both customarily and actually treated as private by the submitter, the Bureau intends to treat it as confidential in accordance with the Disclosure Rule.[106] The Bureau anticipates that much of the information submitted by applicants in their applications, and by recipients while operating pursuant to a CAST, will qualify as confidential information under the Disclosure Rule.[107] In particular, the Bureau expects that information submitted that is responsive to subsections B.2, B.3, B.4, B.6, D.4, and D.5, and parallel information submitted pursuant to subsections E.1, E.2, F.1.a.i, F.1.b.i and F.2.a, will qualify as business information under the Disclosure Rule.[108] Other information submitted by applicants or recipients may also qualify as confidential information.

Disclosure to other Federal and State agencies of information or data provided to the Bureau under the Policy is governed by applicable law, including the Dodd-Frank Act [109] and the Disclosure Rule.

To the extent the Bureau wishes to publicly disclose non-confidential information regarding approvals, the Bureau intends to include the terms of such disclosure in the CAST. The Bureau intends to draft the CAST in a manner such that confidential information is not disclosed. Consistent with applicable law and its own rules, the Bureau does not intend to publicly disclose any information that would conflict with consumers' privacy interests.

Disclosure of information about No-Action Letters will be in accordance with section G of the NAL Policy.

Dated: September 6, 2019.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2019–19762 Filed 9–12–19; 8:45 am]

BILLING CODE 4810–AM–P

[98] The concept of a regulatory sandbox is relatively new and does not have a precise, generally accepted definition. The term is used in this Policy to refer to a regulatory structure where a participant obtains limited or temporary access to a market in exchange for reduced regulatory uncertainty or other regulatory barriers to entry.

[99] *See, e.g.,* 12 U.S.C. 5512(c)(8).

[100] 12 CFR 1070.41.

[101] 12 CFR 1070.2(f).

[102] 5 U.S.C. 552(b)(4).

[103] 12 CFR 1070.20(a), (b).

[104] When a regulated entity receives an approval in a coordinated manner with assistance under a State sandbox, the Bureau may be restricted in its discretion to further disclose information obtained from the relevant State authority. Nonetheless, the Bureau anticipates that all the disclosures identified above would be made with respect to any approval provided by the Bureau under this Policy.

[105] The Bureau intends to publish denials only after the applicant is given an opportunity to request reconsideration of the denial. Upon request, and if disclosure is not required by 5 U.S.C. 552(a)(2) or other applicable law, the Bureau intends to redact identifying information from denials published on its website.

[106] *See Food Marketing Institute* v. *Argus Leader Media,* 139 S.Ct. 2356 (June 24, 2019).

[107] To the extent associated communications include the same information, that information would have the same status. But other information in associated communications may be subject to disclosure.

[108] To the extent an applicant or recipient submits information in connection with any of the identified subsections that is not actually responsive to these subsections, such information may be subject to disclosure.

[109] *See, e.g.,* 12 U.S.C. 5512(c)(8).

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

[Docket No. CFPB–2018–0023]

Policy To Encourage Trial Disclosure Programs

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Policy guidance and procedural rule.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau or CFPB) is creating the CFPB Disclosure Sandbox through issuance of its revised Policy to Encourage Trial Disclosure Programs (Policy), which is intended to carry out the Bureau's authority under section 1032(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act).

DATES: This Policy is applicable on September 10, 2019.

FOR FURTHER INFORMATION CONTACT: For additional information about the Policy, contact Paul Watkins, Assistant Director; Edward Blatnik, Deputy Counsel; Albert Chang, Counsel; Thomas L. Devlin, Senior Counsel; Will Wade-Gery, Senior Advisor; Office of Innovation, at *officeofinnovation@cfpb.gov* or 202–435–7000. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In section 1032(e) of the Dodd-Frank Act, Congress gave the Bureau authority to provide certain legal protections to covered persons to conduct trial disclosure programs.[1] This authority furthers the Bureau's statutory purpose, stated in section 1021(a) of the Dodd-Frank Act, to ensure that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.[2] Furthermore, this authority advances the Bureau's statutory objectives in section 1021(b) of the Dodd-Frank Act to ensure consumers are provided with timely and understandable information to make responsible decisions about financial transactions; outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens; and markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.[3]

More specifically, under section 1032(e), the Bureau may permit covered persons to conduct trial disclosure programs, limited in time and scope, for the purpose of providing trial disclosures designed to improve upon model forms within the Bureau's jurisdiction.[4] Such permission may include providing a legal safe harbor; *i.e.,* the Bureau may deem a covered person conducting such a program to be in compliance with, or exempt from, a requirement of a rule or enumerated consumer law.[5] Such trial disclosure programs must be subject to standards and procedures that are designed to encourage covered persons to conduct such programs.[6] Similarly, although Bureau rules must provide for public disclosure of such programs, such public disclosure may be limited to the extent necessary to encourage covered persons to conduct effective trials.[7]

Pursuant to the purpose, objectives, and authority listed above, the Bureau proposed the original version of its Policy to Encourage Trial Disclosure Programs in December 2012, and finalized it in September 2013 (2013 Policy). However, the 2013 Policy failed to effectively encourage trial disclosure programs: The Bureau did not permit any such programs under the 2013 Policy.

II. Overview of Public Comments

On September 10, 2018, the Bureau published a notice in the **Federal Register** inviting the public to comment on its proposal to create a Disclosure Sandbox through its revised Policy to Encourage Trial Disclosure Programs.[8] The Bureau received 26 unique comments on the proposed Policy during the comment period. Industry trade associations and other industry groups submitted 12 comment letters. Individual financial services providers submitted two comment letters. There were four comment letters from consumer groups, two from groups of State Attorneys General, two from groups of State financial regulators, and one from a law firm. Individuals submitted a further three comments.

Industry commenters uniformly supported the proposed Policy, and stated that it is more likely to encourage companies to conduct trial disclosure programs than the 2013 Policy. In contrast, consumer groups stated that the proposed Policy is a step backwards vis-à-vis the 2013 Policy and asked the Bureau not to finalize it as proposed. One of the two groups of State Attorneys General was supportive of the proposed Policy; the other group was not.

Although generally supportive of the proposed Policy, industry commenters requested greater protection from liability and greater assurance that any information or data provided to the Bureau would be protected from public disclosure and disclosure to other Federal and State regulators. To the extent consumer groups recommended revisions, they urged the Bureau to limit the scope of the proposed Policy or build in consumer protections that go beyond those included in the 2013 Policy, in some cases reiterating recommendations such groups made on the proposed 2013 Policy that were not adopted by the Bureau.

The Bureau appreciates all of the comments received and has given each of them careful consideration. In determining whether to adopt recommended revisions for purposes of the final Policy, the Bureau's guiding light is Dodd-Frank Act section 1032(e), which evinces a specific congressional intent for the Bureau to encourage covered persons to conduct trial disclosure programs limited in time and scope pursuant to specified standards and procedures. As noted, the 2013 Policy did not effectively encourage covered persons to conduct trial disclosure programs. Commenters urging the Bureau to return to the 2013 Policy or to add requirements or limitations to the proposed Policy that go beyond those in the 2013 Policy did not explain how such approaches would enable the Bureau to fulfill Congress' intent. That said, the Bureau has adopted suggested revisions designed to increase consumer protections that it believes are consistent with this intent. The Bureau has also adopted a number of suggested revisions that it believes will provide further encouragement to companies to conduct trial disclosure programs. But it has endeavored not to make any revisions of this type that it believes will diminish the consumer protections built into the Policy.

Many comments from stakeholders across the spectrum requested greater specificity or detail regarding various provisions of the proposed Policy. The Bureau has provided such additional specificity and detail in a number of instances, as explained below. However, the Bureau believes that, in many cases, providing greater specificity and detail is premature. As the Bureau gains experience implementing the final Policy and engages in additional stakeholder outreach, it will consider the extent to which additional clarifications or adjustments are necessary or appropriate.

III. Summary of Comments, Bureau Responses, and Resulting Policy Changes

This section provides a summary of the significant comments received by subject matter. It also summarizes the Bureau's assessment of such comments by subject matter and, where applicable, describes the resulting changes that the Bureau is making in the final Policy.[9]

A. Legal Authority

A letter from several consumer groups declared that the proposed Policy exceeds the Bureau's authority under Dodd-Frank Act section 1032(e) in various respects.[10] First, they stated that the proposed Policy exceeds the Bureau's authority under section 1032(e) because that section does not authorize trial disclosure programs that change or deviate from substantive disclosure requirements. The Bureau

[1] 12 U.S.C. 5532(e).

[2] 12 U.S.C. 5511(a).

[3] 12 U.S.C. 5511(b)(1), (b)(3), (b)(5).

[4] 12 U.S.C. 5532(e)(1). As explained below, the Bureau interprets section 1032(e) to grant the Bureau authority to permit trial disclosure programs focused on any disclosures required by an enumerated consumer law or a Bureau rule (hereafter, Federal disclosure requirements), so long as such programs are designed to improve upon model forms under Federal consumer financial law.

[5] 12 U.S.C. 5532(e)(2). *See also* 12 U.S.C. 5481(12) (defining enumerated consumer laws).

[6] 12 U.S.C. 5532(e)(1), (2).

[7] 12 U.S.C. 5532(e)(3).

[8] 83 FR 45574 (Sept. 10, 2018).

[9] The Bureau has also made a number of technical changes to the final Policy to accommodate the revisions described below and to increase clarity.

[10] These claims were echoed in a letter from an assemblage of other consumer groups.

does not agree with this contention, as it appears to read out of the statute section 1032(e)(2), which expressly gives the Bureau authority to exempt covered persons conducting trial disclosure programs from disclosure requirements under an enumerated consumer law or a Bureau rule. Indeed, this waiver authority is the central pillar of section 1032(e): To identify improvements to Federal disclosure requirements, companies must be able to test disclosures that deviate from those requirements. The consumer groups appear to base this view on a claim some of the same groups made in comments on the 2013 Policy, namely, that section 1032(e) must be read in the context of the Bureau's authority to prescribe model forms—both in section 1032(b) and in the enumerated consumer laws—such that trial disclosures must meet the criteria for model forms in those sources. A group of State Attorneys General made the same point in their letter. In 2013, the Bureau explained why it believes this to be an unpersuasive interpretation of section 1032(e), and it remains of the same view.[11]

Second, the consumer groups asserted that the proposed Policy exceeds the Bureau's authority under section 1032(e) because it would permit trial disclosure programs based on cost-effectiveness alone, *i.e.,* even where consumer understanding is diminished. This point was echoed by several other commenters, including the same group of State Attorneys General. The Bureau does not intend to permit trial disclosures that it believes will cause a material, adverse impact on consumer understanding, regardless of potential cost-savings. Accordingly, the Bureau has added a footnote in the final Policy to clarify this point.

Third, the consumer groups stated that the proposed Policy exceeds the Bureau's authority under section 1032(e) because that section only gives the Bureau authority to permit covered persons to engage in trials of disclosures found in existing model forms. By this they appear to mean that section 1032(e) does not authorize the Bureau to permit trial disclosure programs unless such programs relate directly to disclosure requirements for which model forms already exist.

The Bureau believes this construction of section 1032(e) is unduly restrictive and risks frustrating Congress' intent. Section 1032(e)(1) authorizes the Bureau to permit trial disclosure programs ''that are designed to improve upon any model form issued pursuant to'' section 1032(b)(1) or any other enumerated consumer law. Consistent with the policy objective of section 1032 to develop new ways and means of enhancing consumer understanding, the Bureau believes section 1032(e)(1) should be interpreted to incorporate model forms that have been issued by the Bureau prior to a particular trial disclosure program, as well as model forms that could be issued by the Bureau subsequent to a particular trial disclosure program.

The Bureau generally has broad discretion to issue model forms as a component of its broad authority to issue disclosure rules under the Federal consumer financial laws. A trial disclosure program that involved testing changes to Federal disclosure requirements could assist the Bureau in developing model forms with respect to those disclosure requirements. The resulting model forms would improve upon model forms that would be issued by the Bureau with respect to those Federal disclosure requirements without the benefit of the trial disclosure program. This reading of section 1032(e)(1) is consistent with section 1032(e)(2), which gives the Bureau broad authority to waive Federal disclosure requirements, irrespective of the current existence of an associated model form. The commenters' contrary interpretation would preclude the Bureau from relying on the results from such trial disclosure programs when establishing new model forms. Such a result would be inconsistent with Congress's recognition that in-market disclosure testing can provide an invaluable supplement to traditional consumer testing.[12]

Even assuming *arguendo* that section 1032(e)(1) encompasses only existing model forms, the Bureau still believes that the consumer groups' interpretation of the provision as limited to disclosure requirements for which model forms already exist is unduly restrictive. Specifically, the interpretation fails to recognize the various ways and means by which the Bureau may improve upon an existing model form. Indeed, trial disclosures not included in existing model forms may lead to improvements of the disclosures that are included in such forms. For example, they could inform the Bureau on the best means to deliver the form, on enhanced ways of presenting the content in the form, or on a range of other lessons learned. Further, even where the Bureau has not issued a model form with respect to a particular or discrete disclosure requirement that is the subject of a trial disclosure program, the program could improve upon the universe or class of model forms that have been issued with respect to the product or service or rule in question. For example, following a successful trial disclosure program, the Bureau could decide to add the additional tested content to an existing form, thereby improving upon it.

Accordingly, the Bureau interprets section 1032(e) to permit trial disclosure programs designed to improve upon any model form that has been issued or could be issued by the Bureau, irrespective of the existence of a model form directly tied to the particular disclosure requirement that is the subject of the trial disclosure program.

Fourth, the consumer groups claimed that the proposed Policy exceeds the Bureau's authority under section 1032(e) because that section provides that trial disclosure programs must be of limited time and scope. For example, the consumer groups stated that permitting two-year trial disclosure programs is not sufficiently limited in time, and permitting groups of companies to conduct trial disclosure programs is not sufficiently limited in scope. And they faulted the proposed Policy for not placing any limits on the size of the testing population or the range of products or services. The Bureau disagrees with this line of comment. Although the trial disclosure programs the Bureau permits under section 1032(e) must indeed be limited in time and scope, that language should not be read in isolation. Rather, it should be read in the context of section 1032(e)'s instruction to the Bureau to issue standards and procedures designed to encourage covered persons to conduct such programs. Developing a robust trial disclosure program requires significant resources. If the proposed Policy limited trial disclosure programs to a period of time the commenters deem to be sufficiently limited and did not permit extensions for successful programs, a company would have little or no incentive to expend such resources. In addition, the comment appears not to appreciate the difference between the Policy and particular trial

[11] 78 FR 64389, 64389 (Oct. 29, 2013).

[12] *See* U.S. Dep't of the Treasury, Financial Regulatory Reform: A New Foundation 63–64 (2009), *available at https://www.treasury.gov/initiatives/Documents/FinalReport_web.pdf* (''A regulator is typically limited to testing disclosures in a 'laboratory' environment. A product provider, however, has the capacity to test disclosures in the field, which can produce more robust and relevant results. For example, a credit card provider can try two different methods to disclose the same product risk and determine which was more effective by surveying consumers and evaluating their behaviors. We propose that the [Consumer Financial Protection Act] should be authorized to establish standards and procedures, including appropriate immunity from liability, for providers to conduct field tests of disclosures.'').

disclosure programs permitted under the Policy. Section 1032(e) requires particular trial disclosure programs to be limited in scope. It does not follow that the Policy must specify precise scope limitations in advance that are applicable to every trial disclosure program.[13]

B. Protection From Liability

A group of State Attorneys General, a group of State financial regulators, and several industry commenters asked the Bureau to clarify the effect of a waiver provided under the proposed Policy on State law. As noted in the 2013 Policy, such a waiver provides a safe harbor from liability as to the Federal disclosure requirements within the scope of the waiver. This means that there would be no predicate under the described Federal disclosure requirements for a private suit or Federal or State enforcement or supervisory action based on the recipient's permitted use of the trial disclosures in question within the scope of the waiver.

Several industry commenters expressed concern about the proposed Policy based on the authority State Attorneys General have under Dodd-Frank Act section 1042 to enforce provisions of title X, including especially the prohibition of unfair, deceptive, or abusive acts and practices (UDAAP).[14] They noted that a State Attorney General could use this authority to bring a UDAAP action against a recipient of a waiver, and asked the Bureau to urge State Attorneys General not to bring such actions. As an initial matter, the Bureau notes that there would be no basis for such a title X UDAAP action predicated on a violation of the Federal disclosure requirements within the scope of the waiver. Rather, a State Attorney General would have to show that, despite the consumer protections built into the Policy and despite the Bureau's issuance of a waiver under the Policy, which the Bureau would not issue if it believed the relevant conduct was unfair, deceptive, or abusive, the applicable elements of its title X UDAAP action had been established.

Moreover, if requested by the applicant, the Bureau intends to coordinate with Federal and State regulators to attempt to secure their support for a trial disclosure program, or at least a commitment not to initiate enforcement actions predicated on permitted use of the trial disclosures. The Bureau notes in this regard that, prior to issuing a No-Action Letter to Upstart Network, Inc. (Upstart) in September 2017 [15] under its related Policy on No-Action Letters,[16] the Bureau consulted with both other Federal regulators and State regulators regarding the application. No other regulator has brought an enforcement action against Upstart for engaging in the acts or practices that are the subject of the letter.

In comments on the proposed 2013 Policy, a number of commenters asked the Bureau to clarify the liability protections provided by a section 1032(e) waiver. In the preamble of the final 2013 Policy, the Bureau explained that such a waiver would provide complete liability protection, including against actions brought by other regulators and private plaintiffs.[17] Several industry commenters on the proposed Policy asked the Bureau to include such a statement in the Policy itself. The Bureau agrees that it is important for all stakeholders that such language be included in the Policy itself, and in the TDP Waiver Terms and Conditions document (WT&C) provided to recipients under section C of the Policy. Accordingly, the Bureau has revised section C of the final Policy to specify that it expects the WT&C will include a statement that, subject to good faith, substantial compliance with the WT&C, the Bureau deems the waiver recipient to be in compliance with, or exempt from, described Federal disclosure requirements and that, as a result of this determination, there is no predicate under the described Federal disclosure requirements for a private suit or Federal or State enforcement or supervisory action based on the recipient's permitted use of the trial disclosures within the scope of the waiver.[18]

Several industry commenters asked the Bureau to clarify that a waiver under the Policy would extend to agents of the waiver recipient, as well as all the necessary participants in a particular kind of transaction, explaining that failure to do so could have a chilling effect on applications. The Bureau acknowledges the general point that parties involved in a transaction in which a recipient is using non-compliant disclosures might have concerns about being a party to the transaction. To address this issue, the Bureau has revised the final Policy to state that the Bureau will entertain requests from applicants to extend waiver protection to identified or described agents, as appropriate, and that, where such a request is granted, the scope of the waiver included in the WT&C will extend to those identified or described agents. To address the concern about other necessary participants in a type of transaction, the Bureau may include, as appropriate, language in the WT&C designed to assure such parties that there is no basis for such concerns.

Finally, several industry commenters asked the Bureau to clarify the liability effects of termination [19] of a waiver on a company's providing trial disclosures during the period in which the waiver was in effect. At least two such commenters urged the Bureau to specify that no such ''retroactive'' liability would apply regardless of the grounds for termination. Another industry commenter suggested that if the termination was based on a ground other than the recipient's failure to comply with the terms and conditions of the waiver, there should be no retroactive liability. The Bureau notes that, prior to a termination of a TDP Waiver, the recipient's use of the trial disclosures covered by the waiver is lawful; *i.e.,* there is no basis for a retroactive action based on failure to comply with existing disclosure requirements. To clarify this point, section D.3 of the final Policy states that, by operation of law, no retroactive action premised on the recipient's

[13] The consumer group letter also asserted that section E of the proposed Policy regarding Regulatory Coordination exceeds the Bureau's authority under section 1032(e). This claim is discussed below in the section III.C.

[14] 12 U.S.C. 5536(a)(1)(B).

[15] *See* Bureau of Consumer Financial Protection, CFPB Announces First No-Action Letter to Upstart Network (Sept. 14, 2017), *available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-first-no-action-letter-upstart-network/.*

[16] 81 FR 8686 (Feb. 22, 2016).

[17] 78 FR 64389, 64391 (Oct. 29, 2013).

[18] Relatedly, the Bureau had included a provision in section C of the proposed Policy specifying that the WT&C will include a statement that, in the exercise of its discretion, the Bureau will not make supervisory findings or bring a supervisory or enforcement action against the company or companies under its authority to prevent unfair, abusive, or deceptive acts or practices predicated upon its or their permitted use of the trial disclosures during the waiver period, provided the company engages in good faith, substantial, compliance with the terms of the waiver. Several industry commenters supported this aspect of the proposed Policy, and it has been retained in the final Policy. The Bureau is including this provision to assure waiver recipients that the Bureau does not intend to bring supervisory or enforcement UDAAP actions based on the very conduct the Bureau has permitted under the waiver.

[19] In the final Policy, the Bureau is replacing the term ''revocation,'' which was used in the proposed Policy, with the term ''termination,'' to more accurately convey the nature of the action and for consistency with the Bureau's other innovation policies. For convenience, the Bureau is also using the term ''termination'' when describing comments despite the fact that the comments used the term ''revocation.''

permitted use of the trial disclosure will lie under provisions within the scope of a TDP Waiver.

C. Coordination With Other Regulators

The Bureau received a range of comments on section E of the proposed Policy, entitled Regulatory Coordination, specifically, as well as on the topic of coordination with other regulators more generally.

A joint consumer group letter stated that section E of the proposed Policy exceeds the Bureau's authority under section 1032(e) because that section does not authorize the Bureau to ''transfer'' or ''offload'' its own statutory duties to the States or give the States authority to waive Federal requirements. This comment appears to be based on a misunderstanding of section E. That section—which is Section F in the final Policy—does not involve a transfer of the Bureau's authority under section 1032(e) to permit trial disclosure programs and to issue waivers. Nor does it give States authority to waive Federal disclosure requirements. Rather, section F expresses the Bureau's interest in entering into agreements with State authorities that operate or plan to operate a State sandbox, which may include a process to receive a TDP Waiver under this Policy in a coordinated manner with regulatory assistance from the State sandbox.

An association of State financial regulators urged the Bureau to exercise caution in the implementation of section E of the proposed Policy, as the agreements between the Bureau and State authorities contemplated in that section risk creating a ''race to the bottom;'' *i.e.,* they could encourage some States to reduce consumer financial protections. The Bureau believes that section F will not lead to a ''race to the bottom'' and is committed to implementing it in a manner designed to ensure that it will not. As noted in section F of the final Policy, the Bureau does not intend to enter into such agreements unless consumers are provided sufficient protections in the State sandbox program.

The same association of State financial regulators urged the Bureau to include, within the scope of its intention to coordinate with other regulators, coordination for purposes of assessing the impact of trial disclosure programs on consumers. The association noted that State regulators possess information relevant to such assessment, including consumer complaints, and advised the Bureau to seek such information from State regulators. The Bureau welcomes this type of information and assistance from State regulators.

D. Disclosure of Information and Data Provided to the Bureau

Dodd-Frank Act section 1032(e)(3) provides that the Bureau's rules shall provide for public disclosure of trial disclosure programs, but that such disclosure may be limited to the extent necessary to encourage covered persons to conduct effective trials. Section F of the proposed Policy described the Bureau's expectations regarding public disclosure of information regarding permitted trial disclosure programs. Proposed section F did not include, however, a detailed description of the Bureau's expectations regarding disclosure of information submitted to the Bureau by applicants for and recipients of a trial disclosure program waiver.

Under the anticipated operation of the Policy, the Bureau expects to receive various types of information or data from applicants and recipients. Most, if not all, of this information and data is expected to serve more than one purpose. For example, test result data submitted by recipients will enable the Bureau to assess the extent to which the trial disclosures improve upon Federal disclosure requirements. To the extent that such data shows that the trial disclosures are such an improvement, it may also be used to support a rulemaking that changes disclosure requirements in the direction of the trial disclosures. Proposed section F indicated that disclosure of such information and data would be governed by the Bureau's rule on Disclosure of Records and Information (Disclosure Rule).[20]

Several industry commenters urged the Bureau to make various changes to the proposed Policy to provide greater assurance that trade secrets and proprietary business information provided to the Bureau by applicants and recipients would be protected from public disclosure. A law firm commenter recommended that section A of the proposed Policy be revised to expressly permit applicants to request and be assured that such information included in applications receive confidential treatment from the Bureau. The Bureau believes that aspects of this recommendation are reasonable and has revised the Policy accordingly. Specifically, the Bureau has added a paragraph to section A that instructs applicants wishing to request confidential treatment for certain information included in the application to identify the information as specifically as possible.

A joint trade association letter stated the Bureau should commit to applying the exemption from disclosure under the Freedom of Information Act (FOIA) for trade secrets and confidential commercial or financial information that is privileged or confidential.[21] The same commenter asked the Bureau to clarify that trial disclosure applications and associated communications with the Bureau are confidential information under the Bureau's Disclosure Rule.[22] Similarly, a law firm commenter requested that the Bureau confirm that information or data submitted by an applicant that describes the applicant's business processes constitutes business information under the Disclosure Rule.[23] The Bureau agrees that such clarifications are warranted and has accordingly revised proposed section F—which is section G of the final Policy—to clarify that the Bureau anticipates that information or data that is responsive to sections of the Policy that request such information or data will qualify as confidential information, and, more specifically, business information.

The joint trade association letter also asked the Bureau to specify that any testing data provided to the Bureau by a recipient of a TDP Waiver be treated as confidential supervisory information (CSI) under the Disclosure Rule. The trade associations reasoned that such testing data should be treated as CSI because CSI is defined to include any information provided to the Bureau by a financial institution to enable the Bureau to monitor for risks to consumers in the offering or provision of consumer financial products or services.[24] A law firm commenter went further, recommending that all information submitted by an applicant to the Bureau be treated as CSI.

The Bureau declines to make the suggested revisions regarding CSI to the Policy for two reasons. First, the Bureau notes that commenters' interpretation of the definitional clause in question is at odds with the Bureau's stated interpretation of the clause, which reads it to refer to information collected under the Bureau's ''market monitoring'' authority.[25]

Second, the Bureau believes that the suggested revisions are unnecessary. As indicated above, the fundamental

[20] 12 CFR part 1070.

[21] 5 U.S.C. 552(b)(4).

[22] 12 CFR 1070.2(f).

[23] 12 CFR 1070.20.

[24] 12 CFR 1070.2(i)(1)(iv).

[25] 12 U.S.C. 5512(c)(1); *see also* 81 FR 58310, 58312 (Aug. 24, 2016).

concern expressed by industry commenters is that trade secrets and proprietary business information submitted to the Bureau by applicants and recipients not be publicly disclosed. The Bureau has revised section G to clarify that the Bureau anticipates that much of this information will qualify as confidential information, and, more specifically, business information protected from public disclosure. In addition, in light of a recent Supreme Court opinion concerning FOIA Exemption 4,[26] the Bureau is adding a statement in the final Policy making clear that where information submitted to the Bureau is both customarily and actually treated as private by the submitter, the Bureau intends to treat it as confidential in accordance with the Disclosure Rule. Revising section G to provide that such information will also qualify as CSI thus would not significantly increase the level of such protection.

The Bureau notes that the preceding protections from public disclosure must be balanced against the Bureau's potential need to publicly disclose test result data in some form—as permitted by applicable law and/or the consent of recipients—if it decides to revise disclosure requirements through notice-and-comment rulemaking based, in part, on trial disclosures that test successfully. Indeed, many of the commenters that recommended the clarifications discussed above also asked the Bureau to commit to amending its disclosure regulations in light of successful trial disclosure programs.

Section F of the proposed Policy provided that the Bureau intends to publish on its website certain information about permitted trial disclosure programs, including the identity of recipients and a summary of the trial disclosures. Two industry commenters urged the Bureau to delay such publication until after the recipient has begun providing the trial disclosures in the market, reasoning that earlier publication would discourage potential applicants from investing the resources needed to develop innovative products or services, as earlier publication would permit competitors to copy the recipient's innovative product or service prior to market launch.

The Bureau appreciates this general concern, but believes that the commenters' suggested remedy goes further than is necessary to address it. Section 1032(e)(3) of the Dodd-Frank Act instructs the Bureau to provide for some degree of public disclosure of trial disclosure programs, but gives the Bureau authority to limit such disclosure in order to encourage covered persons to conduct such programs. The proposed Policy attempted to balance these competing concerns, but the Bureau acknowledges that further clarification of its intentions regarding publication of information about permitted trial disclosure programs would be beneficial to all stakeholders.

Section G of the final Policy clarifies that, consistent with applicable law, the Bureau intends to publish on its website, as soon as practicable, its final disposition of applications processed pursuant to sections A, B, C, D.1, D.2, E.1.b, and E.2—including both grants and denials of applications.[27] In each case, the Bureau expects that the published order will not include information protected from public disclosure under applicable law, including proprietary information and trade secrets that could be used by a competitor of the recipient.

Finally, one industry commenter requested clarification regarding the extent to which the Bureau intends to share information or data provided to the Bureau under the proposed Policy with other Federal and State agencies. Disclosure of such information to other Federal and State agencies is governed by applicable law, including the Dodd-Frank Act [28] and the Disclosure Rule. The Bureau has added the requested clarification in the final Policy.

E. Application Scope

1. Third Party Applications

Several commenters addressed the Bureau's intention to consider applications that involve testing by more than one company, including applications from trade associations or other groups applying on behalf of their members. Commenters on this topic were generally supportive of the Bureau's intention to consider these types of applications, noting, for example, that group applications could spread trial disclosure development costs in a manner that could enable smaller entities to participate in a trial disclosure program. Some industry trade associations noted that the final Policy could further allow smaller entities to participate in a trial disclosure program if third parties other than trade associations, such as Credit Union Service Organizations or data processing vendors, were allowed to apply for a trial disclosure program waiver. Several industry trade associations also requested more specificity on the steps required for a trade association to apply for a waiver on behalf of its members. One industry trade association noted possible challenges to submitting a trade association application, as some information required for the application might not be readily available to a trade association.

In light of these comments, the final Policy seeks to clarify the application process that service providers, trade associations, consumer groups, or other third parties may use. This clarification includes adding a separate section to the Policy on this topic and providing greater detail and specificity regarding the various steps of the process. In particular, under new section E.1 of the final Policy, a service provider or facilitator (*e.g.,* a trade association, consumer group, or other third party) could provide the application information specified in section A with appropriate adjustments given that the applicant itself will not be using the trial disclosures in question. The section also describes the manner in which the Bureau intends to assess the application information provided and the type of document successful applicants should expect to receive from the Bureau. The final Policy refers to this type of document as a ''TDP Waiver Template.'' New section E.1 also describes the Bureau's anticipated application, assessment, and issuance procedures for applications for a standard TDP Waiver based on a TDP Waiver Template.

2. Iterative and Concurrent Testing

Several industry commenters suggested that the final Policy should offer greater flexibility as to the range of disclosures tested under a trial disclosure program. In particular, some industry commenters addressed the proposed Policy's allowance for iterative testing, in which an applicant might engage in a sequence of relatively short tests that enable ongoing improvements to a trial disclosure concept. Under the proposed Policy, an applicant would be expected to specify the initial disclosures and describe the range or type of modifications intended for iterative testing. These contemplated modifications would then be reflected in the associated waiver. Commenters recommended that the Bureau consider other ways to support iterative testing, including in instances where the initial application and waiver do not

[26] *See Food Mktg. Inst.* v. *Argus Leader Media,* 139 S.Ct. 2356 (June 24, 2019).

[27] Section G also provides that, when the Bureau grants an application for a TDP Waiver Template under section E.1.a, the Bureau expects to publish on its website the TDP Waiver Template and a version or summary of the application.

[28] *See, e.g.,* 12 U.S.C. 5512(c)(8).

contemplate trial disclosure iterations that would address ongoing test findings. One commenter suggested that a staggered application process could address this issue, while another commenter noted that a defined process for modifying a waiver could address instances where a company seeks to change the scope of a trial disclosure program based on test results.

The Bureau intends for the final Policy to support iterative testing when appropriate and generally agrees that the Policy should include anticipated procedures for modifying TDP Waivers. Accordingly, the final Policy includes a new section (D.2) that specifies the Bureau's anticipated procedures regarding requests for modification of a TDP Waiver.

Section A of the final Policy also addresses the possibility of concurrent testing during a trial disclosure program. As one trade association noted, some companies may wish to test multiple variations of a disclosure at the same time. Section A of the final Policy instructs applicants seeking to conduct such concurrent testing to identify the range of variations to be tested concurrently.

F. Bureau Assessment of Applications

Some comments, particularly from industry trade associations, urged the Bureau to provide greater clarity regarding its assessment of applications for a waiver under section B of the proposed Policy. One industry trade association asked that the Bureau identify certain additional factors that it will consider in determining whether a trial disclosure is designed to improve upon Federal disclosure requirements. The same industry trade association urged the Bureau to explain how it intended to assess an application's quality and persuasiveness under section B of the proposed Policy. The trade association suggested that the Bureau might do so by confirming the types of proposals it will consider, such as those involving new methods for providing disclosures or disclosures for long-established products.

Under the final Policy, the Bureau intends to consider the general quality and persuasiveness of an application when deciding whether to permit a proposed trial disclosure program. The Bureau expects to place particular emphasis on items covered in sections A.3, A.4, and A.5 of the final Policy as well as information about the applicant and the trial disclosures in question derived through Bureau due diligence processes. Section A.3 of the final Policy provides examples of ways in which trial disclosures may be designed to improve upon Federal disclosure requirements, but the examples are by no means exclusive. The final Policy does not exclude applications involving disclosures associated with long-established products or applications that describe a new method for providing disclosures. Indeed, like the proposed Policy, the final Policy expressly invites applications involving changed delivery mechanisms.

The proposed Policy stated that the Bureau would review reasonable requests for reconsideration of a denial of an application. Some industry trade associations asked the Bureau to commit to a timeframe for responding to a request for reconsideration of a denied application. The Bureau agrees that such a timeframe would be beneficial for stakeholders, and has revised the Policy to specify that the Bureau expects to respond to reasonable requests for reconsideration of a denied application within 60 days of the request.

A trade association recommended that the Bureau revise the Policy to include an expedited application process for companies wishing to test trial disclosures that already have been permitted by the Bureau. The Bureau agrees that processing such applications likely would not require the same amount of time as the initial application regarding the trial disclosures in question. New section E.2 of the final Policy provides for expedited processing of any application that seeks to conduct a trial disclosure program that is substantially similar to one that is the subject of an existing TDP Waiver.

G. Extension and Termination of Waivers

1. Extension

Industry trade associations sought more time to apply for an extension prior to expiration of a trial disclosure program and associated waiver. Under section D of the proposed Policy, waiver recipients would have had to submit extension requests no later than 150 days prior to the expiration of the waiver. One industry trade association recommended that the Bureau allow extension requests to be filed up to 90 days prior to expiration. Another industry trade association contended that extension request deadlines should be scalable and contingent on the period of time for which the trial disclosure program was originally permitted, noting that the proposed Policy would require the recipient of a waiver lasting one year to apply for an extension at approximately the halfway mark of the trial disclosure program. The Bureau considers these requests to be reasonable and has revised the final Policy to permit extension requests up to 90 days prior to expiration of the waiver. When issuing a waiver for a testing period of one year or less, the Bureau may consider an extension deadline appropriate for the testing period.

2. Termination

A number of industry comment letters sought additional specificity regarding the proposed procedures for terminating waivers. More specifically, some industry commenters urged the Bureau to clarify the circumstances under which it would terminate a waiver. One trade association requested that the Bureau clarify how it will evaluate certain information, such as complaint patterns and customer service inquiries, to determine if trial disclosures are causing a material, adverse impact on consumer understanding. Another trade association and a financial services firm asked the Bureau to define material, adverse impact on consumer understanding.

Industry commenters also requested clarification of the termination procedures described in the proposed Policy and additional procedural protections during the termination process. Some commenters asked the Bureau to grant waiver recipients an opportunity to cure any failure to comply with the terms and conditions of a waiver prior to termination. One industry commenter argued for a reasonable grace period following termination to permit the recipient to wind down the trial disclosure program. Other commenters sought explicit timelines and procedures for the termination process.

The Bureau considers many of the comments regarding termination to have merit and has amended the Policy accordingly. Under section D.3 of the final Policy, the Bureau intends to provide waiver recipients (i) the grounds for termination, (ii) a reasonable period of time to respond, (iii) as appropriate, an opportunity to address the grounds for termination within a reasonable period of time before terminating a waiver, (iv) the reason(s) why an attempt to cure such a failure to comply was deemed inadequate, and (v) a period of six months before termination to wind down use of the trial disclosures, unless the termination was based upon the disclosures causing material, adverse, impact to consumers and a wind-down period would permit such injury to continue.

With respect to requests for additional detail regarding circumstances under

which termination might be triggered, section D.3 of the final Policy provides that the Bureau anticipates basing termination on three grounds. The final Policy does not, however, define material, adverse impact on consumer understanding—except to identify examples of objective criteria the Bureau intends to use to determine whether such impact has occurred. These determinations will depend significantly on the type of information provided by a waiver recipient and the facts and circumstances associated with the testing. To the extent practicable, the Bureau expects to provide additional clarity regarding the appropriate criteria in the WT&C associated with each waiver.

H. Additional Consumer Safeguards

Under the proposed Policy, recipients would have been required to notify the Bureau of material changes in customer service inquiries, complaint patterns, default rates, or other effects indicating that trial disclosures may be causing a material, adverse, impact on consumer understanding. Consumer groups expressed concern about the efficacy of this requirement, noting in particular that it would not require recipients to record such information, and that the ''material'' standard is too vague. The consumer groups asserted that this would create a risk that the Bureau would fail to detect consumer harm caused by trial disclosures in a timely fashion. The Bureau acknowledges this point and has revised the final Policy to mitigate such risk. Under section C of the final Policy, the Bureau anticipates that the WT&C will require recipients to report to the Bureau information about the effects of trial disclosures on relevant objective indicators of consumer behavior, such as customer service inquiries, complaint patterns, default rates, or other objective criteria, that will enable to the Bureau to determine if the trial disclosures are causing a material, adverse, impact on consumer understanding. In addition, under the final Policy, the Bureau anticipates that, in most cases, it will be appropriate for the recipient to provide such information three months after the start of the trial disclosure program and then every six months thereafter for the duration of the program.

Several consumer groups urged the Bureau to revise the Policy to provide for public comment on a proposed trial disclosure program prior to the Bureau permitting the program. The Bureau received this same comment on the proposed 2013 Policy. The Bureau declined to add such a requirement based on its belief that it would discourage rather than encourage companies to conduct trial disclosure programs, and remains of the same opinion.[29]

An association of State financial regulators recommended that the Policy should require companies conducting trial disclosure programs to obtain consumers' consent before providing them with trial disclosures. This is likewise a comment the Bureau received on the proposed 2013 Policy, and the Bureau remains of the view that obtaining such consent would significantly limit the ability of trial disclosure testing to lead to improved disclosures.[30]

IV. Regulatory Requirements

The Bureau has concluded that this Policy constitutes an agency general statement of policy and a rule of agency organization, procedure, or practice exempt from the notice and comment rulemaking requirements under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(b). Because the Policy relates solely to agency procedure and practice, it is not substantive, and therefore is not subject to the 30-day delayed effective date for substantive rules under section 553(d) of the APA. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[31]

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau plans to submit a report containing this Policy and other required information to each House of Congress and the Comptroller General prior to the Policy's applicability date. The Office of Information and Regulatory Affairs has designated this Policy as not a ''major rule'' as defined by 5 U.S.C. 804(2).

VI. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies are generally required to seek the Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. According to the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays currently a valid control number assigned by OMB. The information requested in section A of this Policy has been previously approved by OMB and assigned OMB control number 3170–0039. The Bureau has determined that the revisions to this Policy do not introduce any new or substantively or materially revised collections of information beyond what has been previously approved by OMB.

VII. Final Policy

The text of the final Policy is as follows:

Policy To Encourage Trial Disclosure Programs

Consumers need timely and understandable information to make the financial decisions that they believe are best for themselves and their families. Much Federal financial consumer protection law, therefore, rests on the assumption that accurate and effective disclosures will help Americans understand the costs, benefits, and risks of consumer financial products and services.

In section 1032 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Congress gave the Bureau of Consumer Financial Protection (Bureau) authority to prescribe rules to ensure that consumers receive such disclosures, and to include in such rules model forms to facilitate compliance.[32] Furthermore, in section 1032(e) of the Dodd-Frank Act, Congress gave the Bureau authority to provide certain legal protections to covered persons to conduct trial disclosure programs.[33] This authority furthers the Bureau's statutory purpose, stated in section 1021(a) of the Dodd-Frank Act, to ensure that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.[34] Furthermore, this authority advances the Bureau's statutory objectives in section 1021(b) of the Dodd-Frank Act to ensure consumers are provided with timely and understandable information to make responsible decisions about financial transactions; outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens; and markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.[35]

[29] 78 FR 64389, 64390 (Oct. 29, 2013).

[30] 78 FR 64389, 64391–92 (Oct. 29, 2013).

[31] 5 U.S.C. 603(a), 604(a).

[32] 12 U.S.C. 5532(a)–(d).

[33] 12 U.S.C. 5532(e).

[34] 12 U.S.C. 5511(a)

[35] 12 U.S.C. 5511(b)(1), (b)(3), (b)(5).

More specifically, under section 1032(e), the Bureau may permit covered persons to conduct trial disclosure programs, limited in time and scope, for the purpose of testing disclosures designed to improve upon model forms within the Bureau's jurisdiction.[36] Such permission may include providing a legal safe harbor; *i.e.,* the Bureau may deem a covered person conducting such a program to be in compliance with, or exempt from, a requirement of a rule or enumerated consumer law.[37] Such trial disclosure programs must be subject to standards and procedures that are designed to encourage covered persons to conduct such programs.[38] Similarly, although Bureau rules must provide for public disclosure of such programs, such public disclosure may be limited to the extent necessary to encourage covered persons to conduct effective trials.[39]

The Policy implements the statutory requirement to issue standards and procedures for trial disclosure programs and is designed to encourage covered persons to innovate by proposing and conducting such programs, consistent with the protections for consumers described in the Policy.[40]

For permitted trial disclosure programs, the Bureau expects to deem the applicant to be in compliance with, or exempt from, described Federal disclosure requirements, for a limited period of time.[41] As a result of the issuance of such a waiver by the Bureau, no basis exists under the described provisions for a private action based on the recipient's permitted use of the trial disclosures in question. The same is true with respect to supervisory or enforcement actions by other Federal and State regulators even if they have enforcement or supervisory authority as to Federal consumer financial laws under which the Bureau has rulemaking authority. There can be no predicate for an enforcement or supervisory action by such a regulator that is based on the recipient's permitted use of the trial disclosures in question within the scope of the waiver—including actions to enforce the prohibition of unfair, deceptive, or abusive acts and practices[42] predicated on a violation of waived provisions.

The Bureau believes that there may be significant opportunities to enhance consumer protection by facilitating innovation in financial products and services through enabling responsible companies to research informative, cost-effective disclosures in test programs. The Bureau also recognizes that in-market testing, involving companies and consumers in real world situations, may offer particularly valuable information with which to improve disclosure rules and model forms.[43]

The Policy consists of seven sections:

- Section A describes information to be included in an application for a Trial Disclosure Program Waiver (TDP Waiver);
- Section B describes factors the Bureau intends to consider in deciding whether to grant an application for a TDP Waiver;
- Section C describes the standard procedures the Bureau intends to use for issuing TDP Waivers;
- Section D describes procedures the Bureau intends to use for granting extensions of, modifying, and terminating TDP Waivers;
- Section E describes alternative application, assessment, and issuing procedures that the Bureau may use for certain circumstances;
- Section F describes how the Bureau intends to coordinate with other regulators with respect to TDP Waivers; and
- Section G describes the Bureau's intentions regarding disclosure of information relating to TDP Waivers.

A. Submitting Applications for TDP Waivers

Potential applicants are strongly encouraged to contact the Office of Innovation at *officeofinnovation@cfpb.gov* for informal, preliminary discussion of a contemplated proposal prior to submitting a formal application.[44] Applications for a TDP Waiver should include the following:

1. The identity of the applicant;[45]
2. A description of the trial disclosures or delivery mechanisms in question;[46]
3. An explanation of how the trial disclosures or delivery mechanisms are designed to improve upon Federal disclosure requirements with respect to consumer understanding, cost effectiveness, or otherwise, along with metrics for evaluating whether such improvements are realized, such as comparisons with existing costs or consumer payment or response rates for the applicant or the relevant industry;[47]
4. An explanation of the potential consumer risks associated with the trial disclosures, how the applicant intends to mitigate such risks, and how such

[36] 12 U.S.C. 5532(e)(1). The Bureau interprets section 1032(e) to grant the Bureau authority to permit trial disclosure programs focused on any disclosures required by an enumerated consumer law or a Bureau rule (hereafter, ''Federal disclosure requirements''), so long as such programs are designed to improve upon model forms under Federal consumer financial law. For purposes of the Policy, Federal disclosure requirements encompass required notifications, including required notifications of any adverse action.

[37] 12 U.S.C. 5532(e)(2). As used in section 1032(e)(2), the term ''rule'' includes: (i) Rules implementing an enumerated consumer law; and (ii) rules implementing the Consumer Financial Protection Act of 2010, including rules promulgated by the Bureau under its authority to prevent unfair, abusive, or deceptive acts or practices (12 U.S.C. 5531(b)), or to enable full, accurate, and effective disclosure (12 U.S.C. 5532(a)).

[38] 12 U.S.C. 5532(e)(1), (2).

[39] 12 U.S.C. 5532(e)(3).

[40] 12 U.S.C. 5532(e). As specified in section C of the Policy, if the Bureau grants an application for a TDP Waiver, the terms and conditions of the waiver will specify certain legal protections granted to the recipient(s). Those protections, however, are based on the waiver, and not on the Policy. The Policy is not intended to nor should it be construed to create or confer upon any covered person (including one who is the subject of Bureau supervisory, investigation, or enforcement activity) or consumer, any substantive rights or defenses that are enforceable in any manner. Nor should the Policy be viewed as substituting for the normal process of legislative rulemaking. In the event that information learned from trial disclosure programs triggers or otherwise informs follow-on rulemaking, the Bureau would follow the standard rulemaking process, which affords the public the opportunity of submitting comments on a proposed regulation.

[41] For convenience, this statutory authority to deem covered persons in compliance with or to exempt them from disclosure requirements—in each case for a limited period of time—is referred to in the Policy as the authority to issue waivers.

[42] 12 U.S.C. 5536.

[43] *See* U.S. Dep't of the Treasury, Financial Regulatory Reform: A New Foundation 63–64 (2009), *available at https://www.treasury.gov/initiatives/Documents/FinalReport_web.pdf* (''A regulator is typically limited to testing disclosures in a 'laboratory' environment. A product provider, however, has the capacity to test disclosures in the field, which can produce more robust and relevant results. For example, a credit card provider can try two different methods to disclose the same product risk and determine which was more effective by surveying consumers and evaluating their behaviors. We propose that the [Consumer Financial Protection Act] should be authorized to establish standards and procedures, including appropriate immunity from liability, for providers to conduct field tests of disclosures.'').

[44] The email subject line should begin ''CFPB Disclosure Sandbox Inquiry.''

[45] For convenience, the term ''applicant'' is used in the Policy to refer both to single applicants and joint applicants. Applicants may request that the waiver extend to identified or described agents of the applicant.

[46] An application could propose testing (i) modifications to a model form or other disclosures, (ii) replacement of a model form or other disclosures with a new form or disclosures, (iii) alternative delivery mechanisms, or (iv) elimination of disclosure requirements. If disclosures consist of modified or replacement disclosure content, that content should be in plain language, reflect a clear format and design, and be succinct. If an application is for iterative testing, it should specify the initial disclosures and the range or type of modifications contemplated. If an application is for concurrent testing, it should specify the range of variations to be concurrently tested.

[47] Although the Bureau considers cost-effectiveness an appropriate metric of disclosure improvement, it does not intend to permit trial disclosures that it believes will cause a material, adverse impact on consumer understanding, regardless of potential cost-savings.

risks will be assessed during the course of the trial disclosure program;

5. An identification of the statutory and regulatory provisions with respect to which the applicant seeks a TDP Waiver; [48]

6. The requested duration of the testing program, and a plan to wind down or modify activity at its conclusion; [49]

7. The size, location, and nature of the consumer population to be involved in the testing program, an explanation of how the population was chosen, and a description of any plans to scale or modify the population over the duration of the testing program;

8. A description of test result data that the applicant expects to share with the Bureau, and a schedule for sharing that data; [50]

9. If the applicant wishes to request confidential treatment under the Freedom of Information Act (FOIA),[51] the Bureau's rule on Disclosure of Records and Information (Disclosure Rule),[52] or other applicable law for certain information included in the application, the applicant should identify this information as specifically as possible, and may reference the Bureau's intentions regarding confidentiality under section G; [53] and

10. If the applicant wishes the Bureau to coordinate with other regulators, the applicant should identify those regulators, including, but not limited to, those that the applicant has contacted about providing the trial disclosures in question.[54]

Applications may be submitted via email to: *officeofinnovation@cfpb.gov* or through other means designated by the Office of Innovation.[55] Submitted applications may be withdrawn by the applicant at any time.

B. Assessment of Applications for TDP Waivers

The Bureau may grant or deny a TDP Waiver application in its sole discretion. If it chooses to grant an application, the Bureau also has discretion to grant the application in whole or only in part. In deciding whether to grant an application for a TDP Waiver, the Bureau intends to balance a variety of factors in considering the quality and persuasiveness of the application, with particular emphasis on the information specified in sections A.3, A.4, and A.5; as well as information about the applicant, the proposed trial disclosures, or the associated product or service derived through Bureau due diligence processes. The Bureau intends to grant or deny an application within 60 days of notifying the applicant that the Bureau deems the application to be complete.

C. Procedures for Issuing TDP Waivers [56]

When the Bureau permits a trial disclosure program and issues a TDP Waiver, it intends to provide the recipient with the terms and conditions of its permission and the waiver in a document entitled: TDP Waiver Terms and Conditions (WT&C), which will be signed by the Assistant Director of the Office of Innovation, and by an officer of the recipient.[57] The Bureau expects that the WT&C will:

1. Identify the recipient; [58]

2. Specify the subject matter scope of the TDP Waiver, *i.e.,* the new disclosures or delivery methods to be tested by the recipient;

3. Describe the test population(s) and the duration of the TDP Waiver;

4. Require the recipient to report to the Bureau information about the effects of the trial disclosures on relevant indicators of consumer behavior, such as customer service inquiries, complaint patterns, default rates, or other objective criteria, that will enable the Bureau to determine if the trial disclosures are causing a material, adverse, impact on consumer understanding; [59]

5. Specify any other terms or conditions, such as the terms of testing, data sharing, and the extent that the Bureau intends to publicly disclose information about the trial disclosure program; [60]

6. State that, subject to good faith, substantial compliance with the WT&C, the Bureau deems the TDP Waiver recipient to be in compliance with, or exempt from, described Federal disclosure requirements and that, as a result of this action, there is no predicate under the described Federal disclosure requirements for a private suit or Federal or State enforcement or supervisory action based on the recipient's permitted use of the trial disclosures in question within the scope of the waiver; [61]

7. State that, unless or until terminated by the Bureau as described in section C.8, the Bureau will not make supervisory findings or bring a supervisory or enforcement action against the recipient under its authority to prevent unfair, abusive, or deceptive acts or practices [62] predicated upon the recipient's permitted use of the trial disclosures in question within the scope of the waiver.[63]

8. State that (a) the recipient may reasonably rely on any Bureau commitments made in the waiver; and

[48] Applicants should describe the relevant provisions with as much specificity as practicable, in part to enable the Bureau to respond expeditiously to the application. The Bureau recognizes that in some cases it may be difficult to determine precisely which statutory or regulatory requirements would apply, in the normal course, to the trial disclosures in question. In other cases, the applicant may lack the legal resources to make a fully precise determination. In such circumstances, the applicant should provide the maximum specification practicable under the circumstances and explain the limits on further specification.

[49] The Bureau expects that a two-year testing period will be appropriate in most cases.

[50] Such a schedule is intended for sharing data after the conclusion of the testing, but the applicant may also choose to share data with the Bureau during the testing. The data the applicant expects to share with the Bureau should be limited to aggregate data.

[51] 5 U.S.C. 552.

[52] 12 CFR part 1070.

[53] Applicants should describe the relevant legal bases for confidentiality with as much specificity as practicable. The Bureau recognizes that some applicants may lack the legal resources to provide a detailed and complete showing. In such circumstances, the applicant should provide the maximum specification practicable under the circumstances and explain the limits on further specification.

[54] When requested by an applicant, the Bureau intends to coordinate with other Federal and State regulators identified by the applicant, as appropriate. However, depending on the extent of coordination requested, the Bureau may not be able to respond to the application within the time frame specified in section B.

[55] Except as provided in sections A.1 and A.10, applications should not include any personally identifiable information (PII).

[56] The procedures specified in section C may be modified pursuant to coordination efforts with other regulators, as specified in section F.

[57] If the Bureau decides to deny an application, it will inform the applicant of its decision. The Bureau intends to respond to reasonable requests to reconsider its denial of an application within 60 days of such requests. Applicants may withdraw, modify, or re-submit applications at any time.

[58] For convenience, the term ''recipient'' is used in the Policy to refer both to a single recipient and joint recipients. If the application requested that the waiver extend to identified or described agents of the applicant, the WT&C may also identify or describe such agents.

[59] The Bureau anticipates that, in most cases, it will be appropriate for the recipient to provide such information three months after the start of the trial disclosure program and then every six months thereafter for the duration of the program.

[60] If an applicant objects to the disclosure of certain information and the Bureau insists that the information must be publicly disclosed if a TDP Waiver is issued, the applicant may withdraw the application. In the event of such withdrawal, the Bureau intends to treat all information related to the application as confidential to the full extent permitted by law.

[61] The Bureau maintains the authority to obtain information relating to the consumer financial product or service subject to a TDP Waiver under its applicable supervision, enforcement, and other authorities in the same manner and frequency that it obtains information relating to consumer financial products or services not subject to a TDP Waiver.

[62] 12 U.S.C. 5531, 5536.

[63] Implicit in this statement is that the Bureau has not determined that the acts or practices in question are unfair, deceptive, or abusive.

(b) the Bureau may terminate[64] a TDP Waiver if: (i) The recipient fails to substantially comply in good faith with the WT&C; (ii) the Bureau determines that the recipient's use of the trial disclosures is causing a material, adverse impact on consumer understanding based upon the objective criteria identified in the WT&C pursuant to section C.4; or (iii) the Bureau determines that the legal basis for its permission and the waiver has changed as a result of a statutory change or a Supreme Court decision.[65]

D. Procedures for Extension, Modification, and Termination of TDP Waivers

1. Extension Procedures

Recipients may request an extension of permission to conduct a trial disclosure program and of a TDP Waiver for a specified period of time. In considering applications for extensions, the Bureau expects to place particular weight on the extent to which the information provided under section C.4 and the data provided pursuant to the WT&C shows that the trial disclosures are improving upon Federal disclosure requirements, without causing a material, adverse impact on consumer understanding. Such applications for an extension should specify the proposed duration of the extension and should be submitted no later than 90 days prior to the expiration of the TDP Waiver.[66] The recipient should explain the reasons for the requested extension, such as whether it is intended to last until a possible amendment to Bureau regulations.

Upon the presentation of persuasive information and data, the Bureau anticipates granting such extension requests for a period at least as long as the period of the original waiver. The Bureau anticipates permitting longer extensions where the Bureau is considering amending disclosure requirements in a manner consistent with the trial disclosures in question.[67] During the time period pending such a rule amendment, the Bureau intends to consider means of making the improved disclosures available to other covered persons subject to the disclosure requirements in question.

2. Modification Procedures

A recipient of a TDP Waiver may apply for a modification of the waiver. The recipient may seek modification to address an anticipated or unanticipated change in circumstances, such as test results that warrant subsequent, uncontemplated iterations to an initial trial disclosure. Applications for a modification should include the following:

a. Any material changes to the information included in the original application;

b. The specific requested modification to the TDP Waiver;

c. The grounds for modifying the TDP Waiver; and

d. Any other information the recipient wishes to provide in support of the modification application.

In deciding whether to grant an application for modification, the Bureau intends to balance a variety of factors, including the quality and persuasiveness of the application. The Bureau expects to grant or deny such applications within 30 days of notifying the applicant that the Bureau deems the application to be complete. When the Bureau grants an application for modification, it intends to provide the recipient with a modified WT&C in accordance with the procedures specified in section C.

3. Termination Procedures

The Bureau intends that the recipient of a TDP Waiver should be able to reasonably rely on any Bureau commitments made in the associated WT&C. The Bureau expects terminations prior to any pre-determined expiration date to be quite rare based, in part, on its knowledge of similar programs operated by other Federal agencies. The Bureau expects that its practice with respect to termination will be in line with the practices of these agencies.

The Bureau expects that a TDP Waiver will state that (a) the recipient may reasonably rely on any Bureau commitments made in the waiver; and (b) the Bureau may terminate a TDP Waiver if: (i) The recipient fails to substantially comply in good faith with the WT&C; (ii) the Bureau determines that the recipient's use of the trial disclosures is causing a material, adverse impact on consumer understanding based upon the objective criteria identified in the WT&C pursuant to section C.4 or data provided pursuant to the WT&C; or (iii) the Bureau determines that the legal basis for its permission and the waiver has changed as a result of a statutory change or a Supreme Court decision.[68] By operation of law, no retroactive action premised on the recipient's permitted use of the trial disclosure will lie under provisions within the scope of a TDP Waiver.

In accordance with principles of fair notice, before terminating a TDP Waiver, the Bureau intends to notify the recipient of the grounds for termination, and permit an opportunity to respond within a reasonable period of time. In appropriate cases, the Bureau intends to offer the recipient an opportunity to address the grounds for termination within a reasonable period of time before terminating a TDP Waiver. The Bureau intends to allow the recipient to wind-down the use of trial disclosures during a period of six-months before formal termination, unless the trial disclosures are causing a material, adverse impact on consumer understanding, and a wind-down period would permit such injury to continue. If the Bureau terminates a TDP Waiver, it intends to do so in writing and specify the reasons for its decision. The Bureau intends to publish termination decisions on its website.

E. Alternative Application, Assessment, and Issuance Procedures

The Bureau recognizes that the process described in sections A, B, and C (Standard Process) may not be appropriate in certain circumstances. These include applications by service providers that develop disclosures for use by covered persons that offer or provide consumer financial products or services; applications facilitated by trade associations, consumer groups, or other third parties that are not themselves covered persons; and applications involving a trial disclosure program that is substantially similar to

[64] No retroactive action premised on the recipient's permitted use of the trial disclosures will lie under provisions covered by a TDP Waiver. Actions that are not premised on the recipient's permitted use of the trial disclosures associated with a particular TDP Waiver are, by definition, not subject to any such restriction.

[65] If the legal basis for the Bureau's permission and the waiver has changed as a result of a Circuit Court of Appeals Decision, the Bureau may consider modifying the waiver so that it is inoperative within that Circuit.

[66] Assuming the two-year testing period the Bureau expects to be appropriate in most cases, the Bureau believes recipients would have sufficient time to gather evidence supportive of an extension request. For testing periods of one year or less, the Bureau may consider a deadline for submitting an application for an extension appropriate for the testing period.

[67] The Bureau's plans regarding rulemaking activity are set forth in its Semiannual Regulatory Agenda, published in full on *www.reginfo.gov.* Rule amendments that follow successful trial disclosure programs could permit an alternative method of compliance, rather than replacing existing requirements with new ones. If the period of an extension were tied to the Bureau's consideration of amending relevant disclosure requirements and the Bureau announced it was discontinuing its plans to amend the disclosure rules in question, the extension period would be adjusted accordingly, *e.g.,* to end on a specific date.

[68] If the legal basis for the Bureau's permission and the waiver has changed as a result of a Circuit Court of Appeals Decision, the Bureau may consider modifying the waiver so that it is inoperative within that Circuit.

one that is the subject of an existing TDP Waiver.

1. Service Provider and Facilitated Applications

Service providers that develop disclosures for use by covered persons that offer or provide consumer financial products or services may use the Standard Process if they have secured an applicant that intends to use the service provider's trial disclosures in connection with offering or providing a consumer financial product or service. Similarly, applications facilitated by trade associations, consumer groups, or other third parties that are not covered persons that offer or provide consumer financial products or services may use the Standard Process if the third party has secured an applicant that intends to use the trial disclosures in question.

a. *TDP Waiver Template.* As an alternative to using the Standard Process, a service provider, trade association, consumer group, or other third party may apply for a TDP Waiver Template. A TDP Waiver Template is (i) non-operative, *i.e.,* it does not provide permission to conduct a trial disclosure program to any party, and (ii) non-binding on the Bureau.[69]

i. Application Information. Such applications should include the information specified in section A, as applicable and with appropriate adjustments given that the applicant itself will not be using the trial disclosures in question. In particular, for service provider applications the applicant should describe how it anticipates its trial disclosures will be used by a provider of consumer financial products or services.

ii. Assessment. In deciding whether to grant an application for a TDP Waiver Template, the Bureau intends to balance a variety of factors, as described in section B, with appropriate adjustments given the alternative nature of the application. The Bureau intends to grant or deny an application within 60 days of notifying the applicant that the Bureau deems the application to be complete.

iii. Issuance. The Bureau expects that a TDP Waiver Template will include many of the elements specified in section C, with appropriate adjustments based, in part, on the non-operative, non-binding nature of a TDP Waiver Template. In addition, a TDP Waiver Template will include a statement that the Bureau intends to grant applications for a TDP Waiver based on the TDP Waiver Template, under section E.1.b, in appropriate cases.

b. *TDP Waiver Based on a TDP Waiver Template.* A covered person that intends to conduct the trial disclosure program covered by a TDP Waiver Template may apply for a TDP Waiver based on the TDP Waiver Template.

i. Application Information. Such applications should include the information specified in section A, with appropriate adjustments. In particular, the applicant should include (i) a statement that the application is based on a TDP Waiver Template and an identification of the TDP Waiver Template on which it is based; and (ii) a statement identifying the trial disclosures for which a TDP Waiver is being sought and describing how the applicant's use of the trial disclosures is consistent with the framework described in the TDP Waiver Template. The application may cross reference any relevant information contained in the application for the TDP Waiver Template or the TDP Waiver Template itself.

ii. Assessment. In deciding whether to grant an application for such a TDP Waiver, the Bureau intends to balance a variety of factors, as described in section B, with appropriate adjustments. In particular, the Bureau intends to include in its assessment the additional factor of the degree to which the applicant's use of trial disclosures is consistent with the framework described in the TDP Waiver Template. The Bureau anticipates being able to process such applications in a timeframe shorter than that specified in section B given that the underlying TDP Waiver Template has already been granted.

iii. Issuance. When the Bureau grants an application for such a TDP Waiver, it intends to provide the recipient with a TDP Waiver in accordance with the procedures specified in section C.

2. Applications for Substantially Similar Trial Disclosure Programs

If an applicant intends to conduct a trial disclosure program that it believes is substantially similar to a trial disclosure program that is the subject of an existing TDP Waiver,[70] it may apply for a TDP Waiver based on the existing TDP Waiver.

a. Application Information. Such applications should include the information specified in section A, with appropriate adjustments. In particular, the applicant should include (i) a statement that the application is based on an existing TDP Waiver and an identification of the TDP Waiver on which it is based; and (ii) a statement describing how the trial disclosure program in question is substantially similar to the trial disclosure program that is the subject of the existing TDP Waiver. The application may cross reference any relevant information contained in the application for the existing TDP Waiver or the existing TDP Waiver itself.

b. Assessment. In deciding whether to grant an application for such a TDP Waiver, the Bureau intends to balance a variety of factors, as described in section B, with appropriate adjustments. In particular, the Bureau intends to include in its assessment the additional factor of the degree to which the trial disclosure program in question is substantially similar to the existing trial disclosure program. The Bureau anticipates being able to process such applications in a timeframe shorter than that specified in section B given that the underlying TDP Waiver has already been granted.

c. Issuance. When the Bureau grants an application for such a TDP Waiver, it intends to provide the recipient with a TDP Waiver in accordance with the procedures specified in section C.[71]

F. Regulatory Coordination

Section 1015 of the Dodd-Frank Act instructs the Bureau to coordinate with Federal agencies and State regulators, as appropriate, to promote consistent regulatory treatment of consumer financial and investment products and services.[72] Similarly, section 1042(c) of the Dodd-Frank Act instructs the Bureau to provide guidance in order to further coordinate actions with the State attorneys general and other regulators.[73] Such coordination includes coordinating in circumstances where other regulators have chosen to offer regulatory assistance to entities offering innovative products and services. One method of providing such assistance is through a State sandbox, or group of State sandboxes, or other limited scope State authorization program (State sandbox).[74] The Bureau is interested in

[69] In particular, the Bureau may modify a TDP Waiver Template in light of the additional information provided in an application for a TDP Waiver under section E.1.b.

[70] Such an existing TDP Waiver may have been issued under the Standard Process or the alternative processes described in section E.1.b.

[71] In unusual circumstances, the Bureau may utilize other procedures that diverge in one or more respects from the Standard Process or the alternative procedures described in section E, consistent with the purposes of the Policy.

[72] 12 U.S.C. 5495.

[73] 12 U.S.C. 5552(c).

[74] The concept of a regulatory sandbox is relatively new and does not have a precise, generally accepted definition. The term is used in this Policy to refer to a regulatory structure where

Continued

entering into agreements with State authorities that operate or plan to operate a State sandbox, which may include a process to receive a TDP Waiver under this Policy in a coordinated manner with regulatory assistance from the State sandbox.

Furthermore, the Bureau is interested in coordinating with other regulators more generally. To this end, the Bureau intends to enter into agreements whenever practicable to coordinate operation of the CFPB Disclosure Sandbox under the Policy with similar programs operated by State, Federal, or international regulators.

G. Bureau Disclosure of Information Relating to TDP Waivers

Public disclosure of information relating to TDP Waivers is governed by applicable law, including the Dodd-Frank Act,[75] FOIA, and the Disclosure Rule. The Disclosure Rule generally prohibits the Bureau from disclosing confidential information,[76] and defines confidential information to include information that may be exempt from disclosure under FOIA [77]—including Exemption 4 regarding trade secrets and confidential commercial or financial information that is privileged or confidential.[78] Relatedly, the Disclosure Rule defines business information as commercial or financial information obtained by the Bureau from a submitter that may be protected from disclosure under Exemption 4 of FOIA, and generally provides that such business information shall not be disclosed pursuant to a FOIA request except in accordance with section 1070.20 of the rule.[79]

Consistent with applicable law, the Bureau intends to publish on its website its final disposition of applications processed pursuant to sections A, B, C, D.1, D.2, E.1.b, and E.2. If the Bureau decides to grant the application, it intends to publish an order regarding the decision on its website as soon as practicable. The Bureau expects that the order will overlap with the WT&C provided to the recipient, but will contain other information and will not include information protected from public disclosure under applicable law. The Bureau expects the order to:

1. Identify the entity or entities conducting the trial disclosure program and receiving a TDP Waiver;
2. Summarize the trial disclosures;
3. Describe the duration, scope, and other conditions of the TDP Waiver;
4. State the Bureau's reasons for permitting the trial disclosure program and issuing the TDP Waiver; and
5. State that the TDP Waiver applies only to the recipient.

If the Bureau decides to deny the application, it intends to publish an order on its website as soon as practicable that will explain the reason(s) for the Bureau's decision. The Bureau expects that such denial orders likewise will not include information protected from public disclosure under applicable law.[80] [81]

When the Bureau grants an application for a TDP Waiver Template under section E.1.a, the Bureau expects to publish on its website the TDP Waiver Template and a version or summary of the application.

Where information submitted to the Bureau is both customarily and actually treated as private by the submitter, the Bureau intends to treat it as confidential in accordance with the Disclosure Rule.[82] The Bureau anticipates that much of the information submitted by applicants in their applications, and by recipients during the pendency of the TDP Waiver, will qualify as confidential information under the Disclosure Rule.[83] In particular, the Bureau expects that the information submitted that is responsive to sections A.2, A.3, A.4, A.7, A.8, C.4, and C.5, and parallel information submitted that is responsive to sections D.1, D.2, E.1, and E.2 will qualify as business information under the Disclosure Rule.[84] [85] Other information submitted by the applicant or the recipient may also qualify as confidential information.

Disclosure of information or data provided to the Bureau under the Policy to other Federal and State agencies is governed by applicable law, including the Dodd-Frank Act [86] and the Disclosure Rule.

To the extent the Bureau wishes to publicly disclose non-confidential information regarding trial disclosure programs, the Bureau expects to include the terms of such disclosure in the WT&C. The Bureau intends to draft the WT&C in a manner such that confidential information is not disclosed. Consistent with applicable law and its own rules, the Bureau does not expect to publicly disclose any data or information that would conflict with consumers' privacy interests.

Dated: September 6, 2019.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2019–19761 Filed 9–12–19; 8:45 am]

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a participant obtains limited or temporary access to a market in exchange for reduced regulatory uncertainty or other regulatory barriers to entry.

[75] *See, e.g.,* 12 U.S.C. 5512(c)(8).

[76] 12 CFR 1070.41.

[77] 12 CFR 1070.2(f).

[78] 5 U.S.C. 552(b)(4).

[79] 12 CFR 1070.20(a), (b).

[80] The Bureau intends to publish denials only after the applicant is given an opportunity to request reconsideration of the denial. Upon request, and if disclosure is not required by 5 U.S.C. 552(a)(2) or other applicable law, the Bureau intends to redact identifying information from denials published on its website.

[81] The Bureau likewise expects to publish on its website, as soon as practicable, such grant and denial orders for applications submitted and assessed under section F, but anticipates that the content of the orders may require modification in light of the particular facts and circumstances of the State sandbox in question. The Bureau intends to detail any such modifications in the agreement with the State authority in question.

[82] *See Food Marketing Institute* v. *Argus Leader Media,* 139 S.Ct. 2356 (June 24, 2019).

[83] To the extent associated communications include the same information, that information would have the same status. But other information in associated communications may be subject to disclosure.

[84] To the extent an applicant or recipient submits information in connection with any of the identified sections that is not actually responsive to those sections, such information may be subject to disclosure.

[85] The Bureau notes that the preceding protections from public disclosure must be balanced against the Bureau's potential need to publicly disclose test result data in some form—as permitted by applicable law and/or consent of recipients—if the Bureau decides to revise disclosure requirements through notice-and-comment rulemaking based, in part, on trial disclosures that test successfully.

[86] *See, e.g.,* 12 U.S.C. 5512(c)(8).

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Allocation of Assets in Single-Employer Plans; Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans to prescribe certain interest assumptions under the benefit payments regulation for plans with valuation dates in October 2019 and interest assumptions under the asset allocation regulation for plans with valuation dates in the fourth quarter of 2019. These interest assumptions are used for valuing benefits and paying certain benefits under terminating single-employer plans covered by the pension

insurance system administered by PBGC.

DATES: Effective October 1, 2019.

FOR FURTHER INFORMATION CONTACT: Gregory Katz (*katz.gregory@pbgc.gov*), Attorney, Regulatory Affairs Division, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005, 202–326–4400, ext. 3829. (TTY users may call the Federal relay service toll free at 1–800–877–8339 and ask to be connected to 202–326–4400, ext. 3829.)

SUPPLEMENTARY INFORMATION: PBGC's regulations on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) and Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974 (ERISA). The interest assumptions in the regulations are also published on PBGC's website (*https://www.pbgc.gov*).

Lump Sum Interest Assumption

PBGC uses the interest assumptions in appendix B to part 4022 (''Lump Sum Interest Rates for PBGC Payments'') to determine whether a benefit is payable as a lump sum and to determine the amount to pay as a lump sum. Because some private-sector pension plans use these interest rates to determine lump sum amounts payable to plan participants (if the resulting lump sum is larger than the amount required under section 417(e)(3) of the Internal Revenue Code and section 205(g)(3) of ERISA), these rates are also provided in appendix C to part 4022 (''Lump Sum Interest Rates for Private-Sector Payments'').

This final rule updates appendices B and C of the benefit payments regulation to provide the rates for October 2019 measurement dates.

The October 2019 lump sum interest assumptions will be 0.00 percent for the period during which a benefit is (or is assumed to be) in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for September 2019, these assumptions represent a decrease of 0.50 percent in the immediate rate and are otherwise unchanged.

Valuation/Asset Allocation Interest Assumptions

PBGC uses the interest assumptions in appendix B to part 4044 (''Interest Rates Used to Value Benefits'') to value benefits for allocation purposes under section 4044 of ERISA, and some private-sector pension plans use them to determine benefit liabilities reportable under section 4044 of ERISA and for other purposes. The fourth quarter 2019 interest assumptions will be 2.53 percent for the first 25 years following the valuation date and 2.53 percent thereafter. In comparison with the interest assumptions in effect for the third quarter of 2019, these interest assumptions represent no change in the select period (the period during which the select rate (the initial rate) applies), a decrease of 0.39 percent in the select rate, and a decrease of 0.54 percent in the ultimate rate (the final rate).

Need for Immediate Guidance

PBGC updates appendix B of the asset allocation regulation each quarter and appendices B and C of the benefit payments regulation each month. PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to issue new interest assumptions promptly so that they are available to value benefits and, for plans that rely on our publication of them each month or each quarter, to calculate lump sum benefit amounts.

Because of the need to provide immediate guidance for the valuation and payment of benefits under plans with valuation dates during October 2019, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 312 is added at the end of the table to read as follows:

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		*i*1	*i*2	*i*3	*n*1	*n*2
*	*		*	*	*	*	*	*
312	10–1–19	11–1–19	0.00	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 312 is added at the end of the table to read as follows:

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
312	10–1–19	11–1–19	0.00	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, an entry for ''October–December 2019'' is added at the end of the table to read as follows:

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
October–December 2019	0.0253	1–25	0.0253	>25	N/A	N/A

Issued in Washington, DC.

Hilary Duke,

Assistant General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2019–19838 Filed 9–12–19; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 88

[Docket ID: DOD–2019–OS–0079]

RIN 0790–AK80

Transition Assistance Program (TAP) for Military Personnel

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: This final rule removes the regulation concerning the DoD Transition Assistance Program (TAP). TAP provides information and training to ensure Service members and eligible spouses transitioning from active-duty are prepared for their next step in life, whether it is to pursue additional education, find a job in the public or private sector, or start their own business. This part summarizes the benefits in statute and internal policy. Therefore, this part is duplicative and unnecessary and should be removed from the CFR.

DATES: *Effective Date:* This rule is effective on September 13, 2019.

FOR FURTHER INFORMATION CONTACT: Ronald H. Horne, (703) 614–8631.

SUPPLEMENTARY INFORMATION: It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing DoD internal policies and procedures that are publicly available on the Department's website.

DoD internal guidance will continue to be published in DoD Instruction 1332.35, ''Transition Assistance Program,'' at *https://www.esd.whs.mil/Directives/issuances/dodi/.*

Removal of this part does not reduce burden or costs to the public as it will not change how transition assistance is provided to caregivers, spouses and dependents of eligible Service members.

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review.'' Therefore, the requirements of E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' do not apply.

List of Subjects in 32 CFR Part 88

Employment, Military personnel.

PART 88–[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 88 is removed.

Dated: September 10, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–19868 Filed 9–12–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2019–0681]

RIN 1625–AA08

Special Local Regulation; Tennessee River, Florence, AL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary Special Local Regulation for all navigable waters of the Tennessee River, extending the entire width of the river, from mile marker (MM) 254.0 to 258.0. This action is necessary to provide for the safety of life on these navigable waters near Florence, AL, during a Triathlon on September 22, 2019. This regulation prohibits persons and vessels from being in the regulated area unless authorized by the Captain of the Port Ohio Valley or a designated representative.

DATES: This rule is effective from 6 a.m. through 9 a.m. on September 22, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0681 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 Third Class

Benjamin Gardner, MSD Nashville, U.S. Coast Guard; telephone 615–736–5421, email *MSDNashville@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 would be impractical. It would be impracticable to publish an NPRM because we must establish the Special Local Regulation by September 22, 2019 and lack sufficient time to request and respond to comments within a reasonable time.

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 the public interest because immediate action is needed to establish a Special Local Regulation associated with the Renaissance Man Triathlon by September 22, 2019.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Ohio Valley (COTP) has determined that potential hazards associated with the Renaissance Man Triathlon will be a safety concern for participants. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the Special Local Regulation zone during this time period.

IV. Discussion of the Rule

This rule establishes a Special Local Regulation from 6 a.m. through 9 a.m. on September 22, 2019. The Special Local Regulation will cover all navigable waters from MM. 254.0–258.0 being used by participants in the Renaissance Man Triathlon. The duration of the regulated area is intended to protect personnel, vessels, and the marine environment in these navigable waters while the swim event is taking place. No vessel or person will be permitted to enter the special local regulationwithout obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. 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, and duration of the marine event. The Special Local Regulation will only impact four miles of the Tennessee River for three hours on one day.

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 special local regulation 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 Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting only 3 hours that will prohibit entry on the Tennessee River from mile marker 254.0–258.0.

It is categorically excluded from further review under paragraph L61in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Memorandum for the Record 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 100

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

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

PART 100—SPECIAL LOCAL REGULATIONS/REGATTAS AND MARINE PARADES

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

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

■ 2. Add temporary § 100.T08–0681 to read as follows:

§ 100T08–0681 Special Local Regulation; Tennessee River, Florence Alabama.

100T08–0681 Special Local Regulation; Tennessee River, Florence Alabama.

(a) *Location.* The Tennessee River from 254.0 to 258.0 extending from bank to bank within the river.

(b) *Periods of enforcement.* This Special Local Regulation will be enforced from 6:00 a.m. to 9:00 a.m. on September 22, 2019.

(c) *Regulations.* (1) In accordance with the general regulations in § 100.35 of this part, entry into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or designated personnel. Moreover, persons or vessels desiring to enter into or pass through the special local regulated area must request permission from the COTP Sector Ohio Valley or a designated representative. They may be contacted on VHF–FM radio channel 16 or phone at 1–800–253–7465.

(2) Persons and vessels permitted to deviate from the special local regulated area requirements as well as enter the restricted area must transit at the slowest safe speed and comply with all lawful directions issued by the COTP Sector Ohio Valley or a designated representative.

(d) *Informational broadcasts.* The COTP Sector Ohio Valley or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the special local regulation, as well as any changes in the dates and times of enforcement.

Dated: September 4, 2019.

A.M. Beach,

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

[FR Doc. 2019–19879 Filed 9–12–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR 100

[Docket Number USCG–2019–0768]

RIN 1625–AA08

Special Local Regulation; Tennessee River, Florence, AL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation on the Tennessee River from mile 255 to 257 on September 14, 2019. This special local regulation is needed to protect personnel, vessels, and the marine environment from potential hazards created during the Shoals Dragon Boat Festival. Entry 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 from 9 a.m. through 4 p.m. on September 14, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0768 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 First Class Nicholas Jones, Marine Safety Detachment Nashville U.S. Coast Guard; telephone 615–736–5421, email *Nicholas.J.Jones@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. It is impracticable to publish an NPRM because we must establish this special local regulation by September 14, 2019 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this 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 necessary to respond to the potential safety hazards associated with the boat festival.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential safety needs associated with the Shoals Dragon Boat Festival event on September 14, 2019 present a safety concern. The purpose of this rule is to ensure the safety of the Shoals Dragon Boat Festival participants within the regulated area before, during, and after the scheduled times.

IV. Discussion of the Rule

This rule establishes a temporary special local regulation on the Tennessee River from mile 255 to mile 257 on September 14, 2019 from 9 a.m. through 4 p.m. The special local regulation zone is intended to ensure the safety of the participants of the Shoals Dragon Boat Festival before, during, and after the scheduled times. Vessels are not permitted to enter or transit the special local regulation without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. 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, and duration of the regulated area. This rule is impacts a two-mile stretch of the Tennessee River from mile 255 to mile 257 from 9 a.m. through 4 p.m. on September 14, 2019. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the regulated area and the rule allows vessels to seek permission to enter the area.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit this temporary regulated area 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 Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in

complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a temporary special local regulation on the Tennessee River from mile 255 to 257. The regulated area, specified in the discussion portion of this rule, will be in effect from 9 a.m. through 4 p.m. on September 14, 2019. It is categorically excluded from further review under paragraph L61 in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1.

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 100

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

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

PART 100—SPECIAL LOCAL REGULATIONS/REGATTAS AND MARINE PARADES

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

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

■ 2. Add § 100.T08–0768 to read as follows:

§ 100.T08–0768 Special Local Regulation; Tennessee River, Florence, AL.

(a) *Location.* The Tennessee River mile 255 to 257.

(b) *Periods of enforcement.* This temporary special local regulation will be enforced from 9 a.m. through 4 p.m. on September 14, 2019.

(c) *Regulations.* (1) In accordance with the general regulations in § 100.35 of this part, entry into this regulated area is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or designated personnel. Persons or vessels desiring to enter into or pass through the special local regulated area must request permission from the COTP or a designated representative. They may be contacted on VHF–FM radio channel 16 or phone at 1–800–253–7465.

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

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners of the enforcement period for the special local regulation, as well as any changes in the dates and times of enforcement.

Dated: September 9, 2019.

A.M. Beach,

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

[FR Doc. 2019–19837 Filed 9–12–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0686]

RIN 1625–AA00

Safety Zone; San Juan Harbor, San Juan, PR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within an area of one half mile around each Liquefied Gas carrier entering and departing San Juan Harbor and a 50-yard radius around each vessel when moored at the Puma Energy dock, Cataño Oil dock, or Wharf B. This safety zone is needed to protect personnel, transiting vessels, and Liquefied Gas carriers. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port San Juan or his designated representative.

DATES: This rule is effective without actual notice from September 13, 2019 until 11:59 p.m. on November 15, 2019. For the purposes of enforcement, actual notice will be used from 12:01 a.m. on August 25, 2019 September 13, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0686 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Commander Pedro Mendoza, Sector San Juan Prevention Department, Waterways Management Division, U.S. Coast Guard; telephone 787–729–2374, email *Pedro.L.Mendoza@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The existing regulation in 33 CFR 165.754, contains a moving safety zone around transiting Liquefied Petroleum (LPG) carriers en route to, or departing from, the Gulf Refinery Oil dock or the Cataño Oil dock. On December 12, 2017, the Coast Guard received a request to assess the waterway suitability of transiting and semi-permanently moored liquefied natural gas (LNG) carriers within the San Juan Harbor. On September 26, 2018, the Coast Guard determined the Port of San Juan could accommodate the safe navigation and mooring of LNG carriers within the San Juan Harbor. On July 26, 2019, U.S Coast Guard Sector San Juan and New Fortress Energy held two public meetings in San Juan, Puerto Rico. There were approximately 50 attendees and 20 comments received. The public meetings' summary and comments have been added to this docket number.

Due to their highly volatile cargoes, size, draft, and the local channel restrictions, LPG carrier require use of the center of these channels for safe navigation. The COTP San Juan has determined that potential hazards associated with LNG carriers would be a safety concern for anyone within 50-yards of these carriers. The purpose of this rule is to ensure the safety of vessels and the navigable waters within a 50-yard radius of LNG and LPG carriers transiting San Juan Harbor. The temporary final rule would safeguard vessels at an adjacent berthing location, Puerto Nuevo Berth B, which supplies LNG to the Puerto Rico Electric Power Authority (PREPA) and other industrial sectors.

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) because immediate action is needed to safeguard incoming, moored, and outgoing LNG carriers within San Juan Harbor, San Juan, Puerto Rico.

Under 33 CFR 165.754, the Coast Guard has an existing safety zone in effect for this area but for only LPG carriers. The Coast Guard did not receive sufficient information regarding the transit of LNG with sufficient time to publish an additional NPRM and receive public comment in order to complete the rulemaking process. Delay in promulgating this rule would be impracticable and contrary to public interest because a safety zone is required to safeguard the first LNG carrier expected to arrive in San Juan, Puerto Rico on August 25, 2019.

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** for the same reasons discussed above.

We note that the Coast Guard is in the process of publishing an NPRM proposing to revise the existing safety zone for LPG carriers in § 165.754 to include LNG carriers.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port (COTP) San Juan has determined that the LNG carrier expected to arrive on August 25, 2019 will be a safety concern for anyone within a one-half mile during its transit entering and departing San Juan Harbor and within a 50-yard radius when the vessel is moored. This rule is needed to ensure the safety of personnel, vessels, and the marine environment in the navigable waters within the safety zone.

IV. Discussion of the Rule

This rule establishes a safety zone from 12:01 a.m. on August 25, 2019 until 11:59 p.m. on November 15, 2019. The safety zone will cover all navigable waters one half mile around each Liquefied Gas carrier entering and departing San Juan Harbor and a 50-yard radius around each vessel when moored. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the COTP San Juan or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP San Juan or a designated representative. The Coast Guard will provide notice of the safety zone through Local Notice to Mariners, Broadcast Notice to Mariners via VHF–FM marine channel 16, and designated on-scene representatives.

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, available exceptions to the enforcement of the safety zone, and notice to mariners. The regulated area will impact small designated areas of navigable channels within San Juan Harbor. The rule will allow vessels to seek permission to enter, transit through, anchor in, or remain within the safety zone. Additionally, notifications to the marine community will be made through Local Notice to Mariners, Broadcast Notice to Mariners via VHF–FM marine channel 16, and on-scene representatives. The notifications will allow the public to plan operations around the affected areas.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please call or email 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 Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 36 days that will prohibit entry within one half mile around each Liquefied Gas carrier entering and departing San Juan Harbor and a 50-yard radius around each vessel when moored. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the NPRM to modify the San Juan Harbor, San Juan, Puerto Rico safety zone is properly proposed and implemented. It is categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures. 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 call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T07–0686 to read as follows:

§ 165.T07–0686 Safety Zone; San Juan Harbor, San Juan, PR.

(a) *Location.* A moving safety zone is established in the following area:

(1) The waters around Liquefied Gas carriers entering San Juan Harbor in an area one half mile around each vessel, beginning one mile north of the San Juan Harbor #1 Sea Buoy, in approximate position 18–29.3N, 66–07.6W and continuing until the vessel is moored at the Puma Energy dock, Cataño Oil dock, or Wharf B in approximate position 18–25.8N, 66–06.5W. All coordinates are North American Datum 1983.

(2) The waters around Liquefied Gas carriers in a 50-yard radius around each vessel when moored at the Puma Energy dock, Cataño Oil dock, or Wharf B.

(3) The waters around Liquefied Gas carriers departing San Juan Harbor in an area one half mile around each vessel beginning at the Puma Energy Dock, Cataño Oil dock, or Wharf B in approximate position 18–25.8N, 66–06.5W when the vessel gets underway, and continuing until the stern passes the San Juan Harbor #1 Sea Buoy, in approximate position 18–28.3N, 66–07.6W. All coordinates referenced use datum: NAD 83.

(b) *Definition.* As used in this section, the term ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) San Juan in the enforcement of the safety zone.

(c) *Regulations.* (1) No person or vessel may enter, transit, or remain in the safety zone unless authorized by the COTP San Juan, Puerto Rico, or a designated Coast Guard commissioned, warrant, or petty officer. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the designated Coast Guard commissioned, warrant, or petty officer.

(2) Persons desiring to transit the area of the safety zones may contact the COTP San Juan or his designated representative to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the COTP or his designated representative.

(3) Vessels encountering emergencies, which require transit through the moving safety zone, should contact the Coast Guard patrol craft or Duty Officer on VHF Channel 16. In the event of an emergency, the Coast Guard patrol craft may authorize a vessel to transit through the safety zone with a Coast Guard designated escort.

(4) The COTP and the Duty Officer at Sector San Juan, Puerto Rico, can be contacted at telephone number 787–289–2041. The Coast Guard Patrol Commander enforcing the safety zone can be contacted on VHF–FM channels 16 and 22A.

(5) All persons and vessels must comply with the instructions of on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, or petty officers of the U.S. Coast Guard. Coast Guard Auxiliary and local or state officials may be present to inform vessel operators of the requirements of this section, and other applicable laws.

(d) *Notification.* The zone described in paragraphs (a)(1) through (3) of this section will be activated upon entry of an LNG carrier into the navigable waters of the United States in the San Juan Captain of the Port Zone. An LNG carrier will be identifiable by the requirement to fly the Bravo flag (red international signal flag under Pub. 102, International Code of Signals) from the outermost halyard (above the pilot house) where it can most easily be seen. In addition to visual identification of an LNG carrier, Coast Guard Sector San Juan will give notice through Mariners Broadcast Notice to Mariners for the purpose of enforcement of the temporary safety zone.

(e) *Effective period.* This rule is effective from 12:01 a.m. on August 25,

2019 through 11:59 p.m. on November 15, 2019.

Dated: August 23, 2019.

E. P. King,

Captain, U.S. Coast Guard, Captain of the Port San Juan.

[FR Doc. 2019–19851 Filed 9–12–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–1009]

RIN 1625–AA00

Safety Zones; Sector Upper Mississippi River Annual and Recurring Safety Zones Update

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending and updating its table of annual and recurring safety zones that take place within the Eighth Coast Guard District listed in section 165.801 Table 2 of the Title 33 of the Code of Federal Regulations (CFR).

DATES: This rule is effective October 15, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2018–1009 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Christian Barger, Sector Upper Mississippi River Waterways Management Division, U.S. Coast Guard; telephone 314–269–2560, email *Christian.J.Barger@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Upper Mississippi River
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

In Fall 2018, the Captain of the Port Sector Upper Mississippi River (COTP) began the annual review of section 165.801 Table 2 of Title 33 of the Code of Federal Regulations (CFR) (33 CFR 165.801 Table 2) to ensure it accurately reflected safety zones occurring on a regular basis in the Sector Upper Mississippi River Captain of the Port Zone. On May 31, 2019 the Coast Guard published a notice of proposed rulemaking (NPRM) titled *Sector Upper Mississippi River Annual and Recurring Safety Zones Update* [84 FR 25212]. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to the annual update. During the comment period that ended July 1, 2019, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Upper Mississippi River (COTP) is amending and updating section 165.801 Table 2 of Title 33 of the Code of Federal Regulations (CFR) (33 CFR 165.801 Table 2) to accurately reflect safety zones occurring on a regular basis in the Sector Upper Mississippi River Captain of the Port Zone. This rule ensures that the public is informed of annual and recurring safety zones taking place within the Sector Upper Mississippi River Captain of the Port Zone, that the table of annual and recurring safety zones is easy to read, and minimizes administrative burden to both the Coast Guard and those requesting the enforcement of recurring safety zones. The recurring safety zones are necessary to provide for the safety of life on navigable waters during events which pose a risk to persons and vessels operating on the waterway.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published on May 31, 2019. We are adding the Kansas City Airshow into this rule because the sponsor said the 2019 Airshow was successful and it will be taking place again in 2020. Additionally, although we proposed to remove them in the NPRM, we are retaining the safety zones for the City of Champlin/Father Hennepin Fireworks Display and the McGregor/Marquette Chamber Commerce/Independence Day Celebration. We now believe that both of these events will continue to re-occur.

Section 165.801 of Title 33 CFR contains regulations related to annual and recurring safety zones. From time to time, this section requires amendment to properly reflect safety zones recurring within the Eighth Coast Guard District. This rule updates Table 2 of this section by removing two safety zones, adding one safety zone, updating details for all safety zones to include the correction of twelve names, re-defining the date of safety zones for fireworks displays for 4th of July celebrations to permit greater flexibility in planning of these events, correcting errors in the nearest city for nine safety zones, removing sponsor names from all safety zones, and rearranging the Table to display safety zones first by the body of water on which they take place (alphabetically), second by the date(s) on which those safety zones will be enforced, and third by mile marker (descending). The changes are as follows.

This rule is removes the following two safety zones from Table 2 of 33 CFR 165.801:

Date	Sponsor/name	Sector upper Mississippi River location	Safety zone
35. 2 days—2nd weekend in August	Tug Committee/Great River Tug	Port Byron, IL	Upper Mississippi River mile marker 497.2 to 497.6 (Illinois).
39. 2 days—Weekend that precedes Labor Day Weekend.	Lake of the Ozarks Shootout, Inc./Lake of the Ozarks Shootout.	Lake of the Ozarks, MO.	Lake of the Ozarks mile marker 032.5 to 034.5.

Both of these events are expected to continue. However, the Coast Guard is changing how the events are regulated and, correspondingly, will be relocating the regulations for these events to other portions of the CFR in a separate rule or rules.

This rule adds one safety zone (line 15 below), updates the details of all safety zones in Table 2 of 33 CFR 165.801, and reorganizes the table as follows:

Date	Event	City, state	Safety zone
Illinois River			
1. 1 day—Either on or within a week before or after July 4th.	Unity Point Health Red With and Boom.	Peoria, IL	Mile Markers 162.5–162.1.
2. 1 day—Either on or within a week before or after July 4th.	Grafton Chamber 4th of July Fireworks.	Grafton, IL	Mile Markers 1.5–0.5.
Lake of the Ozarks			
3. 1 day—Last Sunday of May	Tan-Tar-A Resort Memorial Day Fireworks.	Osage Beach, MO	Mile Markers 26.2–25.8.
4. 1 day—Last Sunday of May	Lodge of the Four Seasons Memorial Day Fireworks.	Lake Ozark, MO	Mile Markers 14.2–13.8.
5. 1 day—Either on or within a week before or after July 4th.	Tan-Tar-A Resort 4th of July Fireworks.	Osage Beach, MO	Mile Markers 26.2–25.8.
6. 1 day—Either on or within a week before or after July 4th.	Lodge of the Four Seasons 4th of July Fireworks.	Lake Ozark, MO	Mile Markers 14.2–13.8.
7. 1 day—First weekend of September	Tan-Tar-A Resort Labor Day Fireworks.	Osage Beach, MO	Mile Markers 26.2–25.8.
8. 1 day—First weekend of September	Lodge of the Four Seasons Labor Day Fireworks.	Lake Ozark, MO	Mile Markers 14.2–13.8.
Missouri River			
9. 1 day—Either the last weekend of June or first weekend of July.	KC Riverfest	Kansas City, MO	Mile Markers 365.5–364.8.
10. 1 day—Either on or within a week before or after July 4th.	Parkville 4th of July Fireworks	Parkville, MO	Mile Markers 378.0–377.5.
11. 1 day—Either on or within a week before or after July 4th.	Salute to America	Jefferson City, MO	Mile Markers 143.5 to 143.0.
12. 1 day—Either on or within a week before or after July 4th.	Hermann 4th of July Fireworks	Hermann, MO	Mile Markers 98.0 to 97.0.
13. 2 days—Either on or within a week before or after July 4th.	St. Charles Riverfest	St. Charles, MO	Mile Markers 28.8 to 28.2.
14. 2 days—Third weekend of July	Amelia Earhart Festival	Atchison, KS	Mile Markers 424.5 to 422.0.
15. 4 days—Either the first or Second week in August.	Kansas City Airshow	Kansas City, MO	Mile Markers 366.3–369.8.
16. 2 days—Third weekend of September.	Riverside Riverfest	Riverside, MO	Mile Markers 372.2–371.8.
17. 1 day—The weekend before Thanksgiving.	Parkville Christmas on the River	Parkville, MO	Mile Markers 378.0–377.5.
St. Croix River			
18. 1 day—Either the last weekend of June or first weekend of July.	Hudson Booster Days	Hudson, WI	Mile Markers 17.2–16.8.
19. 1 day—Either on or within a week before or after July 4th.	Stillwater 4th of July	Stillwater, MN	Mile Markers 23.5–22.9.
20. 4 days—Third week of July	Lumberjack Days	Stillwater, MN	Mile Markers 23.5–22.9.
Upper Mississippi River			
21. 1 day—Fourth weekend of May	Lumiere Place Memorial Day Fireworks.	St. Louis, MO	Mile Markers 180.5–180.0.
22. 1 day—First weekend of June	St. Louis Brewers Guild Festival Fireworks.	St. Louis, MO	Mile Markers 180–179.2.
23. 1 day—2nd weekend of June	City of Champlin/Father Hennepin Fireworks Display.	Champlin, MN	Upper Mississippi River mile marker 870.5 to 872.0.
24. 1 day—The Sunday of Father's Day weekend.	Winona Steamboat Days Fireworks	Winona, MN	Mile Markers 725.7–725.4.
25. 1 day—Either the last weekend of June or first weekend of July.	Bellevue Heritage Days	Bellevue, IA	Mile Markers 556.5–556.5.
26. 4 days—Either the first or second week of July.	La Crosse Riverfest Air Show and Fireworks.	La Crosse, WI	Mile Markers 698.5–697.5.
27. 1 day—4th of July weekend	McGregor/Marquette Chamber Commerce/Independence Day Celebration.	McGregor, IA	Upper Mississippi River mile marker 635.7 to 634.2.
28. 1 day—Either on or within a week before or after July 4th.	Red, White, and Boom Minneapolis	Minneapolis, MN	Mile Markers 854.5–853.5.
29. 1 day—Either on or within a week before or after July 4th.	Mississippi Alumination	Red Wing, MN	Mile Markers 791.2–790.8.
30. 1 day—Either on or within a week before or after July 4th.	Lake City 4th of July Fireworks	Lake City, MN	Mile Markers 772.8–772.4.

Date	Event	City, state	Safety zone
31. 1 day—Either on or within a week before or after July 4th.	Marquette Independence Day Celebration.	Marquette, IA	Mile Markers 635.7–634.2.
32. 1 day—Either on or within a week before or after July 4th.	Stars and Stripes	Guttenberg, IA	Mile Markers 614–615.5.
33. 1 day—Either on or within a week before or after July 4th.	Radio Dubuque/Dubuque JayCees Air Show and Fireworks.	Dubuque, IA	Mile Markers 583.0–581.0.
34. 1 day—Either on or within a week before or after July 4th.	City of East Moline Fireworks	East Moline, IA	Mile Markers 490.2–489.8.
35. 1 day—Either on or within a week before or after July 4th.	Red, White, and Boom Davenport	Davenport, IA	Mile Markers 482.7–482.0.
36. 1 day—Either on or within a week before or after July 4th.	Muscatine 4th of July Fireworks	Muscatine, IA	Mile Markers 456.0–455.0.
37. 1 day—Either on or within a week before or after July 4th.	Louisiana July 4th Fireworks	Louisiana, MO	Mile Markers 283.0–282.0.
38. 1 day—Either on or within a week before or after July 4th.	Mississippi Fireworks Festival	Alton, IL	Mile Markers 203.0–202.5.
39. 4 days—Either on or within a week before or after July 4th.	Fair St. Louis	St. Louis, MO	Mile Markers 180.0–179.2.
40. 1 day—Second weekend of July	Prairie du Chien Fireworks	Prairie du Chien, WI	Mile Markers 635.7–635.2.
41. 2 days—Third weekend of July	Hastings Rivertown Days	Hastings, MN	Mile Markers 815.2–813.7.
42. 1 day—Fourth weekend of July	Aquatennial Fireworks	Minneapolis, MN	Mile Markers 854.2–853.2.
43. 1 day—Second weekend of August.	Lansing Fish Days Fireworks	Lansing, IA	Mile Markers 663.9–662.8.
44. 2 days—First weekend of September.	City of Keithsburg Fireworks	Keithsburg, IL	Mile Markers 427.5–427.3.
45. 1 day—First weekend of September.	Lumiere Place Labor Day Fireworks	St. Louis, MO	Mile Markers 180.5–180.0.

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 location, size, and duration of the safety zones that will be in place during the listed events. The enforcement of these safety zones is limited in size and duration to only that necessary to ensure the safety of life during the listed events. Additionally, this rule only modifies the existing Table of safety zones by removing two that no longer take place, adding one, updating the details of safety zones to ensure they are current and accurate, and modifying the table for easier reading.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the amendment of existing safety zone tables found in 33 CFR 165.801 to accurately reflect recurring safety zones occurring on a regular basis within the Eighth Coast Guard District. Normally such actions are categorically excluded from further review under paragraph L60(b) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01, for which a Record of Environmental Consideration is not required. However, prior to the activation of any listed safety zone, a complete environmental review will be conducted in accordance with DHS Instruction Manual 023–01–001–01, Rev.01 and Commandant Instruction M16475.1D. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and 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: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise Table 2 to § 165.801 as follows:

TABLE 2 TO § 165.801—SECTOR UPPER MISSISSIPPI RIVER ANNUAL AND RECURRING SAFETY ZONES

Date	Event	City, state	Safety zone
Illinois River			
1. 1 day—Either on or within a week before or after July 4th.	Red, White, and Boom Peoria	Peoria, IL	Mile Markers 162.5–162.1.
2. 1 day—Either on or within a week before or after July 4th.	Grafton Chamber 4th of July Fireworks.	Grafton, IL	Mile Markers 1.5–0.5.
Lake of the Ozarks			
3. 1 day—Last Sunday of May	Tan-Tar-A Resort Memorial Day Fireworks.	Osage Beach, MO	Mile Markers 26.2–25.8.
4. 1 day—Last Sunday of May	Lodge of the Four Seasons Memorial Day Fireworks.	Lake Ozark, MO	Mile Markers 14.2–13.8.
5. 1 day—Either on or within a week before or after July 4th.	Tan-Tar-A Resort 4th of July Fireworks.	Osage Beach, MO	Mile Markers 26.2–25.8.
6. 1 day—Either on or within a week before or after July 4th.	Lodge of the Four Seasons 4th of July Fireworks.	Lake Ozark, MO	Mile Markers 14.2–13.8.
7. 1 day—First weekend of September	Tan-Tar-A Resort Labor Day Fireworks.	Osage Beach, MO	Mile Markers 26.2–25.8.
8. 1 day—First weekend of September	Lodge of the Four Seasons Labor Day Fireworks.	Lake Ozark, MO	Mile Markers 14.2–13.8.
Missouri River			
9. 1 day—Either the last weekend of June or first weekend of July.	KC Riverfest	Kansas City, MO	Mile Markers 365.5–364.8.
10. 1 day—Either on or within a week before or after July 4th.	Parkville 4th of July Fireworks	Parkville, MO	Mile Markers 378.0–377.5.
11. 1 day—Either on or within a week before or after July 4th.	Salute to America	Jefferson City, MO	Mile Markers 143.5 to 143.0.
12. 1 day—Either on or within a week before or after July 4th.	Hermann 4th of July Fireworks	Hermann, MO	Mile Markers 98.0 to 97.0.
13. 2 days—Either on or within a week before or after July 4th.	St. Charles Riverfest	St. Charles, MO	Mile Markers 28.8 to 28.2.
14. 2 days—Third weekend of July	Amelia Earhart Festival	Atchison, KS	Mile Markers 424.5 to 422.0.
15. 4 days—Either the first or second week in August.	Kansas City Airshow	Kansas City, MO	Mile Markers 366.3–369.8.

TABLE 2 TO § 165.801—SECTOR UPPER MISSISSIPPI RIVER ANNUAL AND RECURRING SAFETY ZONES—Continued

Date	Event	City, state	Safety zone
16. 2 days—Third weekend of September.	Riverside Riverfest	Riverside, MO	Mile Markers 372.2–371.8.
17. 1 day—The weekend before Thanksgiving.	Parkville Christmas on the River	Parkville, MO	Mile Markers 378.0–377.5.
St. Croix River			
18. 1 day—Either the last weekend of June or first weekend of July.	Hudson Booster Days	Hudson, WI	Mile Markers 17.2–16.8.
19. 1 day—Either on or within a week before or after July 4th.	Stillwater 4th of July	Stillwater, MN	Mile Markers 23.5–22.9.
20. 4 days—Third week of July	Lumberjack Days	Stillwater, MN	Mile Markers 23.5–22.9.
Upper Mississippi River			
21. 1 day—Fourth weekend of May	Lumiere Place Memorial Day Fireworks.	St. Louis, MO	Mile Markers 180.5–180.0.
22. 1 day—First weekend of June	St. Louis Brewers Guild Festival Fireworks.	St. Louis, MO	Mile Markers 180–179.2.
23. 1 day—2nd weekend of June	City of Champlin/Father Hennepin Fireworks Display.	Champlin, MN	Upper Mississippi River mile marker 870.5 to 872.0.
24. 1 day—The Sunday of Father's Day weekend.	Winona Steamboat Days Fireworks	Winona, MN	Mile Markers 725.7–725.4.
25. 1 day—Either the last weekend of June or first weekend of July.	Bellevue Heritage Days	Bellevue, IA	Mile Markers 556.5–556.5.
26. 4 days—Either the first or second week of July.	La Crosse Riverfest Air Show and Fireworks.	La Crosse, WI	Mile Markers 698.5–697.5.
27. 1 day—4th of July weekend	McGregor/Marquette Chamber Commerce/Independence Day Celebration.	McGregor, IA	Upper Mississippi River mile marker 635.7 to 634.2.
28. 1 day—Either on or within a week before or after July 4th.	Red, White, and Boom Minneapolis	Minneapolis, MN	Mile Markers 854.5–853.5.
29. 1 day—Either on or within a week before or after July 4th.	Mississippi Alumination	Red Wing, MN	Mile Markers 791.2–790.8.
30. 1 day—Either on or within a week before or after July 4th.	Lake City 4th of July Fireworks	Lake City, MN	Mile Markers 772.8–772.4.
31. 1 day—Either on or within a week before or after July 4th.	Marquette Independence Day Celebration.	Marquette, IA	Mile Markers 635.7–634.2.
32. 1 day—Either on or within a week before or after July 4th.	Stars and Stripes	Guttenberg, IA	Mile Markers 615.5–615.0.
33. 1 day—Either on or within a week before or after July 4th.	Radio Dubuque/Dubuque JayCees Air Show and Fireworks.	Dubuque, IA	Mile Markers 583.0–581.0.
34. 1 day—Either on or within a week before or after July 4th.	City of East Moline Fireworks	East Moline, IA	Mile Markers 490.2–489.8.
35. 1 day—Either on or within a week before or after July 4th.	Red, White, and Boom Davenport	Davenport, IA	Mile Markers 482.7–482.0.
36. 1 day—Either on or within a week before or after July 4th.	Muscatine 4th of July Fireworks	Muscatine, IA	Mile Markers 456.0–455.0.
37. 1 day—Either on or within a week before or after July 4th.	Louisiana July 4th Fireworks	Louisiana, MO	Mile Markers 283.0–282.0.
38. 1 day—Either on or within a week before or after July 4th.	Mississippi Fireworks Festival	Alton, IL	Mile Markers 203.0–202.5.
39. 4 days—Either on or within a week before or after July 4th.	Fair St. Louis	St. Louis, MO	Mile Markers 180.0–179.2.
40. 1 day—Second weekend of July	Prairie du Chien Fireworks	Prairie du Chien, WI	Mile Markers 635.7–635.2.
41. 2 days—Third weekend of July	Hastings Rivertown Days	Hastings, MN	Mile Markers 815.2–813.7.
42. 1 day—Fourth weekend of July	Aquatennial Fireworks	Minneapolis, MN	Mile Markers 854.2–853.2.
43. 1 day—Second weekend of August.	Lansing Fish Days Fireworks	Lansing, IA	Mile Markers 663.9–662.8.
44. 2 days—First weekend of September.	City of Keithsburg Fireworks	Keithsburg, IL	Mile Markers 427.5–427.3.
45. 1 day—First weekend of September.	Lumiere Place Labor Day Fireworks	St. Louis, MO	Mile Markers 180.5–180.0.

Dated: September 6, 2019.

S.A. Stoermer,

Captain, U.S. Coast Guard, Captain of the Port Sector Upper Mississippi River.

[FR Doc. 2019–19812 Filed 9–12–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2019–0011; FRL–9999–60–OAR]

RIN 2060–AU14

Reconsideration of the Area Designation for the 2010 1-Hour Sulfur Dioxide (SO_2) Primary National Ambient Air Quality Standard for Williamson County, Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) has completed its reconsideration of the nonattainment designation under the Clean Air Act (CAA) for the Williamson County, Illinois area for the 2010 1-hour sulfur dioxide (SO_2) primary national ambient air quality standard (NAAQS). On June 30, 2016, the EPA Administrator signed a final action that designated the Williamson County, Illinois area as nonattainment based on a review of available information. On September 12, 2016, Southern Illinois Power Cooperative (SIPC), the owner of the largest source of SO_2 emissions in the area (the Marion Power Station), submitted to the EPA an updated modeling analysis that characterized SO_2 air quality in the area at the time of the final designation action. The EPA has reviewed that modeling and concludes the available information demonstrates that, as of the date of the Administrator's signature on the final action, the Williamson County, Illinois area was not violating the 2010 1-hour SO_2 NAAQS and was not contributing to a NAAQS violation in a nearby area. Therefore, the EPA is changing the initial designation of Williamson County, Illinois, from nonattainment to attainment/unclassifiable.

DATES: This final rule is effective on October 15, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2019–0011. All documents in the docket are listed in the index at *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in the docket or in hard copy at the EPA Docket Center Reading Room, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The hours of operation at the EPA Docket Center Reading Room are 8:30 a.m.–4:30 p.m., Monday–Friday. The telephone number for the EPA Docket Center is (202) 566–1744. Air dispersion modeling input and output files are too large to post in the docket or on the website and must be requested from the EPA Docket Center or the Regional office contacts listed in the **FOR FURTHER INFORMATION CONTACT** section.

In addition, the EPA has established a website for SO_2 designations rulemakings at: *https://www.epa.gov/sulfur-dioxide-designations*. The website includes the EPA's final SO_2 designations, as well as state and tribal recommendation letters, the EPA's modification letters, technical support documents, responses to comments and other related technical information.

FOR FURTHER INFORMATION CONTACT: For further information concerning this action, please contact Corey Mocka, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539–01, 109 T.W. Alexander Drive, Research Triangle Park, NC 27709; by telephone at (919) 541–5142 or by email at *mocka.corey@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

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I. Background

On June 7, 2019, the EPA proposed to change the initial designation of Williamson County, Illinois, from nonattainment to attainment/unclassifiable. *See* 84 FR 26627. A detailed analysis of the EPA's rationale, which was provided in the notice of proposed rulemaking, is hereby incorporated into this notice and will not be restated here. The public comment period for this proposed rule ended on July 8, 2019.

II. Response to Comments

The EPA received one anonymous comment on the proposal, which is addressed in this section.

Comment: In general, the commenter questions the EPA's authority to revisit final agency actions in certain circumstances by asserting that the EPA cannot reconsider a final agency action that has already become effective and where statutory deadlines have already been implicated by EPA's action. Because the EPA's final rule designating Williamson County as nonattainment has been in effect for almost 3 years, the commenter implies that the only way to change the area's designation is for the state to request redesignation under the CAA. Lastly, the commenter argues that air dispersion modeling to reconsider the prior designation must use actual SO_2 emissions from the most recent 3 years of data and should consider potential emissions, whereas the modeling used as the basis for the EPA's proposal evaluated Marion Power Station's 2013–2015 actual SO_2 emissions.

Response: The EPA's ability to revisit previous final actions is well-grounded in the law. Specifically, the EPA has inherent authority to reconsider, repeal, or revise past decisions to the extent permitted by law so long as the agency provides a reasoned explanation. *See, e.g., Encino Motorcars LLC* v. *Navarro,* 136 S.Ct. 2117, 2125 (2016). This is true when, as is the case here, review is undertaken ''in response to . . . a change in administrations.'' *National Cable & Telecommunications Ass'n* v.

Brand X Internet Services, 545 U.S. 967, 981 (2005). Indeed, ''[a]gencies obviously have broad discretion to reconsider a regulation at any time'' and an agency ''is free to do so as long as 'the new policy is permissible under the statute . . ., there are good reasons for it, and . . . the agency believes it to be better.' '' *Clean Air Council* v. *Pruitt,* 862 F.3d 1, 8–9 (D.C. Cir. 2017) (quoting *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009)). Here, the EPA changed its view regarding whether, as an exercise of the agency's discretion in this particular matter, it would be appropriate to reconsider this designation based on information that was submitted to the EPA after the close of the public comment period and that had not been demonstrated to be impracticable to raise within such time, but which upon review appeared to reflect better information regarding air quality in the area at the time of the initial designation than the information that formed the basis for the agency's prior determination. The EPA thinks that this change in this particular circumstance leads to a more accurate determination, as it results in a designation that is based on the most complete and informative information regarding the area's air quality at the time of the EPA's initial designation. The EPA also notes that its authority to reconsider prior decisions exists regardless of whether the final agency action has already become effective, though the initial action remains effective until the action reconsidering it is finalized. The 2016 nonattainment designation becoming effective and triggering planning requirements does not preclude the EPA from reconsidering that action. The EPA is reconsidering the Williamson County area's initial designation for the 2010 SO_2 NAAQS under its inherent reconsideration authority. It is not redesignating the area pursuant to its authority under CAA section 107(d)(3) authority, and, therefore, the requirements of section 107(d)(3) do not apply to this action.[1] Thus, to the extent the comment discusses what requirements apply to and what information is relevant to redesignation actions under CAA section 107(d)(3), those comments are outside the scope of this action.[2]

Regarding the appropriate use of SO_2 emissions data, the EPA's SO_2 NAAQS Designations Modeling Technical Assistance Document outlines our longstanding rationale for using actual emissions in modeling for designations, and we hereby incorporate that rationale in support of basing our reconsidered designation on such actual emissions modeling.[3] Marion Power Station's 2013–2015 actual SO_2 emissions data are representative of conditions in the area at the time of the final designation action for Williamson County on June 30, 2016, and the air quality for the area at that time is what we were evaluating for that designation. Because this action is a reconsideration of the initial designation for this area that occurred in 2016, rather than a redesignation based on an evaluation of current air quality, it is reasonable for our analysis of the air quality and the resulting designation to be based on modeling of actual emissions from that same time, rather than of more recent emissions.[4] Therefore, as outlined in the proposed action, the modeling appropriately demonstrates that the Williamson County area was not violating the 2010 1-hour SO_2 NAAQS and was not contributing to a NAAQS violation in a nearby area at the time of our initial designation in 2016.

III. Final Action

The EPA is changing the initial designation of Williamson County, Illinois for the 2010 1-hour SO_2 NAAQS. Based on the information available to the EPA, we are finalizing the Williamson County, Illinois area's initial designation as attainment/unclassifiable for that SO_2 NAAQS.[5] This final action relieves Illinois of obligations under CAA sections 172, 191, and 192 to submit a state implementation plan that demonstrates attainment of the SO_2 NAAQS, because those requirements do not apply to areas designated attainment/unclassifiable.

IV. Environmental Justice Concerns

When the EPA establishes a new or revised NAAQS, the CAA requires the EPA to designate all areas of the United States as either nonattainment, attainment, or unclassifiable.

This final action reconsiders the initial nonattainment designation for the Williamson County, Illinois area for the 2010 1-hour SO_2 NAAQS. Area designations address environmental justice concerns by ensuring that the public is properly informed about the air quality in an area. In locations where air quality does not meet the NAAQS, the CAA requires relevant state authorities to initiate appropriate air quality management actions to ensure that all those residing, working, attending school, or otherwise present in those areas are protected, regardless of minority and economic status.

V. Statutory and Executive Order Reviews

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

This action is exempt from review by the Office of Management and Budget because it is a reconsideration of an initial action taken pursuant to the CAA requirement to promulgate air quality designations after promulgation of a new or revised NAAQS. This final rule is not a significant regulatory action under Executive Order 12866.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because actions such as air quality designations after promulgating a new revised NAAQS are exempt under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. In this action, the EPA reconsiders the SO_2 NAAQS designation for the Williamson County, Illinois area promulgated previously on July 12, 2016. The action does not encompass any information collection activities.

D. Regulatory Flexibility Act (RFA)

This action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. NAAQS designations do not in and of themselves create any new requirements beyond what is mandated by the CAA. Instead, this rulemaking only makes factual determinations, and does not directly regulate any entities.

[1] The EPA is also not reconsidering this area's designation under CAA section 307(d). The Round 2 designations final action is not a CAA section 307(d) rule.

[2] The EPA also would like to correct the commenter's statement regarding the error correction petition that the EPA received regarding the initial designation. The EPA neither granted nor denied that error correction petition in the EPA's letter responding to receipt of the petition. Moreover, with this final action revising the designation at issue in that petition, that petition and the previous reconsideration petition are now moot.

[3] *https://www.epa.gov/sites/production/files/2016-04/documents/so2modelingtad.pdf.*

[4] Nevertheless, the EPA notes that SO_2 emissions from the Marion Power Station have been declining, from a 2013 to 2015 average of 7,081 tons per year (*See* Docket Item No. EPA–HQ–OAR–2019–0011–0007) to a 2016 to 2018 average of 4,214 tons per year (*See https://ampd.epa.gov/ampd/*). So, the modeling results may be conservative.

[5] Docket Item No. EPA–HQ–OAR–2019–0011–0006.

E. Unfunded Mandates Reform Act (UMRA)

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

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The division of responsibility between the federal government and the states for purposes of implementing the NAAQS is established under the CAA.

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

This action does not have tribal implications, as specified in Executive Order 13175. This action concerns the designation of Williamson County, Illinois for the 2010 1-hour SO_2 NAAQS. This rule does not have a substantial direct effect on one or more Indian tribes. This action changes the initial designation for Williamson County for the 2010 1-hour SO_2 NAAQS, but no areas of Indian country are designated or have their designation changed by this action. There are no areas of Indian country in or near Williamson County. Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. The CAA and the Tribal Authority Rule establish the relationship of the federal government and tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Thus, Executive Order 13175 does not apply.

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

The EPA interprets Executive Order 13045 as applying to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

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

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). When the EPA establishes a new or revised NAAQS, the CAA requires the EPA to designate all areas of the U.S. as either nonattainment, attainment, or unclassifiable. This action reconsiders the nonattainment designation for the Williamson County, Illinois area for the 2010 1-hour SO_2 NAAQS. Area designations address environmental justice concerns by ensuring that the public is properly informed about the air quality in an area. In locations where air quality does not meet the NAAQS, the CAA requires relevant state authorities to initiate appropriate air quality management actions to ensure that all those residing, working, attending school, or otherwise present in those areas are protected, regardless of minority and economic status.

L. Congressional Review Act (CRA)

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

M. Judicial Review

Under section 307(b)(1) of the CAA, petitions for review of this final action must be filed in the U.S. Court of Appeals for the appropriate circuit within 60 days from the date this final action is published in the **Federal Register**.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: September 5, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 81 is amended as follows:

PART 81—DESIGNATIONS 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.

Subpart C—Section 107 Attainment Status Designations

2. Section 81.314 is amended by revising the table titled ''Illinois—2010 Sulfur Dioxide NAAQS (Primary)'' to read as follows:

§ 81.314 Illinois.

* * * * *

ILLINOIS—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

Designated area [1] [2]	Designation	
	Date [3]	Type
Alton Township, IL	9/12/16	Nonattainment.
Madison County (part).		
Within Alton Township: Area east of Corporal Belchik Memorial Expressway, south of East Broadway, south of Route 3, and north of Route 143.		
Lemont, IL	10/4/13	Nonattainment.
Cook County (part).		
Lemont Township.		
Will County (part).		
DuPage Township and Lockport Township.		

ILLINOIS—2010 SULFUR DIOXIDE NAAQS (PRIMARY)—Continued

Designated area [1 2]	Designation	
	Date [3]	Type
Pekin, IL	10/4/13	Nonattainment.
Tazewell County (part).		
Cincinnati Township and Pekin Township.		
Peoria County (part).		
Hollis Township.		
Adams County		Attainment/Unclassifiable.
Alexander County		Attainment/Unclassifiable.
Bond County		Attainment/Unclassifiable.
Boone County		Attainment/Unclassifiable.
Brown County		Attainment/Unclassifiable.
Bureau County	9/12/16	Attainment/Unclassifiable.
Calhoun County		Attainment/Unclassifiable.
Carroll County		Attainment/Unclassifiable.
Cass County		Attainment/Unclassifiable.
Champaign County		Attainment/Unclassifiable.
Christian County		Attainment/Unclassifiable.
Clark County		Attainment/Unclassifiable.
Clay County		Attainment/Unclassifiable.
Clinton County		Attainment/Unclassifiable.
Coles County		Attainment/Unclassifiable.
Cook County (part) (remainder)		Attainment/Unclassifiable.
Crawford County		Attainment/Unclassifiable.
Cumberland County		Attainment/Unclassifiable.
De Kalb County		Attainment/Unclassifiable.
De Witt County		Attainment/Unclassifiable.
Douglas County		Attainment/Unclassifiable.
Du Page County		Attainment/Unclassifiable.
Edgar County		Attainment/Unclassifiable.
Edwards County		Attainment/Unclassifiable.
Effingham County		Attainment/Unclassifiable.
Fayette County		Attainment/Unclassifiable.
Ford County		Attainment/Unclassifiable.
Franklin County		Attainment/Unclassifiable.
Fulton County		Attainment/Unclassifiable.
Gallatin County		Attainment/Unclassifiable.
Greene County		Attainment/Unclassifiable.
Grundy County		Attainment/Unclassifiable.
Hamilton County		Attainment/Unclassifiable.
Hancock County		Attainment/Unclassifiable.
Hardin County		Attainment/Unclassifiable.
Henderson County		Attainment/Unclassifiable.
Henry County		Attainment/Unclassifiable.
Iroquois County		Attainment/Unclassifiable.
Jackson County		Attainment/Unclassifiable.
Jasper County	9/12/16	Attainment/Unclassifiable.
Jefferson County		Attainment/Unclassifiable.
Jersey County		Attainment/Unclassifiable.
Jo Daviess County		Attainment/Unclassifiable.
Johnson County		Attainment/Unclassifiable.
Kane County		Attainment/Unclassifiable.
Kankakee County		Attainment/Unclassifiable.
Kendall County		Attainment/Unclassifiable.
Knox County		Attainment/Unclassifiable.
Lake County		Attainment/Unclassifiable.
La Salle County		Attainment/Unclassifiable.
Lawrence County		Attainment/Unclassifiable.
Lee County		Attainment/Unclassifiable.
Livingston County		Attainment/Unclassifiable.
Logan County		Attainment/Unclassifiable.
McDonough County		Attainment/Unclassifiable.
McHenry County		Attainment/Unclassifiable.
McLean County		Attainment/Unclassifiable.
Macoupin County		Attainment/Unclassifiable.
Madison County (part) (remainder) [5]		Attainment/Unclassifiable.
Marion County		Attainment/Unclassifiable.
Marshall County		Attainment/Unclassifiable.
Mason County		Attainment/Unclassifiable.
Massac County	9/12/16	Attainment/Unclassifiable.
Menard County		Attainment/Unclassifiable.
Mercer County		Attainment/Unclassifiable.

ILLINOIS—2010 SULFUR DIOXIDE NAAQS (PRIMARY)—Continued

Designated area [1] [2]	Designation	
	Date [3]	Type
Monroe County		Attainment/Unclassifiable.
Montgomery County		Attainment/Unclassifiable.
Morgan County		Attainment/Unclassifiable.
Moultrie County		Attainment/Unclassifiable.
Ogle County		Attainment/Unclassifiable.
Peoria County (part) (remainder)		Attainment/Unclassifiable.
Perry County		Attainment/Unclassifiable.
Piatt County		Attainment/Unclassifiable.
Pike County		Attainment/Unclassifiable.
Pope County		Attainment/Unclassifiable.
Pulaski County		Attainment/Unclassifiable.
Putnam County	9/12/16	Attainment/Unclassifiable.
Randolph County		Attainment/Unclassifiable.
Richland County		Attainment/Unclassifiable.
Rock Island County		Attainment/Unclassifiable.
St. Clair County		Attainment/Unclassifiable.
Saline County		Attainment/Unclassifiable.
Sangamon County		Attainment/Unclassifiable.
Schuyler County		Attainment/Unclassifiable.
Scott County		Attainment/Unclassifiable.
Shelby County		Attainment/Unclassifiable.
Stark County		Attainment/Unclassifiable.
Stephenson County		Attainment/Unclassifiable.
Tazewell County (part) (remainder)		Attainment/Unclassifiable.
Union County		Attainment/Unclassifiable.
Vermilion County		Attainment/Unclassifiable.
Wabash County		Attainment/Unclassifiable.
Warren County		Attainment/Unclassifiable.
Washington County		Attainment/Unclassifiable.
Wayne County		Attainment/Unclassifiable.
White County		Attainment/Unclassifiable.
Whiteside County		Attainment/Unclassifiable.
Will County (part) (remainder)		Attainment/Unclassifiable.
Williamson County	[4] 10/15/19	Attainment/Unclassifiable.
Winnebago County		Attainment/Unclassifiable.
Woodford County		Attainment/Unclassifiable.

[1] Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

[2] Macon County will be designated by December 31, 2020.

[3] This date is April 9, 2018, unless otherwise noted.

[4] Williamson County was initially designated on September 12, 2016. The initial designation was reconsidered and modified on October 15, 2019.

[5] A portion of Madison County, specifically all of Wood River Township, and the area in Chouteau Township north of Cahokia Diversion Channel, was designated attainment/unclassifiable on September 12, 2016.

[FR Doc. 2019–19782 Filed 9–12–19; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2017–0051; FXES11130900000–178–FF09E42000]

RIN 1018–BC09

Endangered and Threatened Wildlife and Plants; Removing the Foskett Speckled Dace From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or USFWS), are removing the Foskett speckled dace (*Rhinichthys osculus* ssp.), a fish native to Oregon, from the Federal List of Endangered and Threatened Wildlife on the basis of recovery. This determination is based on a review of the best available scientific and commercial information, which indicates that the threats to the Foskett speckled dace have been eliminated or reduced to the point where it no longer meets the definition of an endangered or threatened species under the Endangered Species Act of 1973 (Act), as amended.

DATES: This rule is effective October 15, 2019.

ADDRESSES: This final rule, the post-delisting monitoring plan, and supporting documents including the Cooperative Management Plan are available on the internet at *http://www.regulations.gov* in Docket No. FWS–R1–ES–2017–0051, or at *https://ecos.fws.gov.* In addition, the supporting file for this final rule will be available for public inspection by appointment, during normal business hours, at: U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266; telephone: 503–231–6179.

FOR FURTHER INFORMATION CONTACT: Paul Henson, State Supervisor, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266; telephone: 503–231–6179. If you use a

telecommunications device for the deaf (TDD), call the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants protection through listing if it is endangered or threatened. Conversely, a species may be removed from the Federal List of Endangered and Threatened Wildlife (List) if the Act's protections are determined to be no longer required based on recovery, original data error, or extinction. Removing a species from the List can be completed only by issuing a rule. This rule finalizes the removal of the Foskett speckled dace (*Rhinichthys osculus* ssp.) from the List due to recovery, as proposed on January 4, 2018 (83 FR 475).

The basis for our action. We have determined that the Foskett speckled dace is no longer at risk of extinction and has exceeded or met the following criteria for delisting described in the species' recovery plan (USFWS 1998): (1) Long-term protection of habitat, including spring source aquifers, spring pools and outflow channels, and surrounding lands, is assured; (2) long-term habitat management guidelines are developed and implemented to ensure the continued persistence of important habitat features, and include monitoring of current habitat and investigation for and evaluation of new spring habitats; and (3) research into life history, genetics, population trends, habitat use and preference, and other important parameters is conducted to assist in further developing and/or refining criteria (1) and (2), above. We consider the Foskett speckled dace to be a conservation-reliant species, which we define in this case as a species that has generally met recovery criteria but requires continued active management to sustain the species and associated habitat in a recovered condition (see Scott *et al.* 2010, entire), given that the Foskett speckled dace requires active management to maintain suitable habitat. To address this management need, the Bureau of Land Management (BLM), the Oregon Department of Fish and Wildlife (ODFW), and the Service developed, and are implementing, the Foskett speckled dace Cooperative Management Plan (CMP; USFWS *et al.* 2015), and are committed to the continuing long-term management of this species.

Peer review and public comment. We evaluated the species' needs, current conditions, and future conditions to support our proposed rule. We sought comments from independent specialists to ensure that our determination is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on the draft post-delisting monitoring plan. We considered all comments and information we received during the public comment period on the proposed rule to delist the Foskett speckled dace and the post-delisting monitoring plan when developing this final rule.

Previous Federal Actions

In carrying out our responsibility to administer the Act, we maintain the Lists of Endangered and Threatened Wildlife and Plants in title 50 of the Code of Federal Regulations (CFR). We published a final rule listing the Foskett speckled dace as threatened in the **Federal Register** on March 28, 1985 (50 FR 12302). This rule also found that the designation of critical habitat was not prudent because it would increase the likelihood of vandalism to the small, isolated springs that support this species. On April 27, 1998, a recovery plan was completed for the Foskett speckled dace as well as two other fish of the Warner Basin and Alkali Subbasin (USFWS 1998).

Our most recent 5-year review, completed on October 26, 2015 (USFWS 2015, entire), concluded that the status of the Foskett speckled dace had substantially improved since the time of listing according to the definitions of ''endangered species'' and ''threatened species'' under the Act and recommended that the Foskett speckled dace be considered for delisting.

On January 4, 2018, we published a proposed rule in the **Federal Register** (83 FR 475) to delist the Foskett speckled dace on the basis of recovery. In that document, we requested information and comments from the public regarding the proposed rule and the draft post-delisting monitoring plan for the Foskett speckled dace.

Species Description

The Foskett speckled dace is in the family Cyprinidae (Girard 1857) and is represented by one population in Lake County, Oregon: A natural population that inhabits Foskett Spring on the west side of Coleman Lake, and an introduced subpopulation at nearby Dace Springs (USFWS 1998, p. 14). The Foskett speckled dace is a small, elongate, rounded minnow (4 inches (in) (10 centimeters (cm)) with a flat belly. The snout is moderately pointed, the eyes and mouth are small, and ventral barbels (*i.e.,* whisker-like sensory organs near the mouth) are present. Foskett speckled dace have eight dorsal fin rays and seven anal fin rays, and the caudal fin is moderately forked (USFWS 1998, p. 8). The color of its back is dusky to dark olive; the sides are grayish green, with a dark lateral stripe, often obscured by dark speckles or blotches; and the fins are plain. Breeding males are reddish on the lips and fin bases.

Life History

Typically, speckled dace breed at age 1 year, and spawning begins in March to April and extends into July; individual fish can live for at least 4 years (Scheerer *et al.* 2015, p. 2). Multiple age classes of Foskett speckled dace are present at Foskett Spring and successful reproduction occurs annually (Sheerer and Jacobs 2009, p. 5). To describe the different habitat types occupied by Foskett speckled dace, Scheerer split the habitat types into categories. The four habitat types are defined as the (1) Spring Pool; (2) Spring Brook; (3) Tule Marsh; and (4) Cattail Marsh. Aside from 1997, Cattail Marsh supports few Foskett speckled dace; the small population size in the Cattail Marsh habitat is due to habitat encroachment (Scheerer *et al.* 2011, pp. 6–7; Scheerer *et al.* 2016, p. 9). Most of the Cattail Marsh habitat is outside the fence protecting Foskett Spring habitat, and the habitat is known to dry periodically (U.S. Fish and Wildlife Service 1998, p. 14). Young-of-the-year fish are more common in the shallow marsh habitats (Scheerer *et al.* 2016, p. 3). Presumably, similar to other dace, Foskett speckled dace require rock or gravel substrate for egg deposition (Sigler and Sigler 1987, p. 208). The taxonomy of the Foskett speckled dace is summarized in the species' 5-year review (USFWS 2015).

Distribution

The Foskett speckled dace is endemic to Foskett Spring in the Warner Basin, in southeastern Oregon (see Figure 1). The historical known natural range of the Foskett speckled dace is limited to Foskett Spring. At the time of listing in 1985, Foskett speckled dace also occurred at Dace Spring, a smaller spring located approximately 0.5 miles (mi; 0.8 kilometers (km)) south of Foskett Spring, where translocation was initiated in 1979 (Williams *et al.* 1990, p. 243).

Foskett speckled dace were probably distributed throughout prehistoric Coleman Lake (see Figure 1) during times that it held substantial amounts of water. The timing of the isolation between the Warner Lakes and the Coleman Lake Subbasin is uncertain, although it might have been as recent as 10,000 years ago (Bills 1977, entire). As

Coleman Lake dried, the salt content of the water increased and suitable habitat would have been reduced from a large lake to spring systems that provided adequate freshwater.

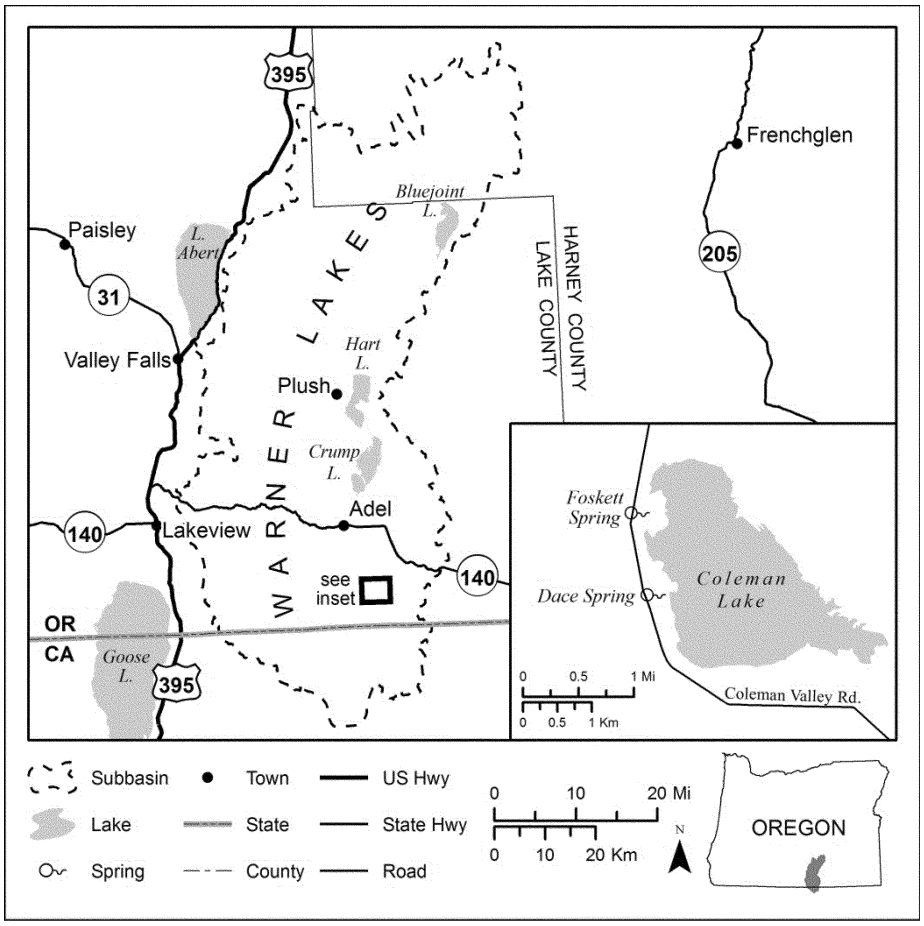

Figure 1. Location of Foskett Spring and Dace Spring.

Given that both Foskett and Dace springs were historically below the surface elevation of Coleman Lake, it is reasonable to assume that Foskett speckled dace occupied Dace Spring at some point in the past, although none was documented in the 1970s. Beginning in 1979, Foskett speckled dace were translocated into the then-fishless Dace Spring to attempt to create a subpopulation (see *Abundance,* below).

Habitat

Foskett Spring is a small, natural thermal artesian spring that rises from a springhead pool that flows through a narrow, shallow spring brook into a series of shallow marshes, and then disappears into the soil of the normally dry Coleman Lake (Scheerer *et al.* 2016, p. 1; Sammel and Craig 1981, p. 113). Foskett Spring is a cool-water thermal spring with temperatures recorded at a constant 64.8 degrees Fahrenheit (°F) (18.2 degrees Celsius (°C)) (Scheerer and Jacobs 2009, p. 5). The spring water is clear, and the water flow rate is consistently less than 0.5 cubic feet (ft^3) per second (0.01 cubic meters (m^3) per second). The springhead pool has a loose sandy bottom and is heavily vegetated with aquatic plants. The ODFW estimated approximately 864 square yards (yds^2) (722 square meters (m^2)) of wetland habitat are associated with the Foskett Spring area, including the spring pool, spring brook, tule marsh, cattail marsh, and sedge marsh (Scheerer and Jacobs 2005, p. 6; hereafter ''marsh'' unless otherwise noted). Foskett speckled dace occur in all the wetlands habitats associated with the spring. The fish use overhanging bank edges, grass, exposed grass roots, and filamentous algae as cover.

In 1987, the BLM acquired the property containing both Foskett and Dace springs and the surrounding 161 acres (ac) (65 hectares (ha)), of which approximately 69 ac (28 ha) were fenced to exclude cattle from the two springs. After fencing and cattle exclusion, encroachment by aquatic vegetation reduced the open-water habitat (Sheerer and Jacobs 2007, p. 9). This is a common pattern in desert spring ecosystems and has resulted in reductions of fish populations at other sites (see Kodric-Brown and Brown 2007).

In 2005, 2007, and 2009, the ODFW considered Foskett speckled dace habitat to be in good condition, but limited in extent. They noted that encroachment by aquatic plants may be limiting the population and that a decline in abundance of Foskett speckled dace since 1997 was probably due to the reduction in open-water habitat (Scheerer and Jacobs 2005, p. 7; 2007, p. 9; 2009, p. 5). Deeper water with moderate vegetative cover would

presumably be better habitat, judging from the habitats used by other speckled dace, although Dambacher *et al.* (1997, no pagination) noted that past habitat management to increase open water has been unsuccessful in the long run due to sediment infilling and regrowth of aquatic plants. To increase open-water habitat, the BLM and the Service worked together in 2009 constructing two ponds connected to the outlet channel of Dace Spring. To address the encroachment by aquatic vegetation at Foskett Spring, in 2013, the BLM reduced vegetation biomass by implementing a controlled burn in the surrounding marshes. In 2013 and 2014, the BLM hand-excavated 11 pools and increased the open-water habitat around Foskett Spring by 196 yds^2 (164 m^2) (Scheerer *et al.* 2014, p. 9). The response of Foskett speckled dace to this habitat enhancement was substantial but relatively short-lived (see *Abundance,* below).

The BLM initiated baseline water quality and vegetation monitoring at Foskett and Dace springs in 1987. Data collected on September 28, 1988, documented that the two springs had similar water chemistry, temperature, and turbidity (Williams *et al.* 1990, p. 244). In 2013, the BLM reconfigured the inlet and outlet to the two ponds at Dace Spring, allowing greater water flow and improving water quality (Scheerer *et al.* 2013, p. 8).

Abundance

The population of Foskett speckled dace has been monitored regularly by the ODFW since 2005, and, while variable, appears to be resilient (*i.e.,* capable of withstanding natural variation in habitat conditions and weather as well as random events). General observations made during these surveys included the presence of multiple age-classes and the presence of young-of-the-year, which indicates that breeding is occurring and young are surviving for multiple years. Bond (1974) visually estimated the population in Foskett Spring to be between 1,500 and 2,000 individuals in 1974. In 1997, the ODFW obtained mark-recapture population estimates at both Foskett and Dace springs (Dambacher *et al.* 1997, no pagination). The Foskett Spring estimate was 27,787 fish, and the majority of the fish (97 percent) occurred in an open-water pool located in the marsh outside of the existing Foskett Spring cattle exclosure. Since 1997, population estimates have varied from 751 to 24,888 individuals (see Table 1, below).

Abundance declined substantially from 1997 through 2012, a period when aquatic plants substantially expanded into open-water habitats (Scheerer *et al.* 2016, p. 9). ODFW attributed the higher population estimates from 2013 through 2015 to habitat management that increased open water (see below); during these years most fish were found in these maintained habitats (Scheerer *et al.* 2016, p. 9). The population decline documented in 2016 in Foskett Spring was likely a result of vegetation regrowth into the excavated areas (Scheerer *et al.* 2016, pp. 6–9). As a result of the vegetation regrowth and population decline in 2016, and consistent with the CMP, the BLM conducted an extensive habitat enhancement project in 2017. The project entailed excavating approximately 300 cubic yards (yds^2) (251 m^2) of vegetation and accumulated sediment in the Foskett Spring pool, stream, and portions of the wetland, resulting in a significant increase in open-water habitat. Prior to initiating this enhancement project in 2017, the ODFW conducted a population survey that estimated 4,279 dace in Foskett Spring (95 percent confidence interval (CI): 3,878–4,782), a moderate increase in the estimate from the prior year (1,830) (P. Scheerer 2017, pers. comm.). As noted previously, and as illustrated in Table 1 below, the variability in abundance is not uncommon for dace species and appears, based on observations by ODFW biologists, to be driven in part by the availability of open-water habitat. Given information gained from prior habitat enhancement actions at Foskett and Dace springs, we anticipate the extensive habitat enhancement work conducted by the BLM in 2017 will support abundance commensurate with available habitat in coming years.

TABLE 1—FOSKETT SPRING: POPULATION ESTIMATES WITH 95 PERCENT CONFIDENCE INTERVALS OF FOSKETT SPECKLED DACE BY HABITAT TYPE

Model	Yr [1]	Habitat type or location					Management
		Spring pool	Spring brook	Tule marsh	Cattail marsh	Entire site [2]	
Lincoln-Petersen	1997	204 (90–317)	702 (1,157–2,281)	no sample	26,881 (13,158–40,605)	27,787 (14,057–41,516)	none.
	2005	1,627 (1,157–2,284)	755 (514–1,102)	425 (283–636)	353 (156–695)	3,147 (2,535–3,905)	none.
	2007	1,418 (1,003–1,997)	719 (486–1,057)	273 (146–488)	422 (275–641)	2,984 (2,403–3,702)	none.
	2009	247 (122–463)	1,111 (774–1,587)	1,062 (649–1,707)	158 (57–310)	2,830 (2,202–3,633)	none.
	2011	322 (260–399)	262 (148–449)	301 (142–579)	0	751 (616–915)	none.
	2012	404 (354–472)	409 (357–481)	220 (159–357)	0	988 (898–1,098)	Controlled burn.
Huggins	2011	NA [3]	NA [3]	NA [3]	NA [3]	1,728 (1,269–2,475)	none.
	2012	633 (509–912)	589 (498–1024)	625 (442–933)	0	1,848 (1,489–2,503)	Controlled burn.
	2013	2,579 (1,985–3,340)	638 (566–747)	6,891 (5,845–8,302)	3,033 (2,500–3,777)	13,142 (10,665–16,616)	Pool excavation and hand excavation of spring brook and marshes.
	2014	2,843 (2,010–3,243)	7,571 (2,422–13,892)	11,595 (7,891–12,682)	2,936 (1,757–7,002)	24,888 (19,250–35,510)	Pool excavation and hand excavation of spring brook and marshes.
State-space	2015	698 (520–2,284)	11,941 (5,465–15,632)	3,662 (2,158–6,565)	38 (8–111)	16,340 (10,980–21,577)	none.
	2016	138 (122–226)	656 (609–1240)	1,021 (926–1245)	14 (12–19)	1,830 (1,694–2,144)	none.
	2017	925	1,032	2,322	no survey [4]	4,279 (3,878–4,782)	Mechanical excavation to deepen the open water pools and channels.

[1] Note that there are two population estimates (*i.e.,* Lincoln-Petersen and Huggins) for 2011 and 2012.
[2] Site estimate totals were calculated from the total number of marked and recaptured fish and are not the sum of the estimates for the habitat types.
[3] No estimates were calculated; see Scheerer *et al.* 2015, pp. 4–7.
[4] The cattail marsh habitat was too shallow to survey in 2017.

No Foskett speckled dace were documented in Dace Spring in the 1970s. In 1979 and 1980, individuals were translocated from Foskett Spring to Dace Spring (Williams *et al.* 1990, p. 243; see Table 2, below). Although an estimated 300 fish were documented in 1986 (Williams *et al.* 1990, p. 243), this initial effort failed to establish a subpopulation at Dace Spring due to a lack of successful recruitment (Dambacher *et al.* 1997, no pagination).

Only 19 fish were observed in 1997, and subsequent surveys failed to locate individuals in Dace Springs (Scheerer and Jacobs 2005, p. 2). In 2009, two pools were created at Dace Spring to increase open-water habitat and additional individuals were moved to the spring. Although recruitment was documented, major algal blooms and periods of low dissolved oxygen resulted in low survival (Scheerer *et al.* 2012, p. 8). Habitat manipulation by the BLM in 2013 improved water quality, and recruitment was documented in 2014 and 2015 (Scheerer *et al.* 2014, p. 6; Scheerer *et al.* 2015, p. 5). The two constructed pools at Dace Spring are currently providing additional habitat and may continue to serve as a refuge for Foskett speckled dace. Table 2 summarizes population estimates, translocations, and habitat management at Dace Spring (Williams *et al.* 1990, p. 243; Dambacher *et al.* 1997, no pagination; Scheerer and Jacobs 2005, p. 2; Scheerer *et al.* 2012, p. 1; Scheerer *et al.* 2013, pp. 2, 8; Scheerer *et al.* 2014, pp. 6, 9; Scheerer *et al.* 2015, p. 5; Scheerer *et al.* 2016, p. 6; Scheerer *et al.* 2017, p. 6; Monzyk *et al.* 2018, p. 10).

TABLE 2—DACE SPRING: SUMMARY OF FOSKETT SPECKLED DACE POPULATION ESTIMATES

Year	Population estimate	Number translocated	Habitat management
Pre-1979	0	none	none.
1979	no estimate	50	none.
1980	no estimate	50	none.
1986	300 [1]	none	none.
1997	<20 [1]	none	none.
2005	0	none	none.
2009	no estimate	none	construction of two pools.
2010	no estimate	49	none.
2011	34 (11–36)	75	none.
2012	13 [2]	none	none.
2013	34 (17–62)	200	construction of flow-through channels.
2014	552 (527–694)	324	none.
2015	876 (692–1,637)	none	none.
2016	1,964 (1,333–4,256)	none	none.
2017	15,729 (3,470–58,479) [3]	none	none.
2018	1,924 (1,890–1,968)	none	none.

[1] No confidence interval calculated.
[2] In 2012, there were a known total of 13 individuals.
[3] The very large 2017 estimate lacked precision (reflected in the large 95-percent confidence interval) due to a likely biased estimator of capture probabilities used for small fish that year (F. Monzyk 2018, pers. comm.).

Recovery Planning and Recovery Criteria

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the List. However, revisions to the List (*i.e.,* adding, removing, or reclassifying a species) must reflect determinations made in accordance with sections 4(a)(1) and 4(b) of the Act. Section 4(a)(1) requires that the Secretary determine whether a species is endangered or threatened (or not) because of one or more of five threat factors. Section 4(b) of the Act requires that the determination be made ''solely on the basis of the best scientific and commercial data available.'' Therefore, recovery criteria should help indicate when we would anticipate an analysis of the five threat factors under section 4(a)(1) would result in a determination that the species is no longer an endangered species or threatened species (see Summary of Factors Affecting the Species, below).

While recovery plans provide important guidance to the Service, States, and other partners on methods of minimizing threats to listed species and measurable objectives against which to measure progress towards recovery, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species or remove it from the List is ultimately based on analysis of the best scientific and commercial data available to determine whether a species is no longer considered endangered or threatened, regardless of whether that information differs from the recovery plan.

Recovery plans may be revised to address continuing or new threats to the species as new substantive information becomes available. The recovery plan identifies site-specific management actions that will help recover the species, measurable criteria that set a trigger for eventual review of the species' listing status (*e.g.,* under a 5-year review conducted by the Service), and methods for monitoring recovery progress. Recovery plans are intended to establish goals for long-term conservation of listed species and define criteria that are designed to indicate when the threats facing a species have been removed or reduced to such an extent that the species may no longer need the protections of the Act.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be met. In that instance, we may determine that the threats are minimized sufficiently to delist. In other cases, recovery opportunities may be discovered that were not known when the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan. Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. Recovery of a species is a dynamic process requiring adaptive management that may, or may not, fully follow the guidance provided in a recovery plan.

The Oregon Desert Fishes Working Group has been proactive in improving the conservation status of the Foskett speckled dace. This group of Federal and State agency biologists, academicians, and others has met annually since 2007 to: (1) Share species' status information; (2) share results of new research; and (3) assess ongoing threats to the species.

The primary conservation objective in the Foskett speckled dace recovery plan is to enhance its long-term persistence through the conservation and enhancement of its limited range and habitat (USFWS 1998, entire). The recovery plan states that the spring habitat of the Foskett speckled dace is currently stable, but extremely restricted, and any alterations to the spring or surrounding activities that indirectly modify the spring could lead to the extinction of this species. While the recovery plan does not explicitly tie the recovery criteria to the five listing factors in section 4(a)(1) of the Act, our analysis of whether the species has achieved recovery is based on these five factors, which are discussed below under Summary of Factors Affecting the Species. The recovery plan outlines three recovery criteria (summarized below) to assist in determining when the Foskett speckled dace has recovered to the point that the protections afforded by the Act are no longer needed. A detailed review of the recovery criteria for the Foskett speckled dace is presented in the species' 5-year review (USFWS 2015), which is available online at *https://ecos.fws.gov/docs/five_year_review/doc4758.pdf,* at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2017–0051, or by requesting a copy from our Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). The 2015 5-year review concluded that the risk of extinction has been substantially reduced, as threats have been managed, and recommended that the species be proposed for delisting (USFWS 2015, p. 29). The Foskett speckled dace has exceeded or met the following criteria for delisting described in the recovery plan:

Recovery Criterion 1: *Long-term protection to habitat, including spring source aquifers, spring pools and outflow channels, and surrounding lands, is assured.*

Criterion 1 has been met. In 1987, the BLM acquired and now manages the 160-ac (65-ha) parcel of land containing both Foskett and Dace springs (see below) and fenced 70 ac (28 ha) to exclude cattle from both springs, although the fence does not include the entire occupied habitat for Foskett speckled dace. This parcel of land was acquired by the BLM specifically to provide conservation benefit to the Foskett speckled dace. We anticipate continued ownership of this habitat by the BLM in the future in part due to direction in the BLM's Lakeview District Resource Management Plan (RMP), which includes a management goal of retaining public land with high public resource values and managing that land for the purpose for which it was acquired (BLM 2003, p. 92). Additional support for continued ownership and management of the site by the BLM rests in the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), as amended, which directs the BLM to manage public land to provide habitat for fish and aquatic wildlife and to protect the quality of water resources. Lastly, continued ownership and management by the BLM, as well as the protections afforded to Foskett and Dace springs from public ownership, are supported by the BLM's involvement as a cooperating agency in the development and implementation of the CMP that was agreed to, finalized, and signed by the BLM in August 2015 (USFWS *et al.* 2015). The BLM's official commitment to carry out the CMP demonstrates that Criterion 1 has been met.

While little information is available regarding spring flows or the status of the aquifer, the aquifer has limited capability to produce water for domestic or stock use (Gonthier 1985, p. 7). Given this, the few wells that exist in the Warner Valley are unlikely to impact Foskett or Dace springs. Recovery Criterion 1 addresses listing factor A (present or threatened destruction, modification, or curtailment of habitat or range).

Recovery Criterion 2: *Long-term habitat management guidelines are developed and implemented to ensure the continued persistence of important habitat features and include monitoring of current habitat and investigation for and evaluation of new spring habitats.*

Criterion 2 has been met. With the understanding that the Foskett speckled dace is a conservation-reliant species, the BLM, ODFW, and Service developed a CMP (USFWS *et al.* 2015) that outlines long-term management actions necessary to provide for the continued persistence of habitats important to Foskett speckled dace. The CMP was agreed to, finalized, and signed by the BLM, ODFW, and Service in August 2015. The cooperating parties committed to the following actions: (1) Protect and manage Foskett speckled dace habitat; (2) enhance the habitat when needed; (3) monitor Foskett speckled dace populations and habitat; and (4) implement an emergency contingency plan as needed to address potential threats from the introduction of nonnative species, pollutants, or other unforeseen threats (USFWS *et al.* 2015, p. 3). The CMP has no termination date.

Although the CMP is a voluntary agreement among the three cooperating agencies, we anticipate the plan will be implemented into the foreseeable future for the following reasons. First, each of the cooperating agencies have established a long record of engagement in conservation actions for Foskett speckled dace, including the BLM's prior contributions through land acquisition and three decades of habitat management at Foskett and Dace springs; scientific research and monitoring by the ODFW dating back to 1997; and funding support, coordination of recovery actions, and legal obligations by the Service to monitor the species into the future under the Foskett speckled dace post-delisting monitoring plan. In addition, all three cooperating agencies are active participants in the Oregon Desert Fishes Working Group, an interagency group facilitated by the Service that meets annually to discuss recent monitoring and survey information for multiple fish species, including Foskett speckled dace, as well as to coordinate future monitoring and management activities.

Second, implementation of the CMP is already underway. Under the auspices of the CMP, the BLM has conducted quarterly site visits to determine the general health of the local spring environment using photo point monitoring techniques. In 2017, the BLM conducted an extensive habitat enhancement project by excavating approximately 300 yards (yds^2) (251 m^2) of vegetation and accumulated sediment in the Foskett Spring pool, stream, and portions of the wetland, resulting in a significant increase in open-water habitat. The BLM also provided funding to ODFW to conduct estimates of Foskett speckled dace. The ODFW provided personnel and technical assistance to the BLM for the above-mentioned excavation work in 2017, and they conducted an abundance estimate in 2017 to keep track of the long-term trend of the population. The Service provided personnel and technical assistance to the BLM for the 2017 excavation work and provided funding to the ODFW in 2005, 2007, and 2009 at Foskett Spring, and in 2015, 2016, and 2017 to conduct population estimates in both Foskett and Dace springs.

Third, the conservation mission and authorities of these agencies authorize this work even if the species is delisted. For example, the Lakeview District BLM's Resource Management Plan (RMP) and BLM Manual 6840.06E both provide general management direction for Special Status Species, including the Foskett speckled dace. ''Special Status'' species for the BLM includes sensitive, proposed for listing, threatened, and endangered species. When delisted, the Foskett speckled dace would still be considered a ''Special Status'' species, as it meets the criteria to be ''sensitive'' for the BLM. According to the BLM's *Criteria for determining FS R6 and OR/WA BLM Sensitive and Strategic Species* (July 13, 2015), all federally delisted species that are suspected or documented on BLM or U.S. Forest Service lands are considered ''sensitive'' for the duration of their delisting monitoring plan unless the species meets some of the other criteria for being ''sensitive.'' In this case, being a State/Oregon Biodiversity Information Center (ORBIC) rank 1 species, with a Heritage program/NatureServe rank of S1 puts the Foskett speckled dace firmly in the ''sensitive'' category (R. Huff 2018, pers. comm.; ORBIC 2016, p. 5). Special Status species lists and criteria are updated and transmitted to the BLM Districts approximately every 3 years through the State Director, who then directs the Districts to use the new list (R. Huff 2018, pers. comm.). The Federal Land Policy and Management Act of 1976 directs the BLM to manage public land to provide habitat for fish and aquatic wildlife and to protect the quality of water resources. The ODFW's State of Oregon Wildlife Diversity Plan (Oregon Administrative Rule (OAR) 635–100–0080), Oregon Native Fish Conservation Policy (OAR 636–007–0502), and the Oregon Conservation Strategy (ODFW 2016) each provide protective measures for the conservation of native fish including Foskett speckled dace, which will remain on the ODFW's sensitive species list even if the species is removed from the Federal List. The Service is authorized to assist in the protection of fish and wildlife and their habitats under authorities provided by the Act (16 U.S.C. 1531 *et seq.*), the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), and the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j, not including 742 d–l).

Fourth, there is a practical reason to anticipate implementation of the CMP into the foreseeable future: the CMP actions are technically not complicated to implement, and costs are relatively low. We also have confidence that the actions called for in the CMP will be effective in the future because they have already proven effective as evidenced by the information collected from recent habitat actions and associated monitoring (including abundance data, the effects of exclosure fences and vegetation encroachment, and vegetation management through controlled burns and pool expansion) (Scheerer *et al.* 2016, entire).

Lastly, if the CMP is not adhered to by the cooperating agencies or an evaluation by the Service suggests the habitat and population are at risk, the Service would evaluate the need to again add the species to the List (*i.e.,* ''relist'' the species) under the Act. Taken together, it is therefore reasonable to conclude that the CMP will be implemented as anticipated and that the long-term recovery of the Foskett speckled dace will be maintained and monitored adequately.

Criterion 2 is further met by the establishment of a refuge subpopulation of Foskett speckled dace at nearby Dace Spring. As described earlier in this rule, dating back to 1979, multiple unsuccessful attempts were made to create a refuge for Foskett speckled dace at Dace Spring. More recent actions have been more successful. Habitat modification at Dace Spring by the BLM, first in 2009 and again in 2013, and translocation of dace from Foskett Spring to Dace Spring by the ODFW in 2010, 2011, 2013, and 2014, has provided for adequate abundance of the species over time with reflected natural variability (see Table 2, above). Natural recruitment was documented in 2014, 2015, and 2016 (Scheerer *et al.* 2016, p. 6).

Our decision to delist the Foskett speckled dace is not dependent on the existence of a subpopulation at Dace Spring. However, the existence of a subpopulation of Foskett speckled dace, should it be resilient over the long term, provides increased redundancy to the species' overall status and may reduce vulnerability to catastrophic events and any future threats that may appear on the landscape.

Recovery Criterion 3: *Research into life history, genetics, population trends, habitat use and preference, and other important parameters is conducted to assist in further developing and/or refining criteria 1 and 2 above.*

This criterion has been met through population surveys by the ODFW and the Service, and investigations into the genetic relatedness of the Foskett speckled dace to other nearby dace populations. In 1997, the Service contracted the ODFW to conduct an abundance survey and develop a population estimate for the Foskett speckled dace. In 2005, 2007, 2009, and 2011 through 2017, the Service again contracted the ODFW to obtain mark-recapture abundance estimates for both Foskett and Dace springs, and also in 2018 only at Dace Spring. At Foskett Spring, habitat-specific population estimates were developed. Captured fish were measured to develop length-frequency histograms to document reproduction. In addition to collecting abundance data, ODFW staff mapped wetland habitats, monitored vegetation, and measured temperature and water quality at both springs during each survey. Together, the population estimates and habitat mapping at Foskett Spring suggested a relationship between open-water habitat and fish abundance (Sheerer *et al.* 2016, p. 8). Water quality monitoring highlighted the need for habitat enhancement at Dace Springs. Thus, these data assisted in further developing and/or refining recovery criteria 1 and 2.

Summary of Changes From the Proposed Rule

We considered all comments and information we received during the comment period for the proposed rule to delist Foskett speckled dace (83 FR 475; January 4, 2018). This resulted in the following changes from the proposed rule in this final rule:

- We made some minor editorial changes to the document.
- Based on a request for clarification regarding our discussion of open-water habitat and population size, we replaced the word ''variability'' with the word ''abundance'' in one sentence (at the end of the *Abundance* discussion, above).
- Based on a comment on the uncertainty regarding the contribution of the Dace Spring population to the overall status of the species, we revised our discussion of the Dace Spring population (at the end of the ''Small Population Size'' discussion under Factor E in Summary of Factors Affecting the Species, below).
- Based on comments that the ODFW study only shows an observed response of Foskett speckled dace abundance to increased open water and not a direct correlation between the two variables, we have removed the reference to a direct response from this final rule. Although we present population information and discuss the relationship between population size and open-water habitat as suggested by ODFW (Scheerer *et al.* 2016, pp. 1, 9), our rationale for delisting Foskett speckled dace is based on the removal or reduction of threats to the species, not on population size.

• Based on comments regarding the potential response of the Foskett speckled dace to the effects of climate change, we added information to the climate change discussion under Factor E in Summary of Factors Affecting the Species, below.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. ''Species'' is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). A species may be determined to be an endangered or threatened species because of any one or a combination of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We must consider these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened; or (3) the original scientific data used at the time the species was classified were in error.

A recovered species is one that no longer meets the Act's definition of endangered or threatened. Determining whether a species is recovered requires consideration of the same five categories of threats specified in section 4(a)(1) of the Act. For species that are already listed as endangered or threatened, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following delisting or downlisting (*i.e.,* reclassification from endangered to threatened) and the removal or reduction of the Act's protections.

A species is ''endangered'' for purposes of the Act if it is in danger of extinction throughout all or a ''significant portion of its range'' and is ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a ''significant portion of its range.'' The word ''range'' refers to the general geographical area in which the species occurs at the time a status determination is made.

The Act does not define the term ''foreseeable future;'' we think it is reasonable to define the foreseeable future for the Foskett speckled dace as 30 years based upon the following analysis:

Based on monitoring that began in 1997 by the ODFW, the Foskett speckled dace population is highly variable in size, and may be linked to the amount of open-water habitat (Scheerer *et al.* 2016, p. 8). The relationship between open-water habitat and population size has not been thoroughly studied for Foskett speckled dace, but the relationship has been shown in other types of narrow endemic fishes in spring type environments (Kodric-Brown and Brown 2007, entire). We have no information to suggest this apparent relationship would change in the future. There also is no reason to expect local changes to ground water levels (see Factor A discussion, below), and climate changes modeled over the next 30 plus years (*i.e.,* through 2049) are not predicted to impact the Foskett speckled dace (see Factor E discussion, below).

The BLM has owned and managed the habitat at Foskett and Dace Springs since 1987, and ODFW has conducted monitoring of the Foskett speckled dace for 20 years. The BLM, ODFW, and Service are committed to long-term continued monitoring and implementation of conservation measures for the species through the CMP. Modeling of climate change impacts suggest little change in environmental conditions over the next 30 years (through 2049) in the Warner Lakes Basin. Although we also looked at climate models that projected an additional 25 years into 2074, we determined that the 30-year timeframe reflects climate change models that are relevant to the Foskett speckled dace and its habitat, as well as our ability to project land management decisions; therefore we think it is reasonable to define the foreseeable future for the Foskett speckled dace as 30 years.

In considering what factors might constitute threats, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat, and during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives or contributes to the risk of extinction of the species, such that the species warrants listing as endangered or threatened as those terms are defined by the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that the potential threat is likely to materialize and that it has the capacity (*i.e.,* it should be of sufficient magnitude and extent) to affect the species' status such that it meets the definition of endangered or threatened under the Act.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The Service listed the Foskett speckled dace as threatened in 1985 (50 FR 12302; March 28, 1985), due to the species' very restricted range, its low abundance, and its extremely restricted and vulnerable habitat, which was being modified at that time. Potential habitat-related threats that were identified in the final listing rule included groundwater pumping for irrigation, use of the area by livestock, channeling of the springs for agricultural purposes, and other mechanical modifications of the aquatic ecosystem. The vulnerability of the habitat was accentuated by its very small size and a water flow rate of less than 0.5 cubic feet (ft^3) per second (0.01 cubic meters (m^3) per second) (50 FR 12304; March 28, 1985).

Livestock Use and Mechanical Modification

In listing the species, the Service noted that Foskett Spring was a livestock watering area and grazing occurred in the area, although the exact impact had not been determined. The Service indicated that uncontrolled trampling of the springs by livestock could probably have a negative effect on the aquatic ecosystem and livestock use above those existing at the time of listing would have a negative impact (50 FR 12304 and 12305; March 28, 1985). Grazing cattle affects the form and function of stream and pool habitat by hoof shearing, compaction of soils, and mechanical alteration of the habitat. Since the 1985 listing, the BLM acquired the property containing Foskett and Dace springs by land exchange in 1987, and fenced 70 ac (28 ha) of the 160-ac (65-ha) parcel to exclude cattle from both Foskett and Dace springs as well as the two recently constructed ponds, and protect any Foskett speckled dace in the springs.

While the exclusion of cattle likely improved water quality and habitat stability, it may also have played a role in increasing the extent of encroaching aquatic vegetation. Although most of the habitat was excluded from grazing, a portion of the occupied habitat was not included in the fenced area. Examining the population trends within this unfenced habitat illustrates the variability of the population and the ability of the population to respond to management. The Foskett Spring was revisited in 1997, and 97 percent of the estimated population of Foskett speckled dace was located in a shallow open-water pool in a previously dry marsh outside of the exclosure fence (Dambacher *et al.* 1997, entire). The changed conditions noted at this site over time illustrate the natural variability in habitat conditions of this ephemeral wetland system.

In 2007, 14 percent of the estimated population of 2,984 Foskett speckled dace was located in the marsh outside of the exclusion fence (Scheerer and Jacobs 2007, p. 7), and trampling of the wetland habitat by cattle was evident (USFWS 2015, p. 19). In 2011 and 2012, no Foskett speckled dace were detected in the marsh outside of the exclusion fence (Scheerer *et al.* 2014, p. 6). In response, the BLM conducted a controlled burn in 2013; and in 2013 and 2014, they excavated open-water habitat in the marsh. In 2013, over 13,000 Foskett speckled dace were detected, with nearly 10,000 being in the restored marsh (Scheerer *et al.* 2013, p. 9). In 2014, nearly 25,000 Foskett speckled dace were detected, with nearly 19,000 being in the restored marsh (Scheerer *et al.* 2014, p. 9). Unfortunately, the marsh and excavated pools outside the fence quickly grew dense with vegetation, and the excavated pool filled in with sediment; it is unclear if the pasture was rested during this period. The relationship between dace abundance and open water (Scheerer *et al.* 2016, p. 8) illustrates the need for periodic vegetation removal to maintain appropriate habitat for the Foskett speckled dace (Scheerer *et al.* 2014, p. 9). While the area outside the exclusion fence may provide habitat for Foskett speckled dace in the future, we do not view it as critical to the long-term persistence of the species. The primary habitat for the fish, and the area that has received recent habitat management to create open water, is within the enclosure.

Sometime in fall and/or winter of 2014 to 2015, unauthorized cattle grazing occurred in both the Foskett and Dace Spring exclosures (Leal 2015, pers. comm.). Cattle accessed the site after a nearby gate was removed illegally. Based on photos provided by the BLM, it appears the vegetation utilization was sporadic although heavy in some areas, but damage to Foskett and Dace springs' streambanks appeared inconsequential. The BLM has replaced the gate and will continue to maintain the fence per their commitments outlined in the CMP (USFWS *et al.* 2015). Although cattle did access the Foskett and Dace spring sites, over time these exclosures have sufficiently protected Foskett and Dace springs from damage from livestock grazing, and use of the area by livestock remains below the level at the time of listing in 1985. The quarterly site visits committed to by the BLM in the CMP will increase the ability to detect and remedy any future issues with open gates or downed fences. However, due to the remoteness of the site, it is possible unauthorized grazing within the enclosures may infrequently occur in the foreseeable future. Given the minimal impact of the singular observation of unauthorized grazing within the enclosures and the commitment of quarterly monitoring of the site by BLM, we do not view grazing in the enclosure as a threat in the foreseeable future.

Surveys conducted from 2005 through 2015 at Foskett Spring did not reveal any sign of artificial channeling of water or mechanized impacts beyond the remnants of historical activities (*i.e.,* two small rock cribs and side-casting of material around the spring). The habitat at Foskett Spring is extremely limited, and past encroachment by aquatic vegetation has reduced the area of open water. The decline in abundance of Foskett speckled dace from 1997 to 2011 (see Table 1, above) was likely due to the reduction in open-water habitat (Scheerer and Jacobs 2005, pp. 5, 7; Scheerer *et al.* 2012, p. 8). Management to increase open-water habitat, while very effective in the short term, needs to be periodically repeated as sediment infilling and subsequent growth of aquatic vegetation is continuous. As such, periodic management will be needed in perpetuity to maintain high-quality habitat for the Foskett speckled dace.

The ODFW recommended that restoration efforts to increase open-water habitat are needed to increase carrying capacity for Foskett speckled dace (Scheerer and Jacobs 2007, p. 9; Scheerer and Jacobs 2009, pp. 5–6). Restoration efforts were conducted at Foskett Spring in 2013 and 2014, and resulted in a 164-percent increase in open-water habitat and a peak population estimate in 2014 of 24,888 individuals (Scheerer *et al.* 2016, pp. 8–9). Periodic habitat maintenance at Foskett and Dace springs will be necessary to maintain open-water habitat for the Foskett speckled dace. The BLM, ODFW, and Service have committed to periodic habitat maintenance in the CMP signed in August 2015. As noted earlier in this rule, the CMP identifies actions such as protection of the aquatic habitat and surrounding land; management of the habitat to ensure continued persistence of important habitat features; monitoring of the fish populations and habitat; and implementation of an emergency contingency plan in case of nonnative introduction, pollutants, or other unforeseen threats. Implementation of these actions will significantly reduce or eliminate threats related to destruction, modification, or curtailment of the Foskett speckled dace's habitat or range. It is reasonable to conclude the CMP will be implemented into the foreseeable future for the reasons summarized under Recovery Planning and Recovery Criteria, above.

Mechanical modification and livestock watering uses are no longer considered a threat since the BLM acquired the property containing both Foskett and Dace springs and constructed a fence to exclude cattle from a majority of the habitat. We anticipate continued monitoring and maintenance of the exclusion fence into the foreseeable future by the BLM based on their commitments in the CMP and their long record of conservation management of habitat at Foskett and Dace springs.

Pumping of Groundwater and Lowering of the Water Table

Streams and lakes in and around the Warner Basin have produced a variety of unconsolidated Pliocene to Holocene sediments that have accumulated and contribute to the structure of the aquifer (Gonthier 1985, p. 17). Wells in other portions of the Warner Basin using these Pleistocene lake bed aquifers tend to have low to moderate yields. Pleistocene lake bed deposits of clay, sand, and diatomaceous earth (*i.e.,* soft, crumbly soil formed from the fossil remains of algae) have a thickness of up to 200 ft (60 m) (Gonthier 1985, pp. 38–39; Woody 2007, p. 64). Hydraulic conductivity (*i.e.,* ease with which a fluid can move) in these sediments ranges from 25 to 150 ft (7.6 to 46 m) per day; while transmissivity (horizontal groundwater flow) in valleys in this sediment-filled basin and range region of Oregon, such as the Warner Valley aquifer system, ranges from 1,000

to 15,000 square feet (ft^2) (92.90 to 1,393.55 square meters (m^2)) per day (Gonthier 1985, p. 7). This is considered a poor quality aquifer with limited capability to produce water for domestic or stock use (Gonthier 1985, p. 7). Therefore, few wells exist in the Warner Valley and are not likely to impact Foskett or Dace spring.

We have no evidence of groundwater pumping in the area. A query of the Oregon Water Resources Department database for water rights did not reveal any wells within 5 mi (8 km) of Foskett Spring. The closest well listed in the database is 5.9 mi (9.5 km) away along Twentymile Creek. No other wells were located closer to Foskett Spring.

There are no Oregon Water Resources Department records of water rights within approximately 5 miles of either spring. Any development of water resources and filing of water rights on BLM lands would require a permit (BLM 2003), and we anticipate the likelihood of the BLM receiving a permit request related to a new water right in the future would be low. Although groundwater pumping was identified as a potential threat at the time of listing, we have determined this is not currently a threat and is not anticipated to be a threat in the foreseeable future.

Habitat Enhancement and Creation of a Refuge Population

To assess the effects of management on reducing the encroachment of aquatic vegetation at Foskett Spring and the response of fish to increased open water, the BLM conducted a controlled burn in 2013 in the tule and cattail marsh to reduce plant biomass (Scheerer *et al.* 2014, p. 9). In 2013 and 2014, the BLM excavated pools to increase open-water habitat. The response of dace to these restoration efforts was remarkable, with the 2014 population estimated at 24,888 (19,250–31,500; 95-percent confidence interval) fish, and most of these fish occupied the restored marsh areas. The population data indicate that fluctuations in abundance and population trends are tied to the availability of open water (Scheerer *et al.* 2016, p. 8) and illustrate the need for periodic management to maintain open-water habitat.

Habitat restoration at Dace Spring followed by translocations of dace has resulted in a second subpopulation of Foskett speckled dace. Two ponds were created in 2009, and connected to the outlet channel of Dace Spring. Foskett speckled dace were translocated to the ponds. The 2016 population estimate was 1,964 fish, which is a substantial increase from the 2013 estimate of 34 fish. The estimate includes the 200 dace that were transplanted from Foskett Spring in 2013 (Scheerer *et al.* 2014, p. 6). The 2017 population estimate in Dace Spring was 15,729 (confidence interval: 3,470–58,479) (Scheerer *et. al.* 2017, p. 6), although the broad confidence limits infer low precision. The 2018 estimate at Dace spring was 1,924 (confidence interval: 1,890–1,968) (Monzyk *et al.* 2018, p. 10). Reproduction at Dace Spring was documented by the ODFW in 2014 (Scheerer *et al.* 2014, p. 6) and in 2015 (Scheerer *et al.* 2015, p. 5). The ODFW is evaluating the long-term status of the Dace Spring subpopulation. Although results appear positive, it is premature to conclude if establishment of this refuge will be successful over the long term. While our decision to delist Foskett speckled dace is not dependent on establishment of a refuge, the resilience of a subpopulation at Dace Spring may provide increased redundancy to the species' overall status in the future by reducing vulnerability to catastrophic events.

Summary of Factor A

Securing long-term habitat protections (Recovery Criterion 1) and developing and implementing long-term management techniques (Recovery Criterion 2) are important recovery criteria for this species, and many of the factors discussed above fulfill these criteria, which also were identified in the most recent 5-year review (USFWS 2015, entire). Acquisition of the property by the BLM has facilitated the recovery of the Foskett speckled dace. The recent habitat enhancement work and the commitments made in the CMP provide assurance that minor oversight and continued habitat enhancement by the BLM and ODFW will allow the species to persist at abundance levels commensurate with available habitat. Although the CMP is voluntary, it is reasonable to conclude, for reasons summarized under Recovery Planning and Recovery Criteria, above, that the plan will be implemented by all three cooperating agencies for the foreseeable future.

Based on the best available information and confidence that current management will continue into the future as outlined in the CMP, we conclude that the present or threatened destruction, modification, or curtailment of habitat or range does not constitute a substantial threat to the Foskett speckled dace now or in the foreseeable future.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization for commercial, recreational, scientific, or educational purposes was not a factor in listing, nor do we have information to suggest that it has become a threat since that time. Therefore, based on the best available information, we conclude that it does not constitute a substantial threat to the Foskett speckled dace now or in the foreseeable future.

Factor C. Disease or Predation

The 1985 listing rule states, ''There are no known threats to . . . Foskett speckled dace from disease or predation'' (50 FR 12304; March 28, 1985). During the 2005 and 2011 population surveys, the ODFW biologist noted that: ''[t]he fish appear to be in good condition with no obvious external parasites'' (Scheerer and Jacobs 2005, p. 7; Scheerer 2011, p. 6). During the 2007 and 2009 population surveys, the ODFW noted that the Foskett speckled dace appeared healthy and near carrying capacity for the available habitat at that time (Scheerer and Jacobs 2007, p. 8; 2009, p. 5). We have no additional information that would change this conclusion.

The CMP includes quarterly field visits to Foskett and Dace springs to determine general health of the local spring environment and to identify threats that necessitate implementation of the emergency contingency plan, which could include the detection of disease and introduced predators. The emergency contingency plan describes steps to be taken to secure Foskett speckled dace in the event their persistence is under immediate threat (*e.g.,* from introduction of nonnative fish that may threaten them due to predation or act as a disease vector).

Summary of Factor C

Based on the best available information, we conclude that disease and predation do not constitute substantial threats to the Foskett speckled dace now or in the foreseeable future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address the threats to the Foskett speckled dace discussed under other factors. Section 4(b)(1)(A) of the Act requires the Service to take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species.''

In relation to Factor D under the Act, we interpret this language to require us to consider relevant Federal, State, and Tribal laws, regulations, and other such mechanisms that may minimize any of the threats we describe in the threats analyses under the other four factors, or otherwise enhance conservation of the species. We give strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations; an example would be State governmental actions enforced under a State statute or constitution, or Federal action under statute.

For currently listed species that are being considered for delisting, we consider the adequacy of existing regulatory mechanisms to address threats to the species absent the protections of the Act. We examine whether other regulatory mechanisms would remain in place if the species were delisted, and the extent to which those mechanisms will continue to help ensure that future threats will be reduced or minimized.

The 1985 listing rule states, ''The State of Oregon lists . . . Foskett speckled dace as [a] ''fully protected subspecies'' under the Oregon Department of Fish and Wildlife regulations. These regulations prohibit taking of the fishes without an Oregon scientific collecting permit. However, no protection of the habitat is included in such a designation and no management or recovery plan exists [for the Foskett speckled dace]'' (50 FR 12304; March 28, 1985).

The Foskett speckled dace was listed as threatened by the State of Oregon in 1987, as part of the original enactment of the Oregon Endangered Species Act (Oregon ESA). That listing designated Foskett speckled dace as a ''protected species'' and prohibited take or possession unless authorized by a permit. The Oregon ESA prohibits the ''take'' (kill or obtain possession or control) of State-listed species without an incidental take permit. The Oregon ESA applies to actions of State agencies on State-owned or -leased land, and does not impose any additional restrictions on the use of Federal land. In recognition of the successful conservation actions and future management commitments for the Foskett speckled dace and its habitat, the Oregon Fish and Wildlife Commission (OFWC) ruled to remove the Foskett speckled dace from the State List of Threatened and Endangered Species on April 21, 2017.

The ODFW's Native Fish Conservation Policy calls for the conservation and recovery of all native fish in Oregon (ODFW 2002), including Foskett speckled dace, now listed as sensitive on the ODFW's sensitive species list. The Native Fish Conservation Policy requires that the ODFW prevent the serious depletion of any native fish species by protecting natural ecological communities, conserving genetic resources, managing consumptive and nonconsumptive fisheries, and using hatcheries responsibly so that naturally produced native fish are sustainable (OAR 635–007–0503). The policy is implemented through the development of collaborative conservation plans for individual species management units that are adopted by the OFWC. To date, the ODFW has implemented this policy by following the federally adopted recovery plan and will continue to conserve Foskett speckled dace according to the State rules for conserving native fish and more specifically the commitments made by the ODFW in the CMP. The State of Oregon Wildlife Diversity Plan (OAR 635–100–0080), Oregon Native Fish Conservation Policy (OAR 636–007–0502), and the Oregon Conservation Strategy (ODFW 2016) provide additional authorities and protective measures for the conservation of native fish, including the Foskett speckled dace.

Finally, the BLM manages the 160-ac (65-ha) parcel of land containing the Foskett and Dace spring sites consistent with the Lakeview District's RMP (BLM 2003), which provides general management guidelines for Special Status Species, and specifically states that the BLM will manage the Foskett speckled dace and its habitat consistent with the species' 1998 recovery plan.

Additionally, though not a regulatory mechanism, the CMP, which was prepared jointly and signed by the BLM, ODFW, and Service, is a conservation measure that will guide future management and protection of the Foskett speckled dace, regardless of its State or Federal listing status. The CMP, as explained in more detail under Recovery Planning and Recovery Criteria, above, identifies actions to be implemented by the BLM, ODFW, and Service to provide for the long-term conservation of the Foskett speckled dace (Recovery Criterion 2). The approach of developing an interagency CMP for the Foskett speckled dace to promote continued management post-delisting is consistent with a ''conservation-reliant species,'' described by Scott *et al.* (2005, pp. 384–385) as those that have generally met recovery criteria but require continued active management to sustain the species and associated habitat in a recovered condition. A key component of the CMP is continued management of aquatic vegetation, as necessary, to promote open-water habitat important to the species' long-term viability.

Summary of Factor D

In our discussion under Factors A, B, C, and E, we evaluate the significance of threats as mitigated by any conservation efforts and existing regulatory mechanisms. Regulatory mechanisms may reduce or eliminate the impacts from one or more identified threats. Where threats exist, we analyze the extent to which conservation measures and existing regulatory mechanisms address those threats to the species. The existence of regulatory mechanisms like the Lakeview District BLM's RMP, State conservation measures such as the Oregon Native Fish Conservation Strategy, along with the other authorities supporting each cooperating agency's entrance into the CMP agreement, reduce risk to the Foskett speckled dace and its habitat. For the reasons discussed above, we anticipate that the conservation measures initiated under the CMP will continue through at least the foreseeable future, which we have defined as 30 years. Consequently, we find that conservation measures, along with existing State and Federal regulatory mechanisms, are adequate to address threats to the species absent protections under the Act.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

The 1985 listing rule states, ''Additional threats include the possible introduction of exotic fishes into the springs, which could have disastrous effects on the endemic Foskett speckled dace, either through competitive exclusion, predation, or introduced disease. Because these fishes occur in such limited and remote areas, vandalism also poses a potential threat'' (50 FR 12304; March 28, 1985).

No exotic fish introduction or acts of vandalism of the springs have occurred since the time of listing more than 30 years ago. As mentioned in the discussion of livestock grazing, sometime in 2014 or 2015, a gate was illegally removed near the springs, but damage to Foskett and Dace springs' streambanks appeared inconsequential. The BLM replaced the gate and will continue to maintain the fence per their commitments outlined in the CMP (USFWS *et al.* 2015). The Foskett speckled dace is vulnerable to invasive or nonnative species (aquatic plants, invertebrates, or fish species). However,

this vulnerability is reduced in part due to the remoteness of the site and the lack of recreational or other reasons for the public to visit the area. It is also reduced by the establishment of a refuge population in Dace Spring. While the risk of exotic fish introductions is low, the potential impact is high due to the highly restricted distribution of the Foskett speckled dace. The CMP includes quarterly monitoring and an emergency contingency plan to address potential threats from introduction of nonnative species or pollutants (for information on how to access the CMP for further reference see **ADDRESSES**, above).

Other Risk Factors

A species' habitat requirements, population size, and dispersal abilities, among other factors, help to determine its vulnerability to extinction. Key risk factors include small population size, dependence on a rare habitat type, inability to move away from sources of stress or habitat degradation, restrictions to a small geographic area, and vulnerability to catastrophic loss resulting from random or localized disturbance (Williams *et al.* 2005, p. 27). The Service listed the Foskett speckled dace in part due to these factors. This species had a very restricted natural range; the species occurred in low numbers in a small spring that was extremely vulnerable to destruction or modification due to its small size and a water flow rate of less than 0.5 ft^3 per second (0.01 m^3 per second). Additionally, the habitat upon which the Foskett speckled dace depends is fragile and has been affected by past livestock grazing and mechanical modification.

Small Population Size

Surveys by the ODFW from 2005 through 2017 have documented that the number of Foskett speckled dace vary considerably through time and by habitat type (see Table 1, above), and available open-water habitat, which fluctuates annually, appears to be the key factor in determining the population size of this species (Scheerer *et al.* 2016, p. 8). The lowest population estimate was 751 fish (using the Lincoln-Petersen model) in 2011, and no individuals were documented in the cattail marsh that year (see Table 1, above). Management to create more open water in the marsh habitat at Foskett Spring was initiated in 2012 and completed in 2014, increasing the amount of open-water habitat by 150 percent, to approximately 358 yds^2 (300 m^2) (Scheerer *et al.* 2016, pp. 7–9). The increase in fish abundance in 2013 through 2015 was notable, especially in the two habitats where management occurred (see Table 1, above).

Based on the relationship between the amount of open water and the number of Foskett speckled dace, the CMP includes removing encroaching vegetation to enhance open-water habitat, and excavating open-water pools. These activities will be conducted every 5 to 10 years or as determined necessary to maintain open-water habitat to support healthy populations of Foskett speckled dace.

Additionally, the ongoing effort by the BLM and the Service to restore Dace Spring provides the potential for a refuge population of Foskett speckled dace. Two ponds have been created and connected to the outlet channel of Dace Spring; Foskett speckled dace have been translocated to the ponds (see Table 2, above). Reproduction and an associated population increase was documented by the ODFW in 2014, 2015, 2016, 2017, and 2018. The ODFW is currently evaluating the status of the Foskett speckled dace in the new ponds, and, although results are positive, it is premature to predict long-term viability of the Dace Spring population.

Dependence Upon a Specific Rare Habitat Type and Inability To Disperse

This species is known to occupy only Foskett Spring and Dace Spring. Due to the small size of Foskett Spring and the lack of connectivity to other aquatic habitat, there is no opportunity for the Foskett speckled dace to disperse away from stress, habitat degradation, or disturbance factors. There are no streams or drainages or other aquatic connections that provide alternate habitat or allow for emigration. As noted previously in this rule, the BLM created two new ponds connected to the outlet channel of Dace Spring, and the ODFW has introduced Foskett speckled dace into these ponds in an attempt to establish a refuge population.

Restriction to a Small Geographic Area and Vulnerability to Stochastic Events

The Foskett speckled dace is restricted to one small spring and has been translocated to two small, constructed ponds at an adjacent spring. The available open-water habitat at Foskett Spring is naturally limited, and encroaching aquatic vegetation periodically limits suitable habitat. However, removing sediments and vegetation to increase open-water habitat is a proven conservation measure that results in a significant increase in fish abundance. Because of its restricted natural distribution and dependence on a single water source, the Foskett speckled dace is more vulnerable to threats that may occur than species that are more widely distributed. Foskett speckled dace has persisted in this habitat, likely since the more recent pluvial period of the Pleistocene epoch 10,000 to 60,000 years ago.

Additionally, the CMP provides for management of Foskett Spring and Dace Spring areas for the long-term conservation of the Foskett speckled dace. Although it is difficult to plan for and address potentially catastrophic events (such as vandalism, contaminants, or introduction of nonnative fish), quarterly site visits and habitat and population surveys conducted regularly will facilitate the timely detection of changes to the habitat and as well as other unforeseen future threats.

Effects of Climate Change

We also analyzed the effects of changing climate to the Foskett speckled dace and its habitat. The Intergovernmental Panel on Climate Change (IPCC) concluded that the evidence for warming of the global climate system is unequivocal (IPCC 2013, p. 3). Numerous long-term climate changes have been observed including changes in arctic temperatures and ice, widespread changes in precipitation amounts, ocean salinity, wind patterns, and aspects of extreme weather including droughts, heavy precipitation, and heat waves (IPCC 2013, p. 4). The general climate trend for North America includes increases in mean annual temperatures and precipitation and the increased likelihood of extreme weather events by the mid-21st century (IPCC 2014, pp. 1452–1456). Changes in climate can have direct or indirect effects on species; may be positive, neutral, or negative; and may change over time, depending on the species and other relevant considerations such as the effects of interactions of climate with other variables (*e.g.,* habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we used our expert judgment to weigh relevant information, including uncertainty, in considering the effects of climate change on the Foskett speckled dace.

Global climate projections are informative and, in some cases, the only or the best scientific information available for us to use. However, projected changes in climate and related impacts can vary substantially across and within different regions of the world (IPCC 2007, pp. 8–12). Therefore, we use ''downscaled'' projections when they are available and have been developed through appropriate

scientific procedures because such projections provide higher-resolution information that is more relevant to spatial scales used for analyses of a given species (see Glick *et al.* 2011, pp. 58–61, for a discussion of downscaling).

Downscaled projections as of 2016 were available for our analysis of the Foskett speckled dace from the U.S. Geological Survey (USGS) (*https://www2.usgs.gov/climate_landuse/clu_rd/nccv/viewer.asp*). The National Climate Change Viewer is based on the mean of 30 models, which can be used to predict changes in air temperature and precipitation for the Warner Lakes basin in Lake County, Oregon, for two of the emission scenarios, RCP4.5 and RCP8.5. Scenario RCP4.5 is a moderate emissions scenario (where atmospheric concentrations of greenhouse gases are expected to equal approximately 650 parts per million (ppm) after the year 2100), and RCP8.5 is the most aggressive emissions scenario (in which greenhouse gases continue to rise unchecked through the end of the century) (Alder and Hostetler 2016, entire). At this time, there are no available climate projections on the persistence of springs into the future. For the 25-year period from 2025 to 2049, the model set shows an increase in the mean maximum air temperature of between 2.7 °F (1.6 °C) (RCP4.5) and 3.2 °F (1.8 °C) (RCP8.5), and an increase in the mean annual minimum air temperature of between 2.5 °F (1.5 °C) (RCP4.5) and 3.1 °F (1.8 °C) (RCP8.5). For both scenarios, mean precipitation is not predicted to change, but annual snow accumulation is predicted to decrease by 0.4 in (10.16 millimeters (mm)). The model set also shows evaporative deficit over this 25 year period with changes projected in evaporation in the summer that may affect soil moisture for the vegetative community around the springs. However, the projected increase remains similar to current conditions and within the confidence intervals for the predicted change (Alder and Hostetler 2016, entire). Over the subsequent 25-year period from 2050 to 2074, the model set shows an increase in mean annual maximum air temperature of between 4.1 °F (2.3 °C) (RCP4.5) to 5.9 °F (3.3 °C) (RCP8.5), and an increase in mean annual minimum air temperature of between 4.1 °F (2.3 °C) (RCP4.5) to 6.1 °F (3.4 °C) (RCP8.5). For the 2050 to 2074 period, the model set shows no change in the mean annual precipitation for both scenarios, and shows a decrease in annual snow accumulation of between 0.2 in (5.4 mm) (RCP4.5) to 0.3 in (7.1 mm) (RCP8.5) for the Warner Lakes basin (Alder and Hostetler 2016, entire).

An increase in the ambient air temperature may cause slight warming of Foskett Spring surface water. This may reduce the overall amount of habitat available for Foskett speckled dace due to an increase in water temperatures, especially at the lower end of the outlet stream and marsh habitat. However, Foskett speckled dace have persisted overtime in these springs located in a naturally variable ephemeral wetland system, and abundance data indicate Foskett speckled dace may have a preference for the spring and pool habitats through the stream portion of the outlet channel as shown in Table 1, as opposed to shallower marsh habitat that might be more impacted by evaporation.

Furthermore, the occupied habitat for Foskett speckled dace is fed from a thermal artesian spring that has a fairly consistent temperature of approximately 65 °F (18 °C) and consistent flow. Springs have been identified as potential hydrologic refugia that may protect species from the effects of climate change (McLaughlin *et al.* 2017, p. 2946). Springs have geologic features that are independent of climate, and their recharge is decoupled from their discharge; these features make them less sensitive to, or buffered from, changes in the local climate, including regional drought intensification (McLaughlin *et al.* 2017, p. 2946; Cartwright *et al.* 2017, p. 16).

Summary of Factor E

The 1985 listing rule identified introduction of exotic fishes and vandalism as potential threats. However, in over 30 years of monitoring, no exotic fishes have been detected, there is no evidence of attempts to introduce exotic fish species, and no vandalism has occurred beyond one singular incident of gate removal. Other potential threats such as small population size, dependence on a specific or rare habitat type, the inability to disperse, restriction to a small geographic area, vulnerability to stochastic events, and climate change also have been assessed and determined to be minimal. Based on the best available information, we conclude that other natural or manmade factors do not constitute a substantial threat to the Foskett speckled dace now or in the foreseeable future.

Cumulative Impacts

Together, the factors discussed above could result in cumulative impacts to the Foskett speckled dace. For example, effects of cattle grazing directly on the habitat in combination with mechanical disturbances could result in a greater overall impact to Foskett speckled dace habitat. Although the types, magnitude, or extent of cumulative impacts are difficult to predict, we are not aware of any combination of factors that have not already been, or would not be, addressed through ongoing conservation measures that are expected to continue post-delisting and into the future, as described above. The best scientific and commercial data available indicate that the species experiences natural variably in abundance; the species has maintained abundance commensurate with available habitat; and the factors discussed above are not currently leading, nor are they anticipated to cumulatively lead, to reductions in Foskett speckled dace numbers and/or reductions of the species' habitat.

Summary of Comments and Recommendations

In our proposed rule published on January 4, 2018 (83 FR 475), we requested that all interested parties submit written comments on the proposal by March 5, 2018. We also requested public comments on the draft post-delisting monitoring plan. We contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. We did not receive any requests for a public hearing. Newspaper notices inviting general public comment were published in the Lake County Examiner.

During the comment period, we received 20 letters or statements directly addressing the proposed action. These included 4 comments from peer reviewers, 1 from the State, and 15 from the public. All comments are posted at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2017–0051. Nine of the public comments (including comments from the State) supported the proposed action to delist the Foskett speckled dace. Nine commenters did not state whether they support the decision or not. Five provided no relevant information related to Foskett speckled dace and our proposed action. The remaining two public commenters objected to the action to delist the Foskett speckled dace; however, neither provided substantive scientific information regarding the proposed delisting rule.

We reviewed all comments we received from the peer reviewers and the public for substantive issues and new information regarding the Foskett speckled dace. Substantive comments received during the comment period are

addressed below and, where appropriate, incorporated directly into this final rule and the post-delisting monitoring plan.

Peer Review and Public Comments

Section 4(b)(5)(A)(ii) of the Act states that the Secretary must give actual notice of a proposed regulation under section 4(a) to the State agency in each State in which the species is believed to occur, and invite the comments of such agency. Section 4(i) of the Act directs that the Secretary will submit to the State agency a written justification for his or her failure to adopt regulations consistent with the agency's comments or petition. We solicited and received comments from the Oregon Department of Fish and Wildlife (ODFW). The ODFW supports our delisting of the Foskett speckled dace and has delisted Foskett speckled dace from their State endangered species list.

Comment (1): One commenter stated that the Service should delay delisting in order to conduct additional monitoring.

Our Response: Extensive habitat and population abundance surveys at Foskett and Dace springs have been regularly conducted since 2005 and as a result, we do not agree additional monitoring is necessary prior to delisting. These data contributed to our analysis of the five threat factors to the species and our decision to delist the species. We have determined the threats to Foskett speckled dace have been eliminated or reduced to the point that protection under the Act is no longer needed. Monitoring will continue after delisting as described in our post-delisting monitoring (PDM) plan to confirm the maintenance of the species' recovered status and amelioration of threats.

Comment (2): Two peer reviewers suggested we consider genetic analysis published in scientific journals (Ardren *et al.* 2009; Ardren *et al.* 2010; Hoekzema 2013; Hoekzema and Sidlauskas 2014) to discuss the current taxonomic status of the Foskett speckled dace.

Our Response: We reviewed the information provided by the peer reviewers, and conclude that the genetic analysis supports the taxonomic status of the Foskett speckled dace currently and at the time of listing, specifically that the Service knowingly listed the Foskett speckled dace as an ''undescribed subspecies.'' We are not seeking a change in that status, but are delisting the entity as it is currently classified. Future genetic and taxonomic study may be conducted that may revise the fish's taxonomic classification. We are not pursuing a study to describe the Foskett speckled dace, but are making a decision to remove it from the Federal List of Endangered and Threatened Wildlife.

Comment (3): Two peer reviewers and several commenters stated that actions to eliminate threats from physical habitat modification or water extraction have been implemented. Commenters also stated that the immediate threats have been adequately addressed, that the Foskett speckled dace is no longer at risk of extinction, and that criteria for delisting have been met or exceeded. Commenters noted that the CMP does not necessarily eliminate threats but provides guidance and actions to eliminate threats.

Our Response: The Service agrees that the Foskett speckled dace has recovered due to conservation efforts of the BLM, ODFW, and Service and qualifies for removal from the Federal List of Endangered and Threatened Wildlife. Conservation efforts by the BLM, specifically the acquisition and fencing of the property, have largely removed the threats from mechanical disturbance to the habitat by precluding livestock grazing. Any disturbance from machinery or drilling of wells has also either never materialized or would be subject to the BLM's evaluation and/or permitting now that this is land managed by the BLM. Additional conservation actions include the excavation of excess sediment and vegetation from the spring and outflow and the implementation of a cooperative management plan with the BLM, ODFW, and Service. In addition to providing guidance and actions to eliminate threats, the CMP articulates the agencies' commitment to implementing those actions.

Comment (4): Two peer reviewers suggest we conduct a survey for internal and external parasites to assess risk from disease because the only evidence presented is lack of obvious external parasites. The reviewers suggest a basic necropsy should be undertaken by ODFW staff to be certain there are no underlying disease or parasite problems.

Our Response: Our decision to delist the Foskett speckled dace is based on the removal or reduction of threats to the species identified at the time of listing, since the time of listing and in the foreseeable future. At no time has the Service had any information to indicate that disease may pose a threat to the Foskett speckled dace. Other studies of disease in fishes occupying nearby waters (in the Warner basin) have indicated common fish parasites and disease are present in low levels. These diseases are common in freshwater fishes. Therefore, as we do not have any information that disease or predation are a threat, we are not conducting a new study to detect disease. Based on observations and the best available information, we have determined it is unlikely parasites or disease represent a threat to the Foskett speckled dace now or in the foreseeable future.

Comment (5): One peer reviewer commented that the proposed rule defines foreseeable future as 30 years. As such, the 9-year duration of the CMP does not match the identified need for monitoring, and after it concludes, it is possible that Factor D would again threaten the Foskett speckled dace.

Our Response: We think the commenter is confusing the CMP (cooperative management plan) with the PDM (post-delisting monitoring plan). In our draft PDM that was available for public comment, we stated that the PDM would be in place for 9 years after delisting; however, the CMP does not have a termination date and will proceed well into the foreseeable future. Between the proposed and final PDM, we reassessed the duration of the plan and determined that reducing the duration of the PDM from 9 years to 5 years and eliminating consecutive year monitoring will help to minimize unnecessary handling of the fish and reduce risk to individuals. In addition, 5 years is an adequate monitoring period to ensure the species remains secure once delisted because the CMP will continue indefinitely following the PDM period. Monitoring may be increased during the PDM, depending on information needs and availability of funding. In the long term, it will be the responsibility of the BLM and ODFW to monitor and manage the species, and the strategy for this is detailed in the CMP, which does not have a termination date. As discussed under Summary of Factors Affecting the Species, above, we anticipate that the conservation measures initiated under the CMP will continue through at least the foreseeable future, which we have defined as 30 years. Consequently, we find that conservation measures, along with existing State and Federal regulatory mechanisms, are adequate to address these specific threats, including Factor D, absent protections under the Act.

Comment (6): One peer reviewer suggested the Service's conclusion that threats are minimal appears to be unwarranted. The commenter stated that the Foskett speckled dace currently meets at least two of the three criteria for rarity (narrow geographic range and narrow habitat requirements) and that

threats from vandalism and introduced species that were included in the 1985 listing rule for the species have not changed substantially. The commenter further stated that most of the factors mentioned in the 2018 proposed delisting (remoteness of the site, minimal visitation, and lack of connectivity to other water bodies) were equally true at the time of listing in 1985. The commenter refers to populations of other endangered species such as the Devil's Hole pupfish (*Cyprinodon diabolis*) that have been subjected to vandalism in recent memory (Rocha 2016), despite similar legal protection and monitoring.

Our Response: While rarity may increase risk to a species from an operative threat, rarity, in and of itself, does not represent a threat under the Act. The Foskett speckled dace is an endemic species that is naturally restricted in its distribution to a localized spring system. Introduced species and vandalism of the springs could represent a potential threat, but neither has been identified at Foskett Spring nor have these potential threats occurred during the more than 30 years since listing. Because of this, we believe it is reasonable to conclude the likelihood of these threats being realized is very low. There was a single instance of gate removal near the springs, but the BLM replaced the gate and committed in the 2015 CMP to monitor the gate to ensure its integrity. The management and protections provided by the BLM and ODFW will monitor these potential threats to the species now and into the foreseeable future and provide for actions to be taken should these threats be detected. Therefore, we have determined protection under the Act is no longer warranted for the Foskett speckled dace.

Comment (7): One peer reviewer commented that the current existence of the refuge population at Dace Spring provides resilience and robustness, but the long-term stability of the Dace Spring population is unclear. The reviewer also stated that the introduction to Dace Spring has failed at least once before, but that if the current population proves to be viable, its existence would reduce risk to the Foskett Spring population from its inherent rarity.

Our Response: We agree with the peer reviewer and have incorporated this information into this final rule (see ''Small Population Size'' under Factor E discussion, above). Although we acknowledge the refuge population at Dace Spring adds to the security of the population, it is not required, nor do we depend on it for our determination to remove the Foskett speckled dace from the Federal List of Endangered and Threatened Wildlife.

Comment (8): One peer reviewer stated that the CMP conflates the concept of effective population size (Ne) with census population size (Nc), which would indicate a low population size for Foskett speckled dace. The reviewer stated an effective population size of 500 or higher for the Foskett speckled dace would require a sustained census population size of at least 2,500 to 3,500 individuals. The reviewer also stated that this threshold of 500 should be corrected in the CMP, and genetic studies should calculate Ne as part of the proposed monitoring.

Our Response: We think the commenter is confusing the CMP (cooperative management plan) with the PDM (post-delisting monitoring plan). Regarding the threshold of 500 fish, we are making the assumption, given what we know about the life history of the fish and size of the mesh in the minnow traps (the primary method to develop population estimates) that all fish captured are of reproductive age (age one or older, or Ne). We will add this specificity to the final PDM.

Comment (9): We received several peer review comments regarding the suggested relationship between open-water habitat and abundance of the species. One commenter questioned whether the proposed rule's suggestion of a clear link between open-water habitat and population size of Foskett speckled dace was an overstatement of evidence and said there appears to be substantial natural variation in recruitment success and population size independent of the amount of open-water habitat. Some commenters pointed out that there is limited evidence to demonstrate all the drivers of the variable abundance exhibited by the species, and that population size may be a result of other habitat parameters such as annual weather changes. One commenter suggested that several decades' worth of data would be needed to establish statistical confidence in any relationship between open-water habitat and variability in abundance. Another commenter suggested that a correlation between open-water habitat and variability in abundance appeared to be stronger in the marsh habitats at Foskett Spring than in the pool.

Our Response: Although we have observed a link between open-water habitat and population size based on surveys by ODFW, we acknowledge that a strict correlation between open-water habitat and population size has not been clearly established. However, we note that our decision to delist the Foskett speckled dace is not based on the management for open-water habitat or on population estimates; we based our decision on the removal or reduction of threats to the species identified at the time of listing (groundwater pumping for irrigation, use of the area by livestock, channeling of the springs for agricultural purposes, other mechanical modifications of the aquatic ecosystem, introduction of exotic fishes, and vandalism). We included discussion of population estimates as part of the healthy status of the population at the time we proposed delisting of the Foskett speckled dace. While not the basis for delisting, the observed increases in population documented by ODFW give the Service confidence that the habitat enhancement project conducted by the BLM will likely result in improved habitat conditions. The value of maintaining and/or increasing open-water habitat will continue to be assessed in the future by the BLM and ODFW to determine if additional habitat enhancement activities benefit the species post-delisting. The BLM and ODFW will use their discretion and authorities outlined in the CMP to continue conservation of the Foskett speckled dace into the future. In response to the commenters, we have removed the reference to a direct response of the species to open-water habitat from this rule and also clarified the difference between abundance estimate and variability in abundance (see *Abundance,* above).

Comment (10): One commenter stated that it seems unwise to remove protection under the Act for this species. This commenter expressed concern that something could ''exterminate'' the fish before the Government or conservationists could react. They suggest that since the Foskett speckled dace lives in such a small area, with human activity, the Government should try to acquire and safeguard all of the fish's habitat and continue trying to establish new populations where the fish may have been found in the past. The commenter also stated that because the fish's habitat is so small, there should not be a lot of economic tradeoffs, and economic losses are acceptable to preserve the species.

Our Response: The Service analyzed all the reasonably foreseeable threats to the species and did not find any threats that would ''exterminate'' the Foskett speckled dace. The BLM acquired the land in 1987, and has agreed, via the CMP, to continue management of the parcel of land on which Foskett Spring is located for the protection and

conservation of the species. The Foskett speckled dace is known to occur only in its native Foskett Spring and the nearby Dace Spring, into which it was transferred for conservation purposes. Therefore, it is already present in all of its historic habitat.

Section 4(b)(1)(A) of the Act requires us to make status (*i.e.,* listing, delisting, and reclassification) determinations based ''solely on the basis of the best scientific and commercial data available.'' The word ''solely'' was added in the 1982 amendments to the Act (Pub. L. 97–304, 96 Stat. 1411) to clarify that the determination of endangered or threatened status was intended to be made ''solely upon biological criteria and to prevent non-biological considerations from affecting such decisions.'' In making the clarification, Congress expressed concerns with the requirements of the Regulatory Flexibility Act, Paperwork Reduction Act, and Executive Order 12291 potentially introducing economic and other factors into the basis for determinations under the Act (H.R. Rep. No. 97–567 at 19–20, May 17, 1982). Therefore, we make status determinations based solely on biological considerations.

The Service has the authority under the Act to emergency-list the species if threats re-emerge.

Comment (11): One peer reviewer commented that the extent of available habitat is small and requires careful management and close monitoring to ensure that the Foskett speckled dace persists for the long term. The commenter cautioned against assuming major mechanical restoration of open pool habitat was always preferred, especially given things like unintended disturbance of other aspects of the habitat and related species, and that smaller scale, shovel-based habitat improvement should be considered.

Our Response: The Foskett speckled dace is a narrow endemic with limited habitat. With the understanding that the species will require some habitat management and monitoring into the future, the Service entered into an agreement with the BLM and ODFW to ensure management actions take place for the benefit of the Foskett speckled dace. In order to allow maximum flexibility and responsiveness to conditions in future management of the species, the CMP is not restrictive with respect to the type of management actions required. Since the 1985 listing of the Foskett speckled dace, the Service, BLM, and ODFW have been actively managing Foskett speckled dace habitat for the conservation of the species. Information learned from decades of management will inform the partners for optimizing future management decisions.

Comment (12): One peer reviewer and several other commenters stated that climate change will have effects that could impact the shallow water habitat of the Foskett speckled dace. Concerns were noted regarding the potential increase of drought and drought intensity through increased evaporation rates and more erratic precipitation.

Our Response: We assessed the potential effects from climate change using the most current science available, although at this time there are no available climate projections on the persistence of springs into the future. Downscaled climate models project an increase in the mean maximum air temperature of between 2.7 °F (1.6 °C) (RCP4.5) and 3.2 °F (1.8 °C) (RCP8.5), and an increase in the mean annual minimum air temperature of between 2.5 °F (1.5 °C) (RCP4.5) and 3.1 °F (1.8 °C) (RCP8.5) in the 25-year period from 2025 to 2049. Mean precipitation is not predicted to change, but annual snow accumulation is predicted to decrease by 0.4 in (10.16 mm) during this period. Although the higher temperatures may contribute to changes in summer evaporation affecting soil moisture for the vegetative community around the springs, the evaporative deficit is projected to remain similar to current conditions and within the confidence intervals for the predicted change (Alder and Hostetler 2013, entire).

The thermal artesian springs that make up Foskett speckled dace habitat have a near constant temperature and flow. Springs have features that are independent of climate that make springs potential refugia for species from the effects of climate change (McLaughlin *et al.* 2017, p. 2946; Cartwright *et al.* 2017, p. 16). The springs are located in a wetland that is ephemeral by nature; the dace have persisted in the area despite conditions that are somewhat variable from year to year. Although dace have been found in shallower, marshy areas, the largest number of individuals have been observed in the deeper pool habitat. Through implementation of the CMP, the partners will continue to evaluate habitat conditions at Foskett and Dace springs and note where the dace are occurring. Future enhancements to optimize Foskett speckled dace habitat, in the pool areas and marsh areas, will be based on the best information available at the time.

Comment (13): One commenter stated that this species only occurs at two springs in an arid area, and humans established the Dace Springs population. Both populations fluctuate. The commenter also states that neither population is secure and likely to become even less secure with increased climate change. The commenter opposes removing the Foskett speckled dace from the Federal List of Endangered and Threatened Wildlife.

Our Response: The species is known as a ''narrow endemic,'' which means it exists in a very small range. While this small range may increase risk to a species from an operative threat, in and of itself, its limited range does not represent a threat under the Act. We have carefully analyzed the potential threats to the species including an analysis of the potential effects from climate change using the best information available. The Service has considered this condition in assessing the potential threat factors listed in section 4(a)(1) of the Act (see Summary of Factors Affecting the Species, above). Based on the best available scientific and commercial information, the Service has determined the threats identified in the 1985 listing rule are either not as significant as originally anticipated or have been eliminated or reduced since listing, and we no longer believe the species meets the definition of an endangered or a threatened species. See also response to *Comment (12),* above.

Comment (14): One peer reviewer commented that it is reasonable to assume that population size is a function of available habitat and it is also a function of prior abundance and of carrying capacity, which can change within the same available habitat. There is not a sufficiently long time-series and appropriate analysis for understanding the Foskett speckled dace's responses to management intervention. Change in a population from one year to the next might be positive or negative. If there is an intervention with an anticipated positive effect, one can expect the variability to still be present but that the mean response will be positive. Ideally, such an evaluation is achieved through a time-series with a sufficient pre- and post-response period to evaluate the response over a variety of annual patterns.

Our Response: We do not have information to show that population size is strictly a function of habitat at Foskett Spring. However, observations of other similar fish in similar habitats indicate that these fish are likely to increase in abundance with an increase in open-water habitat (Kodric-Brown and Brown 2007, entire). Our decision to delist the Foskett speckled dace is based on the removal or reduction of threats to the species. Despite this, we

have made some assumptions in managing the habitat for greater abundance of fish in the population. The Service is not conducting additional studies prior to removal of the Foskett speckled dace from the Federal List of Endangered and Threatened Wildlife. The future management and monitoring included in the CMP allows for flexibility in habitat management and adaptive management to benefit the long-term stability of the species.

Comment (15): Several peer reviewers commented on the draft post-delisting monitoring plan. These peer reviewers suggested monitoring of: (1) Groundwater in and around the vicinity of Foskett and Dace springs; (2) surface water quality; (3) water levels; (4) the extent of water; and (5) climatic conditions. In addition, one peer reviewer suggested a plan to evaluate stability of habitat conditions, sensitivity to climate or drought, and ultimately vulnerability.

Our Response: Post-delisting monitoring is designed to monitor those threats identified at the time of listing and any additional threats we have identified during the species' 5-year status reviews. Since the time of listing in 1985, water level and quality have not been found to be adversely impacting the Foskett speckled dace, nor are they anticipated concerns relating to the future management of the species. The springs have been found to have near constant flow and temperature; water levels and temperature have been adequate for the species, and we anticipate they will continue to be into the future. Therefore, we did not revise the PDM plan in response to these comments.

Determination

Standard for Review

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of ''endangered species'' or ''threatened species.'' The Act defines an ''endangered species'' as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a ''threatened species'' as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether a species meets the definition of ''endangered species'' or ''threatened species'' because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Determination of Status Throughout All of the Foskett Speckled Dace's Range

As required by section 4(a)(1) of the Act, we conducted a review of the status of the Foskett speckled dace and assessed the five factors to evaluate whether the Foskett speckled dace is endangered or threatened throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the species. We found that, with periodic management, Foskett speckled dace populations are persistent but cyclical within a range of 751 to 24,888 individuals over the last decade (see Table 1, above).

As a result of our analysis, we found that impacts believed to be threats to the habitat of the Foskett speckled dace at the time of listing (groundwater pumping for irrigation, use of the area by livestock, channeling of the springs for agricultural purposes, and other mechanical modifications of the aquatic ecosystem) are either not as significant as originally anticipated or have been eliminated or reduced since listing, and we do not expect any of these conditions to substantially change post-delisting and into the foreseeable future (Factor A). The finalization of the CMP acknowledges the ''conservation-reliant'' nature of the Foskett speckled dace and the need for continued management of the habitat at Foskett Spring, and affirms that the BLM, ODFW, and Service will continue to carry out long-term management actions. Long-term management actions and elimination and reduction of threats apply to all populations of the species, such that both the Foskett Spring population and the Dace Spring subpopulation are secure.

We found that overutilization for commercial, recreational, scientific, or educational purposes (Factor B) and disease or predation (Factor C) still pose no threat to the Foskett speckled dace.

The existence of Federal regulatory mechanisms like the Lakeview District BLM's management of the area under its RMP and the Federal Land Policy and Management Act of 1976, State conservation measures such as the Oregon Native Fish Conservation Strategy, and other authorities supporting each cooperating agency's entrance into the CMP agreement reduce risk to the Foskett speckled dace and its habitat (Factor D).

Finally, in over 30 years of monitoring, no exotic fishes have been detected in, and there is no evidence of attempts to introduce exotic fish species into, Foskett speckled dace habitat, no vandalism has occurred beyond a single incident of gate removal, and other potential threats (such as small population size, dependence on a specific or rare habitat type, the inability to disperse, restriction to a small geographic area, vulnerability to stochastic events, and climate change) also have been assessed and determined to be minimal. Based on the best available information, we found that other natural or manmade factors (Factor E) do not constitute a substantial threat to the Foskett speckled dace now or in the foreseeable future.

After assessing the best available information, we conclude that the previously recognized impacts to the Foskett speckled dace no longer are a threat to the species, such that the Foskett speckled dace is not currently in danger of extinction, and is not likely to become so within the foreseeable future throughout all of its range.

Because we determined that the Foskett speckled dace is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we will consider whether there are any significant portions of its range in which the species is in danger of extinction or likely to become so.

Determination of Status Throughout a Significant Portion of the Foskett Speckled Dace's Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range (SPR). Having determined that the Foskett speckled dace is not in danger of extinction now or likely to become so in the foreseeable future throughout all of its range, we now consider whether it may be in danger of extinction or likely to become so in the foreseeable future in an SPR. The range of a species can theoretically be divided into portions in an infinite number of ways, so we first screen the potential portions of the species' range to determine if there are any portions that warrant further consideration. To do this, we look for portions of the species' range for which there is substantial information indicating that: (1) The portion may be significant, and (2) the species may be in danger of extinction or likely to become so in the

foreseeable future in that portion. A portion only warrants further consideration if there is substantial information that both of these statements are true for that portion. Therefore, for a particular portion, if we determine that there is not substantial information that one of these statements is true, then the species does not warrant listing because of its status in that portion of its range.

We evaluated the range of the Foskett speckled dace to determine if any area may be a significant portion of the range. The Foskett speckled dace is endemic to Foskett Spring in the Warner Basin. The known historical, natural range of the Foskett speckled dace is limited to Foskett Spring. At the time of listing in 1985, Foskett speckled dace also occurred at nearby Dace Spring, located approximately one-half mile south of Foskett Spring, where translocation of specimens from Foskett Spring was initiated in 1979. Because of its narrow range limited to two springs within a half-mile of each other, and because speckled dace currently occupying Dace Spring originated from translocations from Foskett Spring, we find that the species is comprised of a single, population and that there are no separate areas of the range that are likely to be of greater biological or conservation importance than any other areas due to natural biological reasons alone. Therefore, there is not substantial information that logical, biological divisions exist that would support delineating one or more portions within the species' range.

Based on our determination that no natural biological divisions delineate separate portions of the Foskett speckled dace population, we conclude that there are no portions of the species' range for which both (1) the portions are likely to be significant, and (2) the species is likely to be in danger of extinction or likely to become so in the foreseeable future in those portions. This makes it unnecessary for us to undertake any further consideration or analysis of whether this species is endangered or threatened throughout an SPR. We conclude therefore that there is no significant portion of the species' range where it is an endangered species or a threatened species. Our approach to analyzing SPR in this determination is consistent with the court's holding in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. August 24, 2018).

Conclusion

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Foskett speckled dace. The threats that led to the species being listed under the Act (primarily the species' extremely restricted and vulnerable habitat, which was being modified; Factor A) have been removed or ameliorated by the actions of multiple conservation partners over the past 30 years; these actions include securing the property, and developing and implementing long-term management strategies to ensure that appropriate habitat is maintained. Given various authorities that enabled the three cooperating agencies to enter into the Foskett Speckled Dace CMP, and the long record of engagement and proactive conservation actions implemented by the three cooperating agencies over a 30-year period, we expect conservation efforts will continue to support a healthy, viable population of the Foskett speckled dace post-delisting and into the foreseeable future. Because the species is not in danger of extinction now or in the foreseeable future throughout all or a significant portion of its range, the species does not meet the Act's definition of an endangered species or a threatened species. We conclude that the Foskett speckled dace no longer requires the protection of the Act, and, therefore, we are removing it from the Federal List of Endangered and Threatened Wildlife.

Effects of This Rule

This rule revises 50 CFR 17.11(h) to remove the Foskett speckled dace from the Federal List of Endangered and Threatened Wildlife and revises 50 CFR 17.44(j) to remove the Foskett speckled dace from the applicable rule promulgated under section 4(d) of the Act. On the effective date of this rule (see **DATES**, above), the prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, no longer apply to this species, and Federal agencies are no longer required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect the Foskett speckled dace. There is no critical habitat designated for this species; therefore, this rule does not affect 50 CFR 17.95. Current State laws related to the Foskett speckled dace will remain in place and be enforced, and will continue to provide protection for this species.

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a system to monitor effectively, for not less than 5 years, all species that have been recovered and delisted. The purpose of this post-delisting monitoring is to verify that a species remains secure from risk of extinction after it has been removed from the protections of the Act. The monitoring is designed to detect the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing under section 4(b)(7) of the Act. Section 4(g) of the Act explicitly requires us to cooperate with the States in development and implementation of post-delisting monitoring programs, but we remain responsible for compliance with section 4(g) of the Act and, therefore, must remain actively engaged in all phases of post-delisting monitoring. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation post-delisting.

Post-Delisting Monitoring Plan Overview

We prepared a PDM plan for the Foskett speckled dace, building on and continuing the research that has taken place in the time since the species was listed. The PDM plan discusses the current status of the taxon and describes the methods to be used for monitoring after the taxon is removed from the Federal List of Endangered and Threatened Wildlife. The PDM plan: (1) Summarizes the current status of the Foskett speckled dace; (2) provides an outline of the roles of PDM cooperators; (3) describes monitoring methods; (4) provides an outline of the frequency and duration of monitoring; (5) provides an outline of data compilation and reporting procedures; and (6) defines thresholds or triggers for potential monitoring outcomes and conclusions of the PDM.

It is our intent to work with our partners towards maintaining the recovered status of the Foskett speckled dace.

Required Determinations

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the

Federal Register on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We do not believe that any Tribes will be affected by this rule. However, we contacted the Burns Paiute Tribe to coordinate with them regarding the proposed rule to delist the Foskett speckled dace. We provided the Tribe with a copy of the proposed rule and draft PDM, but we did not receive any comments from them.

References Cited

A complete list of all references cited in this final rule is available on the internet at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2017–0051 or upon request from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authors

The primary authors of this final rule are staff members of the Service's Oregon Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

§ 17.11 [Amended]

■ 2. Amend § 17.11 in the table in paragraph (h) under FISHES by removing the entry for ''Dace, Foskett speckled'' from the List of Endangered and Threatened Wildlife.

§ 17.44 [Amended]

■ 3. Amend § 17.44 by:

■ a. Removing the words ''and Foskett speckled dace (*Rhinichthys osculus* subspecies)'' from paragraph (j) introductory text; and

■ b. In paragraphs (j)(1) and (2), removing the word ''these'' and adding in its place the word ''this''.

Dated: August 9, 2019.

Margaret E. Everson,

Principal Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2019–19850 Filed 9–12–19; 8:45 am]

BILLING CODE 4333–15–P

Proposed Rules

Federal Register
Vol. 84, No. 178
Friday, September 13, 2019

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 61

[NRC–2017–0081]

RIN 3150–AK00

Greater-Than-Class-C and Transuranic Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory basis; extension of comment period.

SUMMARY: On July 22, 2019, the U.S. Nuclear Regulatory Commission (NRC) solicited comments on a draft regulatory basis to support the development of a rulemaking for the disposal of certain types of greater-than-Class-C waste in a low-level radioactive waste land disposal facility. The public comment period was originally scheduled to close on September 20, 2019. The NRC has decided to extend the public comment period by an additional 60 days to allow more time for members of the public to develop and submit their comments.

DATES: The due date of comments requested in the document published on July 22, 2019 (84 FR 35037), is extended. Comments should be filed no later than November 19, 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 *https://www.regulations.gov* and search for Docket ID NRC–2017–0081. 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: Cardelia Maupin, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–4127; email: *Cardelia.Maupin@nrc.gov;* or Gary Comfort, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–8106; email: *Gary.Comfort@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2017–0081 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 *https://www.regulations.gov* and search for Docket ID NRC–2017–0081.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft regulatory basis, ''Regulatory Basis for the Disposal of Greater-than-Class C (GTCC) Waste,'' is available in ADAMS under Accession No. ML19059A403.
- *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–2017–0081 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 *https://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. Discussion

On July 22, 2019, the NRC solicited comments on a draft regulatory basis ''Regulatory Basis for the Disposal of Greater-than-Class C (GTCC) Waste,'' to support the development of a rulemaking for the disposal of certain types of greater-than-Class-C waste in a low-level radioactive waste land disposal facility. The draft regulatory basis evaluates which GTCC waste streams could be safely disposed in a near-surface disposal facility and what type of regulatory changes would need to be considered to permit such action. In addition, the draft regulatory basis evaluates whether disposal of GTCC waste presents a hazard such that the NRC should retain authority over its disposal and not allow any Agreement State licensing over such a disposal.

The public comment period was originally scheduled to close on September 20, 2019. In response to multiple requests, the NRC is extending the public comment period on this document until November 19, 2019, to allow more time for members of the public to submit their comments.

Dated at Rockville, Maryland, this 6th day of September 2019.

For the Nuclear Regulatory Commission.

John R. Tappert,

Director, Division of Rulemaking, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2019–19645 Filed 9–12–19; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0697; Product Identifier 2019–NM–110–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2017–19–14 and AD 2014–16–27, which apply to certain Dassault Aviation Model FALCON 900EX airplanes. Those ADs require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and/or airworthiness limitations. Since the FAA issued AD 2017–19–14 and AD 2014–16–27, the FAA determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 28, 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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *http://www.dassaultfalcon.com*. You may view this referenced 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.

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–2019–0697; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0697; Product Identifier 2019–NM–110–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. The FAA will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The FAA issued AD 2017–19–14, Amendment 39–19044 (82 FR 43674, September 19, 2017) (''AD 2017–19–14''), for certain Dassault Aviation Model FALCON 900EX airplanes. AD 2017–19–14 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and/or airworthiness limitations. AD 2017–19–14 resulted from a determination that new or more restrictive maintenance requirements and/or airworthiness limitations are necessary. AD 2017–19–14 specifies that accomplishing the actions required by that AD would terminate the requirements of AD 2014–16–27, Amendment 39–17951 (79 FR 51071, August 27, 2014) (''AD 2014–16–27'') but it did not supersede AD 2014–16–27. In addition, AD 2014–16–27 specifies that accomplishing paragraph (g) of that AD would terminate the requirements of paragraph (g)(1) of AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010), for Dassault Aviation Model 900EX airplanes, serial number (S/N) 97 and S/N 120 and higher. This terminating provision of certain requirements of AD 2010–26–05 is part of this proposed AD.

This AD proposes to supersede AD 2017–19–14 and AD 2014–16–27 but does not propose to supersede AD 2010–26–05.

Actions Since AD 2017–19–14 and AD 2014–16–27 Were Issued

Since the FAA issued AD 2017–19–14 and AD 2014–16–27, the FAA has determined that new or more restrictive airworthiness limitations are necessary.

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0134, dated June 11, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Dassault Aviation Model FALCON 900EX airplanes. The MCAI states:

> The airworthiness limitations for certain Falcon 900EX aeroplanes, which are approved by EASA, are currently defined and published in Dassault Falcon 900EX Easy/900LX/900DX AMM [Airplane Maintenance Manual], Chapter 5–40. These instructions have been identified as mandatory for continued airworthiness.
>
> Failure to accomplish these instructions could result in an unsafe condition.
>
> EASA previously issued AD 2016–0129 (which corresponds to FAA AD 2017–19–14), requiring the actions described in Dassault Falcon 900EX Easy/900LX/900DX AMM Chapter 5–40 (DGT113875) at Revision 9.
>
> Since that [EASA] AD was issued, Dassault published Revisions 10 and 11 of Dassault Falcon 900EX Easy/900LX/900DX AMM Chapter 5–40 (DGT113875). Revision 11 contains new and/or more restrictive maintenance tasks.
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2016–0129, which is superseded, and

requires accomplishment of the actions specified in the ALS [airworthiness limitations section], as defined in this [EASA] AD.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0697.

Related Service Information Under 1 CFR Part 51

Dassault Aviation has issued Chapter 5–40, Airworthiness Limitations, Revision 11, dated September 2018, of the Falcon 900EX EASy, Falcon 900LX, and Falcon 900DX Maintenance Manual. This service information describes procedures, maintenance tasks, and airworthiness limitations specified in the Airworthiness Limitations section of the AMM.

This proposed AD would also require Chapter 5–40, Airworthiness Limitations, Revision 9, dated November 2015, of the Dassault Falcon 900EX EASy, Falcon 900LX, and Falcon 900DX Maintenance Manual, which the Director of the Federal Register approved for incorporation by reference as of October 24, 2017 (82 FR 43674, September 19, 2017).

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

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

Proposed Requirements of This NPRM

This proposed AD would retain all of the requirements of AD 2017–19–14. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This proposed AD would also retain the terminating provision of AD 2014–16–27, related to AD 2010–26–05.

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

Costs of Compliance

The FAA estimates that this proposed AD affects 79 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2017–19–14 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. In the past, the FAA has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

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

Authority for This Rulemaking

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

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

This proposed 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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by

■ a. Removing Airworthiness Directive (AD) 2014–16–27, Amendment 39–17951 (79 FR 51071, August 27, 2014); and AD 2017–19–14, Amendment 39–19044 (82 FR 43674, September 19, 2017); and

■ b. Adding the following new AD:

Dassault Aviation: Docket No. FAA–2019–0697; Product Identifier 2019–NM–110–AD.

(a) Comments Due Date

The FAA must receive comments by October 28, 2019.

(b) Affected ADs

(1) This AD replaces AD 2014–16–27, Amendment 39–17951 (79 FR 51071, August 27, 2014) (''AD 2014–16–27''); and AD 2017–19–14, Amendment 39–19044 (82 FR 43674, September 19, 2017) (''AD 2017–19–14'').

(2) This AD affects AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (''AD 2010–26–05'').

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 900EX airplanes, serial number (S/N) 97 and S/N 120 and higher, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before September 1, 2018.

(d) Subject

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

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address reduced structural integrity of the airplane.

(f) Compliance

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

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

This paragraph restates the requirements of paragraph (g) of AD 2017–19–14, with no changes. Within 90 days after October 24, 2017 (the effective date of AD 2017–19–14), revise the maintenance or inspection program, as applicable, to incorporate the information specified in Chapter 5–40, Airworthiness Limitations, Revision 9, dated November 2015, of the Dassault Falcon 900EX EASy, Falcon 900LX, and Falcon 900DX Maintenance Manual. The initial compliance time for accomplishing the actions specified in Chapter 5–40, Airworthiness Limitations, Revision 9, dated November 2015, of the Dassault Falcon 900EX EASy, Falcon 900LX, and Falcon 900DX Maintenance Manual, is within the applicable times specified in the maintenance manual or 90 days after October 24, 2017, whichever occurs later, except as provided by paragraphs (g)(1) through (g)(4) of this AD.

(1) The term ''LDG'' in the ''First Inspection'' column of any table in the service information means total airplane landings.

(2) The term ''FH'' in the ''First Inspection'' column of any table in the service information means total flight hours.

(3) The term ''FC'' in the ''First Inspection'' column of any table in the service information means total flight cycles.

(4) The term ''M'' in the ''First Inspection'' column of any table in the service information means months.

(h) Retained No Alternative Actions and Intervals, With New Exception

This paragraph restates the requirements specified in paragraph (h) of AD 2017–19–14, with a new exception. Except as required by paragraph (i) of this AD, after accomplishing the revision required by paragraph (g) of this AD, no alternative actions (inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of this AD.

(i) New Requirement of This AD: Maintenance or Inspection Program Revision

Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Chapter 5–40, Airworthiness Limitations, Revision 11, dated September 2018, of the Dassault Falcon 900EX EASy, Falcon 900LX, and Falcon 900DX Maintenance Manual. The initial compliance time for accomplishing the actions specified in Chapter 5–40, Airworthiness Limitations, Revision 11, dated September 2018, of the Dassault Falcon 900EX EASy, Falcon 900LX, and Falcon 900DX Maintenance Manual, is within the applicable times specified in the maintenance manual, or 90 days after the effective date of this AD, whichever occurs later, except as provided by paragraphs (i)(1) through (i)(4) of this AD.

(1) The term ''LDG'' in the ''First Inspection'' column of any table in the service information means total airplane landings.

(2) The term ''FH'' in the ''First Inspection'' column of any table in the service information means total flight hours.

(3) The term ''FC'' in the ''First Inspection'' column of any table in the service information means total flight cycles.

(4) The term ''M'' in the ''First Inspection'' column of any table in the service information means months since the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

(j) No Alternative Actions or Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in paragraph (l)(1) of this AD.

(k) Terminating Actions for Certain Actions in AD 2010–26–05

Accomplishing the actions required by paragraph (g) or (i) of this AD terminates the requirements of paragraph (g)(1) of AD 2010–26–05, for Dassault Aviation Model 900EX airplanes, S/N 97 and S/N 120 and higher.

(l) Other FAA AD Provisions

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards 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 International Section, send it to the attention of the person identified in paragraph (m)(2) of this AD. Information may be emailed to *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Union Aviation Safety Agency (EASA); or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2019–0134, dated June 11, 2019, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0697.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

(3) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *http://www.dassaultfalcon.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.

Issued in Des Moines, Washington, on September 6, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–19772 Filed 9–12–19; 8:45 am]

BILLING CODE 4910–13–P

SUSQUEHANNA RIVER BASIN COMMISSION

18 CFR Parts 806

Review and Approval of Projects

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of proposed rulemaking; notice of public hearing.

SUMMARY: This document contains proposed rules that would amend the regulations of the Susquehanna River Basin Commission (Commission) dealing with the mitigation of consumptive uses. These rules are designed to enhance and improve the Commission's existing authorities to manage the water resources of the basin.

DATES: The Commission will hold an informational webinar explaining the proposed rulemaking on October 1, 2019. Instructions for registration for the webinars will be posted on the Commission's website.

Comments on the proposed rulemaking may be submitted to the Commission on or before November 12, 2019. The Commission has scheduled a public hearing on the proposed rulemaking to be held on October 31, 2019 in Harrisburg, PA. The location of the public hearing is listed in the **ADDRESSES** section of this document.

ADDRESSES: Comments may be mailed to: Jason E. Oyler, Esq., General Counsel, Susquehanna River Basin Commission, 4423 N Front Street, Harrisburg, PA 17110–1788, or by email to *regcomments@srbc.net.* The public hearing location is at the Commission Headquarters at the above address.

Those wishing to testify are asked to notify the Commission in advance, if possible, at the regular address listed above or electronic address given below.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, Esq., General Counsel, telephone: 717–238–0423, ext. 1312; fax: 717–238–2436; email: *joyler@srbc.net.* Also, for further information on the proposed rulemaking, visit the Commission's website at *http://www.srbc.net.*

SUPPLEMENTARY INFORMATION: The Commission undertook a more comprehensive overhaul of its regulations that were proposed in September of 2016 and adopted as final in June of 2017. As a part of that final rulemaking, the Commission reserved the changes it had proposed pertaining to its regulation of the consumptive use of water. It had also proposed a draft Consumptive Use Mitigation Policy as a companion to that rulemaking, which was also reserved. The Commission has performed a more comprehensive analysis of the comments received on that rulemaking and policy, and changes to the consumptive use regulation are proposed herein as a follow up to that effort. In addition, as a companion to this rulemaking, the Commission is also releasing a revised draft policy for Consumptive Use Mitigation to be open for public comment simultaneously with this proposed rulemaking.

Standards for Consumptive Uses of Water—18 CFR 806.22

Section 806.22 (regarding standards for consumptive uses of water) will be revised. The proposed revisions in § 806.22(b)(1) and (2) lower the 90-day standard for consumptive use mitigation to 45 days and require that any alternative water source or storage will not likely impact nearby surface waters. The purpose of these changes is to reduce the barriers to project sponsors providing their own mitigation. Analysis of the past 100 plus years of river flow records show that the overwhelming majority of low flow events in the Basin are adequately covered by a continuous 45-day consumptive use mitigation standard. Further, the prior standard that alternative supplies or storage have no impact was too rigid for projects to find suitable alternative supplies.

Section 806.22(b) is also revised to clarify that discontinuance includes reduction of water consumption to less than 20,000 gallons per day (gpd). This was the Commission's policy from 1992 until 2006 when the present rule was adopted. In practice, complete discontinuance was found to be impractical and unrealistic for many projects; however, some projects have demonstrated the ability to reduce usage to 20,000 gallons per day when necessary. This practice allows continued operations at a locally *de minimis* consumptive use level while reducing mitigation demand on either the project or the Commission. Accordingly, this change is designed to increase the feasibility of projects being able to select discontinuance as a mitigation option. Discontinuance of use is the most effective method of mitigation because it reduces and/or eliminates the water use during Commission designated low flows periods and does not depend on any further action by the Commission or project sponsor to be effectuated.

Section 806.22(e) is amended to allow a project sourced by reuse of stormwater, wastewater or other reused or recycled water to be eligible for an Approval by Rule for consumptive use.

List of Subjects in 18 CFR Part 806

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission proposes to amend 18 CFR part 806 as follows:

PART 806—REVIEW AND APPROVAL OF PROJECTS

■ 1. The authority citation for part 806 continues to read as follows:

Authority: Secs. 3.4, 3.5 (5), 3.8, 3.10 and 15.2, Pub. L. 91–575, 84 Stat. 1509 *et seq.*

■ 2. Amend § 806.22 by revising paragraphs (b)(1) and (e)(1) to read as follows:

§ 806.22 Standards for consumptive use of water.

* * * * *

(b) * * *

(1) During low flow periods as may be designated by the Commission for consumptive use mitigation.

(i) Reduce withdrawal from the approved source(s), in an amount equal to the project's consumptive use, and withdraw water from alternative surface water storage or aquifers or other underground storage chambers or facilities approved by the Commission, from which water can be withdrawn for a period of 45 continuous days such that impacts to nearby surface waters will not likely be at a magnitude or in a timeframe that would exacerbate present low flow conditions.

(ii) Release water for flow augmentation, in an amount equal to the project's consumptive use, from surface water storage or aquifers, or other underground storage chambers or facilities approved by the Commission, from which water can be withdrawn for a period of 45 continuous days such that impacts to nearby surface waters will not likely be at a magnitude or in a timeframe that would exacerbate present low flow conditions.

(iii) Discontinue the project's consumptive use, which may include reduction of the project sponsor's consumptive use to less than 20,000 gpd during periods of low flow. In any case of failure to provide the specified discontinuance, such project shall provide mitigation in accordance with paragraph (b)(3) of this section, for the calendar year in which such failure occurs, after which the Commission will reevaluate the continued acceptability of the discontinuance.

* * * * *

(e) * * *

(1) *General rule.* Except with respect to projects involving hydrocarbon development subject to the provisions of paragraph (f) of this section, any project that is solely supplied water for consumptive use by public water supply, stormwater, wastewater, or other reused or recycled water, or any combination thereof, may be approved by the Executive Director under this

paragraph (e) in accordance with the following, unless the Executive Director determines that the project cannot be adequately regulated under this approval by rule.

* * * * *

Dated: September 9, 2019.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2019–19814 Filed 9–12–19; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[Docket No. DEA–497]

Designation of Benzylfentanyl and 4-Anilinopiperidine, Precursor Chemicals Used in the Illicit Manufacture of Fentanyl, as List I Chemicals

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration (DEA) is proposing the control of *N*-(1-benzylpiperidin-4-yl)-*N*-phenylpropionamide (also known as benzylfentanyl), including its salts, and *N*-phenylpiperidin-4-amine (also known as 4-anilinopiperidine; *N*-phenyl-4-piperidinamine; 4–AP) (hereinafter referred to as 4-anilinopiperidine), including its amides, its carbamates, and its salts, as list I chemicals under the Controlled Substances Act (CSA).

Benzylfentanyl and 4-anilinopiperidine are used in, and are important to, the illicit manufacture of the schedule II controlled substance fentanyl. If finalized, this action would subject handlers of benzylfentanyl and 4-anilinopiperidine to the chemical regulatory provisions of the CSA and its implementing regulations. This rulemaking does not establish a threshold for domestic and international transactions of benzylfentanyl or 4-anilinopiperidine. As such, all transactions of chemical mixtures containing benzylfentanyl or 4-anilinopiperidine will be regulated at any concentration and will be subject to control under the CSA.

DATES: Comments must be submitted electronically or postmarked on or before November 12, 2019. Commenters should be aware that the electronic Federal Docket Management System will not accept any comments after 11:59 p.m. Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–497'' on all electronic and written correspondence, including any attachments.

- *Electronic comments:* The DEA encourages that all comments be submitted electronically through the Federal eRulemaking Portal which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov and follow the online instructions at that site for submitting comments.* Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.
- *Paper comments:* Paper comments that duplicate electronic submissions are not necessary. Should you wish to mail a paper comment, *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA **Federal Register** Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Regulatory Drafting and Policy Support Section (DPW), Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

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

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

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

An electronic copy of this proposed rule is available at *http://www.regulations.gov* for easy reference.

Legal Authority

The CSA gives the Attorney General the authority to specify, by regulation, chemicals as list I or list II chemicals. 21 U.S.C. 802(34) and (35). A ''list I chemical'' is a chemical that is used in manufacturing a controlled substance in violation of title II of the CSA and is important to the manufacture of the controlled substance. 21 U.S.C. 802(34). A ''list II chemical'' is a chemical (other than a list I chemical) that is used in manufacturing a controlled substance in violation of title II of the CSA. 21 U.S.C. 802(35). The current list of all listed chemicals is published at 21 CFR 1310.02. Pursuant to 28 CFR 0.100(b), the Attorney General has delegated his authority to designate list I and list II chemicals to the Administrator of the Drug Enforcement Administration.

Background

The DEA is extremely concerned with the increase in the illicit manufacture and distribution of fentanyl. Fentanyl is a synthetic opioid and was first synthesized in Belgium in the late 1950's. Fentanyl is controlled in schedule II of the CSA due to its high potential for abuse and dependence, and accepted medical use in treatment in the United States. Fentanyl was introduced

into medical practice and is approved for medical practitioners in the United States to prescribe lawfully for anesthesia and analgesia. Due to its pharmacological effects, fentanyl can serve as a substitute for heroin, oxycodone, and other opioids in opioid dependent individuals.

The unlawful trafficking of fentanyl in the United States continues to pose an imminent hazard to the public safety. Since 2012, fentanyl has shown a dramatic increase in the illicit drug supply as a single substance, in mixtures with other illicit drugs (*i.e.,* heroin, cocaine, and methamphetamine), or in forms that mimic pharmaceutical preparations including prescription opiates and benzodiazepines.

The DEA has noted a significant increase in overdoses and overdose fatalities from fentanyl in the United States in recent years. A recent report [1] from the Centers for Disease Control and Prevention (CDC) highlights this trend. According to this report, of the 41,430 drug overdose deaths occurring in the United States in 2011, 1,662 (4.0%) involved fentanyl.[2] Of the 63,632 drug overdose deaths in 2016, 18,335 (28.8%) involved fentanyl. This was the first time that fentanyl was reported in more drug related fatalities than heroin.

The increase of drug overdose deaths continued into 2017. According to the CDC,[3] there were 70,237 drug overdose deaths in the United States in 2017, an increase from the 63,632 overdose deaths recorded in 2016. Of the 70,237 overdose deaths in 2017, 47,600 (67.8%) involved an opioid. Deaths involving prescription opioids and heroin remained stable from 2016 to 2017; synthetic opioid overdose deaths (other than methadone), which include deaths related to fentanyl, increased 45.2% from 19,413 deaths in 2016 to 28,466 deaths in 2017.

The increase in overdose fatalities involving fentanyl coincides with a dramatic increase of law enforcement encounters of fentanyl. According to the National Forensic Laboratory Information System (NFLIS),[4] submissions to forensic laboratories that contained fentanyl increased exponentially beginning in 2012: 694 in 2012, 1,044 in 2013, 5,537 in 2014, 15,455 in 2015, 37,294 in 2016, 61,382 in 2017, and 70,453 in 2018.

Role of These Precursor Chemicals in the Synthesis of Fentanyl

Fentanyl is not a naturally occurring substance. As such, the manufacture of fentanyl requires it to be produced through synthetic organic chemistry. Synthetic organic chemistry is the process in which a new organic molecule is created through a series of chemical reactions, which involve precursor chemicals. In the early 2000's, a synthetic process, commonly known as the Siegfried method, was utilized to manufacture fentanyl in several domestic and foreign clandestine laboratories. 72 FR 20039. At that time, DEA had determined that two primary synthesis routes (*i.e.,* the Janssen method and the Siegfried method) were being used to produce fentanyl clandestinely, although it believed the Janssen synthesis route to be difficult to perform and beyond the rudimentary skills of most clandestine laboratory operators. The Siegfried synthetic route involves two important intermediates, *N*-phenethyl-4-piperidone (NPP) and 4-anilino-*N*-phenethylpiperidine (ANPP). The DEA controlled NPP on April 23, 2007 as a list I chemical through an interim rule (72 FR 20039), which was finalized on July 25, 2008. 73 FR 43355. ANPP was controlled as a schedule II immediate precursor to fentanyl on August 30, 2010. 75 FR 37295.

In 2017, the United Nations Commission on Narcotic Drugs placed NPP and ANPP in Table I of the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (1988 Convention) in response to the international reintroduction of fentanyl on the illicit drug market. As such, member states of the United Nations were required to regulate these precursor chemicals at the national level. In addition, the People's Republic of China regulated NPP and ANPP on February 1, 2018.

Recent law enforcement information indicates that illicit manufacturers of fentanyl may utilize synthetic routes other than the Siegfried method in response to regulations placed on NPP and ANPP. The Janssen method, previously thought to be beyond the skills of most clandestine laboratory operators, is now used with the precursor chemical benzylfentanyl, and other synthetic routes use the precursor chemical 4-anilinopiperidine. The DEA is not aware of any legitimate uses of benzylfentanyl or 4-anilinopiperidine other than in the synthesis of fentanyl.

Benzylfentanyl

The original published synthetic pathway to fentanyl, known as the Janssen method, does not involve NPP or ANPP as a chemical precursor. This synthetic pathway involves the important precursors, benzylfentanyl and norfentanyl. Benzylfentanyl is converted to *N*-phenyl-*N*-(piperidin-4-yl)propionamide (norfentanyl), the immediate precursor in this synthetic pathway, in one chemical reaction. Norfentanyl is then subjected to one simple chemical reaction to complete the synthesis of fentanyl. Norfentanyl is the subject of a Notice of Proposed Rulemaking for control as a schedule II immediate precursor of fentanyl, published elsewhere in this issue of the **Federal Register**.

According to DEA forensic laboratory data, the Janssen method was confirmed as the synthetic route used in 94% of 85 fentanyl drug exhibits that were evaluated to determine the synthetic route. These exhibits were seized in 2018. In addition, the number of law enforcement encounters of benzylfentanyl has increased in 2017 and 2018, which coincides with the international control that placed of NPP and ANPP in Table I of the 1988 Convention in 2017.

According to NFLIS, there was one identification of benzylfentanyl in 2016; however, benzylfentanyl was identified in 195 reports in 2017 and 237 reports in 2018. Since the DEA is not aware of any legitimate uses of benzylfentanyl other than potentially in the synthesis of fentanyl, it is believed that these law enforcement encounters indicate a change in the synthetic route to the Janssen method by some clandestine manufacturers in efforts to evade chemical regulations on NPP and ANPP.

The DEA has determined that benzylfentanyl is commercially available from both domestic and foreign chemical suppliers. The DEA is aware of at least five domestic suppliers and three foreign suppliers in China, two suppliers in Canada, and one supplier in the United Kingdom. Benzylfentanyl is attractive to illicit manufacturers due to the lack of chemical regulations on this substance, it is readily available from chemical suppliers, and it can be converted to the immediate precursor, norfentanyl, in a one-step chemical reaction.

[1] Drugs Most Frequently Involved in Drug Overdose Deaths: United States, 2011–2016. National Vital Statistics Reports; vol 67 no 9. Hyattsville, MD: National Center for Health Statistics, 2018.

[2] The reported data includes fentanyl, fentanyl metabolites, precursors, and analogs.

[3] Scholl L., Seth P., Kariisa M., Wilson N., Baldwin G. Drug and Opioid-Involved Overdose Deaths— United States, 2013–2017. MMWR Morb Mortal Wkly Rep 2019;67:1419–1427.

[4] The National Forensic Laboratory Information System (NFLIS) is a national forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by Federal, State and local forensic laboratories in the United States. NFLIS data was queried on March 26, 2019.

4-Anilinopiperidine

In addition to the Janssen and Siegfried methods, clandestine manufacturers are using other methods to synthesize fentanyl. 4-Anilinopiperidine can serve as an alternative precursor chemical to NPP in the synthesis of ANPP, albeit through a different synthetic process. 4-Anilinopiperidine has been marketed as a replacement to ANPP as a precursor chemical used in the illicit manufacture of fentanyl by foreign chemical suppliers. This is believed to be in response to international controls placed on NPP and ANPP. Although marketed as a replacement for ANPP, DEA understands that 4-anilinopiperidine is not a direct replacement for ANPP in the synthesis of fentanyl. The DEA is not aware of any legitimate uses of 4-anilinopiperidine other than potentially in the synthesis of fentanyl. In contrast to NPP, where two chemical reaction steps are required to synthesize ANPP, 4-anilinopiperidine can be converted to ANPP in a one-step chemical reaction. The resulting ANPP can then be used as the immediate precursor chemical in the illicit manufacture of the schedule II controlled substance, fentanyl. ANPP is controlled in schedule II of the CSA as of August 30, 2010 for this reason. 75 FR 37295 (June 29, 2010).

4-Anilinopiperidine has been imported and identified in law enforcement seizures in the United States. In addition to domestic encounters, the DEA is aware of international encounters of 4-anilinopiperidine beginning as early as July 2018. The International Narcotics Control Board of the United Nations reported 32 international transactions of 4-anilinopiperidine through the International Operations on Novel Psychoactive Substances Communication System IONICS [5] reporting system. These identifications, totaling approximately 30 kg, were reported by Mexico as the destination country. In addition, 4-anilinopiperidine was identified at a clandestine laboratory located in Mexico, which was involved in the illicit manufacture of fentanyl.

These recent law enforcement encounters of 4-anilinopiperidine coincide with the placement of NPP and ANPP in Table I of the 1988 Convention, and the February 1, 2018 regulation of NPP and ANPP in the People's Republic of China. The international encounters of 4-anilinopiperidine at ports of entry in Mexico indicate a change in illicit fentanyl manufacturing methods in efforts to evade international controls on NPP and ANPP.

The DEA determined that 4-anilinopiperidine is commercially available from both domestic and foreign chemical suppliers. The DEA has identified 38 domestic suppliers and 28 foreign suppliers of 4-anilinopiperidine from Canada (3), China (11), Germany (3), Hong Kong (1), India (1), Latvia (1), Lithuania (1), Switzerland (2), and the United Kingdom (5). 4-Anilinopiperidine is attractive to illicit manufacturers due to the lack of chemical controls on this substance, it is readily available from chemical suppliers, and it can easily be converted to the schedule II immediate precursor, ANPP, which can subsequently be converted to fentanyl.

Regulation of Benzylfentanyl, Including Its Salts and 4-Anilinopiperidine, Including Its Amides, Its Carbamates, and Its Salts, as List I Chemicals

The CSA, specifically 21 U.S.C. 802(34), 21 U.S.C. 802(35), and its implementing regulations at 21 CFR 1310.02(c), provide the Attorney General with the authority to specify, by regulation, additional precursor or essential chemicals as ''listed chemicals'' if they are used in the manufacture of controlled substances in violation of the CSA. Recent law enforcement encounters indicate benzylfentanyl and 4-anilinopiperidine are being used in the illicit manufacture of the schedule II controlled substance fentanyl. This proposed rule would regulate benzylfentanyl and 4-anilinopiperidine as list I chemicals because the DEA finds that benzylfentanyl and 4-anilinopiperidine are used in the manufacture of the controlled substance fentanyl, and are important to the manufacture of the controlled substance fentanyl because they cannot be replaced by other chemicals in their respective synthetic pathways in the manufacture of fentanyl.

Chemical Mixtures of Benzylfentanyl and 4-Anilinopiperidine

This proposed rulemaking, if finalized, would specify that chemical mixtures containing benzylfentanyl or 4-anilinopiperidine would not be exempt from regulatory requirements at any concentration, unless an application for exemption of a chemical mixture is submitted by a benzylfentanyl or 4-anilinopiperidine manufacturer and the application is reviewed and accepted by the DEA under 21 CFR 1310.13 (Exemption by Application Process). The control of chemical mixtures containing any amount of benzylfentanyl or 4-anilinopiperidine is necessary to prevent the illicit extraction, isolation, and use of benzylfentanyl or 4-anilinopiperidine to manufacture fentanyl. This proposed rule would modify the Table of Concentration Limits in 21 CFR 1310.12(c) to reflect the fact that chemical mixtures containing any amount of benzylfentanyl or 4-anilinopiperidine are subject to the CSA chemical control provisions.

Exemption by Application Process

The DEA has implemented an application process to exempt mixtures from the requirements of the CSA and its implementing regulations. 21 CFR 1310.13. Under the application process, manufacturers may submit an application for exemption for those mixtures that do not qualify for automatic exemption. Exemption status can be granted if the DEA determines that the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the listed chemical cannot be readily recovered (*i.e.,* it meets the conditions in 21 U.S.C. 802(39)(A)(vi)).

Requirements for Handling List I Chemicals

If this rule is finalized as proposed, benzylfentanyl and 4-anilinopiperidine will be subject to all of the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, importing, and exporting of list I chemicals. Upon publication of a final rule, persons potentially handling benzylfentanyl or 4-anilinopiperidine, including regulated chemical mixtures containing benzylfentanyl or 4-anilinopiperidine, will be required to comply with list I chemical regulations, including the following:

1. *Registration.* Any person who manufactures, distributes, imports, or exports benzylfentanyl or 4-anilinopiperidine, or proposes to engage in the manufacture, distribution, importation, or exportation of benzylfentanyl or 4-anilinopiperidine, must obtain a registration pursuant to 21 U.S.C. 822, 823, 957, 958. Regulations describing registration for list I chemical handlers are set forth in 21 CFR part 1309.

The DEA recognizes that it is not possible for persons who are subject to

[5] IONICS is a free communication platform dedicated to real-time communication of incidents involving suspicious shipments, trafficking, manufacture or production of Novel Psychoactive Substances (NPS). IONICS reports were collected up to April 1, 2019.

the registration requirements to immediately complete and submit an application for registration, and for the DEA to immediately issue registrations for those activities. Therefore, to allow any continued legitimate commerce in benzylfentanyl and 4-anilinopiperidine, the DEA is proposing to establish in 21 CFR 1310.09, a temporary exemption from the registration requirement for persons desiring to engage in activities with benzylfentanyl or 4-anilinopiperidine, provided that the DEA receives a properly completed application for registration or application for exemption of a chemical mixture under 21 CFR 1310.13 on or before 30 days after publication of a final rule implementing regulations regarding benzylfentanyl and 4-anilinopiperidine. The temporary exemption for such persons will remain in effect until the DEA takes final action on their application for registration or application for exemption of a chemical mixture.

The temporary exemption applies solely to the registration requirement; all other chemical control requirements, including recordkeeping and reporting, would become effective on the effective date of the final rule. This is necessary because a delay in regulating these transactions could result in increased diversion of chemicals desirable to drug traffickers.

Additionally, the temporary exemption for registration does not suspend applicable Federal criminal laws relating to benzylfentanyl or 4-anilinopiperidine, nor does it supersede State or local laws or regulations. All handlers of benzylfentanyl or 4-anilinopiperidine must comply with applicable State and local requirements in addition to the CSA regulatory controls.

2. *Records and Reports.* Every DEA registrant would be required to maintain records and submit reports with respect to benzylfentanyl and 4-anilinopiperidine pursuant to 21 U.S.C. 830 and in accordance with 21 CFR part 1310. Pursuant to 21 CFR 1310.04, a record must be kept for two years after the date of a transaction involving a listed chemical, provided the transaction is a regulated transaction.

Each regulated bulk manufacturer of a listed chemical will be required to submit manufacturing, inventory, and use data on an annual basis. 21 CFR 1310.05(d). Existing standard industry reports containing the required information are acceptable, provided the information is separate or readily retrievable from the report.

3. *Importation and Exportation.* All importation and exportation of benzylfentanyl or 4-anilinopiperidine would need to be done in compliance with 21 U.S.C. 957, 958, and 971 and in accordance with 21 CFR part 1313.

4. *Security.* All applicants and registrants would be required to provide effective controls against theft and diversion of list I chemicals in accordance with 21 CFR 1309.71–1309.73.

5. *Administrative Inspection.* Places, including factories, warehouses, or other establishments and conveyances, where registrants or other regulated persons may lawfully hold, manufacture, distribute, or otherwise dispose of a list I chemical or where records relating to those activities are maintained, are controlled premises as defined in 21 U.S.C. 880(a) and 21 CFR 1316.02(c). The CSA allows for administrative inspections of these controlled premises as provided in 21 CFR part 1316, subpart A. 21 U.S.C. 880.

6. *Liability.* Any activity involving benzylfentanyl or 4-anilinopiperidine not authorized by, or in violation of, the CSA, would be unlawful, and would subject the person to administrative, civil, and/or criminal action.

Solicitation for Information

As part of this proposed rulemaking, the DEA is soliciting information on any possible legitimate uses of benzylfentanyl and 4-anilinopiperidine unrelated to fentanyl production (including industrial uses) in order to assess the potential commercial impact of controlling benzylfentanyl and 4-anilinopiperidine. The DEA has searched information in the public domain for legitimate uses of these two chemicals, and has not documented a legitimate commercial use for benzylfentanyl or 4-anilinopiperidine other than as intermediary chemicals in the production of fentanyl. The DEA seeks, however, to document any unpublicized use(s) and other proprietary use(s) of benzylfentanyl and 4-anilinopiperidine that are not in the public domain. Therefore, the DEA is soliciting comment on the uses of benzylfentanyl and 4-anilinopiperidine in the legitimate marketplace.

The DEA is soliciting input from all potentially affected parties regarding: (1) The types of legitimate industries using benzylfentanyl and 4-anilinopiperidine; (2) the legitimate uses of benzylfentanyl and 4-anilinopiperidine, if any; (3) the size of the domestic market for benzylfentanyl and 4-anilinopiperidine; (4) the number of manufacturers of benzylfentanyl and 4-anilinopiperidine; (5) the number of distributors of benzylfentanyl and 4-anilinopiperidine; (6) the level of import and export of benzylfentanyl and 4-anilinopiperidine; (7) the potential burden these proposed regulatory controls of benzylfentanyl and 4-anilinopiperidine may have on any legitimate commercial activities; (8) the potential number of individuals/firms that may be adversely affected by these proposed regulatory controls (particularly with respect to the impact on small businesses); and (9) any other information on the manner of manufacturing, distribution, consumption, storage, disposal, and uses of benzylfentanyl and 4-anilinopiperidine by industry and others. The DEA invites all interested parties to provide any information on any legitimate uses of benzylfentanyl and 4-anilinopiperidine in industry, commerce, academia, research and development, or other applications. The DEA seeks both quantitative and qualitative data.

Handling of Confidential or Proprietary Information

Confidential or proprietary information may be submitted as part of a comment regarding this Notice of Proposed Rulemaking. Please see the ''POSTING OF PUBLIC COMMENTS'' section above for a discussion of the identification and redaction of confidential business information and personally identifying information.

Regulatory Analyses

Executive Orders 12866, 13563, and 13771, Regulatory Planning and Review, Improving Regulation and Regulatory Review, and Reducing Regulation and Controlling Regulatory Costs

This proposed rule was developed in accordance with the principles of Executive Orders 12866, 13563, and 13771. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866. Executive Order 12866 classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), as 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 the Executive Order. The DEA has determined that this proposed rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f).

Executive Order 13771 requires an agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation.[6] In furtherance of this requirement, Executive Order 13771 requires that the new incremental costs associated with new regulations, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.[7] According to guidance provided by OMB, the requirements of Executive Order 13771 only apply to each new ''significant regulatory action that . . . imposes costs.''[8] 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.

If finalized as proposed, benzylfentanyl and 4-anilinopiperidine will be subject to all of the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, importing, and exporting of list I chemicals. Benzylfentanyl and 4-anilinopiperidine are used in, and are important to, the illicit manufacture of the schedule II controlled substance fentanyl. The distribution of illicitly manufactured fentanyl has caused an unprecedented outbreak of thousands of fentanyl-related overdoses in the United States in recent years.

The DEA has searched information in the public domain for any legitimate uses of these two chemicals, and has not documented a use for benzylfentanyl or 4-anilinopiperidine other than as intermediary chemicals in the production of fentanyl. Based on the review of import and quota information for NPP, ANPP, and fentanyl, The DEA believes the vast majority of, if not all, legitimate pharmaceutical fentanyl is produced via a synthetic route involving NPP and ANPP as intermediaries, not benzylfentanyl (and norfentanyl) or 4-anilinopiperidine. The quantities of NPP and ANPP indicated in import and quota documents generally correspond with the quantities of legitimate pharmaceutical fentanyl produced in the U.S. Therefore, the DEA concludes the vast majority of, if not all, benzylfentanyl or 4-anilinopiperidine is used for the manufacturing of illicit fentanyl.

The DEA cannot rule out the possibility that minimal quantities of benzylfentanyl or 4-anilinopiperidine are used for the manufacturing of legitimate pharmaceutical fentanyl. However, if there are any quantities of benzylfentanyl or 4-anilinopiperidine used for the manufacturing of legitimate pharmaceutical fentanyl, the quantities are believed to be small and economically insignificant. The DEA welcomes any public comment on these quantities and their economic significance.

The DEA evaluated the costs and benefits of this proposed action.

Costs

The DEA believes the market for benzylfentanyl or 4-anilinopiperidine for the legitimate manufacturing of pharmaceutical fentanyl is minimal. As stated above, the only use for benzylfentanyl and 4-anilinopiperidine of which the DEA is aware is as intermediaries for the manufacturing of fentanyl. Any manufacturer, distributor, importer, or exporter of benzylfentanyl or 4-anilinopiperidine for the production of legitimate pharmaceutical fentanyl, if they exist at all, would incur costs if this proposed rule were finalized. The primary costs associated with this proposed rule would be the annual registration fees for scheduled drugs or list I chemicals ($3,047 for manufacturers and $1,523 for distributors, importers, and exporters). However, any manufacturer that uses benzylfentanyl or 4-anilinopiperidine for legitimate pharmaceutical fentanyl production would already be registered with the DEA and have all security and other handling processes in place because of the controls already in place on fentanyl, resulting in minimal cost to those entities. While different forms of handling the scheduled substance versus the list I chemical (distribution of fentanyl vs exporting benzylfentanyl), could require a separate registration for the different handling of the substances, if an entity is already registered to handle, manufacture, import, or export a scheduled substance, the entity would not need an additional registration for the list I chemical, provided it is handling the list I chemical in the same manner that it is registered for with the scheduled substance, or as a coincident activity permitted by § 1309.21. Even with the possibility of these additional registrations, the DEA believes that the cost will be minimal.

The DEA has identified 38 domestic suppliers of benzylfentanyl, 4-anilinopiperidine, or both. Only one is registered to handle list I chemicals, the remaining 37 are not registered with the DEA to handle list I chemicals. It is difficult to estimate how much benzylfentanyl and 4-anilinopiperidine is distributed by these suppliers. It is common for chemical distributors to have items on their catalog while not actually having any material level of sales. Based on the review of import and quota information for NPP, ANPP, and fentanyl, where the quantities of NPP and ANPP imported and manufactured generally correspond with the quantities of fentanyl produced, the DEA believes any quantity of sales from these distributors for legitimate pharmaceutical fentanyl manufacturing is minimal. If this proposed rule is finalized, suppliers for the legitimate use of benzylfentanyl or 4-anilinopiperidine are expected to choose the least-cost option, and stop selling the minimal quantities, if any, of benzylfentanyl or 4-anilinopiperidine, rather than incur the registration cost. Because the DEA believes the quantities of benzylfentanyl or 4-anilinopiperidine supplied for the legitimate manufacturing of pharmaceutical fentanyl are minimal, the DEA estimates that the cost of foregone sales is minimal; and thus, the cost of this proposed rule is minimal. The DEA welcomes any public comment regarding this estimate.

This analysis excludes consideration of any economic impact to those businesses that facilitate the manufacturing and distribution of benzylfentanyl or 4-anilinopiperidine for the production of manufacturing illicit fentanyl. As a law enforcement organization and as a matter of principle, the DEA believes considering the economic utility of facilitating the manufacture of illicit fentanyl would be improper.

Benefits

Controlling benzylfentanyl and 4-anilinopiperidine is expected to prevent, curtail, and limit the unlawful manufacture and distribution of the controlled substance, fentanyl. As list I chemicals, handling of benzylfentanyl

[6] Sec. 2(a).

[7] Sec. 2(c).

[8] OMB Guidance Implementing Executive Order 13771 titled ''Reducing Regulation and Controlling Regulatory Costs'' (April 5, 2017).

and 4-anilinopiperidine would require registration with the DEA and various controls and monitoring as required by the CSA. This proposed rule is also expected to assist preventing the possible theft or diversion of benzylfentanyl and 4-anilinopiperidine from any legitimate firms. The DEA also believes control is necessary to prevent unscrupulous chemists from synthesizing benzylfentanyl and 4-anilinopiperidine and selling it (as an unregulated material) through the internet and other channels, to individuals who may wish to acquire unregulated intermediary chemicals for the purpose of manufacturing illicit fentanyl.

In summary, the DEA conducted a qualitative analysis of costs and benefits. The DEA believes this proposed action, if finalized, will minimize the diversion of benzylfentanyl and 4-anilinopiperidine. The DEA believes the market for benzylfentanyl and 4-anilinopiperidine for the legitimate manufacturing of pharmaceutical fentanyl is minimal. Therefore, any potential cost as a result of this regulation is minimal.

Executive Order 12988, Civil Justice Reform

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This proposed rulemaking does not have federalism implications warranting the application of Executive Order 13132. The proposed rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have tribal implications warranting the application of Executive Order 13175. This proposed rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Regulatory Flexibility Act

The Acting Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. As discussed above, if finalized as proposed, benzylfentanyl and 4-anilinopiperidine will be subject to all of the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, importing, and exporting of list I chemicals. Benzylfentanyl and 4-anilinopiperidine are used in, and are important to, the illicit manufacture of the schedule II controlled substance fentanyl. The distribution of illicitly manufactured fentanyl has caused an unprecedented outbreak of thousands of fentanyl-related overdoses in the United States in recent years. The DEA has not identified any legitimate industrial use for benzylfentanyl and 4-anilinopiperidine, other than their role as intermediary chemicals in the production of fentanyl. However, the DEA believes the vast majority, if not all, of legitimate pharmaceutical fentanyl is produced via a synthetic route involving NPP and ANPP as intermediaries, not benzylfentanyl (and norfentanyl) or 4-anilinopiperidine. The review of import and quota information for fentanyl, ANPP, and NPP supports this belief. Therefore, the DEA believes the vast majority, if not all, of benzylfentanyl or 4-anilinopiperidine is used for the illicit manufacturing of fentanyl. The primary costs associated with this proposed rule are the annual registration fees ($3,047 for manufacturers and $1,523 for distributors, importers, and exporters). Additionally, any manufacturer that uses benzylfentanyl or 4-anilinopiperidine for legitimate pharmaceutical fentanyl production would already be registered with the DEA and have all security and other handling processes in place, resulting in minimal cost.The DEA has identified 38 domestic suppliers of benzylfentanyl, 4-anilinopiperidine, or both, 37 of which are not registered with the DEA to handle list I chemicals. All 37 non-registered domestic suppliers are affected, of which 35 (94.5%, based on Small Business Administration size standard for chemical distributors and Statistics of U.S. Business data) are estimated to be small entities. It is impossible to know how much benzylfentanyl or 4-anilinopiperidine is distributed by these suppliers. It is common for chemical distributors to have items on their catalog while not actually having any material level of sales. Based on the review of import and quota information for NPP, ANPP, and fentanyl, where the quantities of NPP and ANPP imported and manufactured generally correspond with the quantities of fentanyl produced, the DEA believes any quantity of sales from these distributors for legitimate pharmaceutical fentanyl manufacturing is minimal. Therefore, the DEA estimates the cost of this rule on any affected small entity is minimal. The DEA welcomes any public comment regarding this estimate. Based on these factors, the DEA projects that this rule, if promulgated, will not result in a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

On the basis of information contained in the ''Regulatory Flexibility Act'' section above, the DEA has determined and certifies pursuant to the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501 *et seq.,* that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year * * *.'' Therefore, neither a Small Government Agency Plan nor any other action is required under provisions of UMRA.

Paperwork Reduction Act

This proposed action does not impose a new collection of information requirement under the Paperwork Reduction Act, 44 U.S.C. 3501–3521. This proposed action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

List of Subjects in 21 CFR Part 1310

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, the DEA proposes to amend 21 CFR part 1310 as follows:

PART 1310—RECORDS AND REPORTS OF LISTED CHEMICALS AND CERTAIN MACHINES; IMPORTATION AND EXPORTATION OF CERTAIN MACHINES

■ 1. The authority citation for 21 CFR part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 827(h), 830, 871(b), 890.

■ 2. In § 1310.02 add paragraphs (a)(32) and (33) to read as follows:

§ 1310.02 Substances covered.

* * * * *

(a) * * *

(32) *N*-(1-benzylpiperidin-4-yl)-*N*-phenylpropionamide (benzylfentanyl) and its salts 8334
(33) *N*-phenylpiperidin-4-amine (4-anilinopiperidine; *N*-phenyl-4-piperidinamine; 4–AP), its amides, its carbamates, and its salts 8335

* * * * *

■ 3. In § 1310.04:

■ a. Redesignate paragraphs (g)(1)(viii) through (xi) as paragraphs (g)(1)(x) through (xiii), respectively;

■ b. Redesignate paragraph (g)(1)(vii) as paragraph (g)(1)(viii); and

■ c. Add new paragraphs (g)(1)(vii) and (ix).

The additions read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(g) * * *

(1) * * *

(vii) *N*-(1-benzylpiperidin-4-yl)-*N*-phenylpropionamide (benzylfentanyl) and its salts

* * * * *

(ix) *N*-phenylpiperidin-4-amine (4-anilinopiperidine; *N*-phenyl-4-piperidinamine; 4–AP), its amides, its carbamates, and its salts

* * * * *

■ 4. In § 1310.09 add paragraphs (o) and (p) to read as follows:

§ 1310.09 Temporary exemption from registration.

* * * * *

(o)(1) Each person required under 21 U.S.C. 822 and 21 U.S.C. 957 to obtain a registration to manufacture, distribute, import, or export regulated *N*-(1-benzylpiperidin-4-yl)-*N*-phenylpropionamide (benzylfentanyl) and its salts, including regulated chemical mixtures pursuant to § 1310.12, is temporarily exempted from the registration requirement, provided that the DEA receives a proper application for registration or application for exemption for a chemical mixture containing benzylfentanyl pursuant to § 1310.13 on or before 30 days after the publication of a rule finalizing this action. The exemption will remain in effect for each person who has made such application until the Administration has approved or denied that application. This exemption applies only to registration; all other chemical control requirements set forth in the Act and parts 1309, 1310, 1313, and 1316 of this chapter remain in full force and effect.

(2) Any person who manufactures, distributes, imports, or exports a chemical mixture containing *N*-(1-benzylpiperidin-4-yl)-*N*-phenylpropionamide (benzylfentanyl) and its salts whose application for exemption is subsequently denied by the DEA must obtain a registration with the DEA. A temporary exemption from the registration requirement will also be provided for those persons whose application for exemption is denied, provided that the DEA receives a properly completed application for registration on or before 30 days following the date of official DEA notification that the application for exemption has been denied. The temporary exemption for such persons will remain in effect until the DEA takes final action on their registration application.

(p)(1) Each person required under 21 U.S.C. 822 and 21 U.S.C. 957 to obtain a registration to manufacture, distribute, import, or export regulated *N*-phenylpiperidin-4-amine (4-anilinopiperidine; *N*-phenyl-4-piperidinamine, 4–AP) and its amides, its carbamates, and its salts, including regulated chemical mixtures pursuant to § 1310.12, is temporarily exempted from the registration requirement, provided that the DEA receives a proper application for registration or application for exemption for a chemical mixture containing 4-anilinopiperidine pursuant to § 1310.13 on or before 30 days after the publication of a rule finalizing this action. The exemption will remain in effect for each person who has made such application until the Administration has approved or denied that application. This exemption applies only to registration; all other chemical control requirements set forth in the Act and parts 1309, 1310, 1313, and 1316 of this chapter remain in full force and effect.

(2) Any person who manufactures, distributes, imports, or exports a chemical mixture containing *N*-phenylpiperidin-4-amine (4-anilinopiperidine; *N*-phenyl-4-piperidinamine; 4–AP) and its amides, its carbamates, and its salts whose application for exemption is subsequently denied by the DEA must obtain a registration with the DEA. A temporary exemption from the registration requirement will also be provided for those persons whose application for exemption is denied, provided that the DEA receives a properly completed application for registration on or before 30 days following the date of official DEA notification that the application for exemption has been denied. The temporary exemption for such persons will remain in effect until the DEA takes final action on their registration application.

■ 5. In § 1310.12, the Table of Concentration Limits in paragraph (c) is amended by adding entries for *N*-(1-benzylpiperidin-4-yl)-*N*-phenylpropionamide (benzylfentanyl) and *N*-phenylpiperidin-4-amine (4-anilinopiperidine; *N*-phenyl-4-piperidinamine; 4–AP) in alphabetical order to read as follows:

§ 1310.12 Exempt chemical mixtures.

* * * * *

(c) * * *

TABLE OF CONCENTRATION LIMITS

	DEA chemical code No.	Concentration	Special conditions
* * *	*	*	* *
N-(1-benzylpiperidin-4-yl)-*N*-phenylpropionamide (benzylfentanyl), including its salts.	8334	Not exempt at any concentration.	Chemical mixtures containing any amount of benzylfentanyl are not exempt.
N-phenylpiperidin-4-amine (4-anilinopiperidine; *N*-phenyl-4-piperidinamine; 4–AP), including its amides, its carbamates, and its salts.	8335	Not exempt at any concentration.	Chemical mixtures containing any amount of 4-anilinopiperidine are not exempt.
* * *	*	*	* *

* * * * *

Dated: September 6, 2019.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2019–19787 Filed 9–12–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 232

[Docket No. FR 6022–P–01]

RIN 2502–AJ46

Federal Housing Administration (FHA): Section 232 Healthcare Facility Insurance Program—Memory Care Residents

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Proposed rule.

SUMMARY: HUD's Section 232 program insures mortgage loans to facilitate the construction, substantial rehabilitation, purchase, and refinancing of nursing homes, intermediate care facilities, board and care homes, and assisted-living facilities. Through this rule, HUD proposes changes to update the requirements for the location of bathrooms in board and care and assisted living facilities to allow providers to configure the facilities to meet the needs of memory care residents and allow for flexibility of the bathroom requirement when financing or refinancing existing facilities.

DATES: *Comment due date:* November 12, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule. All submissions must refer to the above docket number and title. 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 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 two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile (FAX) Comments. FAX comments are not acceptable.

Public Inspection of Public Comments. HUD will make available all properly submitted comments and communications 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, you must schedule an appointment in advance to review the public comments 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. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John M. Hartung, Director, Policy, Risk Analysis & Lender Relations Division, Office of Residential Care Facilities, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 1222 Spruce Street, St. Louis, MO 63103–2836; telephone number 314–418–5238 (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 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 232, 223(a)(7), and 223(f) of the National Housing Act (12 U.S.C. 1715w, 12 U.S.C. 1715n(a)(7), and 12 U.S.C. 1715n(f)(4), respectively), FHA insures mortgages to finance the purchase or refinance of nursing homes, intermediate care facilities, board and care homes, and assisted living facilities (collectively, residential healthcare facilities). To meet the needs of residents living in the Section 232 program facilities and those seeking to insure projects under the Section 232 program, HUD proposes to revise the current regulation at § 232.7 regarding bathroom requirements to meet the needs of memory care residents. Memory care residents are those patients in assisted living or board and care settings that have cognitive impairments, such as Alzheimer's disease and other dementias who require care in a secure setting. HUD proposes the revision to add flexibility for financing existing residential healthcare facilities.

A. Memory Care Residents

Residents of assisted living facilities need assistance with their ''activities of daily living'' (ADL). Activities of daily living include, but are not limited to, such things as bathing, dressing, eating, getting in or out of bed, using the toilet, preparing meals, taking medications,

and performing light housework. Memory care residents' care is often provided on a separate floor or wing to address the residents' specific needs. The health and safety of persons with dementia and other cognitive impairments can be enhanced by environments with features designed to accommodate cognitive and physical impairments. For example, Alzheimer residents' living environments have secured areas to prevent wandering—a common symptom of the disease. Memory care provides intensive, long-term medical care to seniors or others with serious health and dementia conditions in a fully-staffed and monitored facility.[1]

The research shows the growing need for memory care specific services. Based on estimates from the Aging, Demographics, and Memory study of a nationally representative sample of older adults, 13.9% of people aged 71 and over in the United States have Alzheimer's disease or other types of dementia.[2] A National Study of Long-Term Care Providers (NSLTCP) found that a sizeable portion of long-term care service users had a diagnosis of Alzheimer's disease or other dementias—almost one-third of adult day services center participants and home health patients, about four-tenths of residential care residents, and almost one-half of nursing home residents. The National Center for Assisted Living, a nonprofit entity within the American Health Care Association specializing in assisted living, developed a profile for the average resident of an assisted living facility[3] which found the average resident of an assisted living facility to be nearly 87 years old. Whereas, Section 232 of the National Housing Act defines frail elderly to be individuals 62 years and older who are in need of support for three ADLs. The data and research suggest that Alzheimer's disease or other dementias is a common precipitating factor for using formal long-term care services.[4]

B. State Regulation of Memory Care Facilities Bathing Arrangements

Although many Federal laws affect assisted living, oversight generally occurs at the state level through state licensure, statutes, and standards. Federal regulations issued by the Centers for Medicare and Medicaid Services (CMS) for long-term care facilities simply require that each resident room must be equipped with or located near toilet and bathing facilities.[5] State regulation is often much more precise, specifying minimum standards for toilet and bathing facilities locations and ratios. Thirty-five states have provisions for the physical features of dementia care units, including the residents' living units, access to bathrooms, and external locking doors or controlled methods of egress to prevent unsafe exits.[6] It is important to also note that Federal civil rights laws and regulations also contain accessibility and nondiscrimination requirements that apply, including the Fair Housing Act (24 CFR part 100), the Americans with Disabilities Act (28 CFR parts 35 (Title II) and 36 (Title III)), and Section 504 of the Rehabilitation Act (24 CFR part 8), as applicable.

II. This Proposed Rule

HUD's Section 232 regulation at § 232.7 requires a specific number of bathrooms per residents and specifies the physical configuration of a board and care home or an assisted living facility. This regulation has not been updated in any substantial manner in over 20 years.

HUD is proposing to revise the regulations that govern the number and location of bathrooms in board and care homes and assisted living facilities currently insured or to be insured under the Section 232 program. The revisions would allow providers to configure existing facilities to meet the needs of residents, such as frail elderly individuals who have Alzheimer's disease or related dementia, and who need specialized support, such as assistance with bathing. This revision will allow the financing of existing residential healthcare facilities that do not meet HUD's existing bathroom standards, but which are currently providing necessary care to residents with Alzheimer's disease or related dementia.

This proposed rule would not be applicable to substantial rehab and new construction. A substantially rehabilitated or new facility would be constructed in a manner which allows it to provide services for assisted living residents and memory care residents and meet HUD's long-standing standards set forth in § 232.7.

A. Configuration of Section 232 Insured Facilities To Meet Memory Care Residents' Needs

Subpart A of part 232 codified regulations entitled ''Eligibility Requirements,'' contains requirements for the number of bathrooms per residents and access to those bathrooms for board and care homes and assisted living facilities in § 232.7. Specifically, the regulations provide that not less than one full bathroom must be provided for every four residents of a board and care home or assisted living facility, and bathroom access from any bedroom or sleeping area must not pass through a public corridor or area.

Generally, owners of assisted living facilities that apply for FHA mortgage insurance meet the requirements of § 232.7, because those assisted living facilities serve seniors who seek an independent lifestyle and do not require the higher level of monitoring provided to memory care residents. Rather, these residents simply need assistance to meet ADLs. However, several facilities were unsuccessful when they sought HUD's assistance in refinancing their debt because they could not satisfy the bathroom requirements set forth in HUD's regulations, and several applicants have advised that the requirement regarding the number and location of bathrooms set forth in § 232.7 presented barriers to properly serving memory care residents, who need specialized support, including assistance with bathing. Accordingly, some owners seeking Section 232 financing sought and received waivers from the current requirements in § 232.7 to allow bathroom facility configurations that were better suited to meet the care of memory care residents. Over time, HUD realized that the current regulations are outdated and in need of revision.

B. Proposed Changes

HUD's current prohibition on designs that allow residents to ''[pass] through

[1] Office of the Assistant Secretary for Planning and Evaluation, ''Measuring The Activities of Daily Living: Comparison Across National Surveys'' *https://aspe.hhs.gov/basic-report/measuring-activities-daily-living-comparisons-across-national-surveys.*

[2] Long-Term Care Services in the United States: 2013 Overview Vital and Heath Statistics, Series 2, no 37, Center for Disease Control and Prevention, National Center for Health Statistics, U.S. Department of Health and Human Services p.39 (*citing* Plassman BL, et al., Prevalence of Dementia in the United States: The aging, demographics, and memory study. Neuroepidemiology 29(1–2):125–32. 2007).

[3] Overview of Assisted Living, published by the American Association of Homes and Services for the Aging, American Seniors Housing Association, Assisted Living Federation of American, National Center for Assisted Living, and National Investment Center for the Seniors Housing & Care Industry (2009).

Overview of Assisted Living, published by the American Association of Homes and Services for the Aging, American Seniors Housing Association, Assisted Living Federation of American, National Center for Assisted Living, and National Investment Center for the Seniors Housing & Care Industry (2009). Assisted Living Regulations and Policy: 2015 Edition 06/15/2015, Office of The Assistant Secretary for Planning and Evaluation, U.S. Department of Health & Human Services, *https://aspe.hhs.gov/basic-report/compendium-residential-care-and-assisted-living-regulations-and-policy-2015-edition.*

public areas'' to a bathroom precludes insurance of existing facilities that meet the needs of memory care residents requiring assistance in bathing, and at which the physical redesign of the facility would be infeasible. Consequently, to provide flexibility in accepting the existing design of bedrooms and bathrooms to meet the greater care required for memory care residents, HUD proposes to revise § 232.7 to provide exceptions. Excepted facilities must still comply with any applicable State or local standards and requirements, including requirements specific to memory care facilities. See § 232.2. State or local standards that are more stringent than these requirements would not be preempted by this rule.

Exemption for Facilities Insured Under Section 223(f) or 223(a)(7)

The exemption would apply to memory care facilities whose financing is being insured pursuant to Section 223(f) or 223(a)(7) of the National Housing Act, only when four considerations are satisfied: (1) Memory care residents must reside in a separate secured locked area of the board and care home or assisted living facility; (2) any bathroom access from a memory care resident's bedroom or sleeping area that passes through a public corridor or area must be in that separate, secured, and locked area of the board and care home or assisted living facility; (3) memory care residents of such areas require full assistance or supervision when bathing; and (4) wards serving memory care residents have no more than two beds per unit and a half-bath in each unit. Note that the codified rule prohibits bathroom access from a public area, and this section provides limited conditions under which access from public areas is allowable.

This exemption would not apply to new construction or substantial rehabilitation insured under Section 232, and those projects must continue to follow the long-standing bathroom requirements for board and care home or assisted living units.

III. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made by the Office of Management and Budget regarding whether a regulatory action is significant and therefore subject to review in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule allows additional flexibility for the financing of residential healthcare facilities.

Executive Order 13771

Executive Order 13771, entitled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017. This proposed rule is expected to be an Executive Order 13771 deregulatory action by providing additional flexibility for healthcare facilities, as discussed above.

Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC, 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI 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.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private sector. This proposed rule does not impose any Federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

HUD believes that this proposed rule imposes no additional requirements on small businesses. Currently, HUD has a total of 3,673 residential healthcare facilities in its portfolio and completes approximately 300 firm commitments each year for 223(f) and 223(a)(7) refinances. HUD is providing waivers on 3 percent of those applications and waiver requests continue to increase. As noted in the preamble of the proposed rule, applicants have advised that the requirement regarding the number and location of bathrooms presented barriers to properly serving memory care residents, who need specialize support. HUD believes this proposed rule will resolve the inadequacy of the current bathroom requirements, thus, easing the existing burden on those entities seeking to accommodate memory care residents and entities seeking to finance or refinance facilities. Additionally, both owners, small and large, and memory care residents will benefit from the opportunity to finance their facility in compliance with this new framework.

Accordingly, the undersigned certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble to this rule.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits to the extent practicable and permitted by law, an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of Section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance Number for the Mortgage Insurance Nursing Homes, Intermediate Care Facilities, Board and Care Homes and Assisted Living Facilities is 14.129.

List of Subjects in 24 CFR Part 232

Fire prevention, Health facilities, Loan programs-health, Loan programs-housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated above, HUD proposes to amend 24 CFR part 232 as follows:

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, BOARD AND CARE HOMES, AND ASSISTED LIVING FACILITIES

■ 1. The authority citation for part 232 continues to read as follows:

Authority: 12 U.S.C. 1715b; 1715w; 1735d, and 1735f-19; 42 U.S.C. 3535(d).

Subpart A—Eligibility Requirements

■ 2. Revise § 232.7 to read as follows:

§ 232.7 Bathroom.

(a) *General requirement.* For a board and care home or assisted living facility to be eligible for insurance under this part:

(1) The board and care home or assisted living facility must have no less than one full bathroom provided for every four residents; and

(2) Bathroom access from any bedroom or sleeping area must not pass through a public corridor or area.

(b) *Exemption for existing projects providing memory care.* The following applies to a board and care home or assisted living facility that provides housing for residents in need of memory care, *i.e.,* care for residents who have cognitive impairments, such as Alzheimer's disease or other dementias:

(1) Subject to paragraph (b)(2) of this section, a project seeking insurance under subpart E, pursuant to Section 223(f) or 223(a)(7) of the National Housing Act, may be eligible for insurance without meeting the general requirement in paragraph (a) of this section, if the project meets the following four requirements:

(i) Memory care residents are in a separate, secured, and locked area of the board and care home or assisted living facility;

(ii) Any bathroom access from a memory care resident's bedroom or sleeping area that passes through a public corridor or area is in a separate, secured, and locked area of the board and care home or assisted living facility prescribed in paragraph (b)(1)(i) of this section;

(iii) Memory care residents receive full assistance or supervision while bathing; and

(iv) Memory care residents reside in wards that contain no more than two beds per unit and have a half-bath in each unit.

(2) If a facility serving memory care residents also serves residents who are not in a separate, secured, and locked area of the board and care home or assisted living facility, this exemption applies only to the separate, secured, and locked area in which solely memory care residents reside.

Dated: August 9, 2019.

John L. Garvin,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2019–19778 Filed 9–12–19; 8:45 am]

BILLING CODE 4210–67–P

Notices

Federal Register

Vol. 84, No. 178

Friday, September 13, 2019

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0076]

Environmental Impact Statement; Regulation of the Importation, Interstate Movement, and Intrastate Movement of Plant Pests: Record of Decision

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice advises the public of the Animal and Plant Health Inspection Service's record of decision for the final environmental impact statement titled ''Regulation of the Importation, Interstate Movement, and Intrastate Movement of Plant Pests.''

DATES: An official of the Animal and Plant Health Inspection Service-Plant Protection and Quarantine signed the record of decision on July 17, 2019.

ADDRESSES: You may read the final environmental impact statement and record of decision in our reading room. The reading room 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. The record of decision, final environmental impact statement, and supporting information may also be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0076.* To obtain copies of the documents, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: For questions related to the importation and movement of plant pests and biological control agents, contact Dr. Colin D. Stewart, Assistant Director, Pests, Pathogens, and Biocontrol Permits Branch, Plant Health Programs, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737; *colin.stewart@usda.gov;* (301) 851–2237. For questions related to the environmental impact statement, contact Dr. Tracy Willard, Environmental Protection Specialist/Entomologist, ERAS, PPD, APHIS, 4700 River Road, Unit 149, Riverdale, MD 20737; *Tracy.A.Willard@usda.gov;* (301) 851–3101.

SUPPLEMENTARY INFORMATION: On October 20, 2009, we published in the **Federal Register** (74 FR 53673–53674) a notice [1] of intent to prepare a environmental impact statement (EIS) for the movement of plant pests, biological control organisms, and associated articles. That notice identified three broad alternatives to consider in the EIS and requested public comments to help delineate the scope of the issues and alternatives to be analyzed. The 30-day period for scoping of public comments was extended to November 19, 2009. We received 14 comments during the scoping period.

On January 23, 2017, the U.S. Environmental Protection Agency (EPA) published a notice of availability for the draft EIS in the **Federal Register** (82 FR 7822). The Animal and Plant Health Inspection Service (APHIS) made the draft EIS available and invited public comment through March 20, 2017. Our responses to the four comments received in response to the draft EIS are in an appendix to the final EIS. On June 14, 2019, the EPA published a notice of availability of the final EIS in the **Federal Register** (84 FR 27777). The review period for the final EIS ended on July 15, 2019.

The National Environmental Policy Act (NEPA) implementing regulations in 40 CFR 1506.10 require a minimum 30-day waiting period between the time a final EIS is published and the time an agency makes a decision on an action covered by the EIS. We did not receive any comments during the 30-day waiting period. APHIS has reviewed the final EIS and concluded that it fully analyzes the issues covered by the draft EIS and addresses the comments and suggestions submitted by commenters. This notice advises the public that the waiting period has elapsed, and APHIS has issued a record of decision (ROD) to implement the preferred alternative described in the final EIS.

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

Done in Washington, DC, this 10th day of September 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–19856 Filed 9–12–19; 8:45 am]

BILLING CODE 3410–34–P

[1] The notices, comments, draft and final EIS, record of decision, and supporting documents for this docket can be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0076.*

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Sites for the Ouachita National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed new fee sites.

SUMMARY: The Ouachita National Forest, in Arkansas, is proposing to charge new fees at two recreation sites: Little Missouri Falls Day Use Site and Wolf Pen Gap Off-Highway Vehicle (OHV) Trail Complex. These sites have had additional amenities added to improve services and experiences. Fees are assessed based on the level of amenities and service provided, cost of operation and maintenance, market assessment, and public comment. Funds from fees would be used for the continued operation and maintenance of these recreation sites. Improvements have been made to the picnicking area at Little Missouri Falls Day Use Site and a new access bridge, with new hardened trail surface, has been installed to allow visitors easier access down to the unique geological features and small wading pools below the series of waterfalls along the Little Missouri River. The proposed new fees to help maintain the Little Missouri Falls Day Use Site would be: $5.00 per motorized vehicle, to include OHV/ATV riders. Over the past few years, a series of new

trail routes and improvements have been made at the Wolf Pen Gap OHV Trail Complex for off-highway vehicle (OHV) users. The proposed fees are to be phased in over a period from March 2021 to March 2025, beginning with a fee of $5.00 per ATV/UTV/OHV per day or $40.00 for an annual yearly pass, March 2021. In March 2023, the fee would increase to $8.00 per ATV/UTV/OHV per day or $50.00 for an annual pass. In March 2025, the final fee would increase to $10.00 per ATV/UTV/OHV per day or $60.00 for an annual pass.

DATES: Submit comments about these fee proposals by February 1, 2020, so comments can be compiled, analyzed and shared with the Recreation Resource Advisory Committee. New fees would begin March 1, 2021.

ADDRESSES: Written comments concerning this notice should be addressed to the Supervisor's Office: Norman Wagoner, Forest Supervisor, Ouachita National Forest, P.O. Box 1270, Hot Springs, Arkansas 71902.

FOR FURTHER INFORMATION CONTACT: Bill Jackson, Forest Recreation Program Manager, 501–321–5253. Information about the proposed fee changes can also be found on the Ouachita National Forest website: *http://www.fs.usda.gov/ouachita.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–477) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Dated: August 19, 2019.

Richard A. Cooksey,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2019–19854 Filed 9–12–19; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notices by the Intermountain Region; Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by the ranger districts, forests and regional office of the Intermountain Region to publish legal notices. The intended effect of this action is to inform interested members of the public which newspapers the Forest Service will use to publish notices of proposed actions and notices of decision. This will provide the public with constructive notice of Forest Service proposals and decisions, provide information on the procedures to comment, object or appeal, and establish the date that the Forest Service will use to determine if comments or appeals/objections were timely.

DATES: Publication of legal notices in the listed newspapers will begin on or after September 2019. The list of newspapers will remain in effect until June 2020, when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Pete Gombe, Regional Administrative Review and Litigation Coordinator, Intermountain Region, 324 25th Street, Ogden, UT 84401 and phone (801) 625–5069.

SUPPLEMENTARY INFORMATION: The administrative procedures at 36 CFR 214, 219, and 218 require the Forest Service to publish notices in a newspaper of general circulation. The content of the notices is specified in 36 CFR 214, 219 and 218.

In general, the notices will identify: The decision or project, by title or subject matter; the name and title of the official making the decision; how to obtain additional information; and where and how to file comments or appeals/objection. The date the notice is published will be used to establish the official date for the beginning of the comment or appeal/objection period. The newspapers to be used are as follows:

Regional Forester, Intermountain Region

Regional Forester decisions affecting National Forests in Idaho: *Idaho Statesman*

Regional Forester decisions affecting National Forests in Nevada: *Reno Gazette-Journal*

Regional Forester decisions affecting National Forests in Wyoming: *Casper Star-Tribune*

Regional Forester decisions affecting National Forests in Utah: *Salt Lake Tribune*

Regional Forester decisions that affect all National Forests in the Intermountain Region: *Salt Lake Tribune*

Ashley National Forest

Ashley Forest Supervisor decisions: *Vernal Express*

District Ranger decisions for Duchesne, Roosevelt: *Uintah Basin Standard*

Flaming Gorge District Ranger for decisions affecting Wyoming: *Rocket Miner*

Flaming Gorge and Vernal District Ranger for decisions affecting Utah: *Vernal Express*

Boise National Forest

Boise Forest Supervisor decisions: *Idaho Statesman*

Cascade District Ranger decisions: *The Star-News*

Emmett District Ranger decisions: *Messenger-Index*

District Ranger decisions for Idaho City and Mountain Home: *Idaho Statesman*

Lowman District Ranger decisions: *Idaho World*

Bridger-Teton National Forest

Bridger-Teton Forest Supervisor and District Ranger decisions: *Casper Star-Tribune*

Caribou-Targhee National Forest

Caribou-Targhee Forest Supervisor decisions for the Caribou portion: *Idaho State Journal*

Caribou-Targhee Forest Supervisor decisions for the Targhee portion: *Post Register*

District Ranger decisions for Ashton, Dubois, Island Park, Palisades and Teton Basin: *Post Register*

District Ranger decisions for Montpelier, Soda Springs and Westside: *Idaho State Journal*

Dixie National Forest

Dixie Forest Supervisor decisions: *The Spectrum*

District Ranger decisions for Cedar City and Pine Valley: *The Spectrum*

District Ranger decisions for Escalante and Powell: *The Insider*

Fremont (formerly Teasdale) District Ranger decisions: *The Richfield Reaper*

Fishlake National Forest

Fishlake Forest Supervisor and District Ranger decisions: *The Richfield Reaper*

Humboldt-Toiyabe National Forest

Humboldt-Toiyabe Forest Supervisor decisions that encompass all or portions of both the Humboldt and Toiyabe National Forests: *Reno Gazette-Journal*

Humboldt-Toiyabe Forest Supervisor decisions for the Humboldt portion: *Elko Daily Free Press*

Humboldt-Toiyabe Forest Supervisor decisions for the Toiyabe portion: *Reno Gazette-Journal*
Austin-Tonopah District Ranger decisions: *Reno Gazette-Journal*
Bridgeport District Ranger decisions: *Reno Gazette-Journal*
Carson District Ranger decisions: *Reno Gazette-Journal*
Ely District Ranger decisions: *The Ely Times*
Mountain City, Ruby Mountains and Jarbidge District Ranger decisions: *Elko Daily Free Press*
Santa Rosa District Ranger decisions: *Humboldt Sun*
Spring Mountains National Recreation Area District Ranger decisions: *Las Vegas Review Journal*

Manti-La Sal National Forest

Manti-La Sal Forest Supervisor decisions: *Sun Advocate*
Ferron District Ranger decisions: *Emery County Progress*
Moab District Ranger decisions: *Times Independent*
Monticello District Ranger decisions: *San Juan Record*
Price District Ranger decisions: *Sun Advocate*
Sanpete District Ranger decisions: *Sanpete Messenger*

Payette National Forest

Payette Forest Supervisor decisions: *Idaho Statesman*
Council District Ranger decisions: *Adams County Record*
District Ranger decisions for Krassel, McCall and New Meadows: *Star News*
Weiser District Ranger decisions: *Signal American*

Salmon-Challis National Forest

Salmon-Challis Forest Supervisor decisions for the Salmon portion: *The Recorder-Herald*
Salmon-Challis Forest Supervisor decisions for the Challis portion: *The Challis Messenger*
District Ranger decisions for Lost River, Middle Fork and Challis-Yankee Fork: *The Challis Messenger*
District Ranger decisions for Leadore, North Fork and Salmon-Cobalt: *The Recorder-Herald*

Sawtooth National Forest

Sawtooth Forest Supervisor decisions: *The Times News*
District Ranger decisions for Fairfield and Minidoka: *The Times News*
Ketchum District Ranger decisions: *Idaho Mountain Express*
Sawtooth National Recreation Area: *The Challis Messenger*

Uinta-Wasatch-Cache National Forest

Forest Supervisor decisions for the Uinta portion, including the Vernon Unit: *Provo Daily Herald*
Forest Supervisor decisions for the Wasatch-Cache portion: *Salt Lake Tribune*
Forest Supervisor decisions for the entire Uinta-Wasatch-Cache: *Salt Lake Tribune*
District Ranger decisions for the Heber-Kamas, Pleasant Grove and Spanish Fork Ranger Districts: *Provo Daily Herald*
District Ranger decisions for Evanston and Mountain View: *Uinta County Herald*
District Ranger decisions for Salt Lake: *Salt Lake Tribune*
District Ranger decisions for Logan: *Logan Herald Journal*
District Ranger decisions for Ogden: *Standard Examiner*

Dated: August 19, 2019.

Richard A. Cooksey,

Acting Associate Deputy Chief, National Forest Systems.

[FR Doc. 2019–19855 Filed 9–12–19; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Pennsylvania Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a meeting of the Pennsylvania Advisory Committee to the Commission will convene by conference call at 11:30 a.m. (EST) on Tuesday, September, 17, 2019. The purpose of the meeting is to discuss plans for the briefing meeting on the Committee's project titled, Disparate Discipline of Students of Color, Students with Disabilities, and LGBTQ Students and to announce the members to the Planning Workgroup.

DATES: Tuesday, September 17, 2019, at 11:30 a.m. (EDT)

Public Call-In Information:

Conference call-in number: 800–949–2175 and conference call ID number: 8426059.

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

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 800–949–2175 and conference call ID number: 8426059. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call-in number: 800–949–2175 and conference call ID number: 8426059.

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

Records and documents discussed during the meeting will be available for public viewing as they become available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzjZAAQ;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda: Tuesday, September 17, 2019

I. Rollcall
II. Welcome
III. Project Planning
—Discuss Plans for the Briefing Meeting on the Committee's Civil Rights Project
IV. Other Business
V. Next Meeting
VI. Public Comments

VII. Adjourn

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the federal government shutdown.

Dated: September 9, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–19827 Filed 9–12–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–010]

Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on certain crystalline silicon photovoltaic products (solar products) from the People's Republic of China (China) for the period of review (POR) February 1, 2018, through January 31, 2019.

DATES: Applicable September 13, 2019.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2769.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 2019, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on solar products from China for the POR February 1, 2018, through January 31, 2019.[1] In accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), on February 25, 2019, Shenzhen Portable Electronic Technology Co., Ltd. (Shenzhen Portable) requested a review of the order with respect to itself[2] and on February 28, 2019, Suniva Inc. requested reviews of the order with respect to 11 companies/company groupings.[3] On May 2, 2019, in accordance with section 751(a) of the Act and 19 CFR 351.221(c)(1)(i), Commerce initiated an administrative review of the antidumping duty order on solar products from China with respect to 12 companies/company groupings.[4] On May 22, 2019, Suniva Inc. timely withdrew its request for a review of all 11 companies/company groupings named in its February 28, 2019 request.[5] On June 13, 2019, Shenzhen Portable timely withdrew its request for an administrative review of itself.[6] No other party requested a review.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication date of the notice of initiation of the requested review. Shenzhen Portable and Suniva Inc. withdrew their requests for review within the 90-day deadline. Because Commerce received no other requests for review, and no other requests were made for a review of the antidumping duty order on solar products from China with respect to other companies, we are rescinding the administrative review covering the POR February 1, 2018, through January 31, 2019, in full, in accordance with 19 CFR 351.213(d)(1).

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of solar products from China during the period February 1, 2018, through January 31, 2019, at rates equal to the cash deposit rates for estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: September 9, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–19867 Filed 9–12–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–822]

Certain Frozen Warmwater Shrimp From Thailand: Rescission of Antidumping Duty Administrative Review; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on certain frozen warmwater shrimp from Thailand for the period February 1, 2018, through January 31, 2019, based on the timely withdrawal of all requests for review.

DATES: Applicable September 13, 2019.

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 2816 (February 8, 2019).

[2] *See* Shenzhen Portable's Letter ''Request for Administrative Review,'' dated February 25, 2019.

[3] *See* Suniva Inc's Letter ''Request for Administrative Review,'' dated February 28, 2019.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 18777 (May 2, 2019).

[5] *See* Suniva Inc's Letter ''Withdraw of Request for Administrative Review,'' dated May 22, 2019.

[6] *See* Shenzhen Portable's Letter ''Withdraw of Request for Administrative Review,'' dated June 13, 2019.

FOR FURTHER INFORMATION CONTACT: Alice Maldonado, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4682.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 2019, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on certain frozen warmwater shrimp from Thailand for the period February 1, 2018, through January 31, 2019.[1] In February 2019, Commerce received timely requests, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), to conduct an administrative review of this antidumping duty order from the Ad Hoc Shrimp Trade Action Committee (the petitioner), the American Shrimp Processors Association (ASPA), and certain individual companies.[2] Based upon these requests, on May 2, 2019, in accordance with section 751(a) of the Act, Commerce published in the **Federal Register** a notice of initiation listing 170 companies for which Commerce received timely requests for review.[3]

In July 2018, all parties timely withdrew their requests for an administrative review.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. As noted above, all parties withdrew their requests for review by the 90-day deadline. Accordingly, we are rescinding the administrative review of the antidumping duty order on certain frozen warmwater shrimp from Thailand covering the period February 1, 2018, through January 31, 2019, in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information. Timely written notification of the return/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 a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with section 751(a)(1) and 751(i)(1) of the Act.

Dated: September 9, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–19865 Filed 9–12–19; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 2816 (February 8, 2019).

[2] *See* Petitioner's Letter, ''Certain Frozen Warmwater Shrimp from Thailand: Request for Administrative Review,'' dated February 26, 2019; ASPA's Letter, ''Administrative Review of the Antidumping Duty Order Covering Frozen Warmwater Shrimp from Thailand (POR 14: 01/01/18–01/31/19): American Shrimp Processors Association's Request for an Administrative Review,'' dated February 27, 2019; Good Luck Product Co., Ltd.'s (Good Luck's) Letter, ''Certain Frozen Warmwater Shrimp from Thailand; Request for Review,'' dated February 21, 2019; Thai Royal Frozen Food Co., Ltd.'s (Thai Royal's) Letter, ''Frozen Warmwater Shrimp from Thailand: Request for Administrative Review and Request for Voluntary Treatment,'' dated February 25, 2019; and Thai Union Group Public Co., Ltd.'s, Thai Union Seafood Co., Ltd.'s, Pakfood Public Company Limited's, Asia Pacific (Thailand) Co., Ltd.'s, Chaophraya Cold Storage Co., Ltd.'s, Okeanos Co., Ltd.'s, Okeanos Food Co., Ltd's and Takzin Samut Co., Ltd.'s (collectively, Thai Union/Pakfood's) Letter, ''Frozen Warmwater Shrimp from Thailand: Request for Administrative Review and Request for Voluntary Treatment,'' dated February 25, 2019.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 18777 (May 2, 2019).

[4] *See* Petitioner's Letter, ''Certain Frozen Warmwater Shrimp from Thailand: Domestic Producers' Withdrawal of Review Requests,'' dated July 29, 2019; ASPA's Letter, ''Certain Frozen Warmwater Shrimp from Thailand: American Processors Association's Withdrawal of Review Requests,'' dated July 29, 2019; Thai Union/Pakfood's and Thai Royal's Letter, ''Frozen Warmwater Shrimp from Thailand: Withdrawal of Requests for Administrative Review,'' dated July 26, 2019; and Good Luck's Letter, ''Certain Frozen Warmwater Shrimp from Thailand: Good Luck Product Co., Ltd. Withdrawal of Request for Review,'' dated July 29, 2019.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–868, C–560–834, C–552–826]

Utility Scale Wind Towers From Canada, Indonesia, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations of Countervailing Duty Investigations

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

DATES: Applicable September 13, 2019.

FOR FURTHER INFORMATION CONTACT: Moses Song at 202–482–7885 (Canada); Andrew Medley at 202–482–4987 (Indonesia); Julie Geiger at 202–482–2057 (the Socialist Republic of Vietnam (Vietnam)), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2019, the Department of Commerce (Commerce) initiated countervailing duty (CVD) investigations on utility scale wind towers (wind towers) from Canada, Indonesia, and Vietnam.[1] Currently, the preliminary determinations are due no later than October 2, 2019.

Postponement of Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a CVD investigation within 65 days after the date on which Commerce initiated the investigation.

[1] *See Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations,* 84 FR 38216 (August 6, 2019) (*Initiation Notice*).

However, section 703(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 130 days after the date on which Commerce initiated the investigation if: (A) The petitioner[2] makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On August 30, 2019, the petitioner submitted timely requests that Commerce postpone the preliminary CVD determinations.[3] The petitioner stated that it requests postponement to allow the petitioner and other interested parties sufficient time to analyze the respondents' initial questionnaire responses and prepare deficiency comments, as well as submit new subsidy allegations. In addition, the petitioner stated that the postponements would allow Commerce to issue supplemental questionnaires and receive responses prior to making its preliminary CVD determinations.

In accordance with 19 CFR 351.205(e), the petitioner has stated the reasons for requesting a postponement of the preliminary determinations, and Commerce finds no compelling reason to deny the requests. Therefore, in accordance with section 703(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary determinations to no later than 130 days after the day on which these investigations were initiated, *i.e.,* December 6, 2019. Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed at a later date.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

[2] The petitioner is the Wind Tower Trade Coalition.

[3] *See* the petitioner's letters, ''Utility Scale Wind Towers from Canada: Request to Postpone Preliminary Determination,'' ''Utility Scale Wind Towers from Indonesia: Request to Postpone Preliminary Determination,'' and ''Utility Scale Wind Towers from the Socialist Republic of Vietnam: Request to Postpone Preliminary Determination,'' dated August 30, 2019.

Dated: September 9, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–19866 Filed 9–12–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Advisory Board; Public Meeting of the National Sea Grant Advisory Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of Public Meeting and Notice of Solicitation for Nominations for the National Sea Grant Advisory Board.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Sea Grant Advisory Board (Board). Board members will discuss and provide advice on the National Sea Grant College Program (NSGCP)in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described in the agenda found on the NSGCP website at *http://seagrant.noaa.gov/WhoWeAre/Leadership/NationalSeaGrantAdvisoryBoard/UpcomingAdvisoryBoardMeetings.aspx.*

DATES: The announced meeting is scheduled for Monday, November 11, 2019 from 8:00 a.m. to 3:00 p.m. Atlantic Time and Tuesday, November 12, from 8:45 a.m. to 2:00 p.m. Atlantic Time. There will also be a business meeting on Monday, November 11th for the Board Equal Employment Opportunity biennial training, which is not open to the public. There is no due date for nominations, however the program intends to begin reviewing applications to fill upcoming vacancies by January 31, 2020. Applications will be kept on file for consideration of any Board vacancy for a period of three years from January 31, 2020.

ADDRESSES: The meeting will be held La Concha Resort in San Juan, Puerto Rico. Nominations should be sent to the attention of Ms. Donna Brown, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, SSMC3, Room 11717, Silver Spring, Maryland 20910 or *Donna.Brown@noaa.gov.*

Status: The meeting will be open to public participation with a 15-minute public comment period on Monday, November 11, 2019 at 8:00 a.m. Atlantic Time and Tuesday, November 12, 2019 at 8:45 a.m. Atlantic Time. (check agenda using link in the Summary section to confirm time.) The Board expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by Ms. Donna Brown by Friday, November 1, 2019 to provide sufficient time for Board review. Written comments received after the deadline will be distributed to the Board, but may not be reviewed prior to the meeting date. Seats for the meeting will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: For any questions concerning the meeting, please contact Ms. Donna Brown, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11717, Silver Spring, Maryland 20910. Phone Number: 301–734–1088, Fax Number: 301–713–1031, Email: *Donna.Brown@noaa.gov.*

Special Accommodations: The Board meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Donna Brown by Friday, November 1, 2019.

SUPPLEMENTARY INFORMATION: The Board, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128). The Board advises the Secretary of Commerce and the Director of the NSGCP with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice.

This notice also responds to the Sea Grant Program Improvement Act of 1976, which requires the Secretary of Commerce to solicit nominations at least once a year for membership on the National Sea Grant Advisory Board. To apply for membership to the Board applicants should submit a current resume. A cover letter highlighting specific areas of expertise relevant to the purpose of the Board is helpful, but not required. Nominations will be accepted by email or U.S. mail (See Contact Information Section). NOAA is an equal opportunity employer.

Matters To Be Considered

Individuals Selected for Federal Advisory Committee Membership: Upon selection and agreement to serve on the National Sea Grant Advisory Board, you become a Special Government Employee (SGE) of the United States Government. According to 18 U.S.C. 202(a), an SGE is an officer or employee of an agency who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, not to exceed 130 days during any period of 365 consecutive days, either on a full time or intermittent basis. Please be aware that after the selection process is complete, applicants selected to serve on the Board must complete the following actions before they can be appointed as a Board member:

(a) Security Clearance (on-line Background Security Check process and fingerprinting), and other applicable forms, both conducted through NOAA Workforce Management; and

(b) Confidential Financial Disclosure Report as an SGE, you are required to file a Confidential Financial Disclosure Report annually to avoid involvement in a real or apparent conflict of interest. You may find the Confidential Financial Disclosure Form at the following website. *https://oge.gov/web/oge.nsf/OGE%20Forms/60739EAC38F5697785258363005C02C9.*

Dated: September 3, 2019.

David Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2019–19816 Filed 9–12–19; 8:45 am]

BILLING CODE 3510–KA–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Notice of Correction

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Notice of correction.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled published a document in the **Federal Register** of September 6, 2019 concerning a notice of Proposed Addition.

DATES: *Comments must be received on or before:* October 5, 2019.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of September 6, 2019, in FR Doc. 84 FR 46940–46941, the Committee published its intent to add Coat, Dress, Army Services Green Uniform, Men's, Classic Fit, Heritage Green to its Procurement List. Included in this listing were women's coat sizes, which should have been separately listed. The corrected listing is as follows:

NSN: 8415–00–SAM–4548 through 8415–00–SAM–4644

Coat, Dress, Army Services Green Uniform, Men's, Classic Fit, Heritage Green—Sizes: 33–XS, 34–XS, 35–XS, 36–XS, 37–XS, 38–XS, 39–XS, 40–XS, 41–XS, 42–XS, 33–S, 34–S, 35–S, 36–S, 37–3XS, 38–S, 39–S, 40–S, 41–S, 42–S, 43–S, 44–S, 45–S, 46–S, 47–S, 48–S, 49–S, 50–S, 51–S, 52–S, 54–S, 30–R, 31–R, 32–R, 33–R, 34–R, 35–R, 36–R, 37–R, 38–R, 39–R, 40–R, 41–R, 42–R, 43–R, 44–R, 45–R, 46–R, 47–R, 48–R, 49–R, 50–R, 51–R, 52–R, 54–R, 32–L, 33–L, 34–L, 35–L, 36–L, 37–L, 38–L, 39–L, 40–L, 41–L, 42–L, 43–L, 44–L, 45–L, 46–L, 47–L, 48–L, 49–L, 50–L, 51–L, 52–L, 54–L, 34–XL, 35–XL, 36–XL, 37–XL, 38–XL, 39–XL, 40–XL, 41–XL, 42–XL, 43–XL, 44–XL, 45–XL, 46–XL, 47–XL, 48–XL, 49–XL, 50–XL, 51–XL, 52–XL, 54–XL

NSN: 8415–00–SAM–4645 through 8415–00–SAM–4730

Coat, Dress, Army Services Green Uniform, Women's, Heritage Green—Sizes: 4–JR–P, 6–JR–P, 8–JR–P, 10–JR–P, 12–JR–P, 14–JR–P, 16–JR–P, 8–JR–R, 10–JR–R, 12–JR–R, 14–JR–R, 16–JR–R, 18–JR–R, 20–JR–R, 22–JR–R, 10–JR–T, 12–JR–T, 14–JR–T, 16–JR–T, 12–JR–XT, 14–JR–XT, 16–JR–XT, 4–M–P, 6–M–P, 8–M–P, 10–M–P, 12–M–P, 14–M–P, 16–M–P, 4–M–R, 6–M–R, 8–M–R, 10–M–R, 12–M–R, 14–M–R, 16–M–R, 18–M–R, 20–M–R, 22–M–R, 24–M–R, 26–M–R, 6–M–T, 8–M–T, 10–M–T, 12–M–T, 14–M–T, 16–M–T, 18–M–T, 20–M–T, 22–M–T, 24–M–T, 26–M–T, 16–M–XT, 18–M–XT, 20–M–XT, 4–W–P, 6–W–P, 8–W–P, 10–W–P, 12–W–P, 14–W–P, 16–W–P, 6–W–R, 8–W–R, 10–W–R, 12–W–R, 14–W–R, 16–W–R, 18–W–R, 20–W–R, 22–W–R, 6–W–T, 8–W–T, 10–W–T, 12–W–T, 14–W–T, 16–W–T, 18–W–T, 20–W–T, 22–W–T, 24–W–T, 26–W–T, 12–W–XT, 14–W–XT, 16–W–XT, 18–W–XT

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2019–19831 Filed 9–12–19; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Deletion from the Procurement List.

SUMMARY: The Committee is proposing to delete product previously furnished by such agencies.

DATES: *Comments must be received on or before:* October 13, 2019.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following product is proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):

3915–04–000–4368—Small Web Door Assembly

Contracting Activity: USPS, Topeka Purchasing Center, Topeka, KS

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2019–19832 Filed 9–12–19; 8:45 am]

BILLING CODE 6353–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Consumer Credit Card Market Report of the Bureau of Consumer Financial Protection, 2019

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Consumer Credit Card Market Report of the Bureau of Consumer Financial Protection Bureau.

SUMMARY: The Bureau of Consumer Financial Protection is issuing its fourth biennial Consumer Credit Card Market Report to Congress. The report reviews developments in this consumer market

since the Bureau's most recent biennial report on the same subject in 2017.

DATES: The Bureau released the 2019 Consumer Credit Card Market Report on its website on August 27, 2019.

FOR FURTHER INFORMATION CONTACT: Wei Zhang, Credit Card Program Manager, Division of Research, Markets & Regulations (*wei.zhang@cfpb.gov*), or Austin Mueller, Financial Analyst, Division of Research, Markets & Regulations (*austin.mueller@cfpb.gov*), or 202–435–7000. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

Message From Kathleen L. Kraninger, Director

Credit cards are one of the most commonly-held and widely-used financial products in America. At last count, nearly 170 million Americans hold credit cards, many of them carrying more than one. Some consumers use these strictly as payment devices, paying their balances in full each month, while others use them as a source of credit and carry a balance from month to month.

The Credit Card Accountability Responsibility and Disclosure Act (CARD Act or Act) [1] requires the Bureau to prepare a biennial report to Congress regarding the consumer credit card market. This is the Bureau's fourth report, and details findings regarding, among other things, the cost and availability of credit and innovations in the credit card marketplace. The report also emphasizes that with the passage of time, it is becoming increasingly difficult to correlate the CARD Act with specific effects in the marketplace that have occurred since the issuance of the Bureau's last biennial report, and, even more so, to demonstrate a causal relationship between the CARD Act and those effects. Accordingly, while the Bureau will continue to report on the CARD Act's effects where appropriate and feasible, the Bureau anticipates future reports will focus more on overall conditions in the credit card market.

Evidence-based research like this is one way in which the Bureau discharges its statutory duty to monitor for risks to consumers in the offering or provision of consumer financial products and services. It is my hope that the publication of this report with the latest data on this important market will be useful to consumers, providers of credit card products, and policymakers.

[1] Public Law 111–24, 123 Stat. 1734 (2009).

1. Consumer Credit Card Market Report of the Bureau of Consumer Financial Protection, 2019

1.1 Review Mandate

In May 2009, Congress passed the CARD Act. The Act made substantial changes to the credit card market. Its stated purpose was to ''establish fair and transparent practices related to the extension of credit'' in the credit card marketplace.[2] The Act mandated new disclosures and underwriting standards, curbed certain fees, and restricted certain interest rate increases on existing balances.[3]

Among the CARD Act's many provisions was a requirement that the Board of Governors of the Federal Reserve System (Board) report every two years ''within the limits of its existing resources available for reporting purposes'' on the consumer credit card market, including a number of specified topics.[4] With the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) in 2010, that requirement passed to the Bureau of Consumer Financial Protection (Bureau) alongside broader responsibility for administering most of the CARD Act's provisions. This is the fourth report published pursuant to that obligation, building on prior reports published by the Bureau in 2013, 2015, and 2017.[5]

1.2 Publication

In addition to being delivered to Congress, the full report is available to the public on the Bureau's website at *https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2019.pdf.*

[2] *Id.*

[3] A full summary of CARD Act rules implemented by the Board is at pages 11 through 13 of the Bureau's 2013 Report. *See* Bureau of Consumer Fin. Prot., *Card Act Report,* (Oct. 1, 2013) (2013 Report), *http://files.consumerfinance.gov/f/201309_cfpb_card-act-report.pdf.* The Bureau subsequently reissued these rules without material changes in December 2011. It has since amended the ability to pay rules and the fee harvester rules implemented by the Board. These later changes became effective in, respectively, May and March, 2013.

[4] 15 U.S.C. 1616(a) (2012).

[5] *See* 2013 Report, *supra* note 3; Bureau of Consumer Fin. Prot., *The Consumer Credit Card Market,* (Dec. 2015)(2015 Report), *http://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf;* Bureau of Consumer Fin. Prot., *The Consumer Credit Card Market,* (Dec. 2017) (2017 Report), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2017.pdf.* The Bureau also held a conference in 2011 in which numerous market stakeholders contributed information and perspective on developments in the credit card market. *See* Press Release, Bureau of Consumer Fin. Prot., *CFPB Launches Public Inquiry on the Impact of the Card Act* (Dec. 19, 2012), *available at https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-launches-public-inquiry-on-the-impact-of-the-card-act.*

1.3 Summary of Report

The full 2019 report reviews the state of the consumer credit card market as of the end of 2018. In addition to mandating the Bureau's biennial review and report on the market, the Act also requires the Bureau to ''solicit comment from consumers, credit card issuers, and other interested parties'' in connection with its review.[6] As in past years, the Bureau has done so through a Request for Information (RFI) published in the **Federal Register**, and the Bureau discusses specific evidence or arguments provided by commenters throughout the report.[7]

Over the last few years, the credit card market, the largest U.S. consumer lending market measured by number of users, has continued to grow in almost all dimensions and measures. Market conditions remain stable, in large part because of low unemployment, modest wage growth, and high consumer confidence in the past two years. Credit cardholders continue to use their cards to facilitate transactions, smooth consumption, and earn rewards, all with the added security of stringent limitations on liability. Consumer satisfaction with credit cards remains high, while consumers' debt service burden remains near its lowest level recorded in more than a decade.

Late payment and default rates have risen modestly over this period but remain below pre-recession levels. In general, credit card issuers continue to generate profitable returns consistent with historical levels. Innovation has continued to reshape the market, for both users and providers. New providers, including large and small financial institutions as well as startup and mainstream technology companies have entered—or are in the process of entering—the market with competing products, features, and new ways of issuing credit cards.[8]

Since passage of the CARD Act, researchers, including the Bureau, have studied the effects of the CARD Act on the cost and availability of credit to consumers. This report discusses that research. However, the Bureau also emphasizes that with the passage of time, it is becoming increasingly

[6] 15 U.S.C. 1616(b) (2012).

[7] Request for Information Regarding Consumer Credit Card Market, 84 FR 647 (Jan. 31, 2019).

[8] Any reference in the 2019 report (or earlier reports) to any specific commercial product, service, firm, or corporation name is for the information and convenience of the public, and does not constitute endorsement or recommendation by the Bureau.

difficult to correlate the CARD Act with specific effects in the marketplace that have occurred since the issuance of the Bureau's last biennial report, and, even more so, to demonstrate a causal relationship between the CARD Act and those effects. Accordingly, while the Bureau will continue to report on the CARD Act's effects where appropriate and feasible, the Bureau anticipates that future reports will focus more on overall conditions in the credit card market.

Continuing past practice, the 2019 report revisits most of the same baseline indicators as prior reports to track key market developments and trends. In addition, the report reviews significant findings from economics scholarship focused on the CARD Act. Below is a summary of the core findings from each section of the report:

- Total outstanding credit card balances have continued to grow and at year-end 2018 were nominally above pre-recession levels. Throughout the post-recession period, including the period since the Bureau's 2017 Report, purchase volume has grown faster than outstanding balances. After falling to historical lows in the years following the recession, delinquency and charge-off rates have increased over the last two years. Late payment rates have increased for new originations of general purpose and private label cards, both overall and within different credit tiers.
- The total cost of credit (TCC) on revolving accounts has increased over the last two years and in 2018 stood at 18.7 percent, which is the highest overall level observed in the Bureau's biennial reports. Recent TCC increases are largely the result of increases in the indices underlying variable rates, such as the prime rate. General purpose cards, which generally have interest rates linked to the prime rate, have driven the increase across every credit tier. TCC has fallen over the last two years for private label cards, in part because relatively fewer of these cards have rates linked directly to index rates, offset by a decline in fees as a share of balances.
- Most measures of credit card availability—overall and across credit score tiers—have remained stable or decreased slightly since the Bureau's 2017 Report. Measured by application volume, consumer demand for credit cards peaked in 2016. Approval rates have also declined slightly since 2016. Driven by lower approval rates, annual growth in the number of credit card accounts opened and the amount of credit line on new accounts has also leveled off. Even so, total credit line across all consumer credit cards reached $4.3 trillion in 2018, nearly equal to its pre-recession high, largely due to the growth in unused line on accounts held by consumers with superprime scores.
- Cardholders have increased their use of rewards cards, thereby driving up the cost to industry to fund these products. The level and consumer cost of balance transfer and cash advance use remains largely unchanged.
- In the ten years since the CARD Act was passed, social scientists have examined the Act's effects on consumers and the credit card market as a whole. Using a range of theoretical and empirical approaches, scholarship has looked at a range of potential direct and indirect effects of the CARD Act, including pricing, credit availability, consumer repayment behavior, and cardholding.
- Since the 2017 Report, issuers have lowered the range of their daily limits on debt collection phone calls for delinquent credit card accounts. In addition, over that same period, the volume of balances settled through for-profit debt settlement companies (DSCs) grew at a faster rate than issuers' overall accounts receivable did.
- New technologies further enhance consumers' interactions with and control over their credit cards—from originating one card rather than another, to ways of transacting and paying. Cardholders increasingly use and service their cards through digital portals, including those accessed via mobile devices. New technologies such as artificial intelligence and machine learning, as well as new data sources, are changing how providers are able to manage risk and provide customer service.

1.4 Regulatory Agenda

As discussed in its Unified Agenda for Spring 2019, the Bureau is undertaking initiatives to review inherited regulations for the purpose of ensuring that outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens, as well as to fulfill other purposes and objectives of the Bureau and the statutes enumerated in the Dodd-Frank Wall Street Reform and Consumer Protection Act, including the Truth In Lending Act (TILA), wherein the CARD Act is codified.[9] As part of its long-term agenda, the Bureau expects to focus on subparts B and G of Regulation Z, which implement the Truth in Lending Act with respect to open-end credit generally and credit cards in particular. For instance, the Bureau expects to consider rules to modernize the procedures for submitting credit card agreements to the database of credit card agreements that it is required to maintain under the CARD Act to reduce burden on issuers that submit credit card agreements to the Bureau and make the database more useful for consumers and the general public. The Bureau expects to identify other opportunities to clarify ambiguities, address developments in the marketplace, and modernize or streamline the open-end credit provisions. That effort will be informed by the Bureau's ongoing monitoring of the consumer credit card market, including the 2019 report.

Dated: August 16, 2019.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2019–19811 Filed 9–12–19; 8:45 am]

BILLING CODE 4810–AM–P

[9] *See https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=3170-AA73.*

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Matching Program

AGENCY: Department of Education.

ACTION: Notice of a New Matching Program.

SUMMARY: This document provides notice of the re-establishment of a matching program between the Department of Education (Department or ED) and the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS). ED seeks access to the information contained in the DHS–USCIS database (referred to as the Verification Information System (VIS)) for the purpose of verifying the immigration status of applicants for assistance for title IV federal student aid.

DATES: Submit your comments on the proposed matching program on or before October 15, 2019.

The matching program will go into effect at the later of the following two dates: (1) October 21, 2019, or (2) 30 days after the publication of this notice, on September 13, 2019, unless comments have been received from interested members of the public requiring modification and replication of the notice. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months, if the respective Data Integrity Boards (DIBs) of the Department and USCIS determine that the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

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 *https://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 the ''help'' tab.

• *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Marya Dennis, Management and Program Analyst, U.S. Department of Education, Federal Student Aid, Union Center Plaza, 830 First Street NE, Washington, DC 20002–5345.

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 *https://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 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 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: Ms. Marya Dennis, Management and Program Analyst, U.S. Department of Education, Federal Student Aid, Union Center Plaza, 830 First Street NE, Washington, DC 20002–5345. Telephone: (202) 377–3385.

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:

We provide this notice in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a); Office of Management and Budget (OMB) Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, 54 FR 25818 (June 19, 1989); and OMB Circular No. A–108, 81 FR 94424 (December 23, 2016).

The prior Computer Matching Agreement (CMA) was published in the **Federal Register** on March 20, 2017 FR 14355). Under the provisions of the Computer Matching and Privacy Protection Act of 1988, Public Law 100–503, the CMA was renewed for an additional 12 months through October 20, 2019, because: (1) The program was conducted without change; and (2) each Data Integrity Board Chairperson certified in writing that the program was conducted in compliance with the CMA. ED and USCIS are now re-establishing the matching program through this notice.

Participating Agencies

ED and USCIS.

Authority for Conducting the Matching Program

ED seeks this information for the purpose of verifying the immigration status of applicants for assistance, as authorized by section 484(g) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1091(g), consistent with the requirements of section 484(a)(5), 20 U.S.C. 1091(a)(5). ED is authorized to participate in the matching program, which is the subject of this agreement, under the authority of section 484(g)(3) of the HEA, 20 U.S.C. 1091(g)(3), and 20 U.S.C. 3475. DHS–USCIS is authorized to participate in this immigration status verification system under section 103 of the Immigration and Nationality Act, as amended, 8 U.S.C. 1103, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, 110 Stat. 3009, as amended, 8 U.S.C. 1373(c).

Categories of Individuals

Individuals who have completed the Free Application for Federal Student Aid (FAFSA), have indicated that they are an ''Eligible noncitizen'' and have provided their Alien Registration Number (ARN).

Categories of Records

ED will provide to the DHS the ARN, Social Security number, first and last name, and date of birth of each applicant for financial assistance under title IV of the HEA who indicates that they are an ''Eligible noncitizen'' and have provided their Alien Registration Number (ARN) in his or her application for financial assistance under title IV of the HEA.

System(s) of Records

ED system of records: Federal Student Aid Application File (18–11–01) (76 FR 46774, August 3, 2011).

DHS–USCIS system of records: Systematic Alien Verification for Entitlements (SAVE) System (81 FR 78619, November 8, 2016).

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (such as, braille, large print, audiotape, or compact disc) on request to the 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 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 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: September 10, 2019.

Mark A. Brown,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2019–19891 Filed 9–12–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice Announcing Availability of Funds and Application Deadline for the 2019 Temporary Emergency Impact Aid for Displaced Students Program; Disaster Recovery Assistance for Education

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice announcing the availability of funds and application deadline for the 2019 Temporary Emergency Impact Aid for Displaced Students (2019 Emergency Impact Aid) program under Title VIII of the Additional Supplemental

Appropriations for Disaster Relief Act of 2019 (hereafter referred to as the Disaster Supplemental), Catalog of Federal Domestic Assistance (CFDA) number 84.938C. This notice relates to the approved information collection under OMB control number 1810–0739.

DATES:

Applications Available: September 13, 2019.

Deadline for Transmittal of Applications: For State educational agency (SEA) applicants, October 23, 2019.

For local educational agencies (LEAs) to submit applications to SEAs under the Emergency Impact Aid program: October 15, 2019.

ADDRESSES: The addresses pertinent to this program, including the addresses for obtaining and submitting an application, can be found under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Christopher Tate, U.S. Department of Education, Temporary Emergency Impact Aid for Displaced Students Program, 400 Maryland Avenue SW, Room 3W229, Washington, DC 20202–5970. Telephone: (202) 453–6047. Email: *Christopher.Tate@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Under the 2019 Emergency Impact Aid program, we will award grants to eligible SEAs to enable them to make emergency impact aid payments to eligible LEAs and eligible Bureau of Indian Education (BIE)-funded schools for costs incurred during the 2018–2019 school year as a result of educating public and non-public school students displaced by Hurricanes Florence and Michael, Typhoon Mangkhut, Super Typhoon Yutu, and wildfires, earthquakes, and volcanic eruptions occurring in calendar year 2018 and tornadoes and floods occurring in calendar year 2019 in those areas for which a major disaster or emergency is declared under section 401 or 501 of the Robert T. Stafford Disaster Relief and Emergency Act (42 U.S.C. 5170 and 5190) (referred to in this notice as ''a covered disaster or emergency'').

Background: This notice announces the availability of funds and application deadline for eligible applicants for 2019 Emergency Impact Aid supported by the Disaster Supplemental, which was signed into law on June 6, 2019. The law provides $17.2 billion in FY 2019 supplemental appropriations to Federal departments and agencies for expenses related to the consequences of disasters in 2018 and 2019 for which a covered disaster or emergency has been declared, including $165 million for education-related disaster recovery activities. The Disaster Supplemental also provides the Secretary with the discretion to determine which authorized disaster recovery programs to fund. The Department plans to award funds through the 2019 Immediate Aid to Restart School Operations program, 2019 Emergency Impact Aid, Emergency Assistance to Institutions of Higher Education, and Project SERV (School Emergency Response to Violence). The amounts awarded under the 2019 Emergency Impact Aid program will be based on data received from eligible applicants.

Exemption from Rulemaking: This program is exempt from the rulemaking requirements in section 437 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232) and section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), as established in division B, subdivision 1, title VIII, ''Hurricane Education Recovery'' paragraph (6), of Public Law 115–123, the Bipartisan Budget Act of 2018, and title VIII of the Disaster Supplemental.

Program Authority: Title VIII of the Disaster Supplemental, Public Law 116–20 (enacted June 6, 2019).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 76, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: The open licensing requirement in 2 CFR 3474.20 does not apply to the 2019 Emergency Impact Aid program.

II. Award Information

Estimated Available Funds: Congress appropriated $165 million to the Department under the Disaster Supplemental, of which the amounts awarded under this program and others authorized in the law will be based on demand and impact data received from eligible applicants. Awards to eligible applicants may be adjusted downward or upward to match available funding and need.

Period of Funding Availability: SEAs, LEAs, BIE-funded, and non-public schools must obligate funds received under this program by May 31, 2020, for expenses incurred during the 2018–2019 school year. SEAs must return to the Department any funds that are not obligated by SEAs, LEAs, or BIE-funded schools by this deadline.

III. Eligibility Information

1. *Eligible Applicants:* SEAs in any State, including the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Subgrantees:* The SEA may use 2019 Emergency Impact Aid funds to make payments to eligible LEAs and BIE-funded schools for costs incurred during the 2018–2019 school year as a result of educating public and non-public school students displaced by a covered disaster or emergency.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applications for this program must be submitted in both of the following two ways: (a) Submit an application in electronic portable document format (PDF) or Microsoft Word format via email to *K12EmergencyImpactAid@ed.gov.* Questions regarding application submission can be directed to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. (b) Mail the original and two copies of your application by express mail service through the U.S. Postal Service or through a commercial carrier to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make timely awards.

V. Application Review Information

1. *Student Enrollment Data for the Emergency Impact Aid program:* In the 2019 Emergency Impact Aid application for SEA funding, SEAs must report quarterly data on the numbers of displaced students enrolled in public, non-public, and BIE-funded schools as of four different count dates. SEAs must report separate counts of (a) displaced students with disabilities, (b) displaced

English learners without disabilities, and (c) all other displaced students. The Department has identified four suggested quarterly count dates for identifying numbers of eligible displaced students: (i) October 1, 2018; (ii) December 1, 2018; (iii) February 1, 2019; and (iv) April 1, 2019. SEAs may use these dates or select count dates that fall within a 21-day range for each of the quarters, that is, within 10 calendar days before or after these dates. Each SEA must select four specific dates for the quarterly counts and use those dates consistently for all applicants within the SEA.

SEAs must submit enrollment data for all four quarters of the 2018–19 school year, which may include estimated data, in their initial 2019 Emergency Impact Aid applications.

We will use the enrollment data that are included in the SEA applications to make payments under the 2019 Emergency Impact Aid program.

We also are aware that it may take some time for SEAs and LEAs to count, retroactively for all four quarters of the 2018–19 school year, all eligible students, including students who subsequently may have moved to other States or LEAs. Therefore, SEAs are encouraged to provide their best available estimates of eligible students for each count date in their applications, and, in the event that they collect more satisfactory data that were not available at the time of application, they must amend their applications if they need to make upward or downward revisions to their initial child counts. The Secretary will make appropriate upward or downward revisions to subsequent payments, or request a refund for any overpayment, based on the final data provided by an SEA. SEAs must submit any application amendments affecting allocations under the 2019 Emergency Impact Aid program to the Department no later than January 31, 2020.

2. *Other Requirements for 2019 Emergency Impact Aid:* LEAs must make 2019 Emergency Impact Aid payments to accounts on behalf of displaced non-public school students within 14 calendar days of receiving payments from their SEAs.

The Secretary may solicit from any applicant at any time additional information needed to process an application for the program.

3. *Special Funding Rule for 2019 Emergency Impact Aid:* In calculating funding under the Impact Aid Basic Support Payments program, authorized under section 7003 of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7703), for an eligible LEA that receives a 2019 Emergency Impact Aid payment, the Secretary does not count displaced students served by such agency for whom a 2019 Emergency Impact Aid payment is received under this section, nor are such students counted for the purpose of calculating the total number of children in average daily attendance at the schools served by such agency as provided in section 7003(b)(3)(B)(i) of the ESEA (20 U.S.C. 7703(b)(3)(B)(i)).

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program, the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Additional Monitoring:* This program is designated as ''susceptible to significant improper payments'' for purposes of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note). See title VIII of the Disaster Supplemental, and Public Law 115–123, the Bipartisan Budget Act of 2018, division B, subdivision 1, title XII, § 21208(a), February 9, 2018, 132 Stat. 108. Consequently, if 2019 Emergency Impact Aid program grantees expend more than $10,000,000—a level of expenditures that the Department anticipates will be met—there will be additional requirements for grantees under the program, including making expenditure information and documentation available for review by the Department. We will provide additional information about this requirement after we make awards, providing advanced notice to ensure grantees understand their responsibilities for documenting all expenditures of 2019 Emergency Impact Aid funds. In general, these documentation requirements are identical to those ordinarily required for all Federal education program expenditures; the primary impact of the Improper Payments Information Act will be increased review of this documentation.

VI. Award Administration Information

1. *Award Notices:* If you receive a grant award under the 2019 Emergency Impact Aid program, we will notify your U.S. Representative(s) and U.S. Senators, if applicable, and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may also notify you informally.

2. *Reporting:* (a) If you apply for a grant under this program, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations 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 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.

Frank Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2019–19878 Filed 9–12–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice Announcing Availability of Funds and Application Deadline for the 2019 Immediate Aid to Restart School Operations Program; Disaster Recovery Assistance for Education

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice announcing the availability of funds and the application deadline for eligible applicants for the 2019 Immediate Aid to Restart School Operations (2019 Restart) program under title VIII of the Additional Supplemental Appropriations for Disaster Relief Act of 2019 (hereafter referred to as the Disaster Supplemental), Catalog of Federal Domestic Assistance (CFDA) number 84.938A. This notice relates to the approved information collection under OMB control number 1810–0740.

DATES:

Applications Available: September 13, 2019.

Deadline for Transmittal of Applications: October 23, 2019.

ADDRESSES: The addresses pertinent to this program, including the addresses for obtaining and submitting an application, can be found under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Molly Budman, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W303, Washington, DC 20202–6450. Telephone: (202) 453–5791. Email: *K12.Restart@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Under the 2019 Restart program, we will award grants to eligible State educational agencies (SEAs) to assist local educational agencies (LEAs) and non-public schools with expenses related to the restart of elementary and secondary schools affected by the consequences of Hurricanes Florence and Michael, Typhoon Mangkhut, Super Typhoon Yutu, and wildfires, earthquakes, and volcanic eruptions occurring in calendar year 2018 and tornadoes and floods occurring in calendar year 2019 in those areas for which a major disaster or emergency has been declared under section 401 or 501 of the Robert T. Stafford Disaster Relief and Emergency Act (42 U.S.C. 5170 and 5190)(hereafter referred to as ''a covered disaster or emergency''). Funds may be used to assist school administrators and personnel in restarting school operations, re-opening schools, and re-enrolling students.

Background: This notice announces availability of funds and application deadline for eligible applicants for the 2019 Restart program. The Disaster Supplemental, which was signed into law on June 6, 2019, provides $17.2 billion in supplemental appropriations to Federal departments and agencies for expenses related to the consequences of disasters in 2018 and 2019 for which a covered disaster or emergency has been declared, including $165 million for education-related disaster recovery activities. The Disaster Supplemental also provides the Secretary of Education with discretion to determine which disaster recovery programs to fund. The Department plans to award funds through the 2019 Restart program, Temporary Emergency Impact Aid for Displaced Students, Emergency Assistance to Institutions of Higher Education, and Project School Emergency Response to Violence.

Exemption From Rulemaking: The 2019 Restart program is exempt from the rulemaking requirements in section 437 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232) and section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), as established in division B, subdivision 1, title VIII, ''Hurricane Education Recovery'' paragraph (6), of Public Law 115–123, the Bipartisan Budget Act of 2018, and title VIII of the Disaster Supplemental.

Program Authority: Title VIII of the Disaster Supplemental, Public Law 116–20 (enacted June 6, 2019).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 76, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: The open licensing requirement in 2 CFR 3474.20 does not apply to the 2019 Restart program.

II. Award Information

Estimated Available Funds: Congress appropriated $165 million to the Department under the Disaster Supplemental that will be used to make awards under this program and others authorized in the law. Consequently, the specific amount available for the 2019 Restart program will be based on the Department's assessment of relative need across funded programs as determined by such factors as the number of applicants and their demonstrated need for assistance. For this reason, awards to eligible 2019 Restart applicants may be adjusted downward (or upward) to match available funding.

Note: We strongly encourage SEAs to provide services or assistance directly to LEAs or non-public schools, or award Restart funds to eligible LEAs, at the earliest possible date. SEAs and LEAs must obligate the funds in a timely fashion to address the immediate needs of both public and non-public schools with expenses related to the restart of elementary schools and secondary schools.

Grant Period under the 2019 Restart Program: Funds received under this program by SEAs and LEAs (including those funds used by the public agencies to provide services and assistance to non-public schools) must be expended within 24 months of obligation of the funds by the Department. Funds are available for obligation by the Department through September 30, 2020.

III. Eligibility Information

1. *Eligible Applicants:* SEAs affected by the following covered disasters or emergencies: Hurricanes Florence and Michael, Typhoon Mangkhut, Super Typhoon Yutu, and wildfires, earthquakes, and volcanic eruptions occurring in calendar year 2018 and tornadoes and floods occurring in calendar year 2019 in those areas for which a major disaster or emergency has been declared under section 401 or 501 of the Robert T. Stafford Disaster Relief and Emergency Act (42 U.S.C. 5170 and 5190) and that have education-related needs resulting from the covered disaster or emergency. A general list of disaster declarations and emergency declarations can be found at *www.fema.gov/disasters.*

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Subgrantees:* The SEA may use Restart funds to provide services or assistance directly to eligible LEAs or non-public schools, or it may award

Restart funds to eligible LEAs to reimburse them for costs incurred, or to provide funding for other allowable purposes. In providing services or assistance to non-public schools, control of the funds must be maintained by the SEA, and LEA, or another public agency.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applications for this program must be submitted in both of the following two ways:

(a) Submit an application in electronic portable document format (PDF) or Microsoft Word format via email to *k12.restart@ed.gov.* Questions regarding application submission can be directed to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

(b) Mail the original and two copies of your application by express mail service through the U.S. Postal Service or through a commercial carrier to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make timely awards.

V. Application Review Information

1. *School Data:* Applicants must provide data on the number of public and non-public students who were enrolled during the school year prior to the covered disaster or emergency in elementary and secondary schools that were closed as a result of the covered disaster or emergency.

2. *Impact and Needs Assessment:* Applicants must also describe the impact of the covered disaster or emergency on each affected LEA and non-public school and the activities, materials, and services required to restart school operations, re-open schools, and re-enroll students in each affected LEA and non-public school. Note that this description may cover activities already completed or prospective actions expected to continue over a period of time.

3. *Estimated or Actual Costs:* Applicants must identify estimated or actual costs of meeting the recovery needs identified in paragraph 2, Impact and Needs Assessment, which they propose to pay with funds provided through the 2019 Restart program.

4. *Proposed Use of Funds:* Applicants must describe the services and assistance, consistent with allowable uses of funds under the 2019 Restart program, which they propose to provide with the funds requested in paragraph 3, Estimated or Actual Costs.

Restart funds may be used for the following activities: Recovery of student and personnel data and other electronic information; replacement of school district information systems, including hardware and software; financial operations; reasonable transportation costs; rental of mobile educational units and leasing of neutral sites or spaces; initial replacement of instructional materials and equipment, including textbooks; redeveloping instructional plans, including curriculum development; initiating and maintaining education and support services; specific educator-related costs; and other activities related to the purpose of the program subject to approval by the Department. Please note that the legislation expressly prohibits the use of Restart funds for construction or major renovation of schools. If necessary and reasonable, these funds may be used for minor remodeling and repair.

Note: With regard to paragraphs 1–4, applicants are encouraged to submit their best available data as of the application deadline. Applicants that meet the initial application deadline may provide any updated data through November 22, 2019 to *k12.restart@ed.gov.* SEAs must submit any application amendments affecting applications under this program to the Department no later than November 22, 2019.

5. *Compliance Assurance:* Each applicant must provide an assurance that it will comply with all requirements that apply to the 2019 Restart program, including, but not limited to, certifying that the SEA will use funds only for allowable activities, complying with reporting requirements, reserving an amount of funding to be made available to non-public schools based on needs and proportionate to enrollment, cooperating with any Inspector General inquiries, complying with applicable Office of Management and Budget assurances, signing and submitting a certification regarding lobbying using Department Form 80–0013, and complying with any other applicable assurances and certifications.

6. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program, the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions, and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

7. *Additional Monitoring:* This program is designated as ''susceptible to significant improper payments'' for purposes of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note). See title VIII of the Disaster Supplemental, and Public Law 115–123, the Bipartisan Budget Act of 2018, division B, subdivision 1, title XII, § 21208(a), February 9, 2018, 132 Stat. 108. Consequently, once 2019 Restart program grantees have expended more than $10,000,000—a level of expenditures that the Department anticipates will be met—there will be additional requirements for grantees under the program, including making expenditure information and documentation available for review by the Department. We will provide additional information about this requirement after we make awards, providing advanced notice to ensure grantees understand their responsibilities for documenting all expenditures of 2019 Restart funds. In general, these documentation requirements are identical to those ordinarily required for all Federal education program expenditures; the primary impact of the Improper Payments Information Act will be increased review of this documentation.

VI. Award Administration Information

1. *Award Notices:* If you receive a grant award under the 2019 Restart program, we will notify your U.S. Representative(s) and U.S. Senators, if applicable, and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may also notify you informally.

2. *Reporting:* (a) If you apply for a grant under this program, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document

and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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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.

Frank Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2019–19880 Filed 9–12–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

List of Borrowers Who Have Defaulted on Their Health Education Assistance Loans

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

SUMMARY: Federal Student Aid (FSA), as required by the Public Health Service Act (the Act), is publishing this list of Health Education Assistance Loan (HEAL) borrowers who have defaulted on their loans as of August 1, 2019. This information is also made available for use by organizations authorized by the Act.

FOR FURTHER INFORMATION CONTACT:

For Defaulted HEAL Borrowers with Account-Related Questions:

A borrower who is in default on a HEAL program loan and who has an account-related question should contact: HHS Program Support Center, Accounting Services, Debt Collection Center, Mailstop 10230B, 7700 Wisconsin Avenue, Suite 8–8110D, Bethesda, MD 20857. Telephone: (301) 492–4664.

For General HEAL Information:

For general HEAL program questions, contact the HEAL program team: Telephone: (844) 509–8957. Email: *HEAL@ed.gov.*

For Organizations Requesting HEAL Defaulted Borrower Information or Confirmation under Section 709(c)(2) of the Act (42 U.S.C. 292h(c)(2)):

To request information related to a HEAL defaulted borrower or confirmation of the borrower's default status, contact the HEAL program team: Telephone: (844) 509–8957. Email: *HEAL@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: From fiscal year 1978 through fiscal year 1998, the HEAL program insured loans made by participating lenders to eligible graduate students in schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, public health, pharmacy, and chiropractic, and in programs in health administration and clinical psychology. Authorization for new HEAL program loans was discontinued on September 30, 1998.

Under division H, title V, section 525 of the Consolidated Appropriations Act, 2014 (Pub. L. 113–76), and title VII, part A, subpart I of the Public Health Service Act (42 U.S.C. Chapter 6A), the authority to administer the HEAL program, including servicing, collecting, and enforcing any loans made under the HEAL program that remain outstanding, was transferred from the Secretary of Health and Human Services to the Secretary of Education effective July 1, 2014. The Act and a system of records notice published in the **Federal Register** on August 14, 2018 (83 FR 40264), permits the publishing of the list of HEAL borrowers who have defaulted on their loans.

Information on the HEAL program is available on the Department of Education's Information for Financial Aid Professionals (IFAP) website at: *www.ifap.ed.gov.*

List of Defaulters: The following list provides the names and other information of borrowers who have defaulted on their HEAL program loans as of August 1, 2019. Specifically, the list includes the borrower's name, last known city and State of residence, area of practice, and the total amount due on the HEAL debt. The Department publishes this information in order to correctly identify the person in default and to provide relevant information to the authorized recipients of this information, such as State licensing boards and hospitals.

In accordance with section 709(c)(2) of the Act (42 U.S.C. 292h(c)(2)), FSA will provide the information included in this **Federal Register** notice and updated information on the borrower's default status to relevant Federal agencies and to schools, school associations, professional and specialty associations, State licensing boards, hospitals with which listed borrowers may be associated, and other relevant organizations, upon written request to the email address listed under **FOR FURTHER INFORMATION CONTACT**. Any written request must be on the letterhead of the organization making the request.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) by contacting the HEAL program team: Telephone: (844) 509–8957. Email: *HEAL@ed.gov.*

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 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.

Program Authority: 20 U.S.C. 1070b *et seq.* and 1087aa *et seq.;* 42 U.S.C. 2751 *et seq.* and 42 U.S.C. 292h(c)(1).

Dated: September 10, 2019.

Mark A. Brown,

Chief Operating Officer, Federal Student Aid.

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS BY LAST NAME AS OF AUGUST 1, 2019

Last name	First name	Mi	City	State	Discipline	Date reported	Amount due
Abe	Gregory	N	Tujunga	CA	PHA	1/21/98	73,842
Ackley	Brainard	L	Kitty Hawk	NC	CHM	1/21/98	12,608
Acosta-Delgado	Feliberto	D	Bronx	NY	DEN	3/1/99	95,507
Adams	Stephen	....	League City	TX	CHM	3/1/99	90,698
Adeli	Mojgan	E	Los Angeles	CA	DEN	3/1/99	146,939
Adkins	Margo	M	Austin	TX	MED	1/21/98	917,729
Aiken	Richard	F	Gardena	CA	CHM	8/21/15	89,816
Al-Amin	Ihsaan	....	Ringgold	GA	MED	11/2/00	100,090
Alana	Manuela	L	Pharr	TX	POD	9/24/14	243,463
Alden	Thomas	E	Cambridge	MA	CHM	11/2/00	132,038
Allen	Lawrence	P	Temecula	CA	CHM	7/31/98	355,657
Alston	Linda	D	Philadelphia	PA	OST	5/21/19	191,621
Alter	Dale	N	Tucson	AZ	MED	2/5/09	439,910
Anaya	Enid	L	South Setauket	NY	MED	5/21/19	26,290
Anderson	Angela	J	Torrance	CA	MED	1/21/98	181,286
Anderson	Gwendolyn	....	Lansdowne	PA	POD	1/21/98	281,482
Anyaji	George	I	Chula Vista	CA	MED	4/25/14	121,658
Aquino	Sayira	I	Homestead	FL	POD	8/15/19	81,457
Armstrong	Daniel	J	San Francisco	CA	CHM	5/17/99	162,118
Arnesen	Douglas	W	Atascadero	CA	CHM	5/17/99	56,496
Azcueta	Justina	Q	San Jose	CA	DEN	5/7/13	165,363
Bacon	Pamela	M	Hollister	MO	DEN	5/17/99	254,756
Baez	Ana	V	Somerset	NJ	DEN	5/14/02	148,826
Bahadue	George	P	Hialeah	FL	OST	3/1/99	267,652
Bailey	David	W	San Bernadino	CA	MED	3/25/19	47,374
Baird	Curtis	J	Mount Airy	MD	MED	5/14/02	112,504
Baker	Walter	A	Mill Valley	CA	DEN	5/11/05	470,795
Baker	Gale	....	Olympia Flds	IL	DEN	5/17/01	78,373
Ball JR	Thomas	....	Detroit	MI	POD	11/12/13	111,339
Baranco	Patricia	E	Lake Charles	LA	DEN	3/1/99	884,070
Baratta	George	....	Danville	CA	CHM	11/2/00	30,719
Barber	Mildred	L	Washington	DC	MED	11/14/07	151,743
Barile	Joseph	V	Valatie	NY	CHM	3/25/19	12,504
Barnes	De Elward	F	Los Angeles	CA	CHM	11/10/04	56,818
Barnett	Brian	D	Pearland	TX	CHM	1/21/98	79,638
Barney	Thomas	W	Sugar Grove	IL	CHM	8/22/17	48,040
Barrows	Joni	....	Newmarket	NH	DEN	5/19/09	690,428
Bayles	Jay	C	Westlake Village	CA	CHM	8/11/05	122,883
Bear	Todd	L	El Paso	TX	CHM	9/24/14	78,406
Beckford	Audrey	L	East Orange	NJ	OST	2/15/02	73,832
Bennett	Kathy	....	Caldwell	ID	CHM	8/12/16	83,084
Bentley JR	James	W	Van Nuys	CA	DEN	8/12/16	25,888
Bergstrom	Eric	R	Anaheim Hills	CA	CHM	5/7/13	33,510
Bertin	Michael	W	West Bloomfield	MI	DEN	1/21/98	9,624
Bertsch	Dar	A	Santa Cruz	CA	CHM	4/25/14	42,964
Bettis	Gail	M	Bellrose	NY	DEN	1/21/98	101,502
Biosah-Coleman	Ada	N	Houston	TX	PUB	9/24/14	51,189
Bittenbender	Robert	G	Clarks Summit	PA	CHM	11/7/01	44,109
Bland JR	Henry	N	Jacksonville	FL	DEN	5/14/02	246,858
Blase	Richard	M	Worcester	MA	DEN	1/21/98	483,327
Bolton	Paul	K	Kansas City	MO	CHM	11/2/00	133,930
Booher	Janette	L	South San Francisco	CA	CHM	2/1/01	65,325
Boshes	Perri	D	Deerfield Beach	FL	CHM	1/21/98	78,122
Bowman	Jeffrey	S	Salt Lake City	UT	CHM	1/21/98	23,099
Brandt	Susan	J	Winston Salem	NC	MED	7/6/12	100,331
Brantley	Carl	E	Houston	TX	DEN	9/24/14	44,823
Breazeale	Michael	E	Marietta	GA	CHM	1/21/98	328,844
Brodie	Douglas	K	San Antonio	TX	DEN	1/21/98	394,224
Brodsky	Barbara	L	San Francisco	CA	CHM	1/21/98	22,179
Bronk	Brian	R	Santa Monica	CA	CHM	1/21/98	74,857
Broussard	Charlotte	R	Carrollton	TX	CHM	11/2/00	19,665
Broussard	Linda	C	Los Angeles	CA	CHM	2/10/11	3,911
Brown	Darla	J	Highlands	TX	CHM	1/21/98	470,707
Brown	Jeffrey	T	Gainesville	GA	CHM	11/7/01	32,677
Brown-Collins	Jannas	E	Columbia	SC	DEN	5/31/18	584,500
Bruyning	Edwin	F	Miami	FL	DEN	1/21/98	350,783
Buchta	Joseph	F	Bradenton	FL	DEN	7/26/18	35,648
Buchwald-Heilig	Bonnie	I	Tucson	AZ	CHM	1/21/98	42,539
Buford	John	I	Philadelphia	PA	OST	5/17/01	64,304
Bui	Khai	T	Springfield	MA	DEN	8/16/06	89,759
Bulen	Jerry	L	Brandon	FL	OST	2/28/05	186,032
Bunce	Christine	T	Sonoma	CA	CPY	2/1/01	196,460
Burke-Lundy	Elaine	I	Davie	FL	MED	5/16/11	42,208

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS BY LAST NAME AS OF AUGUST 1, 2019—Continued

Last name	First name	Mi	City	State	Discipline	Date reported	Amount due
Caballero	Jorge	R	Los Angeles	CA	CHM	1/21/98	284,014
Cabrera	Cecilia	I	Pembroke Pines	FL	OPT	2/5/09	20,674
Caldwell	William	G	Concord	MA	DEN	5/14/02	118,332
Calix	Raul	O	Lennox	CA	CHM	5/16/11	11,608
Campanale	Paul	R	Jacksonville	FL	CHM	1/21/98	94,259
Canillas	Gregorio	L	Long Beach	CA	CPY	5/16/11	77,215
Caporaso	Nicholas	G	West Liberty	OH	CHM	2/1/01	34,032
Caputo	Francesco	J	Plainview	NY	CHM	7/6/12	265,767
Cardenas-Cuyuche	Ines	B	Los Angeles	CA	CHM	11/18/11	20,513
Carlos	Lester	B	San Leandro	CA	CHM	8/5/04	72,723
Carney	Timothy	M	East Patchogue	NY	CHM	11/26/12	36,301
Carpenter	Richard	P	Saginaw	MI	CHM	1/21/98	42,491
Carrie	Thomas	T	Mount Vernon	NY	MED	3/1/99	364,504
Carthen	Michael	....	Brooklyn	NY	POD	1/21/98	388,545
Castaline	Perren	V	Canyon Country	CA	CHM	8/11/05	142,425
Castellanos	Loretta	M	Key Biscayne	FL	DEN	2/3/14	282,038
Castro	Henry	G	Corpus Christi	TX	CHM	5/20/04	57,762
Caulkins	Robert	M	Shrewsbury	MA	MED	8/5/04	502,276
Cha	Chris	S	Garden Grove	CA	DEN	11/12/99	347,920
Chalgujian	Hilda	A	Palm Desert	CA	CPY	5/16/11	148,757
Chen	Syng-Fu	F	Pls Vrds Pnsl	CA	MED	5/20/04	56,113
Cheney	Julian	L	Reseda	CA	CHM	1/21/98	9,380
Choe	Kevin	K	Lakewood	CA	CHM	1/21/98	5,049
Choi	Seong	Y	Diamond Bar	CA	DEN	3/1/99	164,463
Christian	Roy	P	Saratoga	CA	DEN	7/6/12	68,436
Christiansen	John	C	Taylorsville	UT	CHM	5/19/09	82,655
Clark	Garth	A	Humble	TX	MED	8/10/01	157,189
Cleere	Carrol	E	Tulsa	OK	CHM	1/21/98	232,884
Clifton	Rhea	S	Dallas	TX	CHM	8/5/04	8,484
Cline	Sherri	L	Sylmar	CA	OST	1/21/98	10,943
Clouse	William	J	San Antonio	TX	POD	3/1/99	227,694
Coate	Linda	....	Reno	NV	CHM	11/9/10	187,415
Cobrin	Bettina	B	Marina Del Rey	CA	CPY	1/21/98	274,610
Coleman JR	Harold	J	Tacoma	WA	DEN	5/16/11	286,254
Collier	George	R	Ponderay	ID	DEN	1/21/98	306,492
Collier	William	F	Sandpoint	ID	CHM	1/21/98	245,100
Collins JR	Gail	W	Fullerton	CA	OPT	3/1/99	33,391
Connaughton	Edward	M	Hermosa Beach	CA	CHM	8/12/16	39,166
Connor	Kenneth	J	Newport Beach	CA	CHM	11/7/01	84,048
Cook	Ian	K	Christiansted	VI	POD	2/8/17	189,744
Cook	Karen	....	Redwood City	CA	CHM	7/6/12	502,121
Cooke	Courtney	W	Van Nuys	CA	CHM	5/18/10	48,024
Coombs	Timothy	R	Anaheim	CA	CHM	5/15/00	120,019
Cooney	Carey	E	Eugene	OR	DEN	1/21/98	42,998
Coonts	Terry	A	Eldorado Springs	MO	CHM	2/17/00	18,825
Cooper	April	D	Hazel Crest	IL	MED	1/21/98	494,455
Cooper	Carol	A	Keizer	OR	CHM	3/25/19	216,369
Corcoran	Jamie	M	Bronx	NY	DEN	4/24/98	552,537
Cothran	Lonnie	A	Shady Point	OK	CHM	11/12/99	246,024
Cox	Michael	A	Oakland	CA	CHM	11/15/05	27,086
Cummins	David	F	St Michael Barbados	FC	DEN	1/21/98	159,887
Curtin	Michael	M	Fairfax	CA	CHM	1/21/98	36,947
Cutts	David	P	Temecula	CA	DEN	1/21/98	187,928
Danchisin	Drew	M	Oakland	CA	CHM	5/16/11	123,525
Daniels	Peter	J	San Jose	CA	CHM	2/20/07	99,033
Danielsdixon	Darlene	T	Bloomfield Hills	MI	DEN	9/24/14	189,457
Darrow	Victoria	L	Boca Raton	FL	CHM	11/26/12	140,871
Davalos	Steven	M	Carmel Valley	CA	CHM	8/1/00	52,966
Davidson	Blake	L	Richardson	TX	CHM	8/5/04	49,728
Davis	Mary	L	Saginaw	MI	OPT	3/1/99	79,393
Davitiashvili	Nodari	....	Rego Park	NY	DEN	11/12/13	153,136
De Jesus-Miranda	Luis	A	Mamati	PR	OPT	5/14/02	103,638
Deck	Robert	E	Crowley	TX	CHM	2/14/13	59,378
Deleonardis	Michael	S	Houston	TX	MED	8/10/01	119,066
Demaria	Lynn	A	Albany	NY	MED	2/2/18	84,554
Dennis	Gwenda	B	Aliso Viejo	CA	MED	5/14/16	134,837
Densmore	Robert	D	Tampa	FL	CHM	8/17/07	50,632
Derbonne	John	R	Lake Jackson	TX	CHM	9/24/14	46,835
Desai	Nemish	J	West Bloomfield	MI	DEN	5/21/19	112,446
Dewitt	Eldon	L	Fort Pierce	FL	CHM	2/5/09	141,467
Dhaliwal	Emaline	K	Riverside	CA	CHM	1/21/98	13,991
Diaz	James	A	Redwood Valley	CA	CHM	8/22/17	16,047

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS BY LAST NAME AS OF AUGUST 1, 2019—Continued

Last name	First name	Mi	City	State	Discipline	Date reported	Amount due
Diesen	James	D	Jacksonville	FL	CHM	1/21/98	445,004
Difiore JR	William	E	Fountain Valley	CA	CHM	1/21/98	74,760
Dinh	Michael	K	Mcallen	TX	CHM	9/24/14	11,792
Ditroia	Frederick	....	Warrington	PA	DEN	1/21/98	64,956
Divanbeigi	Farah	Z	Las Vegas	NV	DEN	3/25/19	185,083
Dominic	Anthony	J	Manasquan	NJ	MED	2/15/02	54,624
Dominicis	Beth	A	Lake Arrowhead	CA	CHM	2/1/01	27,555
Doom	Randolph	H	Murrells Inlet	SC	CHM	8/17/12	162,309
Dorian	Saro	S	Glendale	CA	CHM	11/7/01	35,465
Ructor	James	D	Pittsburgh	PA	MED	8/10/01	71,228
Dudley	Raynold	R	Houston	TX	PHA	1/21/98	121,814
Dungan	Kim	V	Fort Lauderdale	FL	CHM	11/14/07	130,323
Dupuis	Kenneth	J	Orono	ME	CHM	5/14/02	197,427
Durham	Ricky	L	Houston	TX	CHM	1/21/98	244,711
Dwight	Benton	J	Albuquerque	NM	PHA	7/26/18	17,175
Dykeman	Peter	J	Hawthorne	CA	CHM	1/21/98	139,507
Elbayar	Nader	K	Port Washington	NY	POD	1/21/98	157,974
Elder	Terry	M	Glendale Heights	IL	CHM	8/1/00	279,114
Eli	Desiree	D	Soquel	CA	CHM	1/21/98	78,390
Ellis	Mark	S	Miami	FL	POD	2/17/00	141,175
Emerson	Edwin	A	Selden	NY	CHM	1/21/98	246,727
Engel	Rob	L	Garden Grove	CA	CHM	2/17/00	30,893
Ensminger	Aletha	M	Carmichael	CA	DEN	11/9/10	99,797
Epstein	Judy	J	Carlsbad	CA	CPY	2/17/00	162,694
Eslao	Caesar	G	Carson	CA	DEN	1/21/98	159,543
Esmailbeigui	Babak	....	Pacific Palisades	CA	DEN	9/24/14	9,905
Etienne	Fernande	....	West Palm Beach	FL	POD	5/11/06	183,124
Etumnu	Patrick	C	Houston	TX	CHM	9/24/14	30,279
Evans	William	L	Spring	TX	CHM	9/24/14	103,092
Fabricant	Michael	J	Fort Lauderdale	FL	CHM	1/21/98	261,308
Fair	David	F	Knoxville	TN	CHM	3/1/99	148,049
Falkinburg	Rory	D	Point Pleasant Boro	NJ	CHM	7/26/18	92,412
Fallman	James	M	Victorville	CA	CHM	5/15/00	50,411
Falth-Vanvollenhoven	Annika	M	San Francisco	CA	MED	3/1/99	144,588
Fanizzi	Thomas	....	Brightwaters	NY	POD	4/24/98	528,265
Farris	Farral	W	Hurst	TX	CHM	5/15/00	67,978
Fayazfar	Mitra	....	Oak Park	CA	CHM	11/7/01	29,754
Feinman	Brian	M	Tampa	FL	POD	2/20/07	805,719
Fenton	Mark	A	Van Nuys	CA	CHM	5/11/06	99,916
Fiore	James	P	Santa Ana	CA	CHM	8/10/01	70,607
Fletcher	Leonard	G	Corona	CA	MED	8/21/15	74,857
Flores	Otto	O	Antario	CA	CHM	1/21/98	182,780
Fluck	Dennis	W	New Tripoli	PA	OST	10/30/03	310,761
Flunker	Edward	J	Houston	TX	CHM	8/12/16	13,543
Ford	Leslie	E	Keller	TX	CHM	8/15/19	15,332
Ford	Thomas	M	Yorba Linda	CA	CHM	2/1/01	15,690
Formaker	James	W	West Hollywood	CA	DEN	1/21/98	112,482
Fox	Carl	A	Dana Point	CA	CHM	5/11/05	114,152
Franco	Michael	G	Glendale	CA	MED	3/3/15	219,729
Francus	Irwin	N	East Northport	NY	CHM	4/24/98	472,576
Franks	Michael	A	Wharton	TX	CHM	9/24/14	28,879
Freeze	Kenneth	J	Amarillo	TX	CHM	8/15/19	161,410
Fridrick	Tim	P	Las Vegas	NV	CHM	1/21/98	66,986
Friedman	Marc	H	Huntington Beach	CA	POD	8/12/16	56,178
Fulton	William	C	Oakland	CA	CPY	11/7/01	81,400
Funcia	Ana	T	Miami	FL	DEN	2/1/01	209,005
Gaber	Alan	M	Levittown	PA	DEN	5/14/02	61,086
Gain	John	J	Wilmington	DE	MED	5/2/03	366,530
Galliher	Jack	T	Wimberley	TX	OPT	11/7/01	3,600
Gallucci	Don	A	Dedham	MA	DEN	3/1/99	155,980
Garner	Jeffrey	L	Cedar Rapids	IA	OPT	3/25/19	70,181
Gasso	Joaquin	A	Hollywood	FL	CHM	1/21/98	258,063
Gaydos	Richard	F	Fontana	CA	CHM	11/7/01	69,209
Gdula	William	J	Brookline	MA	MED	5/16/11	19,923
Genna	Stephen	A	Bayville	NY	DEN	7/26/18	42,096
Ghalbi	Abdollnasser	....	Santa Ana	CA	CHM	5/14/02	40,367
Gifford	Craig	P	Keller	TX	DEN	2/17/00	103,506
Gilyot	Glenn	D	New Orleans	LA	DEN	2/15/02	311,502
Giorgio	Stephen	R	Middle Island	NY	CHM	7/26/18	27,116
Gipson	Bruce	C	Easton	PA	CHM	5/14/16	26,373
Giventer	Alex	....	Los Angeles	CA	CHM	5/16/11	71,105
Glick	Stanley	B	Pasadena	CA	OPT	1/21/98	7,202

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS BY LAST NAME AS OF AUGUST 1, 2019—Continued

Last name	First name	Mi	City	State	Discipline	Date reported	Amount due
Gloshinski	Laura	E	Portland	PA	CHM	1/21/98	144,789
Goins	Rondy	D	Detroit	MI	POD	3/25/19	329,595
Goldbeck	Donald	E	Woodland Hills	CA	CHM	8/12/16	104,156
Gomes	Steven	P	Santa Rosa	CA	CHM	4/24/98	53,246
Gomez	Meneleo	P	Glendale	CA	DEN	5/15/00	292,555
Gonzalez	Maria	E	East Rockaway	NY	DEN	5/15/00	74,668
Goodman	William	D	Thorp	WI	DEN	1/21/98	36,153
Goodwin	Randall	J	Satanta	KS	CHM	7/6/12	108,835
Gosa-Kersee	Angela	J	Chicago	IL	DEN	3/1/99	296,849
Gottschling	Carl	F	Cleveland	OH	MED	11/7/01	160,434
Grant	Terry	E	Hempstead	NY	DEN	2/1/01	81,305
Gray	David	M	San Francisco	CA	POD	3/2/04	71,551
Green JR	Edwin	A	Brownwood	TX	MED	12/11/18	61,531
Greeno	Vincent	A	Bolton	MA	CHM	2/28/05	62,513
Greeson-Cargioli	Leisa	A	Noblesville	IN	CHM	7/26/18	38,967
Gregory	Todd	A	Pismo Beach	CA	CHM	1/21/98	56,428
Gregory	Thomas	M	Brentwood	NY	CHM	8/22/17	336,251
Gregson	Randall	....	Kailua	HI	CHM	8/22/17	101,957
Grenier	Paul	S	Viroqua	WI	CHM	8/9/10	49,940
Grob-Mick	Renee	J	Dover	DE	MED	5/31/18	41,552
Grossman	Brian	W	Tulra	CA	CPY	8/12/16	93,008
Gulas	Carl	M	Los Gatos	CA	CHM	11/18/11	42,425
Gutierrez	Celso	....	Arlington	TX	CHM	8/12/16	26,307
Guyer	Larry	G	Santa Rosa	CA	CHM	11/7/01	43,563
Hahn	Peter	S	Placentia	CA	CHM	1/21/98	43,157
Haines	Steven	M	Jackson	NJ	CHM	3/1/99	60,413
Hall	Pamela	A	Miami Gardens	FL	CPY	8/17/07	206,875
Hamilton	Cynthia	R	Chino Hills	CA	MED	5/16/11	41,872
Hampton	Jubal	....	Long Beach	CA	POD	11/12/99	112,381
Hankins	Dean	G	Anaheim	CA	CHM	8/12/16	96,403
Hankins	Douglas	A	Anaheim	CA	CHM	8/22/17	60,749
Hansen	Kristen	T	Washington	UT	CHM	2/6/03	115,705
Harp	Richard	B	Hacienda Heights	CA	CHM	8/10/11	25,179
Harris	Conrad	W	Washington	DC	DEN	1/21/98	138,699
Harris	Sabrina	D	San Antonio	TX	MED	12/11/18	167,002
Harrison	Rodney	B	Claremont	CA	DEN	5/19/09	464,400
Hasley	Steven	J	Melbourne	FL	CHM	2/28/05	77,821
Hassid	Sharona	H	Kings Point	NY	DEN	7/26/18	27,226
Hatfield	Brian	L	Brentwood	CA	CHM	1/21/98	62,572
Haygood	Regina	J	Brooklyn	NY	POD	4/24/98	196,417
Hazelwood III	Harry	H	Daytona Beach	NJ	PUB	3/1/99	310,656
Heckler	Rodney	R	Wheaton	IL	CHM	11/15/05	25,094
Hempsey	William	C	North Hollywood	CA	CHM	1/21/98	117,073
Henderson	Charles	A	Baltimore	MD	POD	8/22/17	46,332
Hennell-Larue	Renata	A	Mapleton	OR	CHM	9/24/14	43,102
Hernandez	Agapito	....	Mcallen	TX	CHM	11/7/01	199,126
Hernandez	Orestes	M	Los Angeles	CA	CHM	1/21/98	93,051
Herrera	Diego	F	Long Island City	NY	DEN	8/5/99	330,359
Herzlich	Douglas	B	New York	NY	POD	5/21/19	181,325
Hibbert	Harold	H	Mountain View	CA	MED	11/2/00	29,938
Ho	Wook	....	Los Angeles	CA	DEN	3/1/99	59,678
Hoang	Dat	T	Anaheim	CA	MED	8/12/16	73,868
Hobowsky	Martin	R	South Charleston	OH	OST	11/9/10	258,148
Hoehn	James	D	Thousand Oaks	CA	DEN	1/21/98	81,303
Hoffman	Stuart	....	Venice	CA	CHM	8/12/16	23,124
Holt	Kenneth	G	Riverside	CA	CHM	1/21/98	125,251
Holzer	Richard	M	Glendale	AZ	CHM	8/17/07	166,785
Hopkins	Keith	T	Kissimmee	FL	CHM	1/21/98	13,633
Horsley	Ronald	G	Yulee	FL	CHM	1/21/98	90,649
Hough JR	Reginio	T	Lancaster	CA	CHM	8/1/00	37,065
Howell	Ralph	G	Stateline	NV	CHM	11/7/01	248,531
Hungerford	Richard	D	Portola	CA	CHM	1/21/98	91,560
Hunt	Richard	D	Pasadena	CA	CHM	2/15/02	151,140
Hunter	Donald	E	Fairborn	OH	CHM	5/19/09	77,275
Hush	George	G	Rose City	MI	CHM	1/21/98	108,603
Ichiuji	Arnold	T	Salinas	CA	DEN	8/10/01	111,953
Iliou	Claude	B	Punta Gorda	FL	MED	8/16/06	25,721
Ionova-Zalivchy	Irina	I	Brooklyn	NY	DEN	7/26/18	68,333
Iqal	Robert	S	Claremont	CA	PHA	1/21/98	14,427
Israelsen	John	A	Logan	UT	DEN	8/1/00	300,060
Ito	Stephen	M	Menifee	CA	CHM	4/24/98	154,300
Jackson	Harold	O	Atlanta	GA	DEN	5/16/11	34,359

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS BY LAST NAME AS OF AUGUST 1, 2019—Continued

Last name	First name	Mi	City	State	Discipline	Date reported	Amount due
Jackson	Francesca	A	San Francisco	CA	CHM	4/24/98	94,226
Jacob-France	Elizabeth	....	St Petersburg	FL	CHM	2/10/11	70,942
Jaimes	Laura	....	Pico Rivera	CA	MED	7/26/18	9,403
Jansson	Susanne	E	Westhampton Beach	NY	GHA	1/21/98	123,876
Jeffcoat	Lori	M	Vallejo	CA	CHM	10/30/03	37,984
Jennifer	Jai	....	Oakland	CA	MED	7/6/12	61,187
Jernigan	Sherry	S	Land O Lakes	FL	OST	3/25/19	162,612
Jewett	Charles	D	Portsmouth	OH	CHM	1/21/98	108,190
Joergens JR	Donald	W	Staten Island	NY	CHM	1/21/98	59,104
Johnson	John	B	Pasadena	TX	CHM	8/12/16	17,145
Johnson	Steven	R	Hillsboro	TN	CHM	8/1/00	158,655
Johnson	Anthony	....	Detroit	MI	MED	1/21/98	17,154
Johnson	Gary	M	Burbank	CA	CHM	4/24/98	98,936
Johnson	Eric	D	Folsom	CA	CHM	1/21/98	389,305
Kahan	Robert	M	Mission Viejo	CA	CHM	1/21/98	78,514
Kamel	Luca	....	Canyon Country	CA	MED	8/12/16	239,402
Kantro	Scott	R	New York	NY	POD	8/16/06	428,741
Katz	Steven	M	Sherman Oaks	CA	CHM	8/10/01	205,395
Kaufmann	Todd	S	Corte Madera	CA	CHM	8/5/99	145,002
Kea	Rattana	D	Highland	CA	DEN	11/7/01	212,830
Keeler-Jones	Dawn	M	Port Saint Lucie	FL	CHM	5/14/02	84,870
Keenan	John	M	Watertown	NY	CHM	2/5/09	51,845
Kelly-Soluri	Laura	....	Farmingdale	NY	POD	5/17/99	262,418
Kempis	Richard	A	San Francisco	CA	DEN	2/17/00	115,795
Kessinger	Charles	W	Key West	FL	CHM	8/21/15	45,850
Kessler	Bill	R	Fountain Valley	CA	CHM	8/10/11	45,079
Khalsa	Gururakha	S	Springfield	VA	CHM	7/31/98	146,782
Khalsa	Har Hari	S	Beverly Hills	CA	CHM	8/10/11	67,509
Khan	Tariq	A	San Leandro	CA	DEN	7/6/12	62,668
Kim	Won Kak	....	Torrance	CA	CHM	8/12/16	105,358
King	Susan	M	Apache Junction	AZ	CHM	9/24/14	189,389
King	James	H	Washington	DC	DEN	1/21/98	48,768
Kirkpatrick	Ira	P	Hurst	TX	CHM	7/26/18	209,882
Kiss	Kathleen	M	Blue Point	NY	CHM	1/21/98	135,483
Klapper	Gerald	P	Hollywood	FL	POD	2/11/08	55,122
Klejnot	Timothy	A	Marietta	GA	CHM	1/21/98	231,896
Knight	Patricia	A	Bayport	NY	CPY	1/21/98	96,923
Ko	Joo	H	Marina	CA	CHM	4/25/14	20,110
Koukeh-Sackett	F	M	San Bernardino	CA	CHM	1/21/98	155,453
Kowalski	Brian	A	Irvine	CA	CHM	8/21/15	28,971
Kralj	Mladen	M	Chicago	IL	DEN	4/24/98	606,519
Krichevsky	Rita	A	Newtown	PA	MED	2/2/18	145,600
Krystosik	James	D	Streetsboro	OH	CHM	11/9/06	255,998
Kunen	Frederick	J	Miami	FL	MED	3/1/99	199,398
Kushner	William Iii	....	Danville	CA	DEN	5/9/07	30,298
Kyprie	Warren	....	Boca Raton	FL	CPY	2/14/12	80,939
Lafleur	Allen	R	Hull	MA	CHM	3/1/99	463,228
Lamb	Robert	D	Sebastopol	CA	CHM	1/21/98	198,357
Lampley	Joseph	C	Hamlin	TX	OST	3/25/19	167,118
Lampman	Chuck	D	Sylmar	CA	CHM	1/21/98	270,731
Lancaster	Barry	D	Marietta	GA	CHM	1/21/98	139,565
Landou	Lissa	S	Belleville	NJ	CHM	5/14/02	214,314
Lane	Craig	R	Baltimore	MD	POD	3/25/19	323,518
Langham	Mary	L	Talkeetna	AK	OST	5/19/09	568,988
Lauffer	Mark	A	Mineral Point	PA	CHM	5/16/11	89,648
Lawton	Michael	D	Yorba Linda	CA	MED	11/12/99	244,753
Lee	Steve	Y	Livingston	NJ	DEN	8/10/01	95,601
Lent	Rosella	M	Nahant	MA	CHM	8/11/05	237,062
Leonor	Lillian	....	Riverside	CA	DEN	8/10/11	49,033
Leshinger	Craig	L	Bayport	NY	DEN	3/25/19	10,883
Lester	Robert	C	Waxahachie	TX	CHM	2/17/00	64,183
Leung	Leo	S	Woodside	NY	CHM	1/21/98	231,987
Levin	Nancy	E	Palm Beach Gardens	FL	CHM	1/21/98	240,238
Lewis	Richard	C	Colorado Springs	CO	CHM	8/17/12	26,638
Light	David	N	Winter Garden	FL	DEN	2/28/05	135,076
Lim	Jong	S	Elmhurst	NY	DEN	11/12/13	156,982
Lippay	Ronald	W	Fresno	CA	CHM	10/30/03	76,429
Lipschutz	Robert	B	Philadelphia	PA	POD	2/1/06	147,398
Little	Carlton	E	Chicago	IL	MED	11/12/13	315,779
Littleton	Charles	R	Edmond	OK	DEN	7/31/98	1,118
Lodwig	Michael	J	Castro Valley	CA	CHM	1/21/98	55,497
Lopez	Luis	....	Cathedral City	CA	CHM	5/7/13	223,517

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS BY LAST NAME AS OF AUGUST 1, 2019—Continued

Last name	First name	Mi	City	State	Discipline	Date reported	Amount due
Lottie	Mark	E	Covina	CA	CHM	8/21/15	116,714
Lowry-Brooks	Paulette	M	Summerville	SC	CHM	1/21/98	225,012
Lucero	Lucky	E	San Bernardino	CA	DEN	4/25/14	77,872
Lunceford	Glenn	W	Norco	CA	CHM	1/21/98	59,909
Luta	Patricia	L	Santa Rosa	CA	CHM	2/17/00	97,867
Ly	Hoang	X	Garden Grove	CA	OPT	8/12/16	31,638
Maghloubi	Seyed	M	Pacific Palisades	CA	CHM	8/12/16	43,125
Major	David	C	Whittier	CA	CHM	8/12/16	10,974
Mannino	Guy	C	North Pole	AK	CHM	3/1/99	354,620
Manriquez JR	Antonio	M	Coachella	CA	CHM	5/11/05	101,857
Manvel	Barry	J	Napa	CA	CHM	7/31/98	39,963
Marcel	Perry	L	Alvarado	TX	DEN	11/12/13	180,710
Marcus	Alex	....	Orlando	FL	CHM	2/10/11	122,633
Marquez	Evelyn	W	Reseda	CA	CPY	2/28/05	142,739
Martin JR	John	W	Zephyrhills	FL	CHM	1/21/98	246,635
Marts	Richard	A	Los Angeles	CA	CHM	11/12/99	99,870
Mattson	James	A	Berkeley	CA	OST	11/7/01	180,933
Maxfield-Brown	Bobbi	L	Evansville	IN	CHM	1/21/98	707,779
Mays-Good	Kathryn	M	Reseda	CA	CHM	1/21/98	354,954
Mazhar	Mark	....	Los Angeles	CA	CHM	8/11/05	127,184
McAdams	Glen	R	Spring	TX	CHM	3/1/99	259,357
McAlees	Raymond	M	North Palm Beach	FL	CHM	11/12/99	247,778
McCallum III	Ronald	D	Sunnyvale	CA	CHM	5/20/04	23,273
McClure	Brian	C	Daytona Beach	FL	DEN	1/21/98	15,458
McCombs	Martin	....	Long Beach	CA	CPY	11/12/99	281,622
McConner	Sadie	B	Daytona Beach	FL	POD	1/21/98	71,382
McElhinney	Thomas	E	Saint Augustine	FL	CHM	1/21/98	1,230,083
McGee	Billie	J	Simi Valley	CA	CHM	1/21/98	135,617
McMorris	Bruce	....	Long Beach	CA	CHM	11/12/99	174,556
McRoberts	Lynne	S	Ontario Canada	FC	CHM	1/21/98	104,038
Mcatamney	John	P	Garden City	NY	CHM	11/9/10	26,948
Mcghee	Stephanie	Y	La Marque	TX	CHM	5/19/09	41,270
Mckay	Kevin	J	Dallas	TX	CHM	11/10/04	68,619
Mcmahan	Gregory	E	Anaheim	CA	DEN	11/18/11	32,099
Meade	Madeline	M	Cleveland	OH	DEN	1/21/98	73,656
Meggs	Carl	M	Belize	FC	DEN	8/15/03	110,933
Melendez	Angelina	....	Bronx	NY	POD	5/19/09	297,014
Melker	Neil	L	Princeton	NJ	DEN	5/19/09	234,833
Menezes	Michael	H	Tampa	FL	DEN	2/10/11	211,806
Mihalakis	Georgia	....	Bronx	NY	OST	1/21/98	487,201
Milanes-Scott	Barbara	J	Northridge	CA	MED	1/21/98	215,580
Milgram	Roman	....	Brooklyn	NY	DEN	1/19/17	44,626
Miller	Bradley	G	Beverly Hills	CA	MED	1/21/98	99,645
Miller	Brad	T	Costa Mesa	CA	CHM	1/21/98	22,616
Miller	Gaylon	D	Bixby	OK	CHM	2/14/12	97,099
Millon	Jeffrey	M	Lithonia	GA	MED	1/21/98	195,320
Mills	Stephen	M	Powell	OH	CHM	3/25/19	5,973
Mitchell	Warren	A	Yucaipa	CA	DEN	8/1/00	460,833
Mizell	William	L	Los Lunas	NM	OST	8/12/16	273,089
Moarefi	Mahmdud	R	Los Angeles	CA	CHM	2/17/00	73,223
Mohammadkhani	Alireza	D	Chatsworth	CA	CHM	8/11/05	57,224
Moler	Amy	M	Westerville	OH	MED	8/22/17	19,704
Moore	Thomas	A	Gray	ME	CHM	3/1/99	200,218
Moore	Scott	P	Citrus Heights	CA	CHM	2/20/07	25,531
Morita	Phuong	T	Irvine	CA	CHM	3/1/99	118,763
Moroney	William	P	Nashville	TN	CHM	4/24/98	77,593
Moroney	Raymond	A	Venice	CA	CHM	8/12/16	102,505
Morrone	Mark	J	Los Angeles	CA	DEN	7/31/98	219,064
Moulds JR	Dan	R	Chattanooga	TN	DEN	2/1/01	216,474
Mouton	Marsha	E	Los Angeles	CA	MED	1/21/98	105,558
Muecke	Lee	N	Houston	TX	MED	8/12/16	7,627
Muenker	Mark	E	Hillsboro	OR	CHM	7/31/98	284,198
Mullinax	Jeffrey	S	Windsor	CA	CHM	5/11/05	27,642
Munoz	Luis	R	Chicago	IL	MED	11/12/13	598,884
Murphy	Marc	A	Rancho Santa Margar	CA	CHM	1/21/98	155,471
Murphy	John	P	Black Earth	WI	CHM	7/6/12	43,040
Murphy	Richard	N	North Bergen	NJ	CHM	1/21/98	1,404,765
Myers	Karen	A	Redondo Beach	CA	MED	10/30/03	230,897
Myers	Michael	D	San Rafael	CA	CPY	7/6/12	51,615
Nagel	Douglas	....	Herndon	VA	CHM	8/12/16	46,659
Nappi	Neil	A	West Palm Beach	FL	CHM	3/1/99	218,654
Nason	Christian	W	Holly Springs	NC	CHM	5/18/10	95,984

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS BY LAST NAME AS OF AUGUST 1, 2019—Continued

Last name	First name	Mi	City	State	Discipline	Date reported	Amount due
Nasseri	Amir Abbas	....	Santa Ana	CA	MED	5/31/18	23,419
Navai	Mehdi	N	Alhambra	CA	CHM	1/21/98	413,148
New	Richard	A	Conway	SC	CHM	2/14/13	87,775
Newsome	Dorita	....	Livingston	NJ	DEN	5/19/09	68,774
Newsome	Raymond	E	Desoto	TX	CHM	11/2/02	235,838
Nguyen	Michael	M	Milpitas	CA	MED	11/9/06	54,330
Nguyen	Tuan	H	Fountain Valley	CA	OST	11/12/13	158,357
Nguyen	Ho	H	La Puente	CA	CHM	11/18/11	142,939
Nguyen	Anh	....	Sacramento	CA	DEN	11/18/11	33,093
Nguyen	Charlene	D	La Habra	CA	CHM	5/7/13	33,760
Nichols	Victoria	G	Encinitas	CA	CPY	8/12/16	12,002
Nieman	Edward	....	Riverside	CA	CHM	2/1/01	114,373
Ninomiya	Jesse	K	Honolulu	HI	DEN	5/17/01	163,169
Nipper-Collins	Kristie	L	Lutz	FL	OST	2/10/11	42,622
Nkuku	Christopher	N	Berkeley	IL	MED	5/17/01	73,380
Nnokam	Kennedy	I	Jasper	TX	PUB	9/24/14	62,482
Nolasco	Elizabeth	R	Brooklyn	NY	MED	11/12/13	18,223
Norville	Michael	T	Costa Mesa	CA	CHM	1/21/98	205,849
Ocon	Luis	E	Salinas	CA	CHM	10/30/03	11,978
Ofor	Chukwu	E	Houston	TX	OPT	8/12/16	45,412
Olajide	Gbolahan	A	Corona	CA	CHM	5/19/09	338,940
Olberg	Gregory	S	Hayward	CA	CHM	3/1/99	116,682
Owens	James	R	Evans	GA	CHM	1/21/98	15,541
Owens	Gregory	A	Claremore	OK	CHM	1/21/98	55,144
Pacheco	Carlos	A	Mcallen	TX	MED	9/24/14	32,647
Padilla-Torres	Carlos	....	Ponce	PR	OPT	5/31/18	22,940
Palmer	Becky	A	Fallbrook	CA	CHM	1/21/98	192,964
Palmer	Richard	M	Thousand Oaks	CA	CHM	3/1/99	256,033
Palmer-Mitchell	Donna	C	Phoenix	AZ	POD	1/21/98	135,843
Pankey	John	....	Oakland	CA	CHM	8/5/04	148,127
Parkin	Dianne	E	Houston	TX	MED	9/24/14	20,989
Parsa-Forspte	Sepideh	....	San Clemente	CA	CHM	11/18/11	48,648
Patterson JR	Arthur	E	Holmdel	NJ	CHM	9/24/14	60,468
Paunovic	Susan	J	Hopewell Jct	NY	DEN	11/2/00	14,103
Peerenboom-Grenier	Paula	J	Viroqua	WI	CHM	11/7/01	47,370
Pehush	Marie	L	Florida	NY	CHM	3/25/19	100,208
Pellegrini	John	H	Huntington	WV	OST	3/25/19	178,961
Pennington	Bradley	R	Denver	CO	CHM	5/31/18	33,747
Perez	Daysi	E	New York	NY	CHM	4/24/98	156,221
Perlmutter	Mark	A	Ann Arbor	MI	CHM	2/23/10	76,799
Perrault	Mark	D	Culver City	CA	MED	5/19/09	140,235
Perry	John	E	Houston	TX	MED	9/24/14	57,411
Petrosky	Michael	J	Mandeville	LA	CHM	4/24/98	292,972
Pham	Vinh	H	Fountain Valley	CA	DEN	5/17/01	258,399
Pham	Nghi	D	Fountain Valley	CA	CHM	1/21/98	118,023
Philipson	David	....	Huntington Beach	CA	CHM	11/12/99	185,333
Pierson	Steven	R	Minneapolis	MN	CHM	8/17/07	99,204
Pigott	Abu	G	Alameda	CA	CHM	11/12/13	82,657
Pinson	Jeffrey	R	El Paso	TX	CHM	11/12/99	116,315
Podry	Robert	J	Simi Valley	CA	CHM	1/21/98	140,527
Ponder III	Alvin	F	Brooklyn	NY	MED	1/21/98	215,298
Porter	Jacqueline	R	Washington	DC	POD	1/21/98	161,017
Potok	Leonard	A	Brooklyn	NY	DEN	3/1/99	102,384
Potts	David	A	Pasadena	TX	CHM	9/24/14	30,383
Powell	Carlton	F	Elkins Park	PA	DEN	1/21/98	140,930
Powers	Thomas	P	Oklahoma City	OK	CHM	2/15/02	6,784
Pratt	Kerrie	G	Los Angeles	CA	CHM	7/6/12	58,278
Price	Steven	V	Los Angeles	CA	DEN	1/21/98	3,899
Pritchard	Doyle	P	El Centro	CA	CHM	11/7/01	32,515
Prom	Van	S	Modesto	CA	CHM	8/22/17	71,508
Pulli	Louise	A	Perkiomenville	PA	CHM	8/22/17	6,664
Puryear	Cheryll	D	Houston	TX	CHM	2/17/00	200,836
Pust	Keith	W	Lake Elsinore	CA	CPY	1/21/98	123,751
Quirke	Clement	....	Venice	FL	POD	2/8/17	220,033
Radetic	Peter	M	Bay Point	CA	CHM	11/17/09	141,470
Radtke	Joseph	D	Pueblo	CO	OST	9/24/14	76,418
Ramirez	Richard	R	Houston	TX	CHM	2/28/05	36,186
Ramu	Nalaya	....	Beaumont	CA	DEN	5/14/02	99,408
Rappa	Richard	J	North Haven	CT	CHM	5/11/05	69,035
Rashti	Kouros	....	Encino	CA	DEN	5/14/02	302,245
Ratliff	Cynthia	....	Santa Cruz	CA	CHM	2/1/06	296,793
Ravinski	Deborah	G	Plymouth	MA	CHM	8/12/16	6,667

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS BY LAST NAME AS OF AUGUST 1, 2019—Continued

Last name	First name	Mi	City	State	Discipline	Date reported	Amount due
Rayas-Felix	Magdalena	....	Los Angeles	CA	CHM	1/21/98	71,842
Reddick	David	J	Miami	FL	MED	11/14/07	157,939
Reese-Thurmond	Elaine	M	Chicago	IL	MED	1/21/98	164,482
Renz	Howard	W	Astoria	NY	CHM	1/21/98	93,180
Rey	Jorge	E	Chino	CA	CHM	2/1/01	35,243
Reyes	Danniell	J	Bethlehem	PA	CHM	7/6/12	145,602
Rhine	Cecil	T	Lawrenceville	GA	CHM	1/21/98	100,191
Ribera	Alfred	R	Miami	FL	CHM	3/1/99	242,115
Rice	William	M	Malden	MA	CHM	8/5/99	183,350
Richardson	Justin	W	Porter Ranch	CA	CHM	1/21/98	1,298
Richardson	Joseph	M	Silver Spring	MD	DEN	1/21/98	769,248
Richardson	Katherine	J	Oakland	CA	CPY	7/6/12	435,146
Richichi	Mark	S	Center Moriches	NY	CHM	2/15/02	177,564
Ritto	Sharlene	M	Corona	CA	POD	11/12/13	255,546
Robinson	Glenn	R	Dallas	TX	CHM	3/3/15	123,972
Robinson	Bruce	K	Jupiter	FL	CHM	1/21/98	410,027
Rogers	Thomas	C	Santa Ana	CA	CHM	3/1/99	227,277
Romero	Gloriana	M	Guaynabo	PR	MED	2/8/17	131,931
Rosenfeld	Jeffre	B	Los Angeles	CA	CHM	1/21/98	122,380
Roshy	Gary	L	Ludington	MI	CHM	1/21/98	489,287
Ross	Roger	A	Coraopolis	PA	CHM	1/21/98	49,245
Rostami	Helena	....	Calabasas	CA	CHM	5/16/11	32,034
Rothman	Laura	L	Arroyo Grande	CA	CHM	11/7/01	10,586
Rubinstein	David	M	Fort Lauderdale	FL	CHM	2/15/02	68,089
Rushing	Gary	W	Matawan	NJ	CHM	2/15/02	161,622
Russell	Rosalind	L	Houston	TX	DEN	3/11/15	1,713
Russell	Robert	J	Hollywood	FL	CHM	1/21/98	10,463
Ryan	Kathleen	....	West Springfield	MA	POD	5/19/09	125,500
Saadia	Sammy	....	Brooklyn	NY	DEN	7/30/13	182,437
Sainez	Juana	A	Maryland	NY	MED	2/2/18	90,400
Sainten	Adrienne	C	San Leandro	CA	CHM	8/26/09	18,670
Saldana-Quinonez	Salvador	S	La Puente	CA	CHM	7/6/12	39,127
Sambor	David	H	Lockport	NY	DEN	11/12/99	12,774
Santa Cruz	Matthew	E	Tampa	FL	CHM	5/19/09	45,344
Sargent	John	F	Lawndale	CA	CHM	1/21/98	221,092
Sastre	Armando	A	Cortez	CO	DEN	11/9/10	109,464
Saunders	Ronald	W	San Antonio	TX	CHM	3/25/19	33,496
Savage	Robert	L	Harrisburg	PA	DEN	5/31/18	124,581
Schalk	Ronald	R	Corpus Christi	TX	CHM	5/14/16	68,123
Schiff	Barbara	S	Woodland Hills	CA	CHM	2/17/00	128,805
Schow	Kenneth	M	Glendale	CA	CHM	1/21/98	163,163
Schroder	Anthony	M	Middletown	NY	DEN	1/21/98	88,990
Schulten	Eric	A	Sarasota	FL	MED	11/2/00	212,199
Schwartz	Eric	G	Atlantic Beach	NY	DEN	1/21/98	248,039
Scruggs	Virginia	M	Seneca	SC	OST	11/26/12	72,611
Scully	Stephen	M	Redondo Beach	CA	CHM	3/1/99	52,112
Sek	Amaramony	B	Houston	TX	CHM	8/12/16	23,634
Selko	Robert	L	Morro Bay	CA	CHM	3/1/99	174,610
Sellitto	Rocco	V	Brooklyn	NY	POD	8/1/00	262,158
Senatore	Salvatore	....	Kenilworth	NJ	CHM	11/9/10	148,983
Sepahbody	Cyrus	J	Asbury Park	NJ	DEN	5/21/19	67,887
Serratos	Ernesto	....	Crestline	CA	CHM	1/21/98	132,286
Shahrestani	Shahriar	....	Anaheim	CA	CHM	3/1/99	56,365
Shanefelter III	Charles	D	San Francisco	CA	CHM	1/21/98	49,237
Shapiro	Michael	S	Newhall	CA	CHM	1/21/98	125,711
Shapley	Kevin	N	Concord	CA	CHM	3/2/04	45,088
Shaw	Michael	G	Inglewood	CA	MED	1/21/98	112,610
Shaw	Linda	J	Gladwyne	PA	DEN	1/21/98	31,395
Shear	David	S	Staten Island	NY	CHM	1/21/98	213,769
Sheehan	Alex	J	West Palm Beach	FL	CHM	9/24/14	46,223
Sheehy	Daniel	J	Middletown	CA	CHM	2/28/05	66,433
Shin	Hui-Yong	....	Los Angeles	CA	DEN	1/21/98	100,280
Shoeleh	Hossien	M	Irvine	CA	DEN	1/21/98	239,988
Siguenza	Francisco	A	Maspeth	NY	OST	8/12/16	156,983
Simon	Greg	L	Murrieta	CA	CHM	1/21/98	225,192
Simpson	Ashley	L	Allston	MA	MED	2/10/11	321,598
Slusher-Maroudas	Patricia	L	Gilroy	CA	CHM	11/12/13	11,354
Smith	Michael	P	Encinitas	CA	MED	5/21/19	74,236
Smith	Stacey	D	Malibu	CA	CHM	8/1/00	167,426
Smith	Michael	D	Bethel Park	PA	DEN	8/5/04	397,446
Smith	Jessica	....	Downey	CA	CHM	1/21/98	165,985
Smith	George	....	Philadelphia	PA	MED	1/19/17	589,826

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS BY LAST NAME AS OF AUGUST 1, 2019—Continued

Last name	First name	Mi	City	State	Discipline	Date reported	Amount due
Smith	Gary	D	Groton	CT	CHM	1/21/98	51,198
Smith	Rusty	A	Santa Barbara	CA	CHM	3/1/99	9,930
Smith	Lee	A	Sterling	VA	CHM	5/31/18	54,134
Smukler	Evie	L	Los Angeles	CA	CPY	1/21/98	38,392
Snavely	Danny	H	San Juan Capistrano	CA	CHM	8/21/15	314,117
Snyder	Mark	S	Roslyn	NY	CHM	12/11/18	17,021
Sokol	Louis	J	Stuart	FL	CHM	11/12/99	67,134
Sosa	Richard	....	Colton	CA	CHM	3/1/99	94,810
Soto	Vera	A	Fort Lauderdale	FL	OPT	5/7/08	22,032
Sparks	Stacey	L	Houston	TX	CHM	11/26/12	78,752
Spears	Timothy	P	Arlington	TX	CHM	3/25/19	45,231
Spencer	Keivon	J	Cedar Hill	TX	OPT	8/5/04	2,382
Spicer	Mary	C	Essex Junction	VT	CHM	7/26/18	15,959
St Juste	Dominique	....	Brooklyn	NY	DEN	8/1/00	114,144
Staley	Judith	M	Annapolis	MD	CPY	4/25/14	110,221
Stalker	James	W	Castro Valley	CA	CHM	2/10/11	15,327
Stanbridge	Gary	R	Whittier	CA	CHM	2/28/05	46,705
Steder	Sandra	....	San Rafael	CA	CPY	8/5/04	80,956
Steiner	Jean Marie	....	Sunnyvale	CA	CHM	5/15/00	21,659
Steinfeld	Audrey	G	Tarzana	CA	CHM	2/17/00	257,508
Stephens	Charles	N	Milledgeville	GA	CHM	5/19/09	57,784
Stevenson	Teresa	M	Los Angeles	CA	CPY	1/21/98	148,410
Stoltz	William	D	Grants Pass	OR	CHM	5/19/09	316,887
Stone	Steven	D	San Leandro	CA	CHM	1/21/98	61,827
Street	James	F	Gainesville	GA	CHM	11/12/13	84,530
Stricklan	David	K	Haverton	PA	MED	7/26/18	203,637
Strus	Deborah	A	San Antonio	TX	MED	11/12/13	125,821
Sullivan	Joseph	C	Burbank	CA	CHM	1/21/98	128,455
Sullivan	Daniel	B	Fruita	CO	DEN	5/31/18	5,093
Sullivan	John	K	Eugene	OR	DEN	8/15/19	50,996
Sullivan	John	M	Corpus Christi	TX	CHM	8/22/17	121,295
Taylor	Scott	M	Thousand Oaks	CA	DEN	7/6/12	178,935
Tchakalian	Leon	J	Van Nuys	CA	CHM	11/7/01	19,837
Teague	Jenette	....	Los Angeles	CA	DEN	11/7/01	149,659
Tennant	Michael	D	Wheat Ridge	CO	CHM	11/12/99	96,611
Thomas	Randy	L	Fairbanks	AK	DEN	4/24/98	231,878
Thomas	Gordon	A	Atlanta	GA	CHM	1/21/98	223,074
Thomas Sr	Robert	B	Stone Mountain	GA	DEN	1/21/98	463,533
Thompson	Emma	R	Grenada West Indies	FC	MED	2/15/02	87,716
Tierney	Richard	W	Atlanta	GA	POD	8/5/99	419,324
Tolbert JR	William	....	Los Angeles	CA	MED	11/12/13	76,481
Tomlin-Knight	Teresa	L	Manahawkin	NJ	POD	2/11/08	80,718
Toporovsky	Nathan	A	White Plains	NY	DEN	2/8/17	22,537
Townsend	Thomas	E	Fortmill	SC	CHM	4/24/98	9,023
Tramontana	Raul	E	Cincinnati	OH	OPT	5/14/02	226,768
Tran	Ngoc	H	Simi Valley	CA	CHM	3/1/99	108,064
Tran	Huong	N	Carpinteria	CA	CHM	8/12/16	63,209
Tran	Thuan	K	Henderson	NV	DEN	8/12/16	102,707
Trumbo	Traig	T	Sunland	CA	CHM	3/1/99	92,634
Tschabrun	Kevin	L	Holdrege	NE	DEN	3/1/99	125,706
Tumas	Mary	D	Brielle	NJ	CHM	3/11/15	92,189
Turner	Nancy	A	San Francisco	CA	CHM	1/21/98	24,967
Ussery	Marvin	....	Los Angeles	CA	DEN	8/12/16	56,282
Vacula	Nicole	A	Tonawanda	NY	CPY	8/12/16	62,035
Vafaee	Mohammadali	....	Santa Monica	CA	CHM	2/28/05	24,698
Vaishvila	Gail	A	Santa Monica	CA	CHM	8/1/00	232,642
Valicenti	Patrick	J	Wallkill	NY	DEN	8/5/04	138,395
Vanrensselaer	Jeffrey	A	Lake Forest	CA	CHM	4/24/98	100,190
Vardanian	Michael	A	Fullerton	CA	CHM	1/21/98	115,601
Vazquez	Carlos	R	Port Orange	FL	MED	8/15/19	89,262
Vega	Javier	J	Rancho Cucamonga	CA	CHM	8/12/16	51,938
Vernon	Earl	M	Davenport	IA	CHM	1/21/98	3,433
Vessels	Steven	L	Redlands	CA	CHM	1/21/98	207,725
Vessey	Ned	....	Arcadia	CA	CHM	8/1/00	67,656
Villaverde	John	J	Vestavia	AL	MED	8/22/17	72,342
Villegas	Isreal	....	Goddard	KS	CHM	3/25/19	44,459
Villeta	Javier	G	Kissimmee	FL	MED	3/1/99	331,701
Viloria-Else	Jenifer	A	North Hollywood	CA	CHM	1/21/98	185,256
Voboril JR	William	R	Carlisle	IA	POD	8/5/99	31,290
Vosburgh	Stephen	E	Lutz	FL	CHM	1/21/98	162,849
Wada	Isao	N	Oakland	CA	CHM	7/6/12	25,286
Wade	Michael	J	La Quinta	CA	OST	5/19/09	298,317

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS BY LAST NAME AS OF AUGUST 1, 2019—Continued

Last name	First name	Mi	City	State	Discipline	Date reported	Amount due
Wahdan	Buthayna	W	Jordan	FC	DEN	3/1/99	165,832
Wainwright	Mark	....	Oakland	CA	DEN	7/6/12	31,671
Walcher	Kevin	R	Booker	TX	CHM	5/14/02	106,482
Walker	Joel	W	Annapolis	MD	MED	8/12/16	56,948
Wall	Michael	J	Sandy	UT	MED	3/3/15	140,069
Wallace	Owen	....	Tonkawa	OK	CHM	1/21/98	52,891
Walsh	Richard	J	Ventura	CA	CHM	1/21/98	41,200
Walton	Teri	R	Pasadena	CA	CPY	8/5/99	188,415
Ward	Fairfield	A	Hampton	VA	DEN	8/12/16	36,877
Warner	Arthur	....	San Ramon	CA	DEN	5/20/04	129,714
Warner	Rick	A	Aurora	CO	CHM	11/7/01	111,325
Washington	George	L	Baldwyn	MS	DEN	5/7/13	573,633
Washington	Patricia	A	Coto De Caza	CA	MED	2/2/18	60,052
Washington	Arthur	C	Houston	TX	MED	9/24/14	23,888
Washington-Houzell	Patricia	L	Lakewood	CA	POD	8/10/01	548,842
Weatherly	Darrel	F	Jacksonville	FL	OST	5/16/11	585,386
Weil	Mitchell	A	San Clemente	CA	MED	1/21/98	66,137
Weisheit-Dasylva	Lyn	D	Marietta	GA	CHM	3/1/99	61,817
Welch	Ronald	B	Sandpoint	ID	CHM	3/1/99	100,976
Westing	Denise	D	Alameda	CA	CHM	1/21/98	120,743
Whedbee	Joseph	I	Redlands	CA	DEN	5/14/02	144,410
Whigham	Gwendolyn	E	Houston	TX	CHM	3/1/99	67,237
Whipkey	Douglas	G	Jensen Beach	FL	CHM	1/21/98	135,230
Whitaker	Aaron	T	Washington	DC	DEN	5/19/09	206,845
White	Judith	U	Huntington Beach	CA	CHM	1/21/98	38,119
Whittlesey	James	B	Novato	CA	CHM	1/21/98	58,105
Williams	Johnnie	....	Hayward	CA	MED	3/25/19	487,470
Williams	David	L	Pasadena	CA	POD	1/21/98	93,638
Williams	Duane	A	Livermore	CA	CHM	1/21/98	127,113
Williams	Simeon	J	Washington	DC	MED	3/1/99	112,042
Williams	Brett	S	Los Angeles	CA	MED	5/14/16	185,088
Williams	Pamela	A	Buena Park	CA	PUB	1/21/98	39,377
Winston	Gregg	O	Pompano Beach	FL	CHM	3/1/99	202,733
Wong	Matt	S	Mountain View	CA	CHM	11/9/10	48,977
Wong	Wan Sing	V	South San Francisco	CA	POD	10/30/03	204,120
Wright-Benford	Sheila	A	Southfield	MI	POD	2/8/17	62,365
Yeates	Terrance	C	Brooklyn	NY	DEN	1/21/98	221,576
Yniguez	Alma	B	Newark	CA	CHM	2/20/07	275,332
Yoste	Joseph	....	Brownsville	TX	DEN	8/12/16	102,303
Yurick	Richard	....	Bay St Louis	MS	CHM	11/12/13	62,845
Yurkovich	Mark	R	Bentleyville	PA	CPY	8/12/16	59,340
Zaun	Timothy	M	Lakewood	OH	DEN	1/21/98	195,317
Zeitsoff-Mahar	Deborah	L	Aptos	CA	CHM	1/21/98	134,815
Zucker	Ronald	G	Long Beach	NY	CHM	4/24/98	217,928
Totals:	693	....					$98,130,100

[FR Doc. 2019–19887 Filed 9–12–19; 8:45 am]

BILLING CODE 4000–01–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: EC19–136–000.

Applicants: Consolidated Edison Company of New York, Inc.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Consolidated Edison Company of New York, Inc.

Filed Date: 9/6/19.

Accession Number: 20190906–5142.

Comments Due: 5 p.m. ET 9/27/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1521–005; *ER10–1520–005; ER10–1522–004.*

Applicants: Occidental Power Marketing, L.P., Occidental Power Services, Inc., Occidental Chemical Corporation.

Description: Notice of Non-Material Change in Status of the Occidental MBRA Entities.

Filed Date: 9/9/19.

Accession Number: 20190909–5026.

Comments Due: 5 p.m. ET 9/30/19.

Docket Numbers: ER19–1837–001.

Applicants: California Independent System Operator Corporation.

Description: Compliance filing: 2019–09–06 Compliance Filing re ER19–1837 Tariff Clarifications Amendment to be effective 8/12/2019.

Filed Date: 9/6/19.

Accession Number: 20190906–5103.

Comments Due: 5 p.m. ET 9/27/19.

Docket Numbers: ER19–2105–001.

Applicants: Appalachian Power Company, PJM Interconnection, L.L.C.

Description: Tariff Amendment: PJM TOs submit response to the Commission's 8/8/2019 Deficiency Letter to be effective 8/10/2019.

Filed Date: 9/6/19.

Accession Number: 20190906–5128.

Comments Due: 5 p.m. ET 9/27/19.

Docket Numbers: ER19–2457–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2019–09–09_SA 3333 ITC–DTE Electric Substitute GIA (J793) to be effective 7/11/2019.

Filed Date: 9/9/19.

Accession Number: 20190909–5027.

Comments Due: 5 p.m. ET 9/30/19.

Docket Numbers: ER19–2767–000.

Applicants: Massachusetts Electric Company.

Description: § 205(d) Rate Filing: 2019 Rate Update Filing for Massachusetts Electric Borderline Sales Agreement to be effective 11/1/2017.

Filed Date: 9/6/19.

Accession Number: 20190906–5125.

Comments Due: 5 p.m. ET 9/27/19.

Docket Numbers: ER19–2768–000.

Applicants: Portland General Electric Company.

Description: § 205(d) Rate Filing: Att K Revision Filing to be effective 1/1/2020.

Filed Date: 9/6/19.

Accession Number: 20190906–5127.

Comments Due: 5 p.m. ET 9/27/19.

Docket Numbers: ER19–2769–000.

Applicants: Potomac Electric Power Company.

Description: Application to Recover Abandoned Plant Costs of Potomac Electric Power Company.

Filed Date: 9/6/19.

Accession Number: 20190906–5143.

Comments Due: 5 p.m. ET 9/27/19.

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: September 9, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–19825 Filed 9–12–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–8769–000]

Logan, Cary J., Jr.; Notice of Filing

Take notice that on September 6, 2019, Cary J. Logan, Jr. filed an application for authorization to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b), Part 45 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 45 (2019), and Order No. 664, 112 FERC 61,298 (2005).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on September 27, 2019.

Dated: September 9, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–19823 Filed 9–12–19; 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: ER19–2446–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2019–09–06_SA 3332 Southern Indiana Gas & Electric-OSER Substitute GIA (J783) to be effective 7/10/2019.

Filed Date: 9/6/19.

Accession Number: 20190906–5167.

Comments Due: 5 p.m. ET 9/16/19.

Docket Numbers: ER19–2770–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA SA No. 5480: Queue No. AD2–002 to be effective 8/5/2019.

Filed Date: 9/9/19.

Accession Number: 20190909–5052.

Comments Due: 5 p.m. ET 9/30/19.

Docket Numbers: ER19–2771–000.

Applicants: New York Independent System Operator, Inc., New York State Electric & Gas Corporation.

Description: § 205(d) Rate Filing: NYISO 205 joint Executed IA among NYISO, NYSEG, and TrAILCo for Mainesburg to be effective 7/31/2019.

Filed Date: 9/9/19.

Accession Number: 20190909–5061.

Comments Due: 5 p.m. ET 9/30/19.

Docket Numbers: ER19–2772–000.

Applicants: New York Independent System Operator, Inc., New York State Electric & Gas Corporation, Trans-Allegheny Interstate Line Company.

Description: § 205(d) Rate Filing: Joint 205 of an executed IA among NYISO, NYSEG and TrAILCO for Pierce Brook to be effective 7/31/2019.

Filed Date: 9/9/19.

Accession Number: 20190909–5072.

Comments Due: 5 p.m. ET 9/30/19.

Docket Numbers: ER19–2773–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3594 Wheatbelt Wind GIA to be effective 8/23/2019.

Filed Date: 9/9/19.

Accession Number: 20190909–5076.

Comments Due: 5 p.m. ET 9/30/19.

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: September 9, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–19821 Filed 9–12–19; 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: CP19–507–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Abbreviated Application for Abandonment of Service of Transcontinental Gas Pipe Line Company, LLC.
Filed Date: 9/4/19.
Accession Number: 20190904–5103.
Comments Due: 5 p.m. ET 9/25/19.

Docket Numbers: CP19–508–000.
Applicants: National Fuel Gas Supply Corporation.
Description: Abbreviated Application for Abandonment of Service of National Fuel Gas Supply Corporation.
Filed Date: 9/4/19.
Accession Number: 20190904–5146.
Comments Due: 5 p.m. ET 9/25/19.

Docket Numbers: RP19–1091–004.
Applicants: American Midstream (Midla), LLC.
Description: Compliance filing compliance to 10010 to be effective 8/1/2019.
Filed Date: 9/6/19.
Accession Number: 20190906–5111.
Comments Due: 5 p.m. ET 9/18/19.

Docket Numbers: RP19–1543–000.
Applicants: ANR Pipeline Company.
Description: § 4(d) Rate Filing: Spot Price Indices to be effective 11/1/2019.
Filed Date: 9/6/19.
Accession Number: 20190906–5001.
Comments Due: 5 p.m. ET 9/18/19.

Docket Numbers: RP19–1544–000.
Applicants: Saavi Energy Solutions, LLC, Sempra Gas & Power Marketing, LLC.
Description: Joint Petition for Temporary Waiver of Commission Policies, Capacity Release Regulations and Policies, et al. of Saavi Energy Solutions, LLC, et al. under RP19–1544.
Filed Date: 9/6/19.
Accession Number: 20190906–5045.
Comments Due: 5 p.m. ET 9/18/19.

Docket Numbers: RP19–1545–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: List of Non-Conforming Service Agreements (Rivervale South, Buford) to be effective 10/7/2019.
Filed Date: 9/6/19.
Accession Number: 20190906–5059.
Comments Due: 5 p.m. ET 9/18/19.

Docket Numbers: RP19–1546–000.
Applicants: Gas Transmission Northwest LLC.
Description: § 4(d) Rate Filing: 36-month ROFR to be effective 10/6/2019.
Filed Date: 9/6/19.
Accession Number: 20190906–5065.
Comments Due: 5 p.m. ET 9/18/19.

Docket Numbers: RP19–1547–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Crediting of Reservation Charges—WSS–OA, LSS, SS–2 to be effective 11/1/2019.
Filed Date: 9/6/19.
Accession Number: 20190906–5126.
Comments Due: 5 p.m. ET 9/18/19.

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: September 9, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–19822 Filed 9–12–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–31–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Availability of the Environmental Assessment for the Proposed Lines DT and DS Replacement Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Lines DT and DS Replacement Project (Project), proposed by Southern Star Central Gas Pipeline, Inc. (Southern Star) in the above-referenced docket. The Project consists of the abandonment of two pipelines and construction of one larger diameter pipeline to replace the pipelines being abandoned in Anderson and Franklin Counties, Kansas.

The EA assesses the potential environmental effects of abandoning, constructing, and operating the Project in accordance with the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the Project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Southern Star proposes to construct 31.5 construct 31.5 miles of new 36-inch-diameter pipeline, designated as Line DPA, and three small-diameter (*i.e.,* 2 to 4 inches) pipeline laterals, totaling about 5.9 miles. The new pipelines would replace Southern Star's existing Lines DS and DT. Line DS is a 31.4-mile-long, 20-inch-diameter pipeline of which 29.4 miles would be removed and 2 miles would be abandoned in place. Line DT is a 31.8-mile-long, 26-inch-diameter pipeline, of which 29 miles would be removed and 2.8 miles would be abandoned in place. Southern Star would also modify two existing compressor stations (Ottawa Compressor Station [CS] and Welda CS), five existing tie-ins, and associated auxiliary and appurtenant facilities. Lastly, Southern Star would construct one new regulator/measuring station (Richmond Regulator Station), two new launchers and receivers, three new mainline valves (MLVs), and four new tie-ins along the new pipeline laterals.

The Commission mailed a copy of the *Notice of Availability* 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 Project area. 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*) under the EAs tab. 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.* CP19–31). 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 this Project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on October 9, 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 (CP19–31–000) 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: September 9, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–19824 Filed 9–12–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9046–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 09/02/2019 10 a.m. ET Through 09/09/2019 10 a.m. ET

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20190219, Draft Supplement, FHWA, MI, I–94 Modernization Project in Detroit from I–96 to Conner Avenue DSEIS and Section 4(f) Evaluation, Comment Period Ends: 10/28/2019, Contact: Ruth Hepfer 517–702–1847

EIS No. 20190220, Draft Supplement, CHSRA, CA, Merced to Fresno Section: Central Valley Wye Draft Supplemental Environmental Impact Report/Environmental Impact Statement, Comment Period Ends: 10/28/2019, Contact: Dan McKell 916–330–5668

EIS No. 20190221, Draft, FRA, DC, Long Bridge Project, Comment Period Ends: 10/28/2019, Contact: David Valenstein 202–493–6368

EIS No. 20190222, Final, BLM, NV, Mackay Optimization Project, Review Period Ends: 10/15/2019, Contact: Jeanette Black 775–623–1500

EIS No. 20190223, Final, BLM, AZ, Final Environmental Impact Statement and Proposed Resource Management Plan Amendments for the Ten West Link Transmission Line Project, Review Period Ends: 10/15/2019, Contact: Lane Cowger 602–417–9612

EIS No. 20190224, Final, NYCOMB, NY, East Side Coastal Resiliency (ESCR), Review Period Ends: 10/15/2019, Contact: Eram Qadri 212–788–6282

Dated: September 9, 2019.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2019–19813 Filed 9–12–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2018–0774; FRL–9999–53–ORD]

Proposed Information Collection Request; Comment Request; Evaluating End User Satisfaction of EPA's Research Products (New)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Evaluating Customer Satisfaction of EPA's Research Products'' (EPA ICR No. 2593.01, OMB Control No. 2080–NEW) 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 request for approval of a new collection. 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 November 12, 2019.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–ORD–2018–0774 online using *www.Regulations.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Sean Paul, U.S. Environmental Protection Agency, Office of Program Accountability and Resource Management, Office of Research and Development, Mail Code 41182, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–7099; fax number: (202) 565–2910; email address: *paul.sean@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.*

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: The purpose of this information collection is to survey stakeholders currently using the EPA's Office of Research and Development's (ORD) scientific research products to increase transparency and public participation, and to ascertain the quality, usability, and timeliness of the research products. ORD will collect these data to inform the annual end of year performance reporting to the Office of Management and Budget (OMB) that will be published each year in the Annual Performance Report (APR), which is part of the President's Budget Request and mandated under the Government Performance and Results Act (GPRA). The survey results will be used to estimate the degree to which ORD research products meet customer needs and will enable the improvement of the development and delivery of products. Some of the information reported on the form is confidential, which will be withheld from the public pursuant to Section 107(1) of the Ethics in Government Act of 1978. Participation is voluntary.

Form Numbers: None.

Respondents/affected entities: Life, physical and social science professionals.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 250 (total).

Frequency of response: Annually.

Total estimated burden: .33 hours (per year). Burden is defined at 5 CFR 1320.03(b)

Total estimated cost: $4,785 (per year).

Changes in Estimates: This is a new ICR, therefore there is no change of hours in the total estimated respondent burden.

Dated: August 29, 2019.

Chris Robbins,

Acting Deputy Assistant Administrator for Management, Office of Research and Development.

[FR Doc. 2019–19883 Filed 9–12–19; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Regular Meeting; Farm Credit System Insurance Corporation Board

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Notice, regular meeting.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATES: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 19, 2019, from 2:00 p.m. until such time as the Board concludes its business.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102. Submit attendance requests via email to *VisitorRequest@FCA.gov.* See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056, *aultmand@fca.gov.*

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: Name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale Aultman, Secretary to the Farm Credit System Insurance Corporation Board, at (703) 883–4009. The matters to be considered at the meeting are:

Closed Session

- FCSIC Report on Insurance Risk

Open Session

A. Approval of Minutes

- June 13, 2019

B. Business Reports

- FCSIC Financial Reports
- Report on Insured Obligations
- Report on Annual Performance Plan

C. New Business

- Annual Performance Plan FY 2020–2021
- Proposed 2020 and 2021 Budgets
- Insurance Fund Progress Review and Setting of Premium Range Guidance for 2020
- Policy Statements Concerning: Equal Employment Opportunity and Diversity, and Harassment

Dated: September 9, 2019.

Dale Aultman,

Secretary, Farm Credit System Insurance Corporation.

[FR Doc. 2019–19833 Filed 9–12–19; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 1:00 p.m. on Tuesday, September 17, 2019, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of Minutes of a Board of Directors' Meeting Previously Distributed.

Memorandum and resolution re: Final Rule to Apply CBLR Framework to Deposit Insurance Assessment System.

Memorandum and resolution re: Notice of Proposed Rulemaking—Removal of Transferred OTS Regulations Regarding Accounting Requirements for State Savings Associations.

Memorandum and resolution re: Notice of Proposed Rulemaking to Rescind Regulations Transferred from the Former Office of Thrift Supervision, Part 390, Subpart R—Regulatory Reporting Standards.

Memorandum and resolution re: Proposed Rescission of Certain Statements of Policy.

Memorandum and resolution re: Regulatory Capital Rule: Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996; Revised Effective Date.

Summary report of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Regulatory Capital Rule: Capital Simplification for Qualifying Community Banking Organizations.

Memorandum and resolution re: Notice of Proposed Rulemaking on Swap Margin Requirements.

The meeting will be held in the Board Room located on the sixth floor of the FDIC Building located at 550 17th Street NW, Washington, DC.

This Board meeting will be Webcast live via the internet and subsequently made available on-demand approximately one week after the event. Visit *http://fdic.windrosemedia.com* to view the event. If you need any technical assistance, please visit our Video Help page at: *https://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call 703–562–2404 (Voice) or 703–649–4354 (Video Phone) to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at 202–898–7043.

Dated at Washington, DC, on September 10, 2019. Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 2019–19934 Filed 9–11–19; 11:15 am]

BILLING CODE 6714–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0184; Docket No. 2019–0003, Sequence No. 4]

Submission for OMB Review; Contractors Performing Private Security Functions Outside the United States

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision and renewal of a previously approved information collection requirement regarding contractors performing private security functions outside the United States.

DATES: Submit comments on or before October 15, 2019.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Mandell, 1800 F Street NW, Washington, DC 20405.

Instructions: All items submitted must cite Information Collection 9000–0184, Contractors Performing Private Security Functions Outside the United States. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, Governmentwide Acquisition Policy, at 202–219–0202 or email *cecelia.davis@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Number, Title, and any Associated Form(s)

OMB Control Number 9000–0184, Contractors Performing Private Security Functions Outside the United States.

B. Needs and Uses

In accordance with Federal Acquisition Regulation (FAR) 52.225–26, Contractors Performing Private Security Functions Outside the United States requires contractors performing in areas such as Iraq and Afghanistan to ensure that their personnel performing private security functions comply with 32 CFR part 159, including (1) accounting for Government-acquired and contractor-furnished property and (2) reporting incidents in which a weapon is discharged, personnel are attacked or killed or property is destroyed, or active, lethal countermeasures are employed.

C. Annual Reporting Burden

The estimated hours per response required to identify and input information increased to .5 hours per response. This is an increase from .167 hours per response published in the first notice.

Respondents: 16.
Responses per Respondent: 5.
Total Responses: 80.
Hours per Response: .5.
Total Burden Hours: 40.
Frequency: On Occasion.
Affected Public: Businesses or other for-profit institutions.

D. Public Comment

A 60-day notice published in the **Federal Register** at 84 FR 17830 on April 26, 2019. One comment was received. The analysis of the public comment is summarized as follows:

a. Summary of the Collection Activity is not Accurate

Comment: The respondent expressed that the summary of the collection activity is not accurate, because it only gives two examples of the purposes of the collection.

Response: After additional review of the collection activity requirement, it is deemed no change is necessary because the summary of the information collection adequately identifies the required information.

b. Low Burden Estimate

Comment: The respondent states that the burden estimate seems low for 16 private security companies, each giving 5 responses which takes a small amount of time to complete.

Response: Based on discussions with subject matter experts, it has been concluded that the estimated hours per response were underestimated. The response time has been increased from .167 to .5. This increase will more accurately reflect the burden estimate.

c. Reporting Form

Comment: The respondent indicated that the actual form should be approved along with the information collection summary to provide sufficient details to meet the reporting requirements.

Response: After further review, the reporting requirements detailed in the information collection summary are deemed to provide sufficient details to meet the objectives of FAR clause 52.225–26. No further revisions are necessary because the information collection summary adequately identifies the reporting requirements.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 9000–0184, Contractors Performing Private Security Functions Outside the United States, in all correspondence.

Dated: September 10, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019–19836 Filed 9–12–19; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–XXXX; Docket No. 2019–0001; Sequence No. 11]

Submission for OMB Review; Improving Customer Experience—Implementation of Section 280 of OMB Circular A–11

AGENCY: General Services Administration.

ACTION: Notice and request for comments.

SUMMARY: As part of the Administration's commitment to improving customer service delivery, the General Services Administration (GSA), is coordinating the government wide development of the following proposed Information Collection Request ''Improving Customer Experience—Implementation of Section 280 of OMB Circular A–11'' for approval under the Paperwork Reduction Act. This notice announces GSA will be submitting on this collection to OMB for approval and solicits comments on specific aspects of the proposed information collection.

DATES: Submit comments on or before: October 15, 2019.

ADDRESSES: Submit comments identified by Information Collection 3090–XXXX, Improving Customer Experience (A–11, Section 280), by any of the following methods:

- *Federal eRulemaking portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments to *https://www.regulations.gov,* will be posted to the docket unchanged.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 3090–XXXX, Improving Customer Experience, A–11, Section 280.

Instructions: Please submit comments only and cite Information Collection 3090–XXXX, Improving Customer Experience, in all correspondence related to this collection. To confirm receipt of your comment(s), please check *regulations.gov,* approximately two-to-three business days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Amira Boland, Office of Government-wide Policy, 1800 F ST NW, Washington, DC 20405, or via email to *amira.boland@gsa.gov.*

SUPPLEMENTARY INFORMATION:

Title: Improving Customer Experience, (A–11, Section 280)

Abstract: A modern, streamlined and responsive customer experience means: Raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership.

This proposed information collection activity provides a means to garner customer and stakeholder feedback in an efficient, timely manner in accordance with the Administration's commitment to improving customer service delivery as discussed in Section 280 of OMB Circular A–11 at *https://www.whitehouse.gov/wp-content/uploads/2018/06/s280.pdf.*

Section 280.7 established seven domains for measuring customer experience.

- Overall: (1) Satisfaction, (2) Confidence/Trust

- Service: (3) Quality
- Process: (4) Ease/Simplicity, (5) Efficiency/Speed, (6) Equity/Transparency
- People: (7) Employee Helpfulness

All High Impact Service Providers listed at *https://www.performance.gov/cx/HISPList.pdf* are required to ask questions in these domains of their customers. However, all agencies are encouraged to conduct their customer experience measurement in line with these standard measures.

As discussed in OMB guidance, agencies should identify their highest-impact customer journeys (using customer volume, annual program cost, and/or knowledge of customer priority as weighting factors) and select touchpoints/transactions within those journeys to collect feedback. For the purposes of this collection, Federal customer experience will focused on real-time transaction-level measures

The results will be used to improve the delivery of Federal services and programs. It will also provide government-wide data on customer experience that can be displayed on *www.performance.gov* to help build transparency and accountability of Federal programs to the customers they serve.

For reference, sample proposed questions (also available on *www.performance.gov*) are below. All are on a Likert Scale from 1 to 5 (1=strongly disagree to 5=strongly agree) except free text questions).

[Landing Page]

1. I am satisfied with the service I received from [Program/Service name].)
2. This interaction increased my confidence in [Program/Service name]. OR I trust [Agency/Program/Service name] to fulfill our country's commitment to [relevant population].
3. Anything you want to tell us about your scores above? (free text)
4. Would you like to take two more minutes to answer five more questions to help us improve our services? (Y/N)

[Page 2 if respondent answered Y—programs will select what is applicable to them]

5. My need was addressed.
6. It was easy to complete what I needed to do.
7. It took a reasonable amount of time to do what I needed to do.
8. I was treated fairly.
9. Employees I interacted with were helpful.
10. Which service center did you visit today? OR ''which service did you call about today?''
11. Anything else you'd like to share with us? (free text)

A notice published in the **Federal Register** at 84 FR 31868, on July 3, 2019. No comments were received. Upon OMB approval of the collection, GSA will submit collections on behalf of the following agencies for approval: Department of Agriculture, Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, United States Agency for International Development, the General Services Administration, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Environmental Protection Agency, National Aeronautics and Space Administration, the Consumer Financial Protection Bureau, National Science Foundation, Nuclear Regulatory Commission, the Small Business Administration, the Office of Personnel Management, and Social Security Administration.

As a general matter, these information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

GSA will only submit collections if they meet the following criteria.

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used for general service improvement and program management purposes;
- Upon agreement between OMB and the agency collecting the information, all or a subset of information may be released only on *performance.gov.* Release of any other data must be discussed with OMB before release.

Public responses to these individual collections will provide insights in improving services offered to the public. If this information is not collected, vital feedback from customers and stakeholders on services will be unavailable.

Current Action: New Collection of Information.

Type of Review: New.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Estimated Number of Respondents: Below is a preliminary estimate of the aggregate burden hours for this new collection. GSA will provide refined estimates of burden in subsequent notices.

Average Expected Annual Number of Activities: Approximately 50 customer feedback surveys.

Average Number of Respondents per Activity: Range varies greatly depending on Federal Service.

Annual Responses: Approximately 40,000,000.

Average Minutes per Response: 3 minutes.

Burden Hours: 2,000,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. 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.

All written comments will be available for public inspection on *regulations.gov.* 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 Office of Management and Budget control number.

Dated: September 5, 2019.

David A. Shive,

Chief Information Officer.

[FR Doc. 2019–19861 Filed 9–12–19; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Drug Vial Size Report

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health & Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the issuance of the August 2, 2019 single-source funding opportunity titled ''Drug Vial Size Report'' available solely to the Health and Medicine Division of the National Academies of Sciences, Engineering, and Medicine [the Academies] to conduct a study on the Federal healthcare costs, safety, and quality concerns associated with discarded drugs that results from weight-based dosing of medicines contained in single dose vials as stated in Senate report 114–274.

DATES: The performance period of the award, in the amount of $1,200,000, to the Academies will be 18 months from the date of award.

FOR FURTHER INFORMATION CONTACT: Alisha Williams, (410) 786–7507 and Deborah Pujals Keyser, (410) 786–8096.

SUPPLEMENTARY INFORMATION:

I. Background

A 2016 report published in the British Medical Journal (BMJ) describes overspending and waste due to single-use cancer drugs being supplied in vials that contain larger dosages than needed by the average patient. The authors specifically cite examples of drug manufacturers distributing larger sizes and more limited variety of single-use vial sizes in the U.S. than they do for their overseas markets. While this may paradoxically increase physician and hospital profits when reimbursement is based on a percentage of the cost of an entire vial, this situation results in the excessive waste of highly-valuable drugs and increased Federal and private payer costs. Using claims data for the top 20 cancer drugs, the study found that the proportion of drug wasted ranged from 1 to 33 percent and was associated with an estimated $2.8 billion dollars per year in drug costs and healthcare provider markups on wasted drug.

In addition to wasting taxpayer dollars through Federal health programs like Medicare, this practice also drives up the cost for patients whose cost sharing is based on amounts of drugs that are unnecessarily large. Since Medicare Part B beneficiaries pay coinsurance of up to 20 percent for prescription drugs, seniors are paying higher out-of-pocket costs for drugs they do not need or receive.

As described in Chapter 17, Section 40.1 of the Medicare Claims Processing Manual, Medicare Part B pays for the amount of the drug or biological administered to the beneficiary as well as the remainder of drug discarded from single-use vials or other single-use package up to the amount of the drug or biological indicated on the vial or package label. The JW modifier is a Healthcare Common Procedure Coding System (HCPCS) Level II modifier used on a Medicare Part B drug claims to report the amount of drug or biological that is discarded and eligible for payment under the discarded drug policy. The modifier is only to be used for drugs in single-dose or single-use packaging. As of January 1, 2017, The Centers for Medicare and Medicaid Services (CMS) requires all physicians, hospitals and other providers to use the JW modifier when submitting claims to Medicare Administrative Contractors (MACs) for reimbursement (except claims for drugs and biologicals provided under the Competitive Acquisition Program) and to document discarded waste in the patient's medical record. This mandatory reporting nationwide will provide the data necessary to quantify the amount of drugs that are unused and the cost to taxpayers from that waste.

Further research is needed to fully illustrate system factors that lead to drug waste from single-dose vials, quantify the Federal government's and Medicare beneficiaries' costs associated with this waste, and explore waste mitigation strategies.

II. Provisions of the Notice

The Funding Opportunity offers $1,200,000 in funding for the Academies to conduct a study on the Federal healthcare costs, safety, and quality concerns associated with discarded drugs that results from weight-based dosing of medicines contained in single-dose vials. More specifically, the Academies' requirements include, but are not limited to:

- Provide a comprehensive assessment of Federal healthcare costs, both to the Medicare program and to Medicare beneficiaries, due to billing for wasted drugs and biologicals from single-dose vials. Additionally, examine Federal reimbursement and beneficiary cost-sharing policies as they relate to drug waste and the degree to which these policies may affect costs to Federal programs and beneficiaries.
- Using available data sources, quantify the amount of waste associated with single-dose injectable drugs and biologics in billing units and/or proportion of available vial sizes and calculate the associated dollar amounts.
- Identify relevant drugs, vial sizes, dosing practices, and delivery practices most associated with waste. Evaluate dosing strategies which may contribute to or mitigate excessive drug waste where possible (for example, dosing based on weight, body surface area [BSA] and institutional rounding/dose-capping protocols).
- Research the safety and quality concerns associated with the use of single-dose vials which contain excess drug from industry and regulatory perspectives. Investigate manufacturer rationale for developing particular vial sizes and safety standards (such as those from U.S. Pharmacopoeia [USP]) influencing requirements for single-dose vs multi-dose vial development and utilization. Review Federal guidelines or requirements that influence drug package types and drug supply chain factors such as manufacturing, storage, and shipment.
- Consult with Stakeholders, including CMS, FDA, CDC, DOD, IHS, VA, USP, specialty physicians [including rural practitioners], specialty clinics [including rural clinics], hospitals [including rural hospitals], patient groups, biopharmaceutical manufacturers, health insurance companies, and healthcare distributors/wholesalers.
- Comply with applicable conflict of interest standards.
- The report should include findings related to above requirements as well as provide recommendations to Congress for revising current policies and practices or other strategies to mitigate drug waste and its associated costs. Recommendations should consider collateral impact on all stakeholders' perspectives, such as Federal programs, private insurers, and beneficiaries who pay for wasted drug products, as well as pharmaceutical industry and physician,

clinic, and hospital practices that receive reimbursement for wasted drug products.

III. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: September 6, 2019.

Seema Verma

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2019–19885 Filed 9–12–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–3304]

The Special 510(k) Program; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''The Special 510(k) Program.'' FDA established the Special 510(k) Program to facilitate the submission, review, and clearance of changes to a manufacturer's own legally marketed predicate device. This guidance provides the framework that FDA uses when considering whether a premarket notification (510(k)) is appropriate for review as a Special 510(k).

DATES: The announcement of the guidance is published in the **Federal Register** on September 13, 2019.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–3304 for ''The Special 510(k) Program.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''The Special 510(k) Program'' to the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002 or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Joshua Silverstein, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1615, Silver Spring, MD 20993–0002, 301–796–5155; Angela DeMarco, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1611, Silver Spring, MD 20993–0002, 301–796–4471; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301,

Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

On March 20, 1998, FDA issued the guidance document, ''The New 510(k) Paradigm: Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications,'' which established the Special 510(k) Program. By establishing the Special 510(k) Program, FDA sought to create an efficient review process for certain changes subject to 510(k) submission requirements by leveraging design control requirements. The Special 510(k) Program allows manufacturers that are intending to change their own legally marketed device to utilize risk analysis and verification and validation activities to facilitate submission, review, and clearance of the change. While FDA intends to review Special 510(k)s within 30 days, the Special 510(k) Program does not alter any statutory or regulatory requirements related to the 510(k) process under sections 510 and 513 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360 and 360c) and 21 CFR part 807, subpart E.

To improve the efficiency of 510(k) review, FDA has updated the Special 510(k) Program to both clarify existing policy and the types of changes appropriate for the program. This guidance explains the factors FDA uses when considering whether a 510(k) is appropriate for review as a Special 510(k). In general, a change to an existing device may be appropriate for a Special 510(k) when: (1) The proposed change is submitted by the manufacturer legally authorized to market the existing device; (2) performance data are unnecessary, or if performance data are necessary, well-established methods are available to evaluate the change; and (3) all performance data necessary to support substantial equivalence can be reviewed in a summary or risk analysis format.

FDA considered comments received on the draft guidance that appeared in the **Federal Register** of September 28, 2018 (83 FR 49097). FDA revised the guidance as appropriate in response to the comments. This document supersedes the Special 510(k) content in ''The New 510(k) Paradigm: Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications,'' issued on March 20, 1998.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''The Special 510(k) Program.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* This guidance document is also available at *https://www.regulations.gov* or *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances.* Persons unable to download an electronic copy of ''The Special 510(k) Program'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 18008 and complete title of the guidance in the request to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the following FDA regulations and guidance have been approved by OMB as listed in the following table:

21 CFR part; guidance; or FDA form	Topic	OMB control No.
807, subpart E	Premarket Notification	0910–0120
801	Medical Device Labeling Regulations	0910–0485
820	Current Good Manufacturing Practice (CGMP); Quality System (QS) Regulation.	0910–0073
''Requests for Feedback and Meetings for Medical Device Submissions: The Q Submission Program and Meetings with Food and Drug Administration Staff''.	Q-submissions	0910–0756

Dated: September 9, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–19881 Filed 9–12–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–XXXX]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services (HHS), is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before November 12, 2019.

ADDRESSES: Submit your comments to *Sherette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–New–60D and project title for reference to *Sherrette.funn@hhs.gov,* or call the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collection Request Title: 0990–XXXX—Subpart C Research Certification Form.

Abstract: Assistant Secretary for Health, Office for Human Research Protections is requesting a new information collection, on the Subpart C Research Certification Form. The purpose of the IRB Registration Form is to provide a simplified, standardized procedure for institutions to submit subpart C research certifications to OHRP in order to obtain authorization to include prisoners in human subjects research as required in 45 CFR 46.305(c).

Likely Respondents: Institutions or Organizations operating IRBs that have enrolled or are planning to enroll prisoners in human subject research conducted or supported by HHS.

ESTIMATE ANNUALIZED BURDEN IN HOURS TABLE

Form name	Number of respondents	Average burden per response (in hours)	Total burden hours
Subpart C Certification Form	80	1	80
Total			80

Terry Clark,

Office of the Secretary, Asst Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2019–19857 Filed 9–12–19; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2019–0748]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0028

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0028, Course Approval and Records for Merchant Marine Training Schools; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before November 12, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2019–0748] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–612), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE. SE, STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

In response to your comments, we may revise the this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2019–0748], and must be received by November 12, 2019.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://*

www.regulations.gov and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Information Collection Request

Title: Course Approval and Records for Merchant Marine Training Schools.

OMB Control Number: 1625–0028.

Summary: The information is needed to ensure that merchant marine training schools meet minimal statutory requirements. The information is used to approve the curriculum, facility and faculty for these schools.

Need: Section 7315 of 46 U.S.C. authorizes an applicant for a license or document to substitute the completion of an approved course for a portion of the required sea service. Section 10.402 of 46 CFR contains the Coast Guard regulations for course approval.

Forms: None.

Respondents: Merchant marine training schools.

Frequency: Five years for reporting; one year for recordkeeping.

Hour Burden Estimate: The estimated burden has increased from 139,807 hours to 145,917 hours a year, due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: September 10, 2019.

James D. Roppel,

U.S. Coast Guard, Chief, Office of Information Management.

[FR Doc. 2019–19843 Filed 9–12–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2019–0746]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0118

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0118, Various International Agreement Certificates and Documents; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before November 12, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2019–0746] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–612), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE SE, STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

In response to your comments, we may revise the this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2019–0746], and must be received by November 12, 2019.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Information Collection Request

Title: Various International Agreement Certificates and Documents.

OMB Control Number: 1625–0118.

Summary: This information collection is associated with the Maritime Labour Convention, 2006. The Coast Guard established a voluntary inspection program for vessels who wish to document compliance with the requirements of the MLC. U.S. commercial vessels that operate on international routes are eligible to participate. The Coast Guard issues

voluntary compliance certificates as proof of compliance with the MLC.

Need: This information is needed to determine if a vessel is in compliance with the Maritime Labour Convention, 2006.

Forms:

- CG–16450, Maritime Labour Certificate (Statement of Voluntary Compliance).
- CG–16450A, Interim Maritime Labour Certificate (Statement of Voluntary Compliance).
- CG–16450B, Declaration of Maritime Labour Certificate—Part I (Statement of Voluntary Compliance).
- CG–16450C, United States Coast Guard, Maritime Labour Convention, 2006 Inspection Report.

Respondents: Vessel owners and operators.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 625 hours a year to 653 hours a year, due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: September 10, 2019.

James D. Roppel,

U.S. Coast Guard, Chief, Office of Information Management.

[FR Doc. 2019–19844 Filed 9–12–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2019–0747]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0079

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0079, Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1995, 1997 and 2010 Amendments to the International Convention; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before November 12, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2019–0747] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov*. See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov*. Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

In response to your comments, we may revise the this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2019–0747], and must be received by November 12, 2019.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov*. If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Information Collection Request

Title: Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1995, 1997 and 2010 Amendments to the International Convention.

OMB Control Number: 1625–0079.

Summary: This information is necessary to ensure compliance with the international requirements of the STCW Convention, and to maintain an acceptable level of quality in activities associated with training and assessment of merchant mariners.

Need: Chapter 71 of 46 U.S.C. authorizes the Coast Guard to issue regulations related to licensing of merchant mariners. These regulations are contained in 46 CFR Chapter I, subchapter B.

Forms: None.

Respondents: Owners and operators of vessels, training institutions, and mariners.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 29,366 hours to 29,234 hours a year, primarily due to a decrease in the estimated annual number of vessel respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: September 10, 2019.

James D. Roppel,

U.S. Coast Guard, Chief, Office of Information Management.

[FR Doc. 2019–19846 Filed 9–12–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–NEW]

Agency Information Collection Activities: 321 E-Commerce Data Pilot

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; new collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than November 12, 2019) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–NEW in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (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, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: 321 E-Commerce Data Pilot.

OMB Number: 1651–NEW.

Form Number: N/A.

Current Actions: This submission is being made to obtain an OMB control number for this Information Collection Request and to expand the respondent group of the recent 321 Data Pilot test notice on July 23, 2019 (84 FR 35405) which was limited to nine respondents.

Type of Review: New.

Affected Public: Businesses.

Abstract: CBP faces significant challenges in targeting Section 321 shipments, while still maintaining the clearance speeds the private sector has come to expect. This is because CBP does not receive adequate advance information in order to effectively and efficiently assess the security risk of the approximately 1.8 million Section 321 shipments that arrive each day. This pilot is conducted pursuant to 19 CFR 101.9(a), which authorizes the Commissioner to impose requirements different from those specified in the CBP regulations for the purposes of conducting a test program or procedure designed to evaluate the effectiveness of new technology or operational procedures regarding the processing of passengers, vessels, or merchandise.

In the e-commerce environment, traditionally regulated parties, such as carriers, are unlikely to possess all of the information relating to a shipment's supply chain. While CBP receives some advance electronic data for Section 321 shipments from air, rail, and truck carriers (and certain other parties in limited circumstances) as mandated by current regulations, the transmitted data often does not adequately identify the entity causing the shipment to cross the border, the final recipient, or the contents of the package. Consequently, CBP may not receive any advance information on the entity actually causing the shipment to travel to the United States, such as the seller or manufacturer. Some carriers may not have this information because sellers on e-commerce platforms often contract with other entities to act as the seller. Similarly, for the consignee's name and address, a carrier might transmit information for the domestic deconsolidator, which will not allow CBP to identify in advance of arrival, the final recipient of the merchandise in the United States. With the growth of e-commerce, shipments are increasingly subject to these complex transactions, where information about the shipment is limited. As a result, CBP is less able to effectively target or identify high-risk shipments in the e-commerce environment and CBP Officers must use additional time and resources to inspect Section 321 shipments upon arrival.

CBP anticipates that Section 321 shipments will continue to grow quickly. Accordingly, CBP is initiating this voluntary Section 321 Data Pilot to test the feasibility of obtaining advance information from regulated and non-regulated entities, such as online marketplaces, as well as requiring additional advance data elements. This test will enable CBP to assess the ability of online marketplaces to transmit information to CBP that enables CBP to better use resources used in inspecting and processing these shipments and better understand the operation of online marketplaces. Additionally, CBP is testing whether the transmission of additional advance data, beyond the data elements currently required for shipments arriving by air, truck, or rail, will enable CBP to more accurately and efficiently target Section 321 shipments. Pursuant to this test, participants will provide information that identifies the entity causing the shipment to cross the

border, the ultimate recipient, and the product in the shipment with greater specificity, in advance. CBP will test the feasibility of using the additional data elements, transmitted by multiple entities for a single shipment, to segment risk. In sum, the pilot will enable CBP to determine if requiring additional data and involving non-regulated entities will enable CBP to address the threats and complexities resulting from the vast increase in Section 321 shipments, while facilitating cross-border e-commerce.

Participants in the Section 321 Data Pilot must transmit certain information for any Section 321 shipments destined for the United States for which the participant has information. The required data elements differ slightly depending on what entity is transmitting the data. In general, the required data relates to the entity initiating the shipment (*e.g.,* the entity causing the shipment to cross the border, such as the seller, manufacturer, or shipper), the product in the package, the listed marketplace price, and the final recipient (*e.g.,* the final entity to possess the shipment in the United States). The data elements are as follow.

1. All participants. All participants, regardless of filer type, must electronically transmit the following elements:

- Originator Code of the Participant (assigned by CBP)
- Participant Filer Type (*e.g.,* carrier or online marketplace)
- One or more of the following:
  - Shipment Tracking Number
  - House Bill Number
  - Master Bill Number
- Mode of Transportation (*e.g.,* air, truck, rail, or ocean)

2. Participating carriers. In addition to the data elements listed above in paragraph 1, participating carriers must also electronically transmit the following data elements:

- Shipment Initiator Name and Address (*e.g.,* the entity that causes the movement of a shipment, which may be a seller, shipper, or manufacturer, but not a foreign consolidator)
- Final Deliver to Party Name and Address (*e.g.,* the final entity to receive the shipment once it arrives in the United States, which may be a final purchaser or a warehouse, but not a domestic deconsolidator)
- Enhanced Product Description (*e.g.,* a description of a product shipped to the United States more detailed than the description on the manifest, which should, if applicable, reflect the advertised retail description of the product as listed on an online marketplace)
- Shipment Security Scan (air carriers only) (*e.g.,* verification that a foreign security scan for the shipment has been completed such as an x-ray image or other security screening report)
- Known Carrier Customer Flag (*e.g.,* an indicator that identifies a shipper as a repeat customer that has consistently paid all required fees and does not have any known trade violations)

3. Participating online marketplaces. In addition to the data elements listed above in paragraph 1, participating online marketplaces must electronically submit the following data elements:

- Seller Name and Address (*e.g.,* an international or domestic company that sells products on marketplaces and other websites), and, if applicable, Shipment Initiator Name and Address (as defined in Section II.A.2)
- Final Deliver to Party Name and Address (as defined in Section II.A.2)
- Known Marketplace Seller Flag (*e.g.,* an indicator provided by a marketplace that identifies a seller as an entity vetted by the marketplace and has no known trade violations)
- Marketplace Seller Account Number/Seller ID (*e.g.,* the unique identifier a marketplace assigns to sellers)
- Buyer Name and Address, if applicable (*e.g.,* the purchaser of a good from an online marketplace. This entity is not always the same as the final deliver to party.)
- Product Picture (*e.g.,* picture of the product presented on an online marketplace), Link to Product Listing (*e.g.,* an active and direct link to the listing of a specific product on an online marketplace), or Enhanced Product Description (as defined in Section II.A.2)
- Listed Price on Marketplace (*e.g.,* the retail price of a product that a seller lists while advertising on an online marketplace. For auction marketplaces, this price is the price of final sale.)

Different entities may transmit different data elements for the same shipment. In addition to the above required data elements, participants may voluntarily provide the following optional data elements:

- HTS Number;
- Retail Price in Export Country;
- Shipper Name;
- Shipper Address;
- Shipper Phone Number;
- Shipper Email Address;
- Shipment Initiator Phone Number;
- Consignee Name;
- Consignee Address;
- Consignee Phone Number;
- Consignee Email Address;
- Marketplace Name;
- Buyer Account Number;
- Buyer Address;
- Seller Phone Number;
- Buyer Phone Number;
- Marketplace Website;
- Buyer Name;
- Buyer Confirmation Number;
- Buyer Email Address;
- Carrier Name;
- Known Carrier Customer;
- Merchandise/Product Weight; and,
- Merchandise/Product Quantity.
- Listed Price on Marketplace

Estimated Number of Respondents: 20.

Estimated Number of Annual Responses per Respondent: 70,000.

Estimated Number of Total Annual Responses: 1,400,000.

Estimated Time per Response: 5 seconds.

Estimated Total Annual Burden Hours: 1,944.

Dated: September 9, 2019.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2019–19830 Filed 9–12–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1957]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before December 12, 2019.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA

Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1957 to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazard data* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Yavapai County, Arizona and Incorporated Areas Project: 18–09–0005S Preliminary Date: May 31, 2019	
Unincorporated Areas of Yavapai County	Yavapai County Flood Control District Office, 1120 Commerce Drive, Prescott, AZ 86305.
Tama County, Iowa and Incorporated Areas Project: 17–07–0294S Preliminary Date: March 15, 2019	
City of Chelsea	City Hall, 600 Station Street, Chelsea, IA 52215.
City of Clutier	City Hall, 214 Main Street, Clutier, IA 52217.
City of Elberon	City Hall, 106 Main Street, Elberon, IA 52225.
City of Garwin	City Hall, 208 Main Street, Garwin, IA 50632.
City of Gladbrook	City Hall, 319 2nd Street, Gladbrook, IA 50635.
City of Montour	City Hall, 102 East Elm Street, Montour, IA 50173.
City of Tama	City Hall, 305 Siegel Street, Tama, IA 52339.
City of Toledo	City Hall, 1007 South Prospect Drive, Toledo, IA, 52342.
City of Traer	City Hall, 649 2nd Street, Traer, IA 50675.
City of Vining	City Hall, 407 1st Street, Vining, IA 52348.
Sac and Fox Tribe of the Mississippi	Natural Resource Office, 1826 340th Street, Tama, IA 52339.
Unincorporated Areas of Tama County	Tama County Administration Building, 104 West State Street, Toledo, IA 52342.

[FR Doc. 2019–19700 Filed 9–12–19; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–MB–2019–N105; FF09M21200–190–FXMB1231099BPP0L2; OMB Control Number 1018–0067]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Approval Procedures for Nontoxic Shot and Shot Coatings

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 October 15, 2019.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO/1N), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0067 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

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.

On May 30, 2019, we published a **Federal Register** notice soliciting comments on this collection of information for 60 days, ending on July 29, 2019 (84 FR 25068). We received one comment in response to that notice but it did not address the information collection requirements. No changes were made as a result of their comment.

We are again 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. 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 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 Migratory Bird Treaty Act (MBTA, 16 U.S.C. 703 *et seq.*) prohibits the unauthorized take of migratory birds and authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, we control the hunting of migratory game birds through regulations in 50 CFR part 20. On January 1, 1991, we banned lead shot for hunting waterfowl and coots in the United States.

This is a non-form collection. Regulations at 50 CFR 20.134 outline the application and approval process for new types of nontoxic shot. When considering approval of a candidate material as nontoxic, we must ensure that it is not hazardous in the environment and that secondary exposure (ingestion of spent shot or its components) is not a hazard to migratory birds. To make that decision, we require each applicant to provide information about the solubility and toxicity of the candidate material. Additionally, for law enforcement purposes, a noninvasive field detection device must be available to distinguish candidate shot from lead shot. This information constitutes the bulk of an application for approval of nontoxic shot. The Director uses the data in the application to decide whether to approve a material as nontoxic.

Title of Collection: Approval Procedures for Nontoxic Shot and Shot Coatings (50 CFR 20.134).

OMB Control Number: 1018–0067.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses that produce and/or market approved nontoxic shot types or nontoxic shot coatings.

Total Estimated Number of Annual Respondents: 1.

Total Estimated Number of Annual Responses: 1.

Estimated Completion Time per Response: 3,200 hours.

Total Estimated Number of Annual Burden Hours: 3,200 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $26,630 ($1,630 application processing fee and $25,000 for solubility testing).

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: September 10, 2019.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2019–19848 Filed 9–12–19; 8:45 am]
BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–NWRS–2019–N092; FXRS12610900000–190–FF09R24000; OMB Control Number 1018–0162]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Non-Federal Oil and Gas Operations on National Wildlife Refuge System Lands

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 October 15, 2019.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov*; or via facsimile to (202) 395–5806. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO–1N), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov*. Please reference OMB Control Number 1018–0162 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain*.

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.

On April 16, 2019, we published a **Federal Register** notice soliciting comments on this collection of information for 60 days, ending on June 17, 2019 (84 FR 15628). We received the following comments in response to that notice:

Comment 1: Comment received via email from Andy Reyes on May 10, 2019. Mr. Reyes expressed support for the Service's rule at 50 CFR part 29, subpart D (29D rule), and its implementation.

Response to Comment 1: No action required.

Comment 2: Comment received via email from Susan E. Magee, on behalf of the State of Alaska, on May 29, 2019. The State of Alaska requests that Form 3–2469 state that it is not applicable in Alaska.

Response to Comment 2: The 29D rule specifically exempts Alaska, so there is no need to identify this on the form as it would add unnecessary additional language.

We are again 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. 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 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 authority of the Service to regulate non-Federal oil and gas operations on National Wildlife Refuge System (NWRS) lands is broadly derived from the Property Clause of the United States Constitution (Art. IV, Sec. 3), in carrying out the statutory mandates of the Secretary of the Interior, as delegated to the Service, to manage Federal lands and resources under the National Wildlife Refuge System Administration Act (NWRSAA), as amended by the National Wildlife Refuge System Improvement Act (NWRSIA; 16 U.S.C. 668dd *et seq.*), and to specifically manage species within the NWRS under the provisions of numerous statutes, the most notable of which are the Migratory Bird Treaty Act (MBTA; 16 U.S.C. 715 *et seq.*), the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*), and the Fish and Wildlife Act of 1956 (FWA; 15 U.S.C. 742f).

The Service's 29D rule provides for the continued exercise of non-Federal oil and gas rights while avoiding or minimizing unnecessary impacts to refuge resources and uses. Other land management agencies have regulations that address oil and gas development, including the Department of the Interior's National Park Service (NPS) and Bureau of Land Management (BLM), and the U.S. Department of Agriculture's Forest Service. These agencies all require the submission of information similar to the information requested by the Service.

The collection of information is necessary for the Service to properly balance the exercise of non-Federal oil and gas rights within refuge boundaries with the Service's responsibility to protect wildlife and habitat, water quality and quantity, wildlife-dependent recreational opportunities, and the health and safety of employees and visitors on NWRS lands.

The information collected under the 29D rule identifies the owner and operator (the owner and operator can be the same) and details how the operator may access and develop oil and gas resources. It also identifies the steps the operator intends to take to minimize any adverse impacts of operations on refuge resource and uses. Operators do not submit information unless they wish to conduct oil and gas operations.

We use the information collected to do the following:

(1) Evaluate proposed operations;

(2) Ensure that all necessary mitigation measures are employed to protect refuge resources and values;

(3) Ensure compliance with all applicable laws and regulations, including the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR parts 1500–1508) and the NWRSAA, as amended by the NWRSIA; and

(4) Specifically manage species within the NWRS under the provisions of numerous statutes, the most notable of which are the MBTA, the ESA, the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), and the FWA.

Title of Collection: Non-Federal Oil and Gas Operations on National Wildlife Refuge System Lands, 50 CFR 29, Subpart D.

OMB Control Number: 1018–0162.

Form Number: FWS Form 3–2469.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses that conduct oil and gas exploration on national wildlife refuges.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Activity/requirement	Estimated number of annual responses	Completion time per response (hours)	Estimated total annual burden hours
Preexisting Operations (§ 29.61)	40	50	2,000
Temporary Access Permit Application (§ 29.71)	35	17	595
Accessing Oil and Gas Rights from Non-Federal Surface Location (§ 29.80)	5	1	5
Pre-application Meeting for Operations Permit (§ 29.91)	45	2	90
Operations Permit Application (§§ 29.94–29.97)	45	140	6,300
Financial Assurance (§§ 29.103(b), 29.150)	45	1	45
Identification of Wells and Related Facilities (§ 29.119(b))	45	2	90
Reporting (§ 29.121)			
Third-Party Monitor Report (§ 29.121(b))	300	17	5,100
Notification—Injuries/Mortality to Fish and Wildlife and Threatened/Endangered Plants (§ 29.121(c))	20	1	20
Notification—Accidents involving Serious Injuries/Death and Fires/Spills (§ 29.121(d))	20	1	20
Written Report—Accidents Involving Serious Injuries/Deaths and Fires/Spills (§ 29.121(d))	20	16	320
Report—Verify Compliance with Permits (§ 29.121(e))	240	4	960
Notification—Chemical Disclosure of Hydraulic Fracturing Fluids uploaded to FracFocus (§ 29.121(f))	5	1	5
Permit Modifications (§ 29.160(a))	10	16	160
Change of Operator			
Transferring Operator Notification (§ 29.170)	20	8	160
Acquiring Operator's Requirements for Wells Not Under a Service Permit (§ 29.171(a))	19	40	760
Acquiring Operator's Acceptance of an Existing Permit (§ 29.171(b))	1	8	8
Extension to Well Plugging (§ 29.181(a)).			
Application for Permit	10	140	1,400
Modification	5	16	80
Public Information (§ 29.210)			
Affidavit in Support of Claim of Confidentiality (§ 29.210(c) and (d))	1	1	1
Confidential Information (§ 29.210(e) and (f))	1	1	1
Maintenance of Confidential Information (§ 29.210(h))	1	1	1
Generic Chemical Name Disclosure (§ 29.210(i))	1	1	1
Totals:	934		18,122

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: September 10, 2019.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2019–19853 Filed 9–12–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–NWRS–2019–N106; FXRS12630900000–190–FF09R81000; OMB Control Number 1018–0102]

Agency Information Collection Activities; National Wildlife Refuge Special Use Permit Applications and Reports

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, we), are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before November 12, 2019.

ADDRESSES: Send your comments on the information collection request by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PERMS/PRB (JAO/1N), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov*. Please reference OMB Control Number 1018–0102 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503.

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 information collection request (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 National Wildlife Refuge System Administration Act of 1966 (Administration Act, 16 U.S.C. 668dd–668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997, consolidated all refuge units into a single National Wildlife Refuge System (System). It also authorized us to offer visitor and public programs, including those facilitated by commercial visitor and management support services, on lands of the System when we find that the activities are appropriate and compatible with the purpose(s) for which the refuge was established and the System's mission. The Refuge Recreation Act of 1962 (Recreation Act, 16 U.S.C. 460k–460k–4) allows the use of refuges for public recreation when it is not inconsistent or does not interfere with the primary purpose(s) of the refuge. The Alaska National Interest Lands Conservation Act (ANILCA, 16 U.S.C. 3101 *et seq.*) provides specific authorization and guidance for the administration and management of national wildlife refuges within the State of Alaska. Its provisions provide for the issuance of permits under certain circumstances.

We issue special use permits for a specific period as determined by the type and location of the management activity or visitor service provided. These permits authorize activities such as:

- Agricultural activities (haying and grazing, 50 CFR 29.1 and 29.2).
- Beneficial management tools that we use to provide the best habitat possible on some refuges (50 CFR 30.11, 31.14, 31.16, and 36.41).
- Special events, group visits, and other one-time events (50 CFR 25.41, 25.61, 26.36, and 36.41).
- Recreational visitor service operations (50 CFR 25.41, 25.61, and 36.41).
- Guiding for fishing, hunting, wildlife education, and interpretation (50 CFR 25.41 and 36.41).
- Commercial filming (43 CFR 5, 50 CFR 27.71) and other commercial activities (50 CFR 29.1 and 36.41).
- Building and using cabins to support subsistence or commercial activities (in Alaska) (50 CFR 26.35 and 36.41).
- Research, inventory and monitoring, and other noncommercial activities (50 CFR 26.36 and 36.41).

We use three forms to collect applicant information:

- FWS Form 3–1383–G (General Activities Special Use Application).
- FWS Form 3–1383–C (Commercial Activities Special Use Application).
- FWS Form 3–1383–R (Research and Monitoring Special Use Application).

The information we collect helps ensure that: (1) Applicants are aware of the types of information that may be needed for permit issuance; (2) requested activities are appropriate and compatible with the purpose(s) for which the refuge was established and the System's mission; and (3) the applicant is eligible or is the most qualified applicant to receive the special use permit.

We may collect the necessary information in a non-form format (through discussions in person or over the phone, over the internet, by email, or by letter). In some instances, respondents will be able to provide information verbally. Often, a simple email or letter describing the activity will suffice. For activities (*e.g.,* commercial visitor services, research, etc.) that might have a large impact on refuge resources, we may require applicants to provide more detail on operations, techniques, and locations. Because of the span of activities covered by special use permits and the different management needs and resources at each refuge, respondents may not be required to answer all questions. Depending on the requested activity, refuge managers have the discretion to ask for less information than appears on the forms. However, refuge managers must not ask for more or different information.

We issue permits for a specific period as determined by the type and location of the use or service provided. We use these permits to ensure that the applicant is aware of the requirements of the permit and his/her legal rights. Refuge-specific special conditions may be required for the permit. We identify conditions as an addendum to the permit. Most of the special conditions pertain to how a permitted activity may be conducted and do not require the collection of information. However, some special conditions, such as activity reports, before and after site photographs, or data sharing, would qualify as an information collection, and we have included the associated burden below.

Proposed Revision

We are proposing to revise this collection to request OMB approval of a new form, FWS Form 3–1384, ''Bid Sheet—National Wildlife Refuge System.'' We developed this form to streamline collection of the necessary pre-award information from applicants during bidding processes to conduct economic uses on Service lands, such as livestock, harvesting hay and stock feed, or removing timber (50 CFR 29.21). This form will simplify the pre-award selection/bidding process for bidders and for refuge staff.

Currently, the only form approved for collection of this information is the Commercial Activities Special Use Permit Application (FWS Form 3–1383–C), which bidders and refuge staff alike find confusing and complicated; this hampers the Service's ability to collect the basic information necessary to determine which applicants will be awarded economic use privileges. The proposed Bid Sheet will be much clearer for bidders, better enabling them to understand what information the refuge needs in order to select bids for economic use, and, therefore, reducing the time and burden for the public and Service staff in the pre-award selection bidding process. This form is also easily customizable to the individual economic use being awarded. We will continue to use the Commercial Special Use Permit as the actual award document that will outline the terms and conditions of the economic use on Service lands.

Title of Collection: National Wildlife Refuge Special Use Permit Applications and Reports, 50 CFR 25, 26, 27, 29, 30, 31, 32, & 36.

OMB Control Number: 1018–0102.

Form Number: FWS Forms 3–1383–G, 3–1383–C, 3–1383–R, and 3–1384.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals and households; businesses and other for-profit organizations; nonprofit organizations; farms; and State, local, or tribal governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for applications; annually or on occasion for reports.

Total Estimated Annual Nonhour Burden Cost: $270,300 for fees associated with applications for commercial use activities ($100.00 × an estimated 2,703 applications).

Requirement	Annual number of respondents	Total annual responses	Completion time per response (hours)	Total annual burden hours *
General Special Use Application (Form 3–1383–G)				
Individuals	2,285	2,285	0.5	1,143
Private Sector	1,219	1,219	0.5	610
Government	305	305	0.5	153
Subtotal	3,809	3,809		1,906
Commercial Activities Special Use Application (Form 3–1383–C)				
Individuals	1,595	1,595	4	6,380
Private Sector	1,000	1,000	4	4,000
Government	108	108	4	432
Subtotal	2,703	2,703		10,812
Research and Monitoring Special Use Application (Form 3–1383–R)				
Individuals	209	209	5	1,045
Private Sector	403	403	5	2,015
Government	135	135	5	675
Subtotal	747	747		3,735
Bid Sheet—National Wildlife Refuge System (Form 3–1384)				
Individuals	150	150	1	150
Private Sector	95	95	1	95
Government	5	5	1	5
Subtotal	250	250		250
Activity Reports				
Individuals	40	40	0.5	20
Private Sector	466	466	0.5	233
Government	100	100	0.5	50
Subtotal	606	606		303
Totals	8,115	8,115		17,006

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: September 10, 2019.

Madonna L. Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2019–19847 Filed 9–12–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLESM03300.L14400000.FR0000 FLES–5859 19X]

Notice of Realty Action: Competitive Lease of Land and Equestrian Facility at Lorton, VA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes to offer approximately 46 acres of public lands for lease of an equestrian facility located at the Meadowood Special Recreation Management Area (SRMA) in Lorton, Virginia. The lease would be issued for a period of 10 years, which may be renewed at the discretion of the BLM. To be considered, all bids must be at not less than the appraised fair market value. The appraised rental value for the above-described land and equestrian facility is $26,000 per year. The proposed lease will be subject to the applicable provisions of the Federal Land and Policy Management Act of 1976 (FLPMA).

DATES: Lease applications for use of the equestrian facilities will be competitive, with all bids sealed until November 12, 2019. Lease applications and sealed bids must be received by the BLM, Northeastern States District by no later than 4:00 p.m. Central Time on November 12, 2019. The BLM will start accepting lease applications and sealed bids on October 15, 2019. This deadline for submission of a lease application and sealed bids will be announced in the Fairfax County Times and on the BLM Eastern States website: *https://www.blm.gov/eastern-states,* at least 30 days prior to lease bid closing date.

On or before October 28, 2019, interested parties may submit comments on the decision of the BLM regarding

the availability of the lands described herein for lease; and the prospective decision of the BLM to entertain applications for a competitive bid for the land and facilities as described in the above summary section to the BLM at the addresses listed in the **ADDRESSES** section:

Submit comments on this proposal to lease to the address listed.

ADDRESSES: You may submit written comments on the proposed realty action, and submit lease applications and sealed bids to the District Manager, BLM Northeastern States District, 626 E Wisconsin Ave, Suite 200, Milwaukee, WI 53202. Copies of maps that depict the facilities offered under this lease, the applicable regulations, and further details, including the lease agreement, are available on the BLM Eastern States website: *https://www.blm.gov/eastern-states.* This information is also available for review during normal business hours (8:00 a.m. to 4:30 p.m. ET Monday through Friday) at the Lower Potomac Field Station office located at the Meadowood SRMA, 10406 Gunston Road, Lorton, Virginia.

FOR FURTHER INFORMATION CONTACT: Dean Gettinger, BLM, at telephone: 414–297–4421, email: *dgettinger@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Gettinger during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours. Copies of these maps are available for inspection at the SRMA, located at 10406 Gunston Road, Lorton, Virginia, and by email, or telephone request.

SUPPLEMENTARY INFORMATION: The BLM proposes to offer for lease a 46-acre equestrian facility, comprised of a 45-stall horse barn with two indoor arenas, a six-stall pole barn, a lighted outdoor arena, several other supporting structures, and approximately 44.3 acres of fenced pastures and paddocks, all located at the Meadowood SRMA. The facilities offered under this proposed lease are depicted on the maps ''Meadowood Equestrian Facility'' (Figure 1) and Meadowood Equestrian Facility Buildings'' (Figure 2). To obtain copies of the maps, see **ADDRESSES**.

After review, the BLM has determined that the proposed use of the equestrian facility is in conformance with the applicable BLM land use plan; *i.e.,* the Meadowood Special Recreation Management Area Integrated Activity Management Plan/Environmental Assessment, approved by Record of Decision on May 28, 2004, which allows for an equestrian lease, and complies with Section 302(b) of FLPMA. This proposed use is in accordance with Department of Interior Secretarial Order 3373 (SO 3373), which seeks to increase outdoor recreation opportunities for all Americans by ensuring continued access to public land and waters managed by the Department. This action will sustain recreational equestrian use that has been ongoing in this area since before the BLM acquired the property in a lands exchange with Fairfax County, dated October 18, 2001.

A competitive leasing process will be used to ensure fairness because the BLM is aware of multiple parties who have interest in commercially operating this equestrian facility. The successful lessor will support conservation stewardship, and emphasize the core principles of SO 3373 by being a good neighbor to all adjacent landowners, whether they may be Federal, State, county, or private landowners. *Application and Bid procedures:* Applications must supply the bidder's technical and financial capability for the term of the lease, qualifications, experience and a description of their proposed operation. Sealed bids must be for not less than the appraised fair market value rent of $26,000. The lease application and bid must include a reference to this notice and comply in all other respects with the regulations pertaining to land use authorization applications at 43 CFR 2920.5–2.

In accordance with 43 CFR 2920.8, rent will be payable annually or otherwise in advance, as determined by the BLM, and may be periodically adjusted every 5 years or earlier to reflect current fair market value. When a lease is granted, the lessee shall reimburse the United States for all reasonable administrative and other costs incurred by the United States in processing the lease application and for monitoring of the land and the facilities authorized. The reimbursement of costs shall be in accordance with the provisions of 43 CFR 2920.6.

The lease application and each sealed bid must include a certified check, money order, bank draft, or cashier's check for a non-refundable processing fee of $440 made payable in U.S. currency to: ''Department of the Interior-Bureau of Land Management.'' The check and all documents must be enclosed in a sealed envelope with the name ''Meadowood Equestrian Land Use Application'' written on the lower front left-hand corner of the envelope. The BLM will not accept personal or company checks. The BLM will also subsequently determine cost recovery fees for processing and monitoring the action.

The lease shall be awarded on the basis of the public benefit to be provided, the financial and technical capabilities of the bidder to undertake the project, and the bid offered. Applicants can demonstrate this capability by documenting in their bid package any previous successful experience in the operation and maintenance of similar facilities on public or non-public lands; providing information on the availability of sufficient capitalization to carry out the operation and maintenance of the facility; and providing written copies of conditional commitments of Federal and other loan guarantees or other documentation demonstrating the availability of financial resources.

All bidders will receive written notice of the results within 30 days after closing of the bid period. The winning bidder will work with the BLM to enter into a lease and a cost-recovery agreement to cover annual monitoring costs on the equestrian facility. In addition, subsequent annual payments to monitor the operations and maintenance of the equestrian facility will be paid in advance and simultaneously with annual rental payments. The reimbursement of costs shall be in accordance with the provisions of 43 CFR part 2920.6. The winning bidder will also be required to obtain a performance and reclamation bond and insurance prior to lease issuance. If the winning bidder is unable to complete the lease authorization process for any reason, the BLM may offer the lease to the next highest bidder.

Federal law requires that a bidder must be: (1) A citizen of the United States who is 18 years of age or older; (2) A corporation subject to the laws of any State or of the United States; (3) A State, State instrumentality or political subdivision authorized to hold property; or (4) An entity legally capable of conveying and holding lands or interest therein under the laws of the Commonwealth of Virginia. Evidence of United States citizenship is a birth certificate, passport, or naturalization papers. Failure to submit the above documents to the BLM within 30 days from receipt of the successful bidder letter will result in rejection of the lease application and bid.

If authorized, the lease will be subject to reservations for road, public utilities and flood control purposes, both existing and proposed. The lease will also be subject to valid existing rights, including:

(1) Liquefied Natural Gas pipeline easement to Columbia Liquefied Natural Gas along the northeastern boundary (along Gunston Road); and

(2) Dominion Energy electrical easement along the northeastern boundary.

All areas not under a lease at the SRMA are available for public use.

Submit comments on this proposal to lease to the address listed in the **ADDRESSES** section. Only written comments will be considered properly filed. Before including your address, phone number, email address, or other personally identifiable information in your comment you should be aware that your entire comment, including your personally identifiable information may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from the public review, we cannot guarantee that we will be able to do so.

Adverse comments will be evaluated by the BLM Eastern State's State Director, 20 M Street SE, Washington, DC 20003, who may sustain, vacate, or modify this realty action. In the absence of any adverse comment, this realty action will become the final determination of the BLM as to each one of the two decisions stated above.

Authority: 43 CFR 2920.4.

Dean Gettinger,

District Manager, Northeastern States District.

[FR Doc. 2019–19634 Filed 9–12–19; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ920000.19X.L51010000. ER0000.LVRWA19A3240]

Notice of Availability for the Final Environmental Impact Statement for the Ten West Link 500-Kilovolt Transmission Line Project and Proposed Amendments to the Yuma Field Office Resource Management Plan and the California Desert Conservation Area Plan; Maricopa and La Paz Counties, Arizona, and Riverside County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) has prepared the Final Environmental Impact Statement (EIS) for the proposed Ten West Link 500-Kilovolt (kV) Transmission Line Project and Amendments to the Yuma Field Office Resource Management Plan (RMP) and the California Desert Conservation Area (CDCA) Plan and by this notice is announcing its availability.

DATES: The BLM planning regulations state that any person who meets the conditions as described in the regulations may protest the BLM's Proposed Plan Amendments. A person who meets the conditions and wishes to file a protest must do so within 30 days of the date that the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**.

ADDRESSES: The Final EIS and Proposed Plan Amendments are available on the BLM ePlanning project website at *https://go.usa.gov/xU6Be*. Hard copies of the Final EIS and Proposed Plan Amendments are available for public inspection at the BLM Arizona State Office, One North Central Avenue, Suite 800, Phoenix, AZ 85004, the BLM Yuma Field Office, 7341 East 30th Street, Suite A, Yuma, AZ 85365, and the BLM Palm Springs-South Coast Field Office, 1201 Bird Center Drive, Palm Springs, CA 92262. Instructions for filing a protest with the Director of the BLM regarding the Proposed Plan Amendments may be found online at *https://www.blm.gov/programs/planning-and-nepa/public-participation/filing-a-plan-protest* and at 43 CFR 1610.6–2.

FOR FURTHER INFORMATION CONTACT: Lane Cowger, Project Manager, telephone: 602–417–9612; address: BLM, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, AZ 85004; email: *blm_az_azso_10westlink@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Cowger. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with Mr. Cowger. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM prepared the Final EIS for the proposed Ten West Link 500-kV Transmission Line Project and proposed amendments to the Yuma Field Office RMP and the CDCA Plan to respond to DCR Transmission's request for a right-of-way (ROW) across public land to construct, operate, maintain, and decommission a 500kV transmission line between the Arizona Public Service Delaney Substation near Tonopah in Maricopa County, Arizona, and the Southern California Edison Colorado River Substation near Blythe in Riverside County, California. The BLM's purpose and need for the action is to respond to an application for a ROW and decide whether to approve, approve with modifications, or deny the ROW.

Portions of the Proposed Action and/or Action Alternatives would not be in conformance with the Yuma RMP and the CDCA Plan. Therefore, the BLM considered amending these plans in connection with its consideration of DCR Transmission's ROW application.

The Agency Preferred Alternative identified in the FEIS is 125.0 miles long. This alternative is predominantly within BLM-designated utility corridors or adjacent to existing infrastructure and draws on the environmental analysis and stakeholder input to avoid sensitive environmental resources and important recreational uses on public lands. The Agency Preferred Alternative avoids the Kofa National Wildlife Refuge and Tribal lands. It minimizes impacts to local communities and the U.S. Army's Yuma Proving Ground, and provides interconnections for future energy development projects. The Agency Preferred Alternative includes an amendment to the Yuma RMP to allow ROWs outside of designated BLM utility corridors based on project-specific analysis. The Agency Preferred Alternative would also require an amendment to the CDCA Plan to allow construction of the Ten West Link project within 0.25-mile of occurrences of Harwood's eriastrum, a BLM special status plant species.

Issues identified as part of the NEPA and planning process and addressed in the Final EIS/Proposed Plan Amendments includes soil, biological, visual, and cultural resources, Tribal concerns, land use, recreation, socioeconomics, and environmental justice. Comments received from the public and internal BLM review, on the Draft EIS and Plan Amendments were considered and incorporated as appropriate into the Final EIS and Proposed Plan Amendments. Changes to the Final EIS include incorporation of more detailed project design and engineering information and clarification of the proposed Yuma and Lake Havasu Field Office RMP Amendments considered by the BLM for each alternative, including the Agency Preferred Alternative.

The Final EIS analyzes in detail the direct, indirect, and cumulative impacts for a range of alternatives including the No Action, Proposed Action, Interstate 10, BLM Utility Corridor, Avoidance, and Public Lands Emphasis alternatives and includes the proposed RMP and Plan amendments described for the

Preferred Alternative, as well as amendments to the Yuma and Lake Havasu Field Office RMPs for visual resource management classes for some alternative route segments.

DCR Transmission has filed an application for a Certificate of Public Convenience and Necessity (CPCN) with the California Public Utilities Commission (CPUC) to site the transmission infrastructure in California. The CPUC approval or denial of the CPCN application is a discretionary decision. Under California law, the CPUC would be required to comply with the California Environmental Quality Act (CEQA) before issuing the CPCN. The CPUC is currently a cooperating agency in the BLM's NEPA analysis. Pursuant to the Public Resources Code 21083.5 and the CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3) Section 15221, the CPUC may rely upon this EIS in lieu of all or any part of an Environmental Impact Report (EIR). Furthermore, this Notice of Availability serves as the notice that the CPUC will consider the EIS in its decision-making process relevant to issuance of the CPCN (CEQA Guidelines, Section 15225).

All protests must be in writing and submitted as set forth in the **DATES** and **ADDRESSES** sections above. Before including your address, phone number, email address, or other personal identifying information in your protest, please be aware that your entire protest, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2, 43 CFR 1610.5.

Raymond Suazo,

Arizona State Director.

[FR Doc. 2019–19871 Filed 9–12–19; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORV00400.L16100000.MQ0000.19X.HAG 19–0114]

Notice of Intent To Prepare the Louse Canyon Geographic Management Area Rangeland Health Management Actions Environmental Impact Statement To Analyze Rangeland Health Management Actions in the Louse Canyon Geographic Management Area of the Malheur Field Office, Vale District, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Malheur Field Office, Vale District, Vale, Oregon, intends to prepare an environmental impact statement (EIS) and, by this notice, is announcing the beginning of the public scoping period for the analysis of rangeland health management actions in the Louse Canyon Geographic Management Area (LCGMA).

DATES: The BLM requests that comments be submitted by October 15, 2019. The date(s) and location(s) of any scoping meeting(s) will be announced at least 15 days in advance through local media and the BLM website, *www.blm.gov.*

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

- *Website: https://go.usa.gov/xQeac.*
- *Email: BLM_OR_VL_Louse_Canyon_GMA@blm.gov.*
- *Fax:* 541–473–6213.
- *Mail:* LCGMA, c/o Vale District BLM 100 Oregon Street, Vale, OR 97918. Attention: Todd Allai or Dustin Fowler.

Documents associated with this proposal are available at the Malheur Field Office, BLM Vale District Office, 100 Oregon Street, Vale, OR 97918, or at *https://go.usa.gov/xQeac.*

FOR FURTHER INFORMATION CONTACT: Project leads Todd Allai, 541–473–6355, or Dustin Fowler, 541–473–6250, via phone or via email at: *BLM_OR_VL_Louse_Canyon_GMA@blm.gov.* Please contact Mr. Allai or Mr. Fowler to have your name added to the project mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM Vale District is initiating an EIS in order to analyze alternative livestock management and restoration actions that would allow the district to make progress toward meeting Oregon/Washington (OR/WA) Standards for Rangeland Health and Guidelines for Livestock Grazing Management (Standards and Guidelines) in the LCGMA. The alternatives will consider grazing practices, permit renewals, and the implementation of rangeland restoration and rangeland improvement projects. Proposed rangeland management actions include: Alternative grazing systems and schedules, upland sagebrush habitat restoration, and riparian habitat restoration.

The LCGMA is comprised of five grazing allotments (536,434 acres) in Malheur County, Oregon, and two grazing allotments (11,262 acres) in Humboldt County, Nevada. The Greater Sage-grouse Approved Resource Management Plan Amendment and Record of Decision for Oregon identified the entire planning area as habitat for Greater Sage-grouse. Seventy-four percent of the planning area is identified as priority habitat, and the remaining twenty-six percent of the planning area is classified as general habitat. Approximately twenty percent of the LCGMA was impacted by the 2012 Long Draw fire.

An OR/WA Standards and Guidelines evaluation of the area was completed in 2018 and can be found at *https://go.usa.gov/xQeac.* The evaluation determined that certain OR/WA Standards and Guidelines are not being met within the LCGMA. Preliminary determinations of causal factors in not meeting standards identify wildfire and invasive annual grass species as likely significant causal factors for not meeting or making progress toward upland-related standards. Existing permitted livestock grazing is identified as a likely significant causal factor for not meeting or making progress toward meeting riparian and aquatic habitat-related standards. The BLM is proposing to analyze actions that support proper livestock grazing management practices and improve the ecological condition of the LCGMA to address making progress toward attainment of OR/WA Standards and Guidelines.

Through the public scoping process, the BLM is seeking input on issues,

actions, and alternatives that should be addressed by the EIS. Potential issues include the effects of proposed management actions on: Livestock grazing, the spread of invasive species, the threat of wildfire, sagebrush ecosystems health, and Greater Sage-grouse habitat. Potential management actions include: Alternative grazing systems and schedules, upland sagebrush habitat restoration actions (invasive annual grass treatments, soil stabilization, native vegetation species diversification, shrub establishment, sagebrush thinning, and targeted grazing), riparian/meadow habitat restoration actions (erosion and water-related flow control structures and watering trough relocation), and livestock administration actions (fence construction, water developments, livestock trailing, and modifications to livestock range improvements).

The Malheur Field Office will consult with the McDermitt Shoshone-Paiute Tribe, Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, Shoshone-Bannock Tribes of the Fort Hall Indian Reservation, and the Burns-Paiute Tribe throughout the EIS process. Federal, State, and local agencies, along with other stakeholders that may be interested or affected by the proposal, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency. The BLM will coordinate with Federal, State, and local officials and the affected grazing permittees throughout the EIS process.

Comments can be submitted to the BLM using one of the methods listed in the **ADDRESSES** section of this notice. Comments received will help the BLM determine the scope and breadth of the EIS. To be most helpful, please submit comments by the close of the 30-day scoping period or within 15 days after the last public meeting—whichever is later. 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.

The BLM will use an interdisciplinary approach to develop the EIS. Specialists with expertise in the following disciplines will be involved in the planning process: Range management, wildlife biology, archaeology, hydrology and riparian resources, botany, soil science, economics, and outdoor recreation.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2.

Theresa M. Hanley,

Acting State Director, Oregon/Washington.

[FR Doc. 2019–19870 Filed 9–12–19; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVW00000.L5110000.GN0000. LVEMF1504350.15X MO#4500088392]

Notice of Availability of the Final Environmental Impact Statement for the Proposed Marigold Mining Company—Marigold Mine—Mackay Optimization Project, Humboldt County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Humboldt River Field Office, Winnemucca, Nevada has prepared a Final Environmental Impact Statement (EIS) for the Marigold Mine—Mackay Optimization Project (Project) and by this notice is announcing its availability.

DATES: The BLM will not issue a final decision on the proposal for a minimum of 30 days after the date that the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**.

ADDRESSES: Copies of the Marigold Mine—Mackay Optimization Project Plan of Operations and Final EIS are available for public inspection at the Winnemucca District BLM Office, 5100 East Winnemucca Boulevard, Winnnemucca, NV. Interested persons may also review the Final EIS on the internet at *http://go.usa.gov/xmwds.*

FOR FURTHER INFORMATION CONTACT: Jeanette Black, Project Lead, telephone 775–623–1500; address BLM Winnemucca District, Humboldt River Field Office, 5100 E Winnemucca Boulevard., Winnemucca, NV 89445; email *jblack@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The applicant, Marigold Mining Company (MMC), a wholly-owned subsidiary of SSR Mining Inc., has requested to optimize and modify its approved Plan of Operations by expanding its gold mining operations at the existing Marigold Mine, which is located in the southeastern portion of Humboldt County, Nevada approximately 35 miles southeast of Winnemucca. The mine is currently authorized to disturb up to 5,682.6 acres (3,211.4 acres of private land and 2,471.2 acres of public land), which was permitted under a series of Environmental Impacts Statements and Environmental Assessments from July 1988 through October 2013.

The EIS analyzed the potential environmental impacts associated with the proposed changes to MMC's current operations presented under this Plan of Operations (Plan) modification. The EIS analyzed the Proposed Action and two alternatives: Alternative I:—Partial Discharge to Cottonwood Creek and Pipeline to RIBs Alternative; and the No Action Alternative. The Proposed Action, if selected by the BLM, would include 2,055.9 acres of new disturbance (800.9 acres of public land and 1,255 acres of private land), increasing the surface disturbance by a total of 7,738.5 acres (3,271.7 acres of public land and 4,466.4 acres on private land).

All proposed disturbance would occur within the existing approved Plan boundary and includes combining multiple existing pits into three large pits. Waste rock storage areas, heap leach pads, and other supporting facilities would be expanded to support the pit expansion. The pits are proposed to extend below the historic water table, necessitating dewatering of the groundwater and rapid infiltration basins (RIBs) for recharging the excess water downgradient of the pits. If approved, the proposed modification would extend the mine life by up to 10 years.

Under Alternative I, all components of the Proposed Action would be the same except for the proposed dewatering operation which would increase the total disturbance by approximately 4 acres. A portion of the dewatered groundwater (approximately 191 gpm) would be treated at a water treatment plant, transported via an above ground pipeline system to be discharged to the ephemeral Cottonwood Creek drainage, creating a

water source for livestock and wildlife while recharging the aquifer. The remaining portion of dewatering water would be piped to the RIBs.

Under the No Action Alternative, the plan modification would not be authorized and the activities described under the Proposed Action would not occur. MMC would continue mining activities as authorized in their current Plan, dated November 6, 2013, with closure in 2027, followed by approximately three years of reclamation.

Amendments to two associated rights-of-ways (ROWs) needed to accommodate the proposed mine changes are also evaluated in the EIS. These ROWs include relocation of a portion of the county road called Buffalo Valley Road and of a portion of the existing 120-kV power line (ROW held by NV Energy).

A Notice of Availability (NOA) of the Draft EIS for the proposed Mackay Project was published in the **Federal Register** on May 20, 2019 (FR Doc No: 2019–10473). Two open house public meetings were held during the comment period. The BLM received 13 letters with 186 public scoping comments during the 45-day comment period. Five of the letters contained substantive comments which included concerns on potential impacts to existing fissures on Interstate 80, stability of the pit and waste rock storage facility adjacent to the county road, the California Trail, groundwater quality, pit lake quality, springs and associated wetlands, and eagles. These comments were considered and addressed in Appendix I (Draft Environmental Impact Statement Public Comments and Responses) of the Final EIS.

Comments on the Draft EIS received from the public and internal BLM review were considered and incorporated as appropriate into the Final EIS. Public comments resulted in the addition of clarifying text, but did not significantly change the proposed action.

Authority: 40 CFR 1506.6, 40 CFR 1506.10.

David Kampwerth,

Field Manager, Humboldt River Field Office.

[FR Doc. 2019–19896 Filed 9–12–19; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–28760; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before August 17, 2019, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by September 30, 2019.

ADDRESSES: Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C St. NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before August 17, 2019. Pursuant to Section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State Historic Preservation Officers:

ARKANSAS

Conway County

Community Mausoleum, Elmwood Cemetery, 1148 W Church St., Morrilton, SG100004436

Elmwood Cemetery Historic Section, W of AR 113 and W. Church St. intersection, Morrilton, SG100004438

Point Remove Creek Bridge, Old Arkansas Highway over Point Remove Creek, Morrilton, SG100004442

Lonoke County

Dairyman's Bank Building, 124 W Main St., Carlisle, SG100004439

Bransford, J.M., House, 506 S Center St., Lonoke, SG100004440

Madison County

Faubus, Orval E., House (Arkansas Designs of E. Fay Jones MPS), 640 Governors Rd., Huntsville, MP100004443

Phillips County

Grey, William H., Gravesite, 108 Wire St., Helena-West Helena, SG100004441

Pulaski County

Magnolia Service Station, 3023 W 7th St., Little Rock, SG100004434

Scott County

Waldron School Historic District, 403 and 429 W 5th St., Waldron, SG100004437

Washington County

Tweedy-Punch House, 1411 W Emma Ave., Springdale, SG100004435

ILLINOIS

Rock Island County

Downtown Rock Island Historic District, Roughly bound by Iowa state line, 21st St., 15th St., and 5th Ave., Rock Island, SG100004433

IOWA

Cherokee County

Gillette, Guy M. and Rose (Freeman), House, 111 N 11th St., Cherokee, SG100004427

Boughton, Lemuel C. and Mary (Vaughn), House, 736 W Cedar St., Cherokee, SG100004428

Seaman, Roy C. and Lena (Johnson), House, 400 Magnetic Ave., Cherokee, SG100004429

Wayne County

Hotel Rea, 207 W State St., Corydon, SG100004426

KANSAS

Butler County

Walnut River Crossing of the Cherokee/Fayetteville Oregon-California Trail, Address Restricted, El Dorado, SG100004457

Clark County

Hodson Hotel, 712 Main St., Ashland, SG100004456

Douglas County

Henry, William, House, 344 N 1925 Rd., Lecompton, SG100004448

Star Cash Grocery Store and Residence, 696 E1719 Rd., Baldwin City, SG100004449

Greenwood County

Eureka Downtown Historic District, 100–200 blks. N Main and N/2 100 blk. S Main to Elm and Oak at 3rd to 4th Sts., Eureka, SG100004458

Riley County

Hartford House, 2309 Clafin Rd., Manhattan, SG100004452

Avalon, The, 417 Fremont St., Manhattan, SG100004453

Sedgwick County

Innes Department Store, 220–230 E William St., Wichita, SG100004454

Vickers Petroleum Service Station (Roadside Kansas MPS), 140 N Main St., Haysville, MP100004455

Shawnee County

Fire Station No. 4, 813 SW Clay St., Topeka, SG100004450

St. Mark's African Methodist Episcopal Church, 801 NW Harrison Ave., Topeka, SG100004451

KENTUCKY

Jefferson County

Butchertown Historic District, Roughly bounded by Main, Hancock, Geiger, Quincy Sts., US 42, S Fort Beargrass Creek, and Baxter Ave., Louisville, BC100004421

MAINE

Cumberland County

Greene Cottage, 516 Basin Point Rd., Harpswell, SG100004472

Hancock County

Sound Schoolhouse, 373 Sound Drive, Mount Desert, SG100004469

Oxford County

Camp Cinnamon, 37 Camp Cinnamon Rd., Norway, SG100004470

Sagadahoc County

MARY E. (schooner), 271 Washington St., Bath, SG100004471

SOUTH CAROLINA

Fairfield County

Mt. Zion Institute High School, 250 N Walnut St., Winnsboro, SG100004445

Greenville County

Greer Downtown Historic District (Boundary Increase and Boundary Decrease), Roughly along Trade St., E Poinsett St., and N Main St., Greer, BC100004447

TEXAS

Cameron County

Brownsville City Hall and Market House, 1150 Market Square, Brownsville, SG100004474

Denton County

Fairhaven Retirement Home, 2400 N Bell Ave., Denton, SG100004431

UTAH

Davis County

Kaysville City Hall, 44 N Main St., Kaysville, SG100004476

Salt Lake County

Huetter, Alfred and Hennie, House (Murray City, Utah MPS), 187 E 5600 South, Murray, MP100004477

Rowan, Matthew and Johanna, House (Murray City, Utah MPS), 198 W Winchester St., Murray, MP100004478

Smith, Ray F. and Ethel, House (Murray City, Utah MPS), 1697 E Vine St., Murray, MP100004479

Eagles Building, 404 S West Temple St., Salt Lake City, SG100004480

Sanpete County

Ephraim Relief Society Granary, 86 N Main St., Ephraim, SG100004481

Candland, W.D., House, 123 North 100 West, Mt. Pleasant, SG100004482

Summit County

Park City Main Street Historic District, Main St., Park City, BC100004484

Tooele County

Clegg, Peter, House, 8 South 100 East, Tooele, SG100004483

WASHINGTON

King County

Knights of Columbus Hall—Council No. 676, 722 E Union St., Seattle, SG100004459

Eng, Jim and Betty, House, 8310 Beacon Ave. S, Seattle, SG100004460

Kittitas County

Downtown Ellensburg Historic District, Roughly bounded by 6th Ave., 2nd Ave., Ruby St., and Water St., Ellensburg, BC100004461

WISCONSIN

Fond Du Lac County

Waupun Commercial Historic District, Roughly bounded by E. Franklin St., Carrington St., E Jefferson St., and Forest St., Waupun, SG100004468

WYOMING

Campbell County

Gillette City Hall (1936), 400 S Gillette Ave., Gillette, SG100004422

Fremont County

Amoretti, Welty, Helmer & Co Bank, 111 W Ramshorn St., Dubois, SG100004423

An owner objection received for the following resource:

IOWA

Johnson County

Clinton Street and Railroad Depot Historic District, 530–624 S Clinton St.; 109–113 E Prentiss St.; 109 Wright St., Iowa City, SG100004430

A request for removal has been made for the following resources:

ARKANSAS

Craighead County

Stuck, C.S. & Sons, Lumber Office Building, 215 Union, Jonesboro, OT100002450

Hempstead County

Foster House (Thompson, Charles L., Design Collection TR), 303 N Hervey St., Hope, OT82000825

Nevada County

Allen Tire Company and Gas Station (Arkansas Highway History and Architecture MPS), 228 1st St., SW, Prescott, OT01000523

Yell County

Petit Jean River Bridge (Historic Bridges of Arkansas MPS), Co. Rd. 49 over the Petit Jean River, Ola vicinity, OT09001263

Additional documentation has been received for the following resources:

ARIZONA

Maricopa County

University Park Historic District, Bounded by 13th St., Forest Ave., alley between Apache Blvd. & 14th St., McAllister Ave., Union Pacific RR & Mill Ave., Tempe, AD07001174

KENTUCKY

Jefferson County

Butchertown Historic District, Roughly bounded by Main, Hancock, Geiger, Quincy Sts., US 42, S Fort Beargrass Creek, and Baxter Ave., Louisville, AD76000900

MAINE

Sagadahoc County

Hathorn, Lt. Richard, House, ME 127, Woolwich, AD80000251

SOUTH CAROLINA

Greenville County

East Park Historic District, Roughly bounded by East Park Ave., Bennett St., Harcourt Dr., and Rowley St., Greenville, AD05001157

VIRGINIA

Danville Independent city, Downtown Danville Historic District, Roughly bounded by Memorial Dr. and High, Patton and Ridge Sts., Danville (Independent City), AD93000830

WASHINGTON

Kittitas County

Downtown Ellensburg Historic District, Roughly bounded by 6th. Ave., 2nd Ave., Ruby St., Water St., Ellensburg, AD77001341

Authority: Section 60.13 of 36 CFR part 60.

Dated: August 19, 2019.

Julie H. Ernstein,

Supervisory Archeologist, National Register & National Historic Landmarks Program.

[FR Doc. 2019–19818 Filed 9–12–19; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–608 and 731–TA–1420 (Final)]

Steel Racks From China

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

materially injured by reason of imports of steel racks from China, provided for in subheadings 7326.90.86, 9403.20.00, and 9403.90.80 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV''), and to be subsidized by the government of China.[2]

Background

The Commission, pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)), instituted these investigations effective June 20, 2018, following receipt of petitions filed with the Commission and Commerce by the Coalition for Fair Rack Imports and its members. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of steel racks from China were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on March 28, 2019 (84 FR 11835). The hearing was held in Washington, DC, on July 16, 2019, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on September 9, 2019. The views of the Commission are contained in USITC Publication 4951 (September 2019), entitled *Steel Racks from China: Investigation Nos. 701–TA–608 and 731–TA–1420 (Final).*

By order of the Commission.

Issued: September 9, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–19826 Filed 9–12–19; 8:45 am]

BILLING CODE 7020–02–P

[2] Commissioners Randolph J. Stayin and Amy A. Karpel were not members of the Commission at the time of the vote.

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Heterogeneous System Architecture Foundation

Notice is hereby given that, on August 26, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Heterogeneous System Architecture Foundation (''HSA Foundation'') 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, Marvell International LTD, Hamilton, BERMUDA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HSA Foundation intends to file additional written notifications disclosing all changes in membership.

On August 31, 2012, HSA Foundation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 11, 2012 (77 FR 61786).

The last notification was filed with the Department on June 18, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 10, 2019 (84 FR 32951).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–19845 Filed 9–12–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Mechanical Stratigraphy and Natural Deformation in the Permian Strata of Texas and New Mexico: Implications for Exploitation of the Permian Basin—Phase 2

Notice is hereby given that, on August 15, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on Mechanical Stratigraphy and Natural Deformation in the Permian Strata of Texas and New Mexico: Implications for Exploitation of the Permian Basin—Phase 2 (''Permian Basin—Phase 2'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Noble Energy, Houston, TX; and Chevron U.S.A. Inc., Midland, TX. The general area of Permian Basin—Phase 2's planned activity will involve building on research conducted in Phase 1 of the Consortium, continued analysis of deformation and mechanical stratigraphy in Permian strata exposed in and around the Permian Basin of Texas and New Mexico. Planned activity involves intensive data collection and quantitative analysis of systematic fracture networks and associated deformation related to lithostratigraphy and mechanical stratigraphy. This work will develop datasets based on outcrop and core, that can be used to inform predictive models of fracturing in the Permian Basin. Subsurface investigations include numerical geomechanical modeling of deformation related to tectonic activity and hydraulic fracturing within productive and potentially productive portions of the Permian Basin.

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–19840 Filed 9–12–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Spectrum Consortium

Notice is hereby given that, on August 13, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Spectrum Consortium (''NSC'') 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, Anokiwave, Inc., Billerica, MA; Wind Talker Innovations Inc., Fife, WA; Northern Arizona University, Flagstaff, AZ; Red Balloon Security, Inc., New York, NY; ComSovereign Corp., Tucson, AZ; Pacific Antenna Systems LLC, Camarillo, CA; Parallel Wireless, Inc., Nashua, NH; QuayChain, Inc., San Pedro, CA; Signal Processing Technologies, Inc., Merrimack, NH; Advanced Ground Information Systems, Inc., Jupiter, FL; Boeing Company, Arlington, VA; Phase Sensitive Innovations, Inc., Newark, DE; Northeastern University, Boston, MA; Blue Danube Systems, Inc., Santa Clara, CA; Fenix Group, Inc., Chantilly, VA; Skylark Wireless, LLC, Houston, TX; Raven Wireless, LLC, Chantilly, VA; RunSafe Security, Inc., McLean, VA; William Marsh Rice University, Houston, TX; SOLUTE, Inc., San Diego, CA; Beartooth Radio, Inc., Bozeman, MT; RAM Laboratories, Inc., San Diego, CA; GE Research, Niskayuna, NY; IQ–ANALOG, San Diego, CA; T-Mobile USA Inc., Washington, DC; Infinite Dimensions Integration, Inc., West Plains, MO; Ericsson, Inc., Plano, TX; Janus Communications, Irvine, CA; Verizon, Basking Ridge, NJ; Space Exploration Technologies Corp. (SpaceX), Hawthorne, CA; United Technologies Research Center (UTRC), East Hartford, CT; TrustComm, Inc., Stafford, VA; Epsilon Systems Solutions, Inc. San Diego, CA; Blackwatch International, McLean, VA; Cisco, San Jose, CA; Corvus Consulting, LLC, Centerville, VA; Veritech, LLC, Glendale, AZ; Solvaren, LLC, Wall, NJ; Peregrine Technical Solutions, LLC, Yorktown, VA; Antenna Research Associates, Incorporated, Beltsville, MD; Raven Defense Corporation, Albuquerque, NM; Armaments Research Company, Inc., Bethesda, MD; DataSoft Corporation, Tempe, AZ; Erebus Solutions Inc., Rochester, NY; NetApp, Inc., Sunnyvale, CA; Hughes Network Systems, LLC, Germantown, MD; RKF Engineering Solutions, LLC, Bethesda, MD; IAI, LLC, Chantilly, VA; and Mississippi State University, Mississippi State, MS, have been added as parties to this venture.

Also, Honeywell International, Inc., Morris Township, NJ; Systems & Processes Engineering Corp (SPEC), Austin, TX; AX Enterprize, LLC, Yorkville, NY; CIPHIR–TM, LLC, Albany, OR; Covariant Solutions, LLC, Gaithersburg, MD; DynamicSignals LLC, Lockport, IL; Guidestar Optical Systems, Inc., Longmont, CO; KAB Laboratories, Inc., San Diego, CA; Perceptix LLC, Washington, DC; San Diego State University Research Foundation, San Diego, CA; SCAN LLC, St. Louis, MO; Science Applications International Corporation (SAIC), Reston, VA; Tektronix, Inc., Beaverton, OR; Textron Systems Electronic Systems, Hunt Valley, MD; University of Alabama, Tuscaloosa, AL; University of Southern California Information Sciences Institute, Marina Del Ray, CA; Waveform Logic, Inc., Winter Park, FL; xG Technology, Sunrise, FL; Ziva Corporation, San Diego, CA; Worcester Polytechnic Institute, Worcester, MA; Giga-tronics, Incorporated, Dublin, CA; Global Ground Systems, LLC, Purcellville, VA; MIT Lincoln Laboratory, Lexington, MA; Battelle Energy Alliance, LLC, Idaho Falls, ID; NuWaves Engineering, Middletown, OH; George Mason University, Fairfax, VA; Long Wave, Inc., Oklahoma City, OK; Drexel University, Philadelphia, PA; and QRC Technologies, Fredericksburg, VA, have withdrawn as parties from 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 NSC intends to file additional written notifications disclosing all changes in membership.

On September 24, 2014, NSC 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 November 4, 2014 (79 FR 65424).

The last notification was filed with the Department on January 28, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 28, 2019 (84 FR 6822).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–19841 Filed 9–12–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Integrated Photonics Institute for Manufacturing Innovation Operating Under the Name of the American Institute for Manufacturing Integrated Photonics

Notice is hereby given that, on July 26, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Integrated Photonics Institute for Manufacturing Innovation operating under the name of the American Institute for Manufacturing Integrated Photonics (''AIM Photonics'') 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, Morton Photonics Inc., West Friendship, MD; Purdue University, West Lafayette, IN; HRL Laboratories, LLC, Malibu, CA; Auxsun Technologies, Billerica, MA; Luminous Computing Inc., Menlo, CA; NanoGrass Solar, LLC, Flourtown, PA; and University of Waterloo, Ontario, CANADA, have been added 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 AIM Photonics intends to file additional written notifications disclosing all changes in membership.

On June 16, 2016, AIM Photonics 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 July 25, 2016 (81 FR 48450).

The last notification was filed with the Department on April 29, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 20, 2019 (84 FR 22896).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–19859 Filed 9–12–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on August 22, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. (''IMS Global'') 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, Badgewell, Giza, EGYPT; Cisco Networking Academy, San Antonio, TX; City Schools of Decatur, Decatur, GA; Edgenuity, Scottsdale, AZ; Examity, Newton, MA; Illuminate Education, Irvine, CA; Lumina Foundation, Indianapolis, IN; OESIS Network, Santa Monica, CA; Squirrel AI Learning by Yixue Group, Highland Park, NJ; and Xquiry, Amersfoort, THE NETHERLANDS, have been added as parties to this venture.

Also, UW-Extension, Continuing Ed, Outreach & E-Learning, Madison, WI; Knovation, Cincinnati, OH; Kyoto College of Graduate Studies for Informatics, Kyoto City, JAPAN; Essay Assay, Inc. d/b/a ecree, Durham, NC; and Smart Sparrow Pty Ltd, San Francisco, CA, have withdrawn as parties to this venture.

In addition, Measured Progress has changed its name to Advance Education, LLC, Dover, NH.

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 IMS Global intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global 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 September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on May 24, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 17, 2019 (84 FR 28074).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–19842 Filed 9–12–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0019]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; Extension Without Change of a Currently Approved Collection. Requirement That Movie Theaters Provide Notice as to the Availability of Closed Movie Captioning and Audio Description

AGENCY: Civil Rights Division, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (the Department), Civil Rights Division, Disability Rights Section (DRS), will submit the following information collection extension request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Comments are encouraged and will be accepted for 60 days until November 12, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments (especially on the estimated public burden or associated compliance time) or need additional information, please contact: Rebecca B. Bond, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, by mail at 4CON, 950 Pennsylvania Ave. NW, Washington, DC 20530; send an email to *DRS.PRA@usdoj.gov*; or call (800) 514–0301 (voice) or (800) 514–0383 (TTY) (the Division's Information Line). Include the title of this proposed collection: ''Requirement that Movie Theaters Provide Notice as to the Availability of Closed Movie Captioning and Audio Description,'' in the subject line of all written comments.

You may obtain copies of this notice in an alternative format by calling the Americans with Disabilities Act (ADA) Information Line at (800) 514–0301 (voice) or (800) 514–0383 (TTY).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Civil Rights Division, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether, and if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection

1. *Type of information collection:* Extension of Currently Approved Collection.

2. *The title of the form/collection:* Requirement that Movie Theaters Provide Notice as to the Availability of Closed Movie Captioning and Audio Description.

The agency form number, if any, and the applicable component of the Department sponsoring the collection:

Form Number: OMB Number 1190–0019.

Component: The applicable component within the Department of Justice is the Disability Rights Section in the Civil Rights Division.

3. *Affected public who will be required to comply, as well as a brief abstract:*

Affected Public (Primary): Businesses and not-for-profit institutions that own, operate, or lease a movie theater that has one or more auditoriums showing digital movies with closed movie captioning and audio description, and that provide notice of movie showings and times. Under the relevant regulation, ''movie theater'' means a facility other than a drive-in theater that is used primarily for the purpose of showing movies to the public for a fee.

Affected Public (Other): None.

Abstract: The Department's Civil Rights Division, Disability Rights Section (DRS), is seeking to extend its information collection arising from a regulatory provision that requires covered movie theaters to disclose information to the public regarding the availability of closed movie captioning and audio description for movies shown in their auditoriums.

Title III of the Americans with Disabilities Act (ADA), at 42 U.S.C. 12182, prohibits public accommodations from discriminating against individuals with disabilities. The existing ADA title III regulation, at 28 CFR 36.303(a)–(g), requires covered entities to ensure effective communication with individuals with disabilities. The title III regulation clarifies that movie theaters that provide captioning or audio description for digital movies must ensure that ''that all notices of movie showings and times at the box office and other ticketing locations, on websites and mobile apps, in newspapers, and over the telephone, inform potential patrons of the movies or showings that are available with captioning and audio description.'' 28 CFR 36.303(g). This requirement does not apply to any third-party providers of films, unless they are part of or subject to the control of the public accommodation. *Id.* Movie theaters' disclosure of this information will enable individuals with hearing and vision disabilities to readily find out where and when they can have access to movies with these features.

4. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The Department's initial PRA request for this collection relied on U.S. Census Bureau data from 2012 and estimated that there was a total of 1,876 firms owning one or more movie theaters in the United States that were potentially subject to this disclosure. 81 FR 37643 (June 10, 2016). The most recent U.S. Census Bureau data, from 2016, estimates that there was a total of 1,790 firms owning one or more movie theaters. As the vast majority of U.S. movie theaters now show digital movies, which typically allow for closed captioning and audio description, to the extent that each of these movie theater firms that shows digital movies provides notices of movie showings and times to the public about those films, they must provide information concerning the availability of closed movie captioning and audio description in their communications.

The Department acknowledges that the amount of time it will take a respondent to comply with this requirement may vary depending on the number of movies that the respondent is showing at any given time. Based on a prior review of movie theater communications, the Department estimates that respondents will take an average of 10 minutes each week to update existing notices of movie showings and times with closed captioning and audio description information. Therefore, the Department estimates that each firm owning one or more theaters offering digital movies with closed captioning or audio description will spend approximately ((10 minutes/week × 52 weeks/year) ÷ 60 minutes/hour) 8.7 hours each year to comply with this requirement.

5. *Frequency:* The Department anticipates that firms owning one or more movie theaters will likely update their existing listings of movie showings and times to include information concerning the availability of closed movie captioning and audio description on a regular basis. The Department's research suggests that this information would only need to be updated whenever a new movie with these features is added to the schedule. This will vary as some movies stay on the schedule for longer periods of time than others, but the Department estimates that respondent firms will update their listings to include this information weekly. In the future, if all movies are distributed with these accessibility features, specific notice on a movie-by-movie basis may no longer be necessary and firms owning movie theaters may only need to advise the public that they provide closed captioning and audio description for all of their movies.

6. *An estimate of the total annual public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 15,573 hours. The Department estimates that respondents will take an average of 10 minutes each week to update their existing listings of movie showings and times with the required information about closed captions and audio description. If each respondent spends 10 minutes each week to update its notices of moving showings and times to include this information, the average movie theater firm will spend 8.7 hours annually ((10 minutes/week × 52 weeks/year) ÷ 60 minutes/hour) complying with this requirement. The Department expects that the annual public burden hours for disclosing this information will total (1,790 respondents × 8.7 hours/year) 15,573 hours.

If additional information is required, contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: September 10, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–19864 Filed 9–12–19; 8:45 am]

BILLING CODE 4410–13–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council; Meeting Notice

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The Federal Salary Council will meet on Tuesday, November 5, 2019, at the time and location shown below. The Council is an advisory body composed of representatives of Federal employee organizations and experts in the fields of labor relations and pay policy. The Council makes recommendations to the President's Pay Agent (the Secretary of Labor and the Directors of the Office of Management and Budget and the Office of Personnel Management) about the locality pay program for General Schedule employees under § 5304 of title 5, United States Code. The Council's recommendations cover the establishment or modification of locality pay areas, the coverage of salary surveys, the process of comparing Federal and non-Federal rates of pay, and the level of comparability payments that should be paid.

DATES: Tuesday, November 5, 2019, at 1:00 p.m.

ADDRESSES: Office of Personnel Management, 1900 E Street NW, Pendleton Room 5th Floor, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Brenda L. Roberts, Deputy Associate Director, Pay and Leave, Office of Personnel Management, 1900 E Street NW, Room 7H31, Washington, DC 20415–8200. Phone (202) 606–2838; FAX (202) 606–0824; or email at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: The Council will hear public testimony about the locality pay program, review the results of pay comparisons, and formulate its recommendations to the President's Pay Agent on pay comparison methods, locality pay rates, and locality pay areas and boundaries for 2021.

The meeting is open to the public. Individuals who wish to provide testimony or present material at the meeting should contact the Office of Personnel Management using the

telephone number or email address provided below. In addition, please be aware that the Council asks that oral testimony at the meeting be limited to 5 minutes per speaker.

For The President's Pay Agent:

Stephen Hickman,

Federal Register Liaison.

[FR Doc. 2019–19882 Filed 9–12–19; 8:45 am]

BILLING CODE 6329–39–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

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

1. Title and purpose of information collection: Evidence of Marital Relationship—Living with Requirements; OMB 3220–0021.

To support an application for a spouse or widow(er)'s annuity under Sections 2(c) or 2(d) (45 U.S.C. 231a) of the Railroad Retirement Act, an applicant must submit proof of a valid marriage to a railroad employee. In some cases, the existence of a marital relationship is not formalized by a civil or religious ceremony. In other cases, questions may arise about the legal termination of a prior marriage of the employee, spouse, or widow(er). In these instances, the RRB must secure additional information to resolve questionable marital relationships. The circumstances requiring an applicant to submit documentary evidence of marriage are prescribed in 20 CFR 219.30.

In the absence of documentary evidence, the RRB needs to determine if a valid marriage existed between a spouse or widow(er) annuity applicant and a railroad employee. The RRB utilizes Forms G–124, Individual Statement of Marital Relationship; G–124a, Certification of Marriage Information; G–237, Statement Regarding Marital Status; G–238, Statement of Residence; and G–238a, Statement Regarding Divorce or Annulment, to secure the needed information. Forms G–124, G–237, G–238, and G–238a can be completed either with assistance from RRB personnel during an in-office interview or by mail. One response is requested of each respondent. Completion is required to obtain benefits. The RRB proposes minor non-burden impacting changes to the forms in the collection.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–124 (in person)	125	15	31
G–124 (by mail)	75	20	25
G–124a	300	10	50
G–237 (in person)	75	15	19
G–237 (by mail)	75	20	25
G–238 (in person)	150	3	8
G–238 (by mail)	150	5	13
G–238a	150	10	25
Total	1,100		196

2. Title and purpose of information collection: Application to Act as Representative Payee; OMB 3220–0052.

Under Section 12 of the Railroad Retirement Act (45 U.S.C. 231k), the Railroad Retirement Board (RRB) may pay benefits to a representative payee when an employee, spouse or survivor annuitant is incompetent or is a minor. A representative payee may be a court-appointed guardian, a statutory conservator or an individual selected by the RRB. The procedures pertaining to the appointment and responsibilities of a representative payee are prescribed in 20 CFR 266.

The forms furnished by the RRB to apply for representative payee status, and for securing the information needed to support the application follow. RRB Form AA–5, *Application for Substitution of Payee,* obtains information needed to determine the selection of a representative payee who will serve in the best interest of the beneficiary. RRB Form G–478, *Statement Regarding Patient's Capability to Manage Benefits,* obtains information about an annuitant's capability to manage their own benefits. The form is completed by the annuitant's personal physician or by a medical officer, if the annuitant is in an institution. It is not required when a court has appointed an individual or institution to manage the annuitant's funds or, in the absence of such appointment, when the annuitant is a minor. The RRB also provides representative payees with a booklet at the time of their appointment. The booklet, RRB Form RB–5, *Your Duties as Representative Payee-Representative Payee's Record,* advises representative payees of their responsibilities under 20 CFR 266.9 and provides a means for the representative payee to maintain records pertaining to the receipt and use of RRB benefits. The booklet is provided for the representative payee's convenience. The RRB also accepts records that are kept by representative payee's as part of a common business practice. Completion is voluntary. One response is requested of each respondent. The RRB proposes no changes to the forms in the collection.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
AA–5	*3,000*	18	*900.0*
Individuals	2,250		675.0
Institutions	750		225.0
G–478	2,000	6	200.0
RB–5	*15,300*	60	*15,300*
Individuals	11,475		11,475
Institutions	3,825		3,825
Total	20,300		16,350

3. Title and purpose of information collection: Employer Service and Compensation Reports; OMB 3220–0070.

Section 2(c) of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C.352) specifies the maximum normal unemployment and sickness benefits that may be paid in a benefit year. Section 2(c) further provides for extended benefits for certain employees and for beginning a benefit year early for other employees. The conditions for these actions are prescribed in 20 CFR 302.

All information about creditable railroad service and compensation needed by the RRB to administer Section 2(c) is not always available from annual reports filed by railroad employers with the RRB (OMB 3220–0008). When this occurs, the RRB must obtain supplemental information about service and compensation.

The RRB utilizes Form UI–41, *Supplemental Report of Service and Compensation,* and Form UI–41a, *Supplemental Report of Compensation,* to obtain the additional information about service and compensation from railroad employers. Completion of the forms is mandatory. One response is required of each respondent. The RRB proposes minor non-burden impacting changes to Form UI–41a.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)1/	Burden (hours)
UI–41	100	8	13
UI–41a	50	8	7
Total	150		20

4. Title and purpose of information collection: Repayment of Debt; OMB 3220–0169.

Section 2 of the Railroad Retirement Act (RRA) (45 U.S.C. 231a) provides for payment of annuities to railroad employees who are retired due to age or disability and annuities or benefits to their eligible spouses, divorced spouses, and survivors. Section 2 of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 352) provides for the payment of benefits to qualified railroad employees who are unemployed, but willing and able to work, and railroad employees who are unable to work due to sickness or injury. When an overpayment of RRA or RUIA benefits has occurred, prompt action is initiated to notify the annuitant or beneficiary of the overpayment and the method by which the debt may be liquidated. The overpayment recovery methods available are cash refund by check, money order, debit card and withholding of annuities or benefits due.

Railroad Retirement Board (RRB) procedures pertaining to RRA annuity and benefit overpayment determinations and recovery are prescribed in 20 CFR part 255. RUIA procedures pertaining to benefit overpayment determinations are prescribed in 20 CFR part 340.

When a debt is owed on an RRA or RUIA-related debt, the RRB mails Form DRL–145, Debt Notice, to the debtor; a Form G–421, *Repayment Method Form,* for the debtor to indicate how they will repay the debt; a Form G–66 or G–66B, *Your Rights to Review and/or Waiver,* which explains what they can do if they disagree with the amount of the debt; and a Form G–66A or G–66BA, *Rights Request Form,* to request their right to have us review and/or waiver the debt. Completion of Form G–421F is voluntary. The RRB proposes minor non-burden impacting changes to Form G–421F.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
Form G–421F (RRA) activity	360	5	30
Form G–421F (RUIA) activity	175	5	15
Total	535		45

5. Title and purpose of information collection: Customer Satisfaction Monitoring; OMB 3220–0192.

In accordance with Executive Order 12862, the Railroad Retirement Board (RRB) conducts a number of customer surveys designed to determine the kinds and quality of services our beneficiaries, claimants, employers and members of the public want and expect, as well as their satisfaction with existing RRB services. The information collected is used by RRB management to monitor customer satisfaction by determining to what extent services are satisfactory and where and to what extent services can be improved. The surveys are limited to data collections that solicit strictly voluntary opinions, and do not collect information which is required or regulated. The information collection, which was first approved by the Office of Management and Budget (OMB) in 1997, provides the RRB with a generic clearance authority. This generic authority allows the RRB to submit a variety of new or revised customer survey instruments (needed to timely implement customer monitoring activities) to the Office of Management and Budget (OMB) for expedited review and approval.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual Responses	Time (minutes)	Burden (hours)
G–201	50	2	2
Web-Site Survey	300	5	25
Periodic Survey	1,020	12	204
Focus Groups	250	120	500
Total	1,620		731

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Kennisha Tucker at (312) 469–2591 or *Kennisha.Tucker@rrb.gov.* Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275 or emailed to *Brian.Foster@rrb.gov.* Written comments should be received within 60 days of this notice.

Brian Foster,

Clearance Officer.

[FR Doc. 2019–19820 Filed 9–12–19; 8:45 am]

BILLING CODE 7905–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 290 (Sub-No. 404X)]

Norfolk Southern Railway Company—Abandonment Exemption—in the City of Greensboro, N.C.

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments* to abandon an approximately 3.1-mile rail line in the City of Greensboro, N.C., extending between milepost CF–65.6 and milepost CF–68.7 (the Line). The Line traverses U.S. Postal Service Zip Codes 27401, 27406, and 27408.

NSR has certified that: (1) No local traffic has moved over the Line for at least two years; (2) no overhead traffic has moved over the Line for at least two years and overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication), 49 CFR 1152.50(d)(1) (notice to governmental agencies), and 49 CFR 1105.7 and 1105.8 (environmental and historic report), have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) [1] has been received, this exemption will be effective on October 13, 2019, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 23, 2019.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 3, 2019, with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representatives, William A. Mullins and Crystal M. Zorbaugh, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW, Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void ab initio.

NSR has filed a combined environmental and historic report that addresses the potential effects of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by September 20, 2019. The EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking

[1] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by NSR's filing a notice of consummation by September 13, 2020, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

Decided: September 10, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2019–19863 Filed 9–12–19; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning generation-skipping transfer tax return for distributions.

DATES: Written comments should be received on or before November 12, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Generation-Skipping Transfer Tax Return for Distributions.

OMB Number: 1545–1144.

Form Number: Form 706–GS(D).

Abstract: Form 706–GS(D) is used by persons who receive taxable distributions from a trust to compute and report the generation-skipping transfer tax imposed by Internal Revenue Code section 2601. IRS uses the information to verify that the tax has been properly computed.

Current Actions: There are no changes being made to the form that would affect burden at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 59 minutes.

Estimated Total Annual Burden Hours: 980 hours.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 9, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–19829 Filed 9–12–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning LIFO conformity requirements.

DATES: Written comments should be received on or before November 12, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: LIFO Conformity Requirement.

OMB Number: 1545–1559.

Revenue Procedure Number: 98–46 and 97–44.

Abstract: Revenue Procedure 97–44 permits automobile dealers that comply with the terms of the revenue procedure to continue using the LIFO inventory method despite previous violations of the LIFO conformity requirements of Internal Revenue Code section 472(c) or (e)(2). Revenue Procedure 98–46 modified Revenue Procedure 97–44 by allowing medium-and heavy-duty truck dealers to take advantage of the favorable relief provided in Revenue Procedure 97–44.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time per Respondent: 20 hours.

Estimated Total Annual Burden Hours: 100,000 hours.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 9, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–19828 Filed 9–12–19; 8:45 am]

BILLING CODE 4830–01–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Meetings

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice; correction.

SUMMARY: The U.S.-China Economic and Security Review Commission published a document in the **Federal Register** on June 26, 2019 concerning meetings to review and edit drafts of the 2019 Annual Report to Congress. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Kerry Sutherland, 202–624–1454, or via email at *ksutherland@uscc.gov.*

Correction

In the **Federal Register** of June 26, 2019, in FR Doc. 2019–13633, on page 30311 in the first column, correct the **DATES** caption to read:

DATES: The meetings are scheduled for Thursday, July 11, 2019, from 9:00 a.m. to 5:00 p.m..; Thursday, August 1, 2019, from 9:00 a.m. to 5:00 p.m.; Thursday, September 5, 2019, from 9:00 a.m. to 5:00 p.m.; Tuesday, September 24, 2019 from 9:00 a.m. to 12:00 p.m.; and Tuesday, October 1, 2019, from 9:00 a.m. to 5:00 p.m.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005), as amended by Public Law 113–291 (December 19, 2014).

Dated: September 10, 2019.

Daniel W. Peck,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2019–19860 Filed 9–12–19; 8:45 am]

BILLING CODE 1137–00–P

DEPARTMENT OF VETERANS AFFAIRS

Corporate Senior Executive Management Office

Notice of Performance Review Board Members

AGENCY: Corporate Senior Executive Management Office, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Agencies are required (see Authority citation) to publish a notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This notice announces the appointment of individuals to serve on the PRB of the Department of Veterans Affairs.

DATES: This appointment is effective September 13, 2019.

ADDRESSES: Corporate Senior Executive Management Office, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420

FOR FURTHER INFORMATION CONTACT: Contact Carrie Johnson-Clark, Executive Director, Corporate Senior Executive Management Office (006D), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632–5181.

SUPPLEMENTARY INFORMATION: The membership of the Department of Veterans Affairs Performance Review Board is as follows:

Reeves, Randy (Chair)
Beer, Terri
Bologna, Mark
Brazell, Karen
Catano, Maura
Deitzen, Denise
Hyduke, Barbara
Johnson, Harvey W.
Liezert, Timothy
Mallia, Donna
McLenachen, David R.
Mitrano, Cathy
Murray, Edward J.
Myklegard, Drew
Orr, Martha
Perez, Susan
Rice, James
Thomas, Lisa
Walton, Robert

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 July 31, 2019, for publication.

Authority: 5 U.S.C. 4314(c)(4).

Dated: September 10, 2019.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2019–19873 Filed 9–12–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 84 Friday,

No. 178 September 13, 2019

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 218

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Navy Training and Testing Activities in the Hawaii-Southern California Training and Testing Study Area; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[190826–0018]

RIN 0648–BJ06

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Navy Training and Testing Activities in the Hawaii-Southern California Training and Testing Study Area

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

ACTION: Proposed rule; request for comment.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) to extend the time period from December 2023 to December 2025 for Marine Mammal Protection Act (MMPA) regulations authorizing the take of marine mammals incidental to Navy training and testing activities conducted in the Hawaii-Southern California Training and Testing (HSTT) Study Area. In August 2018, the MMPA was amended by the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year 2019 to allow for 7-year authorizations for military readiness activities, as compared to the previously allowed five years. The Navy's activities qualify as military readiness activities pursuant to the MMPA as amended by the NDAA for Fiscal Year 2004. In making the request to extend the time period covered by the MMPA HSTT regulations from five to seven years, the Navy proposes no changes to their specified activities, the geographical region in which those activities would be conducted, mitigation measures, monitoring, or reporting over the longer seven-year period. Pursuant to the MMPA, NMFS is requesting comments on the proposed seven-year rule and associated Letters of Authorization (LOAs) to cover the same activities covered by the existing 2018 HSTT regulations. NMFS will consider all public comments prior to issuing any final rule and making final decisions on the issuance of the requested LOAs, and agency responses will be summarized in the notice of the final decision.

DATES: Comments and information must be received no later than October 15, 2019.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2019–0103, by any of the following methods:

- *Electronic submission:* Submit all electronic public comments via the federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0103,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

A copy of the Navy's applications, NMFS' proposed and final rules and subsequent LOAs for the existing regulations, and other supporting documents and documents cited herein 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 use the contact listed here (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Wendy Piniak, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Purpose of Regulatory Action

These proposed regulations, issued under the authority of the MMPA (16 U.S.C. 1361 *et seq.*), would extend the framework for authorizing the take of marine mammals incidental to the Navy's training and testing activities (which qualify as military readiness activities) from the use of sonar and other transducers, in-water detonations, air guns, impact pile driving/vibratory extraction, and the movement of vessels throughout the HSTT Study Area. The HSTT Study Area 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 on the high seas where sonar training and testing may occur.

NMFS received an application from the Navy requesting to extend NMFS' existing MMPA regulations (50 CFR part 218, subpart H; hereafter ''2018 HSTT regulations'') that authorize the take of marine mammals incidental to Navy training and testing activities conducted in the HSTT Study Area to cover seven years of the Navy's activities, instead of five. Take is anticipated to occur by Level A harassment 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.

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA 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, the public is provided with notice of the proposed incidental take authorization the opportunity to review and 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 stocks and will not have an unmitigable adverse impact on the availability of the species or stocks for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in this rule as ''mitigation

measures''); and requirements pertaining to the monitoring and reporting of such takings. The MMPA defines ''take'' to mean to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. The *Preliminary Analysis and Negligible Impact Determination* section below discusses the definition of ''negligible impact.''

The NDAA for Fiscal Year 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 and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA): (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B harassment). In addition, the 2004 NDAA amended the MMPA as it relates to military readiness activities such that least practicable adverse impact shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

More recently, section 316 of the NDAA for Fiscal Year 2019 (2019 NDAA) (Pub. L. 115–232), signed on August 13, 2018, amended the MMPA to allow incidental take rules for military readiness activities under section 101(a)(5)(A) to be issued for up to seven years. Prior to this amendment, all incidental take rules under section 101(a)(5)(A) were limited to five years.

Summary of Request

On December 27, 2018, NMFS issued a five-year final rule governing the taking of marine mammals incidental to Navy training and testing activities conducted in the HSTT Study Area (83 FR 66846; hereafter ''2018 HSTT final rule''). Previously on August 13, 2018, and towards the end of the time period in which NMFS was processing the Navy's request for the 2018 regulations, the 2019 NDAA amended the MMPA for military readiness activities to allow incidental take regulations to be issued for up to seven years instead of the previous five years. The Navy's training and testing activities conducted in the HSTT Study Area qualify as military readiness activities pursuant to the MMPA, as amended by the 2004 NDAA. On March 11, 2019 the Navy submitted an application requesting that NMFS extend the 2018 HSTT regulations and associated LOAs such that they would cover take incidental to seven years of training and testing activities instead of five, extending the expiration date from December 20, 2023 to December 20, 2025.

In its 2019 application, the Navy proposes no changes to the nature of the specified activities covered by the 2018 HSTT final rule, the level of activity within and between years would be consistent with that previously analyzed in the 2018 HSTT final rule, and all activities would be conducted within the same boundaries of the HSTT Study Area identified in the 2018 HSTT final rule. Therefore, the training and testing activities (*e.g.,* equipment and sources used, exercises conducted) and the mitigation, monitoring, and nearly all reporting measures are identical to those described and analyzed in the 2018 HSTT final rule. The only changes included in the Navy's request are to conduct those same activities in the same region for an additional two years. In its request, the Navy included all information necessary to identify the type and amount of incidental take that may occur in the two additional years so NMFS could determine whether the analyses and conclusions regarding the impacts of the proposed activities on marine mammal species and stocks previously reached for five years of activities remain the same for seven years of identical activity.

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. 8062), which ensures the readiness of the naval forces of the United States. The Navy executes this responsibility by establishing and executing training programs, including at-sea training and exercises, and ensuring naval forces have access to the ranges, operating areas (OPAREAs), and airspace needed to develop and maintain skills for conducting naval activities.

The Navy proposes to continue conducting training and testing activities within the HSTT Study Area. The Navy's March 11, 2019, rulemaking and LOA extension application (hereafter ''2019 Navy application'') reflects the same compilation of training and testing activities presented in the Navy's October 13, 2017, initial rulemaking and LOA application (hereafter ''2017 Navy application'') and the 2018 HSTT regulations that were subsequently promulgated, which can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.* These activities are deemed by the Navy necessary to accomplish military readiness requirements and are anticipated to continue into the reasonably foreseeable future. The 2019 Navy application and this rule cover training and testing activities that would occur over seven years, including the five years already authorized under the 2018 HSTT regulations, with the regulations valid from the publication date of the final rule (if issued) through December 20, 2025.

Summary of the Proposed Regulations

NMFS is proposing to extend the incidental take regulations and associated LOAs through December 20, 2025, to cover the same Navy activities covered by the 2018 HSTT regulations. The 2018 HSTT final rule was only recently published and its analysis remains current and valid. In its 2019 application, the Navy proposes no changes to the nature (*e.g.,* equipment and sources used, exercises conducted) or level of the specified activities within or between years or to the boundaries of the HSTT Study Area. The mitigation, monitoring, and nearly all reporting measures (described below) would be identical to those described and analyzed in the 2018 HSTT final rule. The proposed regulatory language included at the end of this proposed rule, which would be published at 50 CFR part 218, subpart H, also is the same as that under the HSTT 2018 regulations, except for a small number of technical changes. No new information has been received from the Navy, or otherwise become available to NMFS, since publication of the 2018 HSTT final rule that significantly changes the analyses supporting the 2018 findings. Where there is any new information pertinent to the descriptions, analyses, or findings required to authorize incidental take for military readiness activities under MMPA section 101(a)(5)(A), that information is provided in the appropriate sections below.

Because the activities included in the 2019 Navy application have not changed and the analyses and findings included in the documents provided and produced in support of the recently published 2018 HSTT final rule remain current and applicable, this proposed rule relies heavily on and references to the applicable information and analyses

in those documents. Below is a list of the regulatory documents referenced in this proposed rule. The list indicates the short name by which the document is referenced in this proposed rule, as well as the full titles of the cited documents. All of the documents can be found at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities* and *http://www.hstteis.com/*.

- NMFS June 26, 2018, Hawaii-Southern California Training and Testing (HSTT) proposed rule (83 FR 29872; hereafter ''2018 HSTT proposed rule'');
- NMFS December 27, 2018, Hawaii-Southern California Training and Testing (HSTT) final rule (83 FR 66846; hereafter ''2018 HSTT final rule'');
- Navy October 13, 2017, MMPA rulemaking and LOA application (hereafter ''2017 Navy application'');
- Navy March 11, 2019, MMPA rulemaking and LOA extension application (hereafter ''2019 Navy application''); and
- October 26, 2018, Hawaii-Southern California Training and Testing (HSTT) Final Environmental Impact Statement/Overseas Environmental Impact Statement (FEIS/OEIS) (hereafter ''2018 HSTT FEIS/OEIS'').

Description of the Specified Activity

The Navy requests authorization to take marine mammals incidental to conducting training and testing activities. The Navy has determined that acoustic and explosives stressors are most likely to result in impacts on marine mammals that could rise to the level of harassment. Detailed descriptions of these activities are provided in Chapter 2 of the 2018 HSTT FEIS/OEIS and in the 2017 and 2019 Navy applications.

Overview of Training and Testing Activities

The Navy routinely trains in the HSTT Study Area in preparation for national defense missions. Training and testing activities and components covered in the 2019 Navy application are described in detail in the *Overview of Training and Testing Activities* sections of the 2018 HSTT proposed rule, the 2018 HSTT final rule, and Chapter 2 (*Description of Proposed Action and Alternatives*) of the 2018 HSTT FEIS/OEIS (*http://www.hstteis.com/*). Each military training and testing activity described meets mandated Fleet requirements to deploy ready forces. The Navy proposes no changes to the specified activities described and analyzed in the 2018 HSTT final rule. The boundaries of the HSTT Study Area (see Figure 2–1 of the 2019 Navy application); the training and testing activities (*e.g.,* equipment and sources used, exercises conducted); manner of or amount of vessel movement; and standard operating procedures presented in this proposed rule are identical to those described and analyzed in the 2018 HSTT final rule.

Dates and Duration

The specified activities would occur at any time during the seven-year period of validity of the regulations. The proposed number of training and testing activities are described in the *Detailed Description of the Specified Activities* section (Tables 1 through 9).

Specified Geographical Region

The Navy proposes no changes to the geographic extent of the HSTT Study Area as described in the 2018 HSTT final rule. The HSTT Study Area (see Figure 2–1 of the 2019 Navy 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.

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 established OPAREAs, which may be further divided to provide better control of the area for safety reasons. Additional detail on range complexes and testing ranges was provided in the *Duration and Location* section of the 2018 HSTT proposed rule; please see the 2018 HSTT proposed rule or the 2017 Navy application for more information and maps.

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 specific components that could act as stressors by having direct or indirect impacts on the environment are described in detail in the *Description of Acoustic and Explosive Stressors* section of the 2018 HSTT final rule and Chapter 2 (*Description of Proposed Action and Alternatives*) of the 2018 HSTT FEIS/OEIS. The Navy proposes no changes to the nature of the specified activities and, therefore, the acoustic and explosive stressors are identical to those described and analyzed in the 2018 HSTT final rule.

Other Stressor—Vessel Strike

Vessel strikes are not specific to any particular training or testing activity, but rather a limited, sporadic, and incidental result of Navy vessel movement within the HSTT Study Area. Navy vessels transit at speeds that are optimal for fuel conservation or to meet training and testing requirements. The average speed of large Navy ships ranges between 10 and 15 knots and submarines generally operate at speeds in the range of 8–13 knots, while a few specialized vessels can travel at faster speeds. By comparison, this is slower than most commercial vessels where full speed for a container ship is typically 24 knots (Bonney and Leach, 2010).

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 ship strike would result in serious injury or mortality. The Navy proposes no changes to the nature of the specified activities, the training and testing activities, the manner of or amount of vessel movement, or standard operating procedures described in the 2018 HSTT final rule. Therefore, the description of vessel strikes as a stressor is the same as those presented in the *Other Stressor—Vessel Strike* sections of the 2018 HSTT proposed rule and 2018 HSTT final rule.

[1] Vessel transit corridors are the routes typically used by Navy assets to traverse from one area to another. The route depicted in Figure 2–1 of the 2019 Navy 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.

Detailed Description of the Specified Activities

The Navy's proposed activities are presented and analyzed as a representative year of training to account for the natural fluctuation of training cycles and deployment schedules in any seven-year period. In the 2018 HSTT final rule, NMFS analyzed the potential impacts of these activities (*i.e.,* incidental take of marine mammals) based on the Navy conducting three years of a representative level of activity and two years of a maximum level of activity. For the purposes of this rulemaking and analyzing potential impacts to marine mammals, the Navy proposes that the additional two years of training and testing would consist of one additional year of maximum training tempo and one representative year of training tempo consistent with the pattern set forth in the 2018 HSTT final rule, the 2018 HSTT FEIS/OEIS, and the 2017 Navy application.

Proposed Training Activities

The number of proposed training activities that could occur annually and the duration of those activities remains identical to those presented in Table 4 of the 2018 HSTT final rule, and are not repeated here. The number of proposed training activities that could occur over the seven-year period are presented in Table 1. The table is organized according to primary mission areas and includes the activity name, associated stressors applicable to these proposed regulations, sound source bin, number of proposed activities, and 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 2018 HSTT FEIS/OEIS.

TABLE 1—PROPOSED TRAINING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE HSTT STUDY AREA

Stressor category	Activity name	Description	Source bin	Location	7-Year number of events
Major Training Events—Large Integrated Anti-Submarine Warfare					
Acoustic	Composite Training Unit Exercise [1].	Aircraft carrier and carrier air wing integrates with surface and submarine units in a challenging multi-threat operational environment that certifies them ready to deploy.	ASW1, ASW2, ASW3, ASW4, ASW5, HF1, LF6, MF1, MF3, MF4, MF5, MF11, MF12.	SOCAL	18
Acoustic	Rim of the Pacific Exercise [1]	A biennial multinational training exercise in which navies from Pacific Rim nations and the United Kingdom assemble in Pearl Harbor, Hawaii, to conduct training throughout the Hawaiian Islands in a number of warfare areas. Marine mammal systems may be used during a Rim of the Pacific exercise. Components of a Rim of the Pacific exercise, such as certain mine warfare and amphibious training, may be conducted in the Southern California Range Complex.	ASW2, ASW3, ASW4, HF1, HF3, HF4, M3, MF1, MF3, MF4, MF5, MF11.	HRC SOCAL	4 4
Major Training Events—Medium Integrated Anti-Submarine Warfare					
Acoustic	Fleet Exercise/Sustainment Exercise [1].	Aircraft carrier and carrier air wing integrates with surface and submarine units in a challenging multi-threat operational environment to maintain ability to deploy.	ASW1, ASW2, ASW3, ASW4, HF1, LF6, MF1, MF3, MF4, MF5, MF11, MF12.	HRC SOCAL	7 35
Acoustic	Undersea Warfare Exercise	Elements of the anti-submarine warfare tracking exercise combine in this exercise of multiple air, surface, and subsurface units, over a period of several days. Sonobuoys are released from aircraft. Active and passive sonar used.	ASW3, ASW4, HF1, LF6, MF1, MF3, MF4, MF5, MF11, MF12.	HRC	17
Integrated/Coordinated Training—Small Integrated Anti-Submarine Warfare Training					
Acoustic	Navy Undersea Warfare Training and Assessment Course Surface Warfare Advanced Tactical Training.	Multiple ships, aircraft, and submarines integrate the use of their sensors to search for, detect, classify, localize, and track a threat submarine in order to launch an exercise torpedo.	ASW3, ASW4, HF1, MF1, MF3, MF4, MF5.	HRC SOCAL	7 18
Integrated/Coordinated Training—Medium Coordinated Anti-Submarine Warfare Training					
Acoustic	Submarine Commanders Course.	Train prospective submarine Commanding Officers to operate against surface, air, and subsurface threats.	ASW3, ASW4, HF1, MF1, MF3, MF4, MF5, TORP1, TORP2.	HRC SOCAL	12 12
Integrated/Coordinated Training—Small Coordinated Anti-Submarine Warfare Training					
Acoustic	Amphibious Ready Group/Marine Expeditionary Unit Exercise Group Sail Independent Deployer Certification Exercise/Tailored Anti-Submarine Warfare Training.	Small-scale, short duration, coordinated anti-submarine warfare exercises.	ASW2, ASW3, ASW4, HF1, MF1, MF3, MF4, MF5, MF11.	HRC SOCAL	14 86
Amphibious Warfare					
Explosive	Naval Surface Fire Support Exercise—at Sea.	Surface ship uses large-caliber gun to support forces ashore; however, land target simulated at sea. Rounds impact water and are scored by passive acoustic hydrophones located at or near target area.	Large-caliber HE rounds (E5)	HRC (W188)	105
Acoustic	Amphibious Marine Expeditionary Unit Exercise.	Navy and Marine Corps forces conduct advanced integration training in preparation for deployment certification.	ASW2, ASW3, ASW4, HF1, MF1, MF3, MF4, MF5, MF11.	SOCAL	18
Acoustic	Amphibious Marine Expeditionary Unit Integration Exercise.	Navy and Marine Corps forces conduct integration training at sea in preparation for deployment certification.	ASW2, ASW3, ASW4, HF1, MF1, MF3, MF4, MF5, MF11.	SOCAL	18
Acoustic	Marine Expeditionary Unit Composite Training Unit Exercise.	Amphibious Ready Group exercises are conducted to validate the Marine Expeditionary Unit's readiness for deployment and includes small boat raids; visit, board, search, and seizure training; helicopter and mechanized amphibious raids; and a non-combatant evacuation operation.	ASW2, ASW3, ASW4, HF1, MF1, MF3, MF4, MF5, MF11.	SOCAL	18

TABLE 1—PROPOSED TRAINING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE HSTT STUDY AREA—Continued

Stressor category	Activity name	Description	Source bin	Location	7-Year number of events
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	42 728
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	70 175
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	350 819
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	336 91
Acoustic	Anti-Submarine Warfare Tracking Exercise—Helicopter.	Helicopter crews search for, track, and detect submarines	MF4, MF5	HRC SOCAL, PMSR HSTT Transit Corridor	1,113 3,668 42
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	182 350
Acoustic	Anti-Submarine Warfare Tracking Exercise—Ship.	Surface ship crews search for, track, and detect submarines	ASW3, MF1, MF11, MF12	HRC SOCAL, PMSR	1,568 2,961
Acoustic	Anti-Submarine Warfare Tracking Exercise—Submarine.	Submarine crews search for, track, and detect submarines	ASW4, HF1, HF3, MF3	HRC SOCAL, PMSR HSTT Transit Corridor	1,400 350 49
Explosive, Acoustic	Service Weapons Test	Air, surface, or submarine crews employ explosive torpedoes against virtual targets.	HF1, MF3, MF6, TORP2, Explosive torpedoes (E11).	HRC SOCAL	14 7
Mine Warfare					
Acoustic	Airborne Mine Countermeasure—Mine Detection.	Helicopter aircrews detect mines using towed or laser mine detection systems.	HF4	SOCAL	70
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	7 21
Explosive	Marine Mammal Systems	The Navy deploys trained bottlenose dolphins (*Tursiops truncatus*) and California sea lions (*Zalophus californianus*) as part of the marine mammal mine-hunting and object-recovery system.	E7	HRC SOCAL	70 1,225
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	210 664
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	1,862
Explosive, Acoustic	Mine Countermeasures Mine Neutralization Remotely Operated Vehicle.	Ship, small boat, and helicopter crews locate and disable mines using remotely operated underwater vehicles.	HF4, E4	HRC SOCAL	42 2,604
Explosive	Mine Neutralization Explosive Ordnance Disposal.	Personnel disable threat mines using explosive charges	E4, E5, E6, E7	HRC (Puuloa) SOCAL (IB, TAR 2, TAR 3, TAR 21, SWAT 3, SOAR).	140 1,358
Acoustic	Submarine Mine Exercise	Submarine crews practice detecting mines in a designated area.	HF1	HRC SOCAL	280 84
Acoustic	Surface Ship Object Detection	Ship crews detect and avoid mines while navigating restricted areas or channels using active sonar.	MF1K, HF8	HRC SOCAL	287 1,134
Explosive	Underwater Demolitions Multiple Charge—Mat Weave and Obstacle Loading.	Military personnel use explosive charges to destroy barriers or obstacles to amphibious vehicle access to beach areas.	E10, E13	SOCAL (TAR 2, TAR 3)	126
Explosive	Underwater Demolition Qualification and Certification.	Navy divers conduct various levels of training and certification in placing underwater demolition charges.	E6, E7	HRC (Puuloa) SOCAL (TAR 2)	203 700
Surface Warfare					
Explosive	Bombing Exercise Air-to-Surface.	Fixed-wing aircrews deliver bombs against surface targets	E12 [2]	HRC SOCAL HSTT Transit Corridor	1309 4480 35
Explosive	Gunnery Exercise Surface-to-Surface Boat Medium-Caliber.	Small boat crews fire medium-caliber guns at surface targets.	E1, E2	HRC SOCAL	70 98
Explosive	Gunnery Exercise Surface-to-Surface Ship Large-caliber.	Surface ship crews fire large-caliber guns at surface targets	E5	HRC SOCAL HSTT Transit Corridor	210 1,302 91
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	350 1,260 280
Explosive, Acoustic	Independent Deployer Certification Exercise/Tailored Surface Warfare Training.	Multiple ships, aircraft and submarines conduct integrated multi-warfare training with a surface warfare emphasis. Serves as a ready-to-deploy certification for individual surface ships tasked with surface warfare missions.	E1, E3, E6, E10	SOCAL	7
Explosive	Integrated Live Fire Exercise	Naval Forces defend against a swarm of surface threats (ships or small boats) with bombs, missiles, rockets, and small-, medium- and large-caliber guns.	E1, E3, E6, E10	HRC (W188A) SOCAL (SOAR)	7 7
Explosive	Missile Exercise Air-to-Surface.	Fixed-wing and helicopter aircrews fire air-to-surface missiles at surface targets.	E6, E8, E10	HRC SOCAL	70 1,498
Explosive	Missile Exercise Air-to-Surface Rocket.	Helicopter aircrews fire both precision-guided and unguided rockets at surface targets.	E3	HRC SOCAL	1,598 1,722
Explosive	Missile Exercise Surface-to-Surface.	Surface ship crews defend against surface threats (ships or small boats) and engage them with missiles.	E6, E10	HRC (W188) SOCAL (W291)	140 70
Explosive, Acoustic	Sinking Exercise	Aircraft, ship, and submarine crews deliberately sink a seaborne target, usually a decommissioned ship made environmentally safe for sinking according to U.S. Environmental Protection Agency standards, with a variety of munitions.	TORP2, E5, E10, E12	HRC SOCAL	21 4

TABLE 1—PROPOSED TRAINING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE HSTT STUDY AREA—Continued

Stressor category	Activity name	Description	Source bin	Location	7-Year number of events
Pile driving	Elevated Causeway System	A pier is constructed off of the beach. Piles are driven into the bottom with an impact hammer. Piles are removed from seabed via vibratory extractor. Only in-water impacts are analyzed.	Impact hammer or vibratory extractor.	SOCAL	14
Other Training Exercises					
Acoustic	Kilo Dip	Functional check of the dipping sonar prior to conducting a full test or training event on the dipping sonar.	MF4	HRC SOCAL	420 16,800
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	1,540 560
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	1,820 1,820 651 644 70
Acoustic	Submarine Under-Ice Certification.	Submarine crews train to operate under ice. Ice conditions are simulated during training and certification events.	HF1	HRC SOCAL	84 42
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, CA HSTT Transit Corridor	525 560 1,750 1,750 56
Acoustic	Unmanned Underwater Vehicle Training—Certification and Development.	Unmanned underwater vehicle certification involves training with unmanned platforms to ensure submarine crew proficiency. Tactical development involves training with various payloads for multiple purposes to ensure that the systems can be employed effectively in an operational environment.	FLS2, M3, SAS2	HRC SOCAL	175 70

Notes: HRC = Hawaii Range Complex, SOCAL = Southern California Range Complex, HSTT = Hawaii-Southern California Training and Testing, PMSR = Point Mugu Sea Range Overlap, TAR = Training Area and Range, SOAR = Southern California Anti-Submarine Warfare Range, IB = Imperial Beach Minefield.
[1] Any non-antisubmarine warfare activity that could occur is captured in the individual activities.
[2] For the Bombing Exercise Air-to-Surface, all activities were analyzed using E12 explosive bin, but smaller explosives are frequently used.

Proposed Testing Activities

The number of proposed testing activities that could occur annually and the duration of those activities are identical to those presented in Tables 5 through 8 of the 2018 HSTT final rule, and are not repeated here. Similar to the 2017 Navy application, the Navy's proposed testing activities here are based on the level of testing activities anticipated to be conducted into the reasonably foreseeable future, with adjustments that account for changes in the types and tempo (increases or decreases) of testing activities to meet current and future military readiness requirements. The number of proposed testing activities that could occur for the seven-year period are presented in Tables 2 through 5.

Naval Air Systems Command

The proposed Naval Air Systems Command testing activities that could occur over the seven-year period within the HSTT Study Area are presented in Table 2.

TABLE 2—PROPOSED NAVAL AIR SYSTEMS COMMAND TESTING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE HSTT STUDY AREA

Stressor category	Activity name	Description	Source bin	Location	7-Year number of events
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 SOCAL	134 353
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	414
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 SOCAL	399 436
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	1,120
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	24

TABLE 2—PROPOSED NAVAL AIR SYSTEMS COMMAND TESTING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE HSTT STUDY AREA—Continued

Stressor category	Activity name	Description	Source bin	Location	7-Year number of events
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	117
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	33
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 SOCAL	56 98
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 SOCAL	35 330
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 SOCAL	126 384
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 SOCAL	14 142
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	12
Acoustic	Undersea Range System Test	Post installation node survey and test and periodic testing of range node transmit functionality.	MF9	HRC	129

Notes: HRC = Hawaii Range Complex, SOCAL = Southern California Range Complex.

Naval Sea Systems Command

The proposed Naval Sea Systems Command testing activities that could occur over the seven-year period within the HSTT Study Area are presented in Table 3.

TABLE 3—PROPOSED NAVAL SEA SYSTEMS COMMAND TESTING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE HSTT STUDY AREA

Stressor category	Activity name	Description	Source bin	Location	7-Year number of events
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 SOCAL	154 161
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 HRC–SOCAL SOCAL	109 7 138
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 HRC–SOCAL SOCAL HSTT Transit Corridor	56 28 77 14
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 San Diego, CA	49 49
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 Pearl Harbor, HI San Diego, CA	28 119 168
Acoustic	Surface Ship Sonar Testing/ Maintenance.	Pierside and at-sea testing of ship systems occurs periodically following major maintenance periods and for routine maintenance.	ASW3, MF1, MF1K, MF9, MF10.	HRC Pearl Harbor, HI San Diego, CA SOCAL	21 21 21 21
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 (W188) HRC (W188) SOCAL SOCAL	56 21 56

TABLE 3—PROPOSED NAVAL SEA SYSTEMS COMMAND TESTING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE HSTT STUDY AREA—Continued

Stressor category	Activity name	Description	Source bin	Location	7-Year number of events
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 HRC SOCAL SOCAL	56 63 56
Mine Warfare					
Explosive, Acoustic	Mine Countermeasure and Neutralization Testing.	Air, surface, and subsurface vessels neutralize threat mines and mine-like objects.	HF4, E4	SOCAL	70
Explosive, Acoustic	Mine Countermeasure Mission Package Testing.	Vessels and associated aircraft conduct mine countermeasure operations.	HF4, SAS2, E4	HRC SOCAL	118 406
Acoustic	Mine Detection and Classification Testing.	Air, surface, and subsurface vessels detect and classify mines and mine-like objects. Vessels also assess their potential susceptibility to mines and mine-like objects.	HF1, HF8, MF1, MF5	HRC HRC SOCAL SOCAL	14 10 77
Surface Warfare					
Explosive	Gun Testing—Large-Caliber	Surface crews defend against surface targets with large-caliber guns.	E3	HRC HRC–SOCAL SOCAL	49 504 49
Explosive	Gun Testing—Medium-Caliber	Surface crews defend against surface targets with medium-caliber guns.	E1	HRC HRC–SOCAL SOCAL	28 336 28
Explosive	Missile and Rocket Testing	Missile and rocket testing includes various missiles or rockets fired from submarines and surface combatants. Testing of the launching system and ship defense is performed.	E6	HRC HRC–SOCAL SOCAL	91 168 140
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 SOCAL	21 28
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 SOCAL	21 2,037
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 SOCAL	7 7
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 HRC–SOCAL SOCAL	63 441 102
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 HRC SOCAL SOCAL	49 60 69
Acoustic	Vessel Signature Evaluation	Surface ship, submarine and auxiliary system signature assessments. This may include electronic, radar, acoustic, infrared and magnetic signatures.	ASW3	HRC HRC SOCAL SOCAL	28 252 168
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 SOCAL	7 7
Acoustic	Signature Analysis Operations	Surface ship and submarine testing of electromagnetic, acoustic, optical, and radar signature measurements.	HF1, M3, MF9	HRC SOCAL	14 7

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

The proposed Office of Naval Research testing activities that could occur over the seven-year period within the HSTT Study Area are presented in Table 4.

TABLE 4—PROPOSED OFFICE OF NAVAL RESEARCH TESTING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE HSTT STUDY AREA

Stressor category	Activity name	Description	Source bin	Location	7-Year number of events
Acoustic and Oceanographic Science and Technology					
Explosive, Acoustic	Acoustic and Oceanographic Research.	Research using active transmissions from sources deployed from ships and unmanned underwater vehicles. Research sources can be used as proxies for current and future Navy systems.	AG, ASW2, BB4, BB9, LF3, LF4, LF5, MF8, MF9, MF9, MF9, E3.	HRC SOCAL	14 28

TABLE 4—PROPOSED OFFICE OF NAVAL RESEARCH TESTING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE HSTT STUDY AREA—Continued

Stressor category	Activity name	Description	Source bin	Location	7-Year number of events
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	21

Notes: HRC = Hawaii Range Complex, SOCAL = Southern California Range Complex.

Naval Information Warfare Systems Command

The proposed Naval Information Warfare Systems Command testing activities that could occur over the seven-year period within the HSTT Study Area are presented in Table 5.

TABLE 5—PROPOSED NAVAL INFORMATION WARFARE SYSTEMS COMMAND TESTING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE HSTT STUDY AREA

Stressor category	Activity name	Description	Source bin	Location	7-Year number of events
Acoustic	Anti-Terrorism/Force Protection.	Testing sensor systems that can detect threats to naval piers, ships, and shore infrastructure.	SD1	San Diego, CA	98
				SOCAL	112
Acoustic	Communications	Testing of underwater communications and networks to extend the principles of FORCEnet below the ocean surface.	ASW2, ASW5, HF6, LF4	HRC	5
				SOCAL	70
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	87
				SOCAL	357
				HSTT Transit Corridor	56
Acoustic	Vehicle Testing	Testing of surface and subsurface vehicles and sensor systems that may involve Unmanned Underwater Vehicles, gliders, and Unmanned Surface Vehicles.	BB4, FLS2, FLS3, HF6, LF3, M3, MF9, MF13, SAS1, SAS2, SAS3.	HRC	8
				SOCAL	1,141
				HSTT Transit Corridor	14

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

Tables 6 through 9 show the acoustic and explosive source classes, bins, and numbers used, airgun sources and numbers used, and numbers of pile driving and removal activities associated with the Navy's proposed training and testing activities over a seven-year period in the HSTT Study Area that were analyzed in the 2019 Navy application and for this proposed rule. The annual numbers for acoustic source classes, explosive source bins, and airgun sources, as well as the annual pile driving and removal activities associated with Navy training and testing activities in the HSTT Study Area are identical to those presented in Tables 9 through 12 of the 2018 HSTT final rule, and are not repeated here. Consistent with the periodicity in the 2018 HSTT final rule, the Navy proposes the addition of two pile driving/extraction activities for each of the two additional years.

Table 6 describes the acoustic source classes (*i.e.,* low-frequency (LF), mid-frequency (MF), and high-frequency (HF)) that could occur over seven years under the proposed training and testing activities. Acoustic source bin use in the proposed activities would vary annually. The seven-year totals for the proposed training and testing activities take into account that annual variability.

TABLE 6—ACOUSTIC SOURCE CLASSES ANALYZED AND NUMBER USED FOR SEVEN-YEAR PERIOD FOR TRAINING AND TESTING ACTIVITIES IN THE HSTT STUDY AREA

Source class category	Bin	Description	Unit [1]	Training	Testing
				7-year total	7-year total
Low-Frequency (LF): Sources that produce signals less than 1 kHz.	LF3	LF sources greater than 200 dB	H	0	1,365
	LF4	LF sources equal to 180 dB and up to 200 dB.	H	0	4,496
			C	0	140
	LF5	LF sources less than 180 dB	H	65	14,458
	LF6	LF sources greater than 200 dB with long pulse lengths.	H	956	360
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	38,489	8,692
	MF1K	Kingfisher mode associated with MF1 sonars.	H	700	98
	MF2 [2]	Hull-mounted surface ship sonars (*e.g.,* AN/SQS–56).	H	0	378
	MF3	Hull-mounted submarine sonars (*e.g.,* AN/BQQ–10).	H	14,700	9,177
	MF4	Helicopter-deployed dipping sonars (*e.g.,* AN/AQS–22 and AN/AQS–13).	H	2,719	2,502
	MF5	Active acoustic sonobuoys (*e.g.,* DICASS).	C	40,128	38,233

TABLE 6—ACOUSTIC SOURCE CLASSES ANALYZED AND NUMBER USED FOR SEVEN-YEAR PERIOD FOR TRAINING AND TESTING ACTIVITIES IN THE HSTT STUDY AREA—Continued

Source class category	Bin	Description	Unit [1]	Training	Testing
				7-year total	7-year total
	MF6	Active underwater sound signal devices (*e.g.,* MK 84).	C	63	8,202
	MF8	Active sources (greater than 200 dB) not otherwise binned.	H	0	490
	MF9	Active sources (equal to 180 dB and up to 200 dB) not otherwise binned.	H	0	36,056
	MF10	Active sources (greater than 160 dB, but less than 180 dB) not otherwise binned.	H	0	13,104
	MF11	Hull-mounted surface ship sonars with an active duty cycle greater than 80%.	H	5,205	392
	MF12	Towed array surface ship sonars with an active duty cycle greater than 80%.	H	1,260	4,620
	MF13	MF sonar source	H	0	2,100
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	12,550	5,403
	HF2	HF Marine Mammal Monitoring System	H	0	840
	HF3	Other hull-mounted submarine sonars (classified).	H	1,919	769
	HF4	Mine detection, classification, and neutralization sonar (*e.g.,* AN/SQS–20).	H	15,012	114,069
	HF5	Active sources (greater than 200 dB) not otherwise binned.	H C	0 0	6,720 280
	HF6	Active sources (equal to 180 dB and up to 200 dB) not otherwise binned.	H	0	7,015
	HF7	Active sources (greater than 160 dB, but less than 180 dB) not otherwise binned.	H	0	9,660
	HF8	Hull-mounted surface ship sonars (*e.g.,* AN/SQS–61).	H	711	5,136
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	1,503	3,290
	ASW2	MF Multistatic Active Coherent sonobuoy (*e.g.,* AN/SSQ–125).	C	4,824	32,900
	ASW3	MF towed active acoustic countermeasure systems (*e.g.,* AN/SLQ–25).	H	37,385	19,187
	ASW4	MF expendable active acoustic device countermeasures (*e.g..,* MK 3).	C	9,023	15,398
	ASW5 [3]	MF sonobuoys with high duty cycles	H	1,780	3,854
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).	C	1,605	6,454
	TORP2	Heavyweight torpedo (*e.g.,* MK 48)	C	3,515	2,756
	TORP3		C	0	315
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	196	3,424
	FLS3	VHF sources with short pulse lengths, narrow beam widths, and focused beam patterns.	H	0	18,480
Acoustic Modems (M): Systems used to transmit data through the water.	M3	MF acoustic modems (greater than 190 dB).	H	274	3,623
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	70
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	13,720
	SAS2	HF SAS systems	H	6,297	60,088
	SAS3	VHF SAS systems	H	0	32,200
	SAS4	MF to HF broadband mine countermeasure sonar.	H	294	0
Broadband Sound Sources (BB): Sonar systems with large frequency spectra, used for various purposes.	BB4	LF to MF oceanographic source	H	0	6,414
	BB7	LF oceanographic source	C	0	196
	BB9	MF optoacoustic source	H	0	3,360

[1] H = hours; C = count (*e.g.,* number of individual pings or individual sonobuoys).
[2] MF2/MF2K are sources on frigate class ships, which were decommissioned during Phase II.
[3] Formerly ASW2 (H) in Phase II.
Notes: dB = decibel(s), kHz = kilohertz, VHF = very high frequency.

Table 7 describes the number of air gun shots that could occur over seven years under the proposed training and testing activities.

TABLE 7—TRAINING AND TESTING AIR GUN SOURCES QUANTITATIVELY ANALYZED IN THE HSTT STUDY AREA

Source class category	Bin	Unit [1]	Training	Testing
			7-year total	7-year total
Air Guns (AG): small underwater air guns	AG	C	0	5,908

[1] C = count. One count (C) of AG is equivalent to 100 air gun firings.

Table 8 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 seven-year period of the rule, the Navy will drive a total of 1,666 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 seven-year period of the rule, the Navy will extract a total of 1,666 piles by vibratory pile extraction.

TABLE 8—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 9 describes the number of in-water explosives that could be used in any year under the proposed training and testing activities. Under the proposed activities bin use would vary annually, and the seven-year totals for the proposed training and testing activities take into account that annual variability.

TABLE 9—EXPLOSIVE SOURCE BINS ANALYZED AND NUMBER USED FOR SEVEN-YEAR PERIOD FOR TRAINING AND TESTING ACTIVITIES WITHIN THE HSTT STUDY AREA

Bin	Net explosive weight (lb.) [1]	Example explosive source	Modeled underwater detonation depths (ft.)	Training	Testing
				7-year total	7-year total
E1	0.1–0.25	Medium-caliber projectiles	0.3, 60	20,580	87,012
E2	>0.25–0.5	Medium-caliber projectiles	0.3, 50	12,222	0
E3	>0.5–2.5	Large-caliber projectiles	0.3, 60	19,579	20,848
E4	>2.5–5	Mine neutralization charge	10, 16, 33, 50, 61, 65, 650.	266	4,372
E5	>5–10	5 in. projectiles	0.3, 10, 50	33,310	9,800
E6	>10–20	Hellfire missile	0.3, 10, 50, 60	4,056	230
E7	>20–60	Demo block/shaped charge	10, 50, 60	91	0
E8	>60–100	Lightweight torpedo	0.3, 150	241	399
E9	>100–250	500 lb. bomb	0.3	2,950	28
E10	>250–500	Harpoon missile	0.3	1,543	210
E11	>500–650	650 lb. mine	61, 150	69	84
E12	>650–1,000	2,000 lb. bomb	0.3	114	0
E13	>1,000–1,740	Multiple Mat Weave charges	NA [2]	63	0

[1] Net Explosive Weight refers to the amount of explosives; the actual weight of a munition may be larger due to other components.
[2] Not modeled because charge is detonated in surf zone; not a single E13 charge, but multiple smaller charges detonated in quick succession.
Notes: in. = inch(es), lb. = pound(s), ft. = feet.

Vessel Movement

Vessels used as part of the 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 (kn), 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+ 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. A full description of Navy vessels that are used during training and testing activities can be found in the 2017 Navy

application and Chapter 2 (*Description of Proposed Action and Alternatives*) of the 2018 HSTT FEIS/OEIS.

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 typically be conducted near naval ports, piers, and range areas. Navy vessel traffic would be especially 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.

The Navy proposes no changes to the manner in which Navy vessels would be used during training and testing activities, the speeds at which they operate, the number of vessels that would be used during various activities, or the locations in which Navy vessel movement would be concentrated within the HSTT Study Area from those analyzed in the 2018 HSTT final rule. The only change related to the Navy's request regarding Navy vessel movement is the vessel use associated with the additional two years of Navy activities.

Standard Operating Procedures

For training and testing to be effective, personnel must be able to safely use their sensors and weapon systems as they are intended to be used in a real-world situation and to their optimum capabilities. While standard operating procedures are designed for the safety of personnel and equipment and to ensure the success of training and testing activities, their implementation often yields additional benefits on environmental, socioeconomic, public health and safety, and cultural resources. Because standard operating procedures are essential to safety and mission success, the Navy considers them to be part of the proposed activities and included them in the environmental analysis. Details on standard operating procedures were provided in the 2018 HSTT proposed rule; please see the 2018 HSTT proposed rule, the 2017 Navy application, and Chapter 2 (*Description of Proposed Action and Alternatives*) of the 2018 HSTT FEIS/OEIS for more information. The Navy proposes no changes to the Standard Operating Procedures from those included in the 2018 HSTT final rule.

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 10 along with the best/minimum abundance estimate and associated coefficient of variation value. Consistent with the 2018 HSTT final rule, the Navy still anticipates the take of individuals from 38 marine mammal species by Level A harassment and Level 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. The Navy requested authorization for 13 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 seven-year period. Two marine mammal species, the Hawaiian monk seal and the Main Hawaiian Islands Insular Distinct Population Segment (DPS) of false killer whale, have critical habitat designated under the Endangered Species Act (ESA) in the HSTT Study Area.

We presented a detailed discussion of marine mammals and their occurrence in the HSTT Study Area, inclusive of important marine mammal habitat (*e.g.,* ESA-designated critical habitat), biologically important areas (BIAs), national marine sanctuaries (NMSs), and unusual mortality events (UMEs) in the 2018 HSTT proposed rule and 2018 HSTT final rule; please see these rules and the 2017 and 2019 Navy applications for additional information. There have been no changes to important marine mammal habitat, BIAs, NMSs, or ESA designated critical habitat since the issuance of the 2018 HSTT final rule; therefore the information that supports our determinations here can be found in the 2018 HSTT proposed and final rules. NMFS has reviewed the most recent 2018 final Stock Assessment Reports (SARs); information on relevant UMEs; and other scientific literature, and determined that none of these nor any other new information changes our determination of which species or stocks have the potential to be affected by the Navy's activities or the pertinent information in the *Description of Marine Mammals and Their Habitat in the Area of the Specified Activities* section in the 2018 HSTT proposed and final rules. Therefore the information presented in those sections of the 2018 HSTT proposed and final rules remains current and valid.

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.

TABLE 10—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		290 (NA)/271.
Humpback whale	Megaptera novaeangliae	CA/OR/WA	Strategic, Depleted	Threatened/ Endangered [1]	Southern California		2,900 (0.05)/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 (0.40)/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 (0.60)/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.
		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.
		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 (DPSs) making up the California, Oregon, and Washington (CA/OR/WA) stock present in Southern California are the Mexico DPS, listed under the ESA as Threatened, and the Central America DPS, 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.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

We provided a full discussion of the potential effects of the specified activities on marine mammals and their habitat in our 2018 HSTT proposed rule and 2018 HSTT final rule. In the *Potential Effects of Specified Activities on Marine Mammals and Their Habitat* section of the 2018 HSTT proposed and final rules, NMFS provided a description of the ways marine mammals may be affected by the same activities that the Navy will be conducting during the seven-year period analyzed in this rule in the form of serious injury or mortality, physical trauma, sensory impairment (permanent and temporary threshold shifts and acoustic masking), physiological responses (particularly stress responses), behavioral disturbance, or habitat effects. Therefore, we do not repeat the information here, all of which remains current and applicable, but refer the reader to those rules and the 2018 HSTT FEIS/OEIS (Chapter 3, Section 3.7 *Marine Mammals*), which NMFS participated in the development of via our cooperating agency status and adopted to meet our NEPA requirements.

In addition, NMFS has reviewed new information in relevant SARs, any new information on active UMEs or new UMEs, and new scientific literature. Summaries of current UMEs and new scientific literature since publication of the 2018 HSTT final rule are presented below.

Unusual Mortality Events (UME)

An UME is defined under Section 410(6) of the MMPA as a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response. From 1991 to the present, there have been 17 formally recognized UMEs affecting marine mammals in California and Hawaii and involving species under NMFS' jurisdiction. Three UMEs that could be relevant to informing the current analysis are discussed below. Specifically, the California sea lion UME in California is still open, but will be closed soon. The Guadalupe fur seal UME in California and the gray whale UME along the west coast of North America are active and involve ongoing investigations.

California Sea Lion UME

From January 2013 through September 2016, a greater than expected number of young malnourished California sea lions (*Zalophus californianus*) stranded along the coast of California. Sea lions stranding from an early age (6–8 months old) through two years of age (hereafter referred to as juveniles) were consistently underweight without other disease processes detected. Of the 8,122 stranded juveniles attributed to the UME, 93 percent stranded alive (n=7,587, with 3,418 of these released after rehabilitation) and 7 percent (n=531) stranded dead. Several factors are hypothesized to have impacted the ability of nursing females and young sea lions to acquire adequate nutrition for successful pup rearing and juvenile growth. In late 2012, decreased anchovy and sardine recruitment (CalCOFI data, July 2013) may have led to nutritionally stressed adult females. Biotoxins were present at various times throughout the UME, and while they were not detected in the stranded juvenile sea lions (whose stomachs were empty at the time of stranding), biotoxins may have impacted the adult females' ability to support their dependent pups by affecting their cognitive function (*e.g.* navigation, behavior towards their offspring). Therefore, the role of biotoxins in this UME, via its possible impact on adult females' ability to support their pups, is unclear. The proposed primary cause of the UME was malnutrition of sea lion pups and yearlings due to ecological factors. These factors included shifts in distribution, abundance and/or quality of sea lion prey items around the Channel Island rookeries during critical sea lion life history events (nursing by adult females, and transitioning from milk to prey by young sea lions). These prey shifts were most likely driven by unusual oceanographic conditions at the time due to the ''Warm Water Blob'' and El Niño. This investigation will soon be closed. Please refer to: *https://www.fisheries.noaa.gov/national/marine-life-distress/2013-2017-california-sea-lion-unusual-mortality-event-california* for more information on this UME.

Guadalupe Fur Seal UME

Increased strandings of Guadalupe fur seals began along the entire coast of California in January 2015 and were eight times higher than the historical average (approximately 10 seals/yr). Strandings have continued since 2015 and have remained well above average through 2017. Strandings have continued since 2015 and remained well above average through 2019. Numbers by year are as follows: 2015 (98), 2016 (76), 2017 (61), 2018 (45), 2019 (104, as of June 28, 2019). The total number of Guadalupe fur seals from January 1, 2015, through June 28, 2019, in the UME is 438. Additionally, strandings of Guadalupe fur seals became elevated in the spring of 2019 in Washington and Oregon, subsequently strandings for seals in these two states have been added to the UME starting from January 1, 2019. The current total number of strandings for 2019 in Washington and Oregon is 55 seals as of June 28, 2019. Strandings are seasonal and generally peak in April through June of each year. The Guadalupe fur seal strandings have been mostly weaned pups and juveniles (1–2 years old) with both live and dead strandings occurring. Current findings from the majority of stranded animals include primary malnutrition with secondary bacterial and parasitic infections. This California portion of this UME is occurring in the same area as the 2013–2016 California sea lion UME. This investigation is ongoing. Please refer to: *https://www.fisheries.noaa.gov/national/marine-life-distress/2015-2019-guadalupe-fur-seal-unusual-mortality-event-california* for more information on this UME.

Gray Whale UME

Since January 1, 2019, elevated gray whale strandings have occurred along the west coast of North America, from Mexico to Canada. As of June 28, 2019, there have been a total of 170 strandings along the coasts of the U.S., Canada, and Mexico, with 84 of those strandings occurring along the U.S. coast. Partial necropsy examinations conducted on a subset of stranded whales have shown evidence of emaciation. As part of the UME investigation process, NOAA is assembling an independent team of scientists to coordinate with the Working Group on Marine Mammal Unusual Mortality Events to review the data collected, sample stranded whales, and determine the next steps for the investigation. Please refer to: *https://www.fisheries.noaa.gov/national/marine-life-distress/2019-gray-whale-unusual-mortality-event-along-west-coast* for more information on this UME.

New Pertinent Science Since Publication of the 2018 HSTT Final Rule

Southall *et al.* (2019a) evaluated Southall *et al.* (2007) and used updated scientific information to propose revised noise exposure criteria to predict onset of auditory effects in marine mammals (*i.e.,* PTS and TTS onset). Southall *et al.* (2019a) note that the quantitative processes described and the resulting exposure criteria (*i.e.,* thresholds and auditory weighting functions) are largely identical to those in Finneran (2016) and NMFS (2016 and 2018).

However they differ in that the Southall *et al.* (2019a) exposure criteria are more broadly applicable as they include all marine mammal species (rather than only those under NMFS jurisdiction) for all noise exposures (both in air and underwater for amphibious species) and, while the hearing group compositions are identical, they renamed the hearing groups.

Recent studies on the behavioral responses of cetaceans to sonar examine and continue to demonstrate the importance of not only sound source parameters, but 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. Kastelein *et al.* (2018) examined the role of sound pressure level (SPL) and duty cycle on the behavior of two captive harbor porpoises when exposed to simulated Navy mid-frequency sonar (53C, 3.5 to 4.1 kHz). Neither harbor porpoise responded to the low duty cycle (2.7 percent) at any of the five SPLs presented, even at the maximum received SPL (143 dB re: 1 μPa). At the higher duty cycle (96 percent), one porpoise responded by increasing his respiration rate at a received SPL of greater than or equal to 119 dB re: 1 μPa, and moved away from the transducer at a received SPL of 143 dB re: 1 μPa. Kastelein *et al.* (2018) observed that at the same received SPL and duty cycle, harbor porpoises respond less to 53C sonar sounds than 1–2 kHz, 6–7 kHz, and 25 kHz sonar signals observed in previous studies, but noted that when examining behavioral responses it is important to take into account the spectrum and temporal structure of the signal, the duty cycle, and the psychological interpretation by the animal. Wensveen *et al.* (2019) examined the role of sound source (simulated sonar pulses) distance and received level in northern bottlenose whales in an environment without frequent sonar activity using multi-scaled controlled exposure experiments. They observed behavioral avoidance of the sound source over a wide range of distances (0.8–28 km) and estimated avoidance thresholds ranging from received SPLs of 117–126 dB re: 1 μPa. The behavioral response characteristics and avoidance thresholds were comparable to those previously observed in beaked whale studies; however, they did not observe an effect of distance on behavioral response and found that onset and intensity of behavioral response were better predicted by received SPL. When conducting controlled exposure experiments on blue whales Southall *et al.* (2019b) observed that after exposure to simulated and operational mid-frequency active sonar, more than 50 percent of blue whales in deep-diving states responded to the sonar, while no behavioral response was observed in shallow-feeding blue whales. The behavioral responses they observed were generally brief, of low to moderate severity, and highly dependent on exposure context (behavioral state, source-to-whale horizontal range, and prey availability). Blue whale response did not follow a simple exposure-response model based on received sound exposure level. In a review of the potential impacts of sonar on beaked whales, Bernaldo de Quirós *et al.* (2019) suggested that the effect of mid-frequency active sonar on beaked whales varies among individuals or populations, and that predisposing conditions such as previous exposure to sonar and individual health risk factors may contribute to individual outcomes (such as decompression sickness).

Having considered this information, we have preliminarily determined that there is no new information that substantively affects our analysis of impacts on marine mammals and their habitat that appeared in the 2018 HSTT final rule, all of which remains applicable and valid for our assessment of the effects of the Navy's activities during the seven-year period of this rule.

Estimated Take of Marine Mammals

This section indicates the number of takes that NMFS is proposing to authorize, which are based on the amount of take that NMFS anticipates could occur or is likely to occur, depending on the type of take and the methods used to estimate it, as described below. NMFS coordinated closely with the Navy in the development of their incidental take application, and preliminarily agrees that the methods the Navy has put forth described herein and in the 2018 HSTT proposed and final rules 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. The number and type of incidental takes that could occur or are likely to occur annually remain identical to those authorized in the 2018 HSTT regulations.

Takes are predominantly in the form of harassment, but a small number of serious injuries or mortalities are also possible. 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).

Proposed 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 behavioral disruption (rising to the level of a take as described above) or temporary threshold shift (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, no more than three serious injuries or mortalities total (over the seven-year period) of mysticetes (except for sei whales, minke whales, Bryde's whales, Central North Pacific stock of blue whales, Hawaii stock of fin whales, and Western North Pacific stock of gray whales) and the Hawaii stock of sperm whales have the potential occur through vessel collisions. Although we analyze the impacts of these potential serious injuries or mortalities that are proposed to be 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) and the number of days of activities or events.

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 permanent threshold shift (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 take by 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 behavioral Level B harassment thresholds have been refined here to better consider the best available science (*e.g.,* incorporating both received level and distance), they also still 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 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 behavioral Level B harassment thresholds are the most appropriate method for predicting behavioral Level B harassment given the best available science and the associated uncertainty.

We described these acoustic thresholds and the methods used to determine thresholds, none of which have changed, in detail in the *Acoustic Thresholds* section of the 2018 HSTT final rule; please see the 2018 HSTT final rule for detailed information.

Navy's Acoustic Effects Model

The Navy proposes no changes to the Acoustic Effects Model as described in the 2018 HSTT final rule and there is no new information that would affect the applicability or validity of the model. Please see the 2018 HSTT final and proposed rules and Appendix E of the 2018 HSTT FEIS/OEIS for detailed information.

Range to Effects

The Navy proposes no changes from the 2018 HSTT final rule to the type and nature of the specified activities to be conducted during the seven-year period analyzed in this proposed rule, including equipment and sources used and exercises conducted. There is also no new information that would affect the applicability or validity of the ranges to effects previously analyzed for these activities. Therefore the ranges to effects in this proposed rule are identical to those described and analyzed in the 2018 HSTT final rule, including received sound levels that may cause onset of significant behavioral response and TTS and PTS in hearing for each source type or explosives that may cause non-auditory injury. Please see the *Range to Effects* section and Tables 24 through 40 of the 2018 HSTT final rule for detailed information.

Marine Mammal Density

The Navy proposes no changes to the methods used to estimate marine mammal density described in the 2018 HSTT final rule and there is no new information that would affect the applicability or validity of these methods. Please see the 2018 HSTT final rule for detailed information.

Take Requests

As in the 2018 HSTT final rule, in its 2019 application, 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 NMFS 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); and
- 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 proposed to be authorized, has been fully analyzed and is described below.

Regarding the quantification of expected takes from acoustic and explosive sources (by Level A and Level B harassment, as well as mortality resulting from exposure to explosives), the number of takes are based directly on the level of activities (days, hours, counts, etc., of different activities and events) in a given year. In the 2018 HSTT final rule, take estimates across the five-years were based on the Navy conducting three years of a representative level of activity and two years of maximum level of activity. Consistent with the pattern set forth in the 2017 Navy application, the 2018 HSTT FEIS/OEIS, and the 2018 HSTT final rule, the Navy proposes to add one additional representative year and one additional maximum year to determine the predicted take numbers in this rule. Specifically, as in the 2018 HSTT final rule, the Navy proposes to use the maximum annual level to calculate annual takes (which would remain identical to what was determined in the 2018 HSTT final rule), and the sum of all years (four representative and three maximum) to calculate the seven-year totals for this rule.

The quantitative analysis process used for the 2018 HSTT FEIS/OEIS and the 2017 and 2019 Navy applications 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* (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 procedural mitigation is expected to reduce the risk for model-estimated PTS for exposures to sonars and for model-estimated mortality for exposures to explosives, based on species sightability, observation area, visibility, and the ability to exercise positive control over the sound source. Where the analysis indicates mitigation would effectively reduce risk, the model-estimated PTS are considered reduced to TTS and the model-estimated mortalities are considered reduced to injury. For a complete explanation of the process for assessing the effects of mitigation, see the 2017 Navy application and the *Take Requests* section of the 2018 HSTT final rule. The extent to which the mitigation areas reduce impacts on the affected species and stocks is addressed separately in the *Preliminary Analysis and Negligible Impact Determination* section.

No changes have been made to the quantitative analysis process to estimate potential exposures to marine mammals resulting from acoustic and explosive stressors and calculate take estimates. In addition, there is no new information that would call into question the validity of the Navy's quantitative analysis process. Please see the documents described in the paragraph above, the 2018 HSTT proposed rule, and the 2018 HSTT final rule for detailed descriptions of these analyses. In summary, we believe the Navy's methods, including the method for incorporating mitigation and avoidance, are the most appropriate methods for predicting PTS, TTS, and behavioral disruption. 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 be taken through PTS, TTS, or behavioral disruption.

Summary of Requested Take From Training and Testing Activities

Based on the methods discussed in the previous sections and the Navy's model and quantitative assessment of mitigation, the Navy provided its take estimate and request for authorization of takes incidental to the use of acoustic and explosive sources for training and testing activities both annually (based on the maximum number of activities that could occur per 12-month period) and over the seven-year period covered by the 2019 Navy application. Annual takes (based on the maximum number of activities that could occur per 12-month period) from the use of acoustic and explosive sources are identical to those presented in Tables 41 and 42 and in the *Explosives* subsection of the *Take Requests* section of the 2018 HSTT final rule. The 2019 Navy application also includes the Navy's take estimate and request for vessel strikes due to vessel movement in the HSTT Study Area. NMFS has reviewed the Navy's data, methodology, and analysis and determined that it is complete and accurate. NMFS agrees that the estimates for incidental takes by harassment from all sources as well as the incidental takes by serious injury or mortality from explosives requested for authorization are the maximum number of instances in which marine mammals are reasonably expected to be taken. NMFS also agrees that the takes by serious injury or mortality as a result of vessel strikes could occur. Note that the total amount of estimated incidental take from acoustic and explosive sources over the total seven-year period covered by the 2019 Navy application is less than the annual total multiplied by seven because although the annual estimates are based on the maximum number of activities per year and therefore the maximum possible estimated takes, the seven-year total take estimates are based on the sum of three maximum years and four representative years. Not all activities occur every year. Some activities would occur multiple times within a year, and some activities would occur only a few times over the course of the seven-year period. Using seven years of the maximum number of activities each year would vastly overestimate the amount of incidental take that would occur over the seven-year period where the Navy knows that it will not conduct the maximum number of activities each and every year for the seven years.

Estimated Harassment Take From Training Activities

For training activities, Table 11 summarizes the Navy's take estimate and request and the maximum amount and type of Level A harassment and Level B harassment for the seven-year period covered by the 2019 Navy application that NMFS concurs is reasonably expected to occur by species or stock. For the estimated amount and type of Level A harassment and Level B harassment annually, see Table 41 in the 2018 HSTT final rule. Note that take by Level B harassment includes both behavioral disruption and TTS. Navy Figures 6–12 through 6–50 in Section 6 of the 2017 Navy application illustrate the comparative amounts of TTS and behavioral disruption for each species annually, noting that if a modeled marine mammal was ''taken'' through exposure to both TTS and behavioral disruption in the model, it was recorded as a TTS.

TABLE 11—SEVEN-YEAR TOTAL SPECIES- AND STOCK-SPECIFIC TAKE ESTIMATES PROPOSED FOR AUTHORIZATION FROM ACOUSTIC AND EXPLOSIVE SOUND SOURCE EFFECTS FOR ALL TRAINING ACTIVITIES

Species	Stock	7-Year total	
		Level B	Level A
Blue whale *	Central North Pacific	205	0
	Eastern North Pacific	7,116	6
Bryde's whale †	Eastern Tropical Pacific	167	0
	Hawaiian †	631	0
Fin whale *	California, Oregon, & Washington	7,731	0
	Hawaiian	197	0
Humpback whale †	California, Oregon, & Washington †	7,962	7
	Central North Pacific	34,437	12
Minke whale	California, Oregon, & Washington	4,119	7
	Hawaiian	20,237	6
Sei whale *	Eastern North Pacific	333	0
	Hawaiian	677	0
Gray whale †	Eastern North Pacific	16,703	27
	Western North Pacific †	19	0

TABLE 11—SEVEN-YEAR TOTAL SPECIES- AND STOCK-SPECIFIC TAKE ESTIMATES PROPOSED FOR AUTHORIZATION FROM ACOUSTIC AND EXPLOSIVE SOUND SOURCE EFFECTS FOR ALL TRAINING ACTIVITIES—Continued

Species	Stock	7-Year total	
		Level B	Level A
Sperm whale *	California, Oregon, & Washington	8,834	0
	Hawaiian	10,341	0
Dwarf sperm whale	Hawaiian	84,232	215
Pygmy sperm whale	Hawaiian	33,431	94
Kogia whales	California, Oregon, & Washington	38,609	149
Baird's beaked whale	California, Oregon, & Washington	8,524	0
Blainville's beaked whale	Hawaiian	23,491	0
Cuvier's beaked whale	California, Oregon, & Washington	47,178	0
	Hawaiian	7,898	0
Longman's beaked whale	Hawaiian	82,293	0
Mesoplodon spp (beaked whale guild)	California, Oregon, & Washington	25,404	0
Bottlenose dolphin	California Coastal	1,295	0
	California, Oregon, & Washington Offshore	201,619	13
	Hawaiian Pelagic	13,080	0
	Kauai & Niihau	500	0
	Oahu	57,288	10
	4-Island	1,052	0
	Hawaii	291	0
False killer whale †	Hawaii Pelagic	4,353	0
	Main Hawaiian Islands Insular †	2,710	0
	Northwestern Hawaiian Islands	1,585	0
Fraser's dolphin	Hawaiian	177,198	4
Killer whale	Eastern North Pacific Offshore	460	0
	Eastern North Pacific Transient/West Coast Transient	855	0
	Hawaiian	513	0
Long-beaked common dolphin	California	784,965	99
Melon-headed whale	Hawaiian Islands	14,137	0
	Kohala Resident	1,278	0
Northern right whale dolphin	California, Oregon, & Washington	357,001	57
Pacific white-sided dolphin	California, Oregon, & Washington	274,892	19
Pantropical spotted dolphin	Hawaii Island	17,739	0
	Hawaii Pelagic	42,318	0
	Oahu	28,860	0
	4-Island	1,816	0
Pygmy killer whale	Hawaiian	35,531	0
	Tropical	2,977	0
Risso's dolphin	California, Oregon, & Washington	477,389	45
	Hawaiian	40,800	0
Rough-toothed dolphin	Hawaiian	26,769	0
	NSD [1]	0	0
Short-beaked common dolphin	California, Oregon, & Washington	5,875,431	307
Short-finned pilot whale	California, Oregon, & Washington	6,341	6
	Hawaiian	53,627	0
Spinner dolphin	Hawaii Island	609	0
	Hawaii Pelagic	18,870	0
	Kauai & Niihau	1,961	0
	Oahu & 4-Island	10,424	8
Striped dolphin	California, Oregon, & Washington	777,001	5
	Hawaiian	32,806	0
Dall's porpoise	California, Oregon, & Washington	171,250	894
California sea lion	U.S.	460,145	629
Guadalupe fur seal *	Mexico	3,342	0
Northern fur seal	California	62,138	0
Harbor seal	California	19,214	48
Hawaiian monk seal *	Hawaiian	938	5
Northern elephant seal	California	241,277	490

* ESA-listed species (all stocks) within the HSTT Study Area.
† Only designated stocks are ESA-listed.
[1] NSD: No stock designation.

Estimated Harassment Take From Testing Activities

For testing activities, Table 12 summarizes the Navy's take estimate and request and the maximum amount and type of Level A harassment and Level B harassment for the seven-year period covered by the 2019 Navy application that NMFS concurs is reasonably expected to occur by species or stock. For the estimated amount and type of Level A harassment and Level B harassment annually, see Table 42 in the 2018 HSTT final rule. Note that take by Level B harassment includes both behavioral disruption and TTS. Navy Figures 6–12 through 6–50 in Section 6 of the 2017 Navy application illustrate

the comparative amounts of TTS and behavioral disruption for each species annually, noting that if a modeled marine mammal was ''taken'' through exposure to both TTS and behavioral disruption in the model, it was recorded as a TTS.

TABLE 12—SEVEN-YEAR TOTAL SPECIES AND STOCK-SPECIFIC TAKE ESTIMATES PROPOSED FOR AUTHORIZATION FROM ACOUSTIC AND EXPLOSIVE SOUND SOURCE EFFECTS FOR ALL TESTING ACTIVITIES

Species	Stock	7-Year total	
		Level B	Level A
Blue whale *	Central North Pacific	93	0
	Eastern North Pacific	5,679	0
Bryde's whale †	Eastern Tropical Pacific	97	0
	Hawaiian †	278	0
Fin whale *	California, Oregon, & Washington	6,662	7
	Hawaiian	108	0
Humpback whale †	California, Oregon, & Washington †	4,961	0
	Central North Pacific	23,750	19
Minke whale	California, Oregon, & Washington	1,855	0
	Hawaiian	9,822	7
Sei whale *	Eastern North Pacific	178	0
	Hawaiian	329	0
Gray whale †	Eastern North Pacific	13,077	9
	Western North Pacific †	15	0
Sperm whale *	California, Oregon, & Washington	7,409	0
	Hawaiian	5,269	0
Dwarf sperm whale	Hawaiian	43,374	197
Pygmy sperm whale	Hawaiian	17,396	83
Kogia whales	California, Oregon, & Washington	20,766	94
Baird's beaked whale	California, Oregon, & Washington	4,841	0
Blainville's beaked whale	Hawaiian	11,455	0
Cuvier's beaked whale	California, Oregon, & Washington	30,180	28
	Hawaiian	3,784	0
Longman's beaked whale	Hawaiian	41,965	0
Mesoplodon spp (beaked whale guild)	California, Oregon, & Washington	16,383	15
Bottlenose dolphin	California Coastal	11,158	0
	California, Oregon, & Washington Offshore	158,700	8
	Hawaiian Pelagic	8,469	0
	Kauai & Niihau	3,091	0
	Oahu	3,230	0
	4-Island	1,129	0
	Hawaii	260	0
False killer whale †	Hawaii Pelagic	2,287	0
	Main Hawaiian Islands Insular †	1,256	0
	Northwestern Hawaiian Islands	837	0
Fraser's dolphin	Hawaiian	85,193	9
Killer whale	Eastern North Pacific Offshore	236	0
	Eastern North Pacific Transient/West Coast Transient	438	0
	Hawaiian	279	0
Long-beaked common dolphin	California	805,063	34
Melon-headed whale	Hawaiian Islands	7,678	0
	Kohala Resident	1,119	0
Northern right whale dolphin	California, Oregon, & Washington	280,066	22
Pacific white-sided dolphin	California, Oregon, & Washington	213,380	14
Pantropical spotted dolphin	Hawaii Island	9,568	0
	Hawaii Pelagic	24,805	0
	Oahu	1,349	0
	4-Island	2,513	0
Pygmy killer whale	Hawaiian	18,347	0
	Tropical	1,928	0
Risso's dolphin	California, Oregon, & Washington	339,334	24
	Hawaiian	19,027	0
Rough-toothed dolphin	Hawaiian	14,851	0
	NSD [1]	0	0
Short-beaked common dolphin	California, Oregon, & Washington	3,795,732	304
Short-finned pilot whale	California, Oregon, & Washington	6,253	0
	Hawaiian	29,269	0
Spinner dolphin	Hawaii Island	1,394	0
	Hawaii Pelagic	9,534	0
	Kauai & Niihau	9,277	0
	Oahu & 4-Island	1,987	0
Striped dolphin	California, Oregon, & Washington	371,328	20
	Hawaiian	16,270	0
Dall's porpoise	California, Oregon, & Washington	115,353	478
California sea lion	U.S.	334,332	36

TABLE 12—SEVEN-YEAR TOTAL SPECIES AND STOCK-SPECIFIC TAKE ESTIMATES PROPOSED FOR AUTHORIZATION FROM ACOUSTIC AND EXPLOSIVE SOUND SOURCE EFFECTS FOR ALL TESTING ACTIVITIES—Continued

Species	Stock	7-Year total	
		Level B	Level A
Guadalupe fur seal *	Mexico	6,167	0
Northern fur seal	California	36,921	7
Harbor seal	California	15,898	12
Hawaiian monk seal *	Hawaiian	372	0
Northern elephant seal	California	151,754	187

* ESA-listed species (all stocks) within the HSTT Study Area.
† Only designated stocks are ESA-listed.
[1] NSD: No stock designation.

Estimated 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 during which 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 the 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 seven-year period in particular, the Navy requested incidental takes based on probabilities derived from a Poisson distribution using ship strike data between 2009–2018 in the HSTT Study Area (the time period from when current mitigations were instituted until the Navy conducted the analysis for the 2019 Navy application), as well as historical at-sea days in the HSTT Study Area from 2009–2018 and estimated potential at-sea days for the period from 2018 to 2025 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 2025. The analysis for the period of 2018 to 2023 is described in detail in Chapter 6 of the 2017 Navy application and has been updated for this seven-year proposed rulemaking.

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 sources, 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 seven years of this rule. The probability analysis concluded that there was a 22 percent chance that zero whales would be struck by Navy vessels over the seven-year period, and a 33, 25, 13, and 5 percent chance that one, two, three, or four whales, respectively, would be struck over the seven-year period (with a 78 percent chance that greater than one whale would be struck over the seven-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 seven years.

The probability of the Navy striking up to three large whales over the seven-year period (which is a 13 percent chance) as analyzed for this proposed rule using updated Navy vessel strike data and at-sea days is very close to the probability of the Navy striking up to three large whales over five years (which was a 10 percent chance). As the probability of striking three large whales does not differ significantly from the 2018 HSTT final rule, and the probability of striking four large whales over seven years remains very low to the point of being unlikely (less than 5 percent), the Navy has requested, and we are proposing, no change in the number of takes by serious injury or mortality due to vessel strikes.

Small delphinids, porpoises, and pinnipeds are not expected 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 proposing for authorization) incidental take by vessel strike of large whales only (*i.e.,* no dolphins, small whales, porpoises, or pinnipeds) over the course of the seven-year regulations from training and testing activities as discussed below.

As noted in the 2018 HSTT proposed and final rules, in the 2017 Navy application 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. 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. For this seven-year rule, we have reconsidered these two factors and updated the analysis with the Navy's seven-year ship strike probability analysis and any new/updated ship strike data from the SARs.

To address number (1) above, NMFS compiled information from NMFS' SARs on detected annual rates of large whale serious injury or mortality from vessel collisions. The annual rates of large whale serious injury or 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 (the period used for the SARs). We summed the annual rates of serious injury or mortality 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.,* 78 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 in the SAR changes (and we

include the annual averages from 2017 and 2018 SARs in Table 13 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 2017 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 13 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 or Mortality* subsection of the *Preliminary 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 13 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.* (2017). The last column indicates the annual mortality proposed to be authorized: those stocks with one serious injury or mortality (M/SI) take proposed to be authorized over the seven-year period of the rule are shaded lightly, while those with two M/SI takes proposed to be authorized over the seven-year period of the rule are shaded more darkly.

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Table 13. 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[3]		Rockwood *et al.*, 2017 modeled vessel strikes[4]	Annual Author-ized Take
			2017 SAR[1]	2018 SAR		Review of all NMFS' strike data - # of total strikes[3]	Relative Abundance		
Listed	Blue whale	Central North Pacific	0	0	No	0	0.016	-	-
		Eastern North Pacific	6.5	2.3	1 in SOCAL	14	0.103	18	0.14
	Fin whale	CA/OR/WA	18.1	18.4	2 in SOCAL	21	0.46	43	0.29
		Hawaii	0	0	No	0	0.027	-	-
	Humpback whale[2]	CA/OR/WA stock, Mexico	11.1[2]	24.1[2]	No	15[2]	0.041	22	0.14
	Sei whale	Eastern North Pacific	0	2.3	No	1	0.007	-	-
		Hawaii	0	0	No	0	0.041	-	-
	Gray whale	Western North Pacific	0	0	No	0	0	-	-
	Sperm whale	CA/OR/WA	2	2.3	No	1	0.107	-	-
		Hawaii	0	0	1 in HRC	2	0.487	-	0.14
Not listed	Gray whale	Eastern North Pacific	20.1	9.2	3 in SOCAL	35	0.25	-	0.29
	Bryde's whale	Eastern Tropical Pacific	2[5]	2.3	No	0	0	-	-
		Hawaii	0	0	No	0	0.048	-	-
	Minke whale	CA/OR/WA	0	0	No	0	0.032	-	-
		Hawaii	0	0	No	0	0.027	-	-
	Humpback whale	Central North Pacific[6]	18.1	17.2	2 in HRC	58	0.245	-	0.29

[1]Percent likelihood of Central North Pacific stock of humpback whales for the 2017 SAR was unintentionally presented incorrectly in Table 43 of the 2018 HSTT final rule. As the percent likelihood for all stocks are calculated together, correcting the Central North Pacific stock of humpback whale also corrects the values for other stocks for which ship strikes were reported in the SARs. Correct values are provided here. These transcription errors do not affect the analysis or conclusions in the 2018 HSTT final rule.

[2] Humpback information applies to CA/OR/WA stock, Mexico DPS only. Text explains why takes in SOCAL come from Mexico DPS.

[3] The Navy compiled information related to vessel strike in Section 5.2 of the 2017 Navy application, this column sums information presented on pg 5-11.

[4] Rockwood *et al.* modeled likely annual vessel strikes off the West Coast for these three species only.

[5] The percent likelihood of hitting an individual Bryde's whale from the Eastern North Pacific Stock in 2017 was unintentionally presented incorrectly presented as 0.2 in the 2018 HSTT final rule and is corrected here. This transcription error does not affect the analysis or conclusions reached in the 2018 HSTT final rule.

[6] The 2018 final SAR reports ship strike data for the Central North Pacific stock of humpback whales in Alaska and Hawaii. Only ship strike data from Hawaii was incorporated into our analysis as Alaska is outside of the HSTT Study Area.

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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 seven-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 seven-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 Study Area, 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 3.4 percent likelihood of being struck twice based on NMFS' SAR calculation (not shown in Table 13, 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 seven-year rule.

Based on the information summarized in Table 13, and the fact that there is the potential for up to three large whales to be struck, it is considered reasonably likely that one individual from the

remaining three stocks could be one of the three whales 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 seven-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 seven-year rule. The Navy has not hit a humpback whale in the HSTT Study Area and the relative abundance of the CA/OR/WA stock 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 from the CA/OR/WA stock (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 humpback 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 no strikes of whales 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 13) 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 13 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 proposed authorized take included in this rule, which is 1, 1, and 2, respectively over the seven-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 proposed for authorization.

Accordingly, the Navy has requested take by M/SI from vessel strike of up to two of any of the following species/stocks in the seven-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/stocks in the seven-year period: Blue whale (Eastern North Pacific stock), humpback whale (CA/OR/WA stock, Mexico DPS), or sperm whale (Hawaii stock).

As described above, the Navy analysis suggests, and NMFS analysis concurs, 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 proposing to authorize 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 there is the potential of no more than three whales taken by M/SI over the seven-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), and 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 M/SI of 0.14 or 0.29 whales annually from each of these species or stocks (*i.e.,* 1 or 2 takes, respectively, divided by seven years to get the annual number), along with the expected incidental takes by harassment.

Explosives

The Navy's model and quantitative analysis process used for the 2018 HSTT FEIS/OEIS and in the Navy's 2017 and 2019 applications 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 modelled maximum year of training and testing, the Navy's model and quantitative analysis process estimates M/SI of two short-beaked common dolphin and one California sea lion as a result of exposure to explosive training and testing activities (please see Section 6 of the 2017 Navy application where it is explained how maximum annual estimates are calculated). Over the five-year period of the 2018 HSTT regulations, mortality of 6 short-beaked common dolphins and 4 California sea lions was estimated and authorized (10 marine mammals in total) as a result of exposure to explosive training and testing activities. In extending the same training and testing activities for an additional two years, over the seven-year period of the proposed

regulations M/SI of 8 short-beaked common dolphins and 5 California sea lions (13 marine mammals in total) is estimated as a result of exposure to explosive training and testing activities. As explained in the aforementioned Analytical Approach technical report, expected impacts were calculated considering spatial and seasonal differences in model inputs, as well as the expected variation in the number of training and testing events from year to year, described as representative and maximum levels of activity. The summed impacts over any multi-year period, therefore, are the expected value for impacts over that time period rather than a multiple of a single maximum year's impacts. Therefore, calculating the seven-year total is not a matter of simply multiplying the annual estimate by seven, as the total amount of estimated mortalities over the seven years covered by the 2019 Navy application is less than the sum total of each year. As explained earlier, although the annual estimates are based on the maximum number of activities per year and therefore the maximum estimated takes, the seven-year total take estimates are based on the sum of three maximum years and four representative years. 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 or stock that could be taken by M/SI from explosives.

Proposed Mitigation Measures

Under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable adverse impact on the species or stock(s) and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock(s) for subsistence uses (''least practicable adverse impact''). NMFS does not have a regulatory definition for least practicable adverse impact. The 2004 NDAA 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. For the full discussion of how NMFS interprets least practicable adverse impact, including how it relates to the negligible-impact standard, see the *Mitigation Measures* section in the 2018 HSTT final rule.

Section 101(a)(5)(A)(i)(II) requires NMFS to issue, in conjunction with its authorization, binding—and enforceable—restrictions (in the form of regulations) setting forth how the activity must be conducted, thus ensuring the activity has the ''least practicable adverse impact'' on the affected species or stocks. In situations where mitigation is specifically needed to reach a negligible impact determination, section 101(a)(5)(A)(i)(II) also provides a mechanism for ensuring compliance with the ''negligible impact'' requirement. Finally, 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.[2] 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

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, 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—and the best available science has been used here. 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 could become available in the future and necessitate 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.

[2] 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).

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 its 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. For more detail on how we apply these factors, see the discussion in the *Mitigation Measures* section of the 2018 HSTT final rule.

NMFS fully reviewed the Navy's specified activities and the mitigation measures for the 2018 HSTT rulemaking and determined that the mitigation measures would result in the least practicable adverse impact on marine mammals. There is no change in either the activities or the mitigation measures for this rule. See the 2019 Navy application and the 2018 HSTT final rule for detailed information on the Navy's mitigation measures. NMFS worked with the Navy in the development of the Navy's initially proposed measures, which were informed by years of implementation and monitoring. A complete discussion of the Navy's evaluation process used to develop, assess, and select mitigation measures, which was informed by input from NMFS, can be found in Chapter 5 (*Mitigation*) of the 2018 HSTT FEIS/OEIS. The process described in Chapter 5 (*Mitigation*) of the 2018 HSTT FEIS/OEIS robustly supported NMFS' independent evaluation of whether the mitigation measures would meet the least practicable adverse impact standard. The Navy has implemented the mitigation measures under the 2018 HSTT regulations and would be required to continue implementation of the mitigation measures identified in this rule for the full seven years it covers to avoid or reduce potential impacts from acoustic, explosive, and physical disturbance and ship strike stressors.

In its 2019 application, the Navy proposes no changes to the mitigation measures in the 2018 HSTT final rule and there is no new information that affects NMFS' assessment of the applicability or effectiveness of those measures over the new seven-year period. See the 2018 HSTT proposed rule and the 2018 HSTT final rule for our full assessment of these measures. In summary, 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 M/SI 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 will also implement multiple time/area restrictions (several of which were added in the 2018 HSTT final rule since the previous 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. Summaries of the Navy's procedural mitigation measures and mitigation areas for the HSTT Study Area are provided in Tables 14 and 15.

TABLE 14—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 degrees on either side of the firing line out to 70 yd.
Explosive Sonobuoys	• 600 yd.
Explosive Torpedoes	• 2,100 yd.
Explosive Medium-Caliber and Large-Caliber Projectiles.	• 1,000 yd (large-caliber projectiles). • 600 yd (medium-caliber projectiles during surface-to-surface activities). • 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.

TABLE 14—SUMMARY OF PROCEDURAL MITIGATION—Continued

Stressor or activity	Mitigation zone sizes and other requirements
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.

Notes: lb: Pounds; nmi: Nautical miles; yd: Yards.

TABLE 15—SUMMARY OF MITIGATION AREAS FOR MARINE MAMMALS

Summary of 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.[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 proposed mitigation measures—many of which were developed with NMFS' input during the previous phases of Navy training and testing authorizations and none of which have changed since our evaluation during the 2018 HSTT rulemaking—and considered a broad range of other measures (*i.e.,* the measures considered but eliminated in the 2018 HSTT FEIS/OEIS, which reflect many of the comments that have arisen via NMFS or public input in past years) in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: the manner in which, and the degree to which, the successful implementation of the mitigation measures is expected to reduce the likelihood and/or magnitude of adverse impacts to marine mammal species and stocks and their habitat; the proven or likely efficacy of the measures; and the practicability of the measures for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. There is no new information that affects our analysis from the 2018 HSTT rulemaking, all of which remains applicable and valid for our assessment of the appropriateness of the mitigation measures during the seven-year period of this rule.

Based on our evaluation of the Navy's proposed measures (which are being implemented under the 2018 HSTT regulations), as well as other measures considered by the Navy and NMFS, NMFS has preliminarily determined that the Navy's proposed mitigation measures (which are identical to those in the 2018 HSTT final rule) are appropriate means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and 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 2018 HSTT final rule includes an adaptive management

provision, which the Navy proposes to extend, which ensures that mitigation is regularly assessed and provides a mechanism to improve the mitigation, based on the factors above, through modification as appropriate.

The proposed rule comment period provides the public an opportunity to submit recommendations, views, and/or concerns regarding the Navy's activities and the proposed mitigation measures. While NMFS has preliminarily determined that the Navy's proposed mitigation measures would effect the least practicable adverse impact on the affected species or stocks and their habitat, NMFS will consider all public comments to help inform our final decision. Consequently, the proposed mitigation measures may be refined, modified, removed, or added to prior to the issuance of the final rule based on public comments received, and where appropriate, further analysis of any additional mitigation measures.

Proposed Monitoring

Section 101(a)(5)(A) of the MMPA states that in order to authorize incidental take for an activity, NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

In its 2019 application, the Navy proposes no changes to the monitoring described in the 2018 HSTT final rule. They would continue implementation of the robust Integrated Comprehensive Monitoring Program and Strategic Planning Process described in the 2018 HSTT final rule. The Navy's monitoring strategy, currently required by the 2018 HSTT regulations, is well-designed to work across Navy ranges to help better understand the impacts of the Navy's activities on marine mammals and their habitat by focusing on learning more about marine mammal occurrence in different areas and exposure to Navy stressors, marine mammal responses to different sound sources, and the consequences of those exposures and responses on marine mammal populations. Similarly, the proposed seven-year regulations would include identical adaptive management provisions and reporting requirements as the 2018 HSTT regulations. There is no new information that would indicate that the monitoring measures put in place under the 2018 HSTT final rule would not remain applicable and appropriate for the seven-year period of this proposed rule. See the *Monitoring* section of the 2018 HSTT final rule for more details on the monitoring that would be required under this rule. In addition, please see the 2019 Navy application, which references Chapter 13 of the 2017 Navy application for full details on the monitoring and reporting proposed by the Navy.

Adaptive Management

The 2018 HSTT 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 seven-year regulations. The 2019 Navy application proposes no changes to the adaptive management component included in the 2018 HSTT final rule.

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 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 will be posted to the Navy's Marine Species Monitoring web portal: *http://www.navymarinespeciesmonitoring.us.* The 2019 Navy application proposes no changes to the reporting requirements. Except as discussed below, reporting requirements would remain identical to those described in the 2018 HSTT final rule, and there is no new information that would indicate that the reporting requirements put in place under the 2018 HSTT final rule would not remain applicable and appropriate for the seven-year period of this proposed rule. See the *Reporting* section of the 2018 HSTT final rule for more details on the reporting that would be required under this rule.

In addition, the 2018 HSTT proposed and final rules unintentionally failed to include the requirement for the Navy to submit a final activity ''close out'' report at the end of the regulatory period. That oversight is being corrected through this rulemaking. This comprehensive training and testing activity report would provide the annual totals for each sound source bin with a comparison to the annual allowance and the seven-year total for each sound source bin with a comparison to the seven-year allowance. Additionally, if there were any changes to the sound source allowance, this report would include a discussion of why the change was made and include analysis to support how the change did or did not result in a change in the 2018 HSTT FEIS/OEIS and final rule determinations.

Preliminary Analysis and Negligible Impact Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the

species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be taken through mortality, serious injury, and Level A or Level B harassment (as presented in Tables 11 and 12), 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 M/SI previously authorized for other NMFS activities).

In the *Estimated Take of Marine Mammals* sections of this proposed rule and the 2018 HSTT final rule (where the activities, species and stocks, potential effects, and mitigation measures are the same as for this rule), we identified the subset of potential effects that would be expected to rise to the level of takes both annually and over the seven-year period covered by this rule, and then identified the number of each of those mortality takes that we believe could occur or the maximum number of harassment takes that are reasonably expected 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.). For this proposed rule we evaluated the likely impacts of the enumerated maximum number of harassment takes that are proposed for authorization and reasonably expected to occur, in the context of the specific circumstances surrounding these predicted takes. We also assessed M/SI takes that have the potential to occur, as well as considering the traits and statuses of the affected species and stocks. Last, we collectively evaluated this information, as well as other more taxa-specific information and mitigation measure effectiveness, in group-specific assessments that support our negligible impact conclusions for each stock.

The Navy proposes no changes to the nature or level of the specified activities or the boundaries of the HSTT Study Area, and therefore the training and testing activities (*e.g.,* equipment and sources used, exercises conducted) are the same as those analyzed in the 2018 HSTT final rule. In addition, the mitigation, monitoring, and nearly all reporting measures are identical to those described and analyzed in the 2018 HSTT final rule. As described above, there is no new information since the publication of the 2018 HSTT final rule regarding the impacts of the specified activities on marine mammals, the status and distribution of any of the affected marine mammal species or stocks, or the effectiveness of the mitigation and monitoring measures that would change our analyses, except for one species. For that one species—gray whales—we have considered the effects of the new UME on the west coast of North America along with the effects of the Navy's activities in the negligible impact analysis.

Harassment

As described in the *Estimated Takes of Marine Mammals* section, the annual number of takes proposed for authorization and reasonably expected to occur by Level A harassment and Level B harassment (based on the maximum number of activities per 12-month period) are identical to those presented in Tables 41 through 42 in the *Take Requests* section of the 2018 HSTT final rule. As such, the negligible impact analyses and determinations of the effects of the estimated Level A harassment and Level B harassment takes on annual rates of recruitment or survival for each species and stock are nearly identical to and substantively unchanged from those presented in the 2018 HSTT final rule. The primary difference is that the annual levels of take and the associated effects on reproduction or survival would occur for the seven-year period of the proposed rule instead of the five-year period of the 2018 HSTT final rule, which would make no difference in effects on annual rates of recruitment or survival. The other differences in the analyses include our consideration of the newly-declared gray whale UME and slightly modified explosive take estimates, neither of which, as described below, affect the results of the analyses or our determinations. For detailed discussion of the impacts that affected individuals may experience given the specific characteristics of the specified activities and required mitigation (*e.g.,* from behavioral disruption, masking, and temporary or permanent threshold shift), along with the effects of the expected Level A harassment and Level B harassment take on reproduction and survival, see the applicable subsections in the *Analysis and Negligible Impact Determination* section of the 2018 HSTT final rule (83 FR 66977–67018).

Serious Injury or Mortality

Based on the information and methods discussed in the *Estimated Take of Marine Mammals* section (which are identical to those used in the 2018 HSTT final rule), the number of potential mortalities due to ship strike proposed to be authorized over the seven year period of this rule is the same as those authorized in the 2018 HSTT final rule. As the potential mortalities are now spread over seven years rather than five, an annual average of 0.29 gray whales (Eastern North Pacific stock), fin whales (CA/OR/WA stock), and humpback whales (Central North Pacific stock) and an annual average of 0.14 blue whales (Eastern North Pacific stock), humpback whales (CA/OR/WA stock, Mexico DPS), and sperm whales (Hawaii stock) as described in Table 16 (*i.e.,* one, or two, take(s) over seven years divided by seven to get the annual number) are expected to potentially occur and are proposed for authorization. As this annual number is less than that analyzed and authorized in the 2018 HSTT final rule, which was an annual average of 0.4 whales or 0.2 whales respectively for the same species and stocks, and with the exception of the new gray whale UME on the U.S. west coast no other relevant information about the status, abundance, or effects of M/SI on each species or stock has changed, the analysis of the effects of vessel strike mirrors that presented in the 2018 HSTT final rule.

TABLE 16—SUMMARY INFORMATION RELATED TO MORTALITIES REQUESTED FOR SHIP STRIKE, 2018–2025

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	0.29	≥43.5	Y; ≥0.5	Y, 1.6	81	37.5	↑	N.
Gray whale (Eastern North Pacific stock).	26,960	0.29	139	Y, 9.6	Y, 0.8	801	662	stable since 2003.	Y, 170, 2019.
Humpback whale (CA/OR/WA stock, Mexico DPS).	2,900	0.14	≥40.2	Y; ≥15.7	Y, 22	16.7	−23.5	↑	N.
Humpback whale (Central North Pacific stock) [5].	10,103	0.29	26	Y; 9.9	Y, 1.5	83	57	↑	N.
Sperm whale (Hawaii stock)	4,559 [6]	0.14	0.7	Y, 0.7	N	13.9	13.2	?	N.
Blue whale (Eastern North Pacific Stock).	1,647	0.14	≥19	≥0.96	Y, 18	2.3	−16.7	stable	Y; 3, 2007.

* Presented in the 2018 final SARs.

[1] This column represents the annual take by serious injury or mortality (M/SI) by vessel collision and was calculated by the number of mortalities for authorization divided by seven 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.

[5] Some values for the Central North Pacific stock of humpback whales were unintentionally presented incorrectly in Table 69 of the 2018 HSTT final rule. The correct values are provided here. These transcription errors do not affect the analysis or conclusions in the 2018 HSTT final rule, as the correct values were used in the analysis presented in the *Analysis and Negligible Impact Determination* section.

[6] The stock abundance for the Hawaii stock of sperm whales was unintentionally presented incorrectly as 5,559 in the 2018 HSTT final rule and has been corrected here. This transcription error does not affect the analysis or conclusions reached in the 2018 HSTT final rule.

The Navy has also requested a small number of takes by M/SI from explosives. To calculate the annual average of mortalities for explosives in Table 17 we used the same method as described for vessel strikes. The annual average is the total number of takes over seven years divided by seven. Specifically, NMFS is proposing to authorize the following M/SI takes from explosives: 5 California sea lions and 8 short-beaked common dolphins over the seven-year period (therefore 0.71 mortalities annually for California sea lions and 1.14 mortalities annually for short-beaked common dolphin), as described in Table 17. As this annual number is less than that analyzed and authorized in the 2018 HSTT final rule, which was an annual average of 0.8 California sea lions and 1.2 short-beaked common dolphins, and no other relevant information about the status, abundance, or effects of mortality on each species or stock has changed, the analysis of the effects of explosives mirrors that presented in the 2018 HSTT final rule.

TABLE 17—SUMMARY INFORMATION RELATED TO MORTALITIES FROM EXPLOSIVES, 2018–2025

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	0.71	319.4	Y;197	14,011	6.6	13,685	↑	Y; 2013.
Short-beaked common dolphin (CA/OR/WA stock).	969,861	1.14	≥40	Y; ≥40	8,393	2.8	8,350.2	?	N.

* Presented in the 2018 final SARs.

[1] This column represents the annual take by serious injury or mortality (M/SI) during explosive detonations and was calculated by the number of mortalities planned for authorization divided by seven 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 (322).

[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 (319.4) 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.

See the *Serious Injury or Mortality* subsection in the *Analysis and Negligible Impact Determination* section of the 2018 HSTT final rule (83 FR 66985–66993) for detailed discussions of the impacts of M/SI, including a description of how the agency uses the PBR metric and other factors to inform our analysis, and an analysis of the impacts on each species and stock for which M/SI is proposed for authorization, including the relationship of potential mortality for each species to the insignificance threshold and residual PBR.

Stocks With M/SI Below the Insignificance Threshold

As noted in the *Serious Injury or Mortality* subsection of the *Negligible*

Impact Analysis and Determination section in the 2018 HSTT final rule, 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 16 and 17, the following species or stocks have potential or estimated M/SI from ship strike and explosive takes, respectively, and proposed for authorization 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 proposed authorized M/SI of California sea lions (U.S. stock) and gray whales (Eastern North Pacific stock) are below the insignificance threshold, because of the recent UMEs, we further address how the proposed authorized M/SI and the UME inform the negligible impact determination immediately below. For the other four stocks with proposed authorized M/SI 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 proposed for authorization) lethal take of California sea lions is well below the insignificance threshold (0.71 as compared to a residual PBR of 13,686) and NMFS classifies the stock as ''increasing'' in the 2018 Final SARs. Nonetheless, we consider here how the 2013-present California Sea Lion UME 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 UME Working Group to discuss closure by the summer of 2019 (Deb Fauquier, pers. comm.). NMFS' findings to date indicate that a change in the availability of sea lion prey, especially anchovy and 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 were 1,000–3,000 more annually than they were 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 during the period of this proposed rule, 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 the mortality proposed for authorization on the stock.

Gray Whales (Eastern North Pacific Stock)

Since January 2019, gray whale strandings along the west coast of North America have been significantly higher than the previous 18-year averages. Preliminary findings from necropsies have shown evidence of emaciation. The seasonal pattern of elevated strandings in the spring and summer months is similar to that of the previous gray whale UME in 1999–2000. Current total monthly strandings are slightly higher than 1999 and lower than 2000. If strandings continue to follow a similar pattern, we would anticipate a decrease in strandings in late summer and fall. However, 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 and the insignificance threshold. Because of the abundance, population trend (increasing, despite the UME in 1999–2000), and residual PBR (662) of this stock, this UME is not expected to have impacts on the population rate that, in combination with the effects of mortality proposed for authorization, would affect annual rates of recruitment or survival.

Stocks With M/SI Above the Insignificance Threshold

Humpback Whale (CA/OR/WA Stock, Mexico DPS)

For this stock, PBR is currently set at 16.7 and the total annual M/SI is estimated at greater than or equal to 40.2, yielding a residual PBR of −23.5. NMFS proposes to authorize one M/SI over the seven-year duration of the rule (which is 0.14 annually for the purposes of comparing to PBR and considering other effects on annual rates of recruitment and survival), which means that residual PBR is exceeded by 23.64. In the 2018 HSTT final rule the PBR was incorrectly reported as 33.4 and the total annual M/SI was incorrectly reported as greater than or equal to 40.76 (yielding a residual PBR of −7.36). These transcription errors do not affect the fundamental analysis or conclusion reached in the 2018 HSTT final rule, however, and we have corrected these values here using data from the 2018 Final SARs.

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 here, the proposed authorized lethal take (0.14 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 16.7) and there are management measures in place to address M/SI from activities other than those the Navy is conducting (as discussed 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 mortality proposed for authorization is 0.14 (*i.e.,* less than 1.45), which means that the mortality proposed to be authorized in this rule for HSTT activities would not delay the time to recovery by more than 1 percent.

As described in the 2018 HSTT final rule, 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 M/SI to adversely affect the species or stock via impacts on annual rates of recruitment or survival, which is discussed further below in the species- and stock-specific section.

In June 2019, NMFS published 2018 final SARs in which PBR is reported as 16.7 with the predicted average annual mortality greater than or equal to 38.6 (including 22 estimated from vessel collisions and greater than 14.1 observed fisheries interactions). While the observed M/SI from vessel strikes remains low at 2.1, the 2018 draft and final SARs rely 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, and 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 this stock from vessel strikes. The authors (Rockwood *et al.,* 2017) do not suggest that ship strike suddenly increased to 22. 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.

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 earlier, we also take into consideration management measures in place to address M/SI 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 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-entanglement-working-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 and 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 March 2019 Working Group Report reports on the status of the fishery closure, progress and continued development of the RAMP (though there is a separate RAMP report), discussed the role of the Working Group (development of a new Charter) and indicated next steps.

Importantly, in early 2019, as a result of a litigation settlement agreement, the California Department of Fish and Wildlife (CDFW) closed the Dungeness crab fishery three months early for the year, which is expected to reduce the number of likely entanglements. The agreement also limits the fishery duration over the next couple of years and has different triggers to reduce or close it further. Further, pursuant to the settlement, CDFW is required to apply for a Section 10 Incidental Take Permit under the ESA to address protected species interactions with fishing gear and crab fishing gear (pots), and they have agreed to do so by May 2020. 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.

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.

In this case, 0.14 M/SI annually means the potential for one mortality in one of the seven years and zero mortalities in six of those seven years. Therefore, the Navy would not be contributing to the total human-caused mortality at all in six of the seven, or 85.7 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 six of the seven 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, we can 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 M/SI in six of the years and due to the fact that a single strike could be of 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 seven-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 proposed) mortality is well below 10 percent (0.8 percent) of PBR, and management actions are in place to minimize both fisheries interactions and ship strike from other vessel activity in 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 seven 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 proposed mortality of 0.14 would not delay the time to recovery by more than 1 percent, we do not expect the potential 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 proposed authorized takes would 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 *Group and Species-Specific Analyses* 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. This is unchanged since the 2018 HSTT final rule. NMFS proposes to authorize one M/SI for the Navy over the seven-year duration of the rule (indicated as 0.14 annually for the purposes of comparing to PBR and evaluating overall effects on annual rates of recruitment and survival), which means that residual PBR is exceeded by 16.84. 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 proposed authorized take from a specified activity to be negligible even if total human-caused mortality exceeds PBR, if the proposed 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 (0.14 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 M/SI from activities other than those the Navy is conducting (as discussed 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 seven years not creating the likelihood of adverse impact. Immediately below, we explain the information that supports our finding that the Navy's proposed authorized M/SI 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.

As discussed in the 2018 HSTT final rule, the 2018 draft SAR and the recently published 2018 final SAR rely 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, and 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. 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 recently. 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' 2018 final 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 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. In fact, we note that this population has maintained this status throughout the years that the Navy has consistently tested and trained at similar levels (with similar vessel traffic) in areas that overlap with blue whale occurrence, which would be another indicator of population stability.

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 M/SI 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.

In this case, 0.14 M/SI means one mortality in one of the seven years and zero mortalities in six of those seven years. Therefore, the Navy would not be contributing to the total human-caused mortality at all in six of the seven, or 85.7 percent, of the years covered by this rule. That means that even if a blue whale were to be struck, in six of the seven years there could be no effect on annual rates of recruitment or survival from Navy-caused M/SI. Additionally, as with humpback whales discussed previously, the loss of a male would have far less, if any, effect on population rates and absent any information suggesting that one sex is more likely to be struck than another, we can 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 M/SI in six of the seven years and the fact that the single strike could be a male. Lastly, as with the CA/OR/WA stock of humpback whales above, 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 seven-year period covered by this rule, which is the smallest distinction possible when considering mortality. As noted above, 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 indicates 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 proposed for authorization) M/SI is below 10 percent of PBR and management actions are in place to minimize ship strike from other vessel activity in 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 affect Eastern North Pacific blue 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 Eastern North 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 proposed harassment takes in the *Group and Species-Specific Analyses* section that follows.

Group and Species-Specific Analyses

In addition to broader analyses of the impacts of the Navy's activities on mysticetes, odontocetes, and pinnipeds, the 2018 HSTT final rule contained detailed analyses of the effects of the Navy's activities in the HSTT Study Area on each affected species and stock. All of that information and analyses remain applicable and valid for our analyses of the effects of the same Navy activities on the same species and stocks for the seven-year period of this proposed rule. See the *Group and Species-Specific Analyses* subsection in the *Analysis and Negligible Impact Determination* section of the 2018 HSTT final rule (83 FR 66993–67018). In addition, no new information has been received since the publication of the 2018 HSTT final rule that significantly changes the analyses on the effects of the Navy's activities on each species and stock presented in the 2018 HSTT final rule (the potential impact of the new gray whale UME and the corrected numbers from the humpback whale SARs were discussed earlier in the rule).

In the discussions below, 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 disruption) for species or stocks to their associated abundance estimates to evaluate the magnitude of impacts across the species or 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 times 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) 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 subject to behavioral disturbance at the same time. As described in the *Harassment* subsection of the *Analysis and Negligible Impact Determination* section of the 2018 HSTT final rule, 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 subject to behavioral disturbance would result in impacts to reproduction or survival. Alternately, we recognize that if an individual is subjected to behavioral disturbance 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 summaries). Accordingly, in analyzing the number of takes and the likelihood of repeated and sequential takes (which could result in reproductive impacts), we consider the total takes, not just the Level B harassment takes by behavioral disrupion, so that individuals potentially exposed to both threshold shift and behavioral disruption are appropriately considered. We note that the same reasoning applies with the potential addition of behavioral disruption 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.

Having considered all of the information and analyses previously presented in the 2018 HSTT final rule, including the *Group and Species-Specific Analyses* discussions organized by the different groups and species, below we present tables showing instances of total take as a percentage of stock abundance for each group, updated with the new explosion and vessel strike calculations. We then summarize the information for each species or stock, considering the analysis from the 2018 HSTT final rule and any new analysis. 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.

Mysticetes

In Tables 18 and 19 below for mysticetes, we indicate the total annual mortality, Level A harassment, and Level B harassment, and a number indicating the instances of total take as a percentage of abundance. Tables 18 and 19 have been updated from Tables 71 and 72 in the 2018 HSTT final rule as appropriate with the 2018 final SARs and updated information on mortality, as discussed above. For additional information and analysis supporting the negligible-impact analysis, see the *Mysticetes* discussion in the *Group and Species-Specific Analyses* section of the 2018 HSTT final rule, all of which remains applicable to this proposed rule unless specifically noted.

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Table 18. Annual estimated takes by Level B harassment, Level A harassment, and 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)					Total Takes		Abundance		Instance of total take as percent of abundance	
		Level B Harassment		Level A Harassment								
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 inside and outside of EEZ (HRC)	Within EEZ Navy abundance (HRC)	Total take as percentage of total Navy abundance (HRC)	EEZ take as percentage of Navy 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	2,837	6,289	3	0	0.29	9,129	7,389	5,078	4,595	180	161
Minke whale	Hawaii	1,233	3,697	2	0	0	4,932	4,030	3,652	2,835	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 (as described in the *Estimated Take of Marine Mammals* section of the 2018 HSTT final rule), 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.

Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing activities.

The annual mortality of 0.29 is the result of no more than two mortalities over the course of seven years from vessel strikes as described above in the *Estimated Take of Marine Mammals* section.

Table 19. Annual estimated takes by Level B harassment, Level A harassment, and 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)					Total Takes	Abundance		Instance of total take as percent of abundance	
		Level B Harassment		Level A Harassment							
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
Blue whale	Eastern North Pacific	792	1,196	1	0	0.14	1,989	785	1,647	253	121
Bryde's whale	Eastern Tropical Pacific	14	27	0	0	0	41	1	unknown	3,154	unknown
Fin whale	CA/OR/WA	835	1,390	1	0	0.29	2,226	363	9,029	613	25
Humpback whale	CA/OR/WA	480	1,514	1	0	0.14	1,995	247	2,900	808	69
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	2,633	15
Gray whale	Eastern North Pacific	1,316	3,355	7	0	0.29	4,678	193	26,960	2,424	17
Gray whale	Western North Pacific	2	4	0	0	0	6	0	290	0	2

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 (as described in the *Estimated Take of Marine Mammals* section of the 2018 HSTT final rule).

Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing activities.

The annual mortality of 0.14 is the result of no more than one mortality over the course of seven years from vessel strikes as described above in the *Estimated Take of Marine Mammals* section. The annual mortality of 0.29 is the result of no more than two mortalities over the course of seven years from vessel strikes.

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Below we compile and summarize the information that supports our preliminary determination that the Navy's activities would not adversely affect any species or stocks through effects on annual rates of recruitment or survival for any of the affected mysticete species and 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. NMFS proposes to authorize one mortality over the seven years covered by this rule, or 0.14 mortality annually. With the addition of this 0.14 annual mortality, residual PBR is exceeded, resulting in the total human-caused mortality exceeding PBR by 16.84. However, as described in more detail in the *Serious Injury or Mortality* section above, 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 seven-year Navy rule is not expected to, alone, lead to adverse impacts on the stock through effects on annual rates of recruitment or survival. In addition, even with the additional two years of activities under this rule, no additional M/SI is estimated for this stock, leading to a slight decrease (from 0.2 to 0.14 annually) in annual mortality from the 2018 HSTT final rule.

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 19). 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 Level B harassment takes by behavioral disruption, 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 in the 2018 HSTT final rule 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 (as described in the 2018 HSTT final rule) 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 takes by behavioral disruption.

Altogether, only a small portion of the stock is anticipated to be 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 preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take proposed would 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 proposed to be 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 19). 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 Level B harassment takes by behavioral disruption, 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, 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 anticipated to be 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 preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take proposed would 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 proposes to authorize two mortalities over the seven years covered by this rule, or 0.29 mortality annually. The addition of this 0.29 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 19). 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 Level B harassment takes by behavioral disruption, 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 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, 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 (as described in the 2018 HSTT final rule) 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 anticipated to be 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 proposed authorized mortality expected to adversely affect

this stock through impacts on annual rates of recruitment or survival. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take proposed would 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 DPSs). NMFS proposes to authorize one mortality over the seven years covered by this rule, or 0.14 mortality annually (Mexico DPS only). With the addition of this 0.14 annual mortality, the total human-caused mortality exceeds PBR by 23.64. However, as described in more detail in the *Serious Injury or Mortality* section, 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 16.7. 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 the *Serious Injury or Mortality* section, the authorized mortality of 0.14 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 seven-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 69 percent, respectively (Table 19). 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 (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 Level B harassment takes by behavioral disruption, 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, 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 (as described in the 2018 HSTT final rule) 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 anticipated to be 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 proposed 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 preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take proposed would 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 proposed for authorization 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 19). 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 Level B harassment takes by behavioral disruption, 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, 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 (as described in the 2018 HSTT final rule) 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 individual.

Altogether, only a portion of the stock is anticipated to be 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 preliminarily determined, in consideration of all of

the effects of the Navy's activities combined, that the authorized take proposed would 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 proposed for authorization. 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 19), 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. 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 would be 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 Level B harassment takes by behavioral disruption, 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, 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 anticipated to be 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 preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take proposed would 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 is proposing to authorize two mortalities over the seven years covered by this rule, or 0.29 mortality annually. The addition of this 0.29 annual mortality still leaves the total human-caused mortality well under the insignificance threshold of residual PBR (663). On May 31, 2019, NMFS declared the unusual spike in strandings of gray whales along the west coast of North America since January 1, 2019 an UME. As of June 13, 2019, 155 gray whales have stranded along the west coast of North America (in the U.S., Canada, and Mexico). Including these mortalities in the calculated residual PBR still leaves the addition of 0.29 annual mortality well under the insignificance threshold of residual PBR (508 including known deaths due to the UME).

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 17 percent, respectively (Table 19). This information suggests that only some small portion of individuals in the stock are likely impacted (less than 17 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 4,678 total takes, we believe that it is more likely that a larger number of individuals would be 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 Level B harassment takes by behavioral disruption, 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, 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, while we have considered the impacts of the gray whale UME, 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 anticipated to be 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 proposed authorized mortality of two whales over the seven year period expected to adversely affect this stock through impacts on annual rates of recruitment or survival. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take proposed would 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 reported as increasing in the 2018 final SAR, but is listed as endangered under the ESA. No mortality or Level A harassment is anticipated or proposed for authorization. This stock is expected to incur the very small number of 6 Level B harassment takes (2 behavioral disruption and 4 TTS) to a stock with a SAR-estimated abundance of 290 (Table 19). 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 preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take proposed would have a negligible impact on the Western North Pacific stock of gray whales.

Humpback Whale (Central North Pacific Stock)

The 2018 final SAR identifies this stock as ''increasing'' and the DPS is not listed under the ESA. No Level A harassment by tissue damage is proposed for authorization. NMFS proposes to authorize two mortalities over the seven years covered by this rule, or 0.29 mortalities annually. The addition of this 0.29 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 18). 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 Level B harassment takes by behavioral disruption, 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 the 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, 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 anticipated to be impacted and any individual humpback whale is likely to be disturbed at a low-moderate level, with the taken individuals likely exposed between one to several days per year, with little likelihood of take 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 authorized mortality expected to adversely affect this stock through effects on annual rates of recruitment or survival. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take proposed would 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 proposed for authorization 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 18). 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 Level B harassment takes by behavioral disruption, 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, 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 (as described in the 2018 HSTT final rule) 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 anticipated to be 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 have impacts on annual rates of recruitment or survival. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take proposed would have a negligible impact on these stocks.

Odontocetes

Sperm Whales, Dwarf Sperm Whales, and Pygmy Sperm Whales

In Tables 20 and 21 below for sperm whale, dwarf sperm whales, and pygmy sperm whales, we indicate the total annual mortality, Level A and Level B

harassment, and a number indicating the instances of total take as a percentage of abundance. Tables 20 and 21 are unchanged from Tables 73 and 74 in the 2018 HSTT final rule, except for updated information on mortality for the Hawaii stock of sperm whales, as discussed above. For additional information and analysis supporting the negligible-impact analysis, see the *Odontocetes* discussion as well as the *Sperm Whales, Dwarf Sperm Whales, and Pygmy Sperm Whales* discussion in the *Group and Species-Specific Analyses* section of the 2018 HSTT final rule, all of which remains applicable to this proposed rule unless specifically noted.

Table 20. Annual estimated takes by Level B harassment, Level A harassment, and mortality for sperm whales, dwarf sperm whales, and pygmy sperm whales 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)					Total Takes		Abundance		Instances of total take as percent of abundance	
		Level B Harassment		Level A Harassment								
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 inside and outside EEZ (HRC)	Within EEZ Navy abundance (HRC)	Total take as percentage of total Navy abundance (HRC)	EEZ take as percentage of EEZ abundance (HRC)
Dwarf sperm whale	Hawaii	5,870	14,550	64	0	0	20,484	15,310	8,218	6,379	249	240
Pygmy sperm whale	Hawaii	2,329	5,822	29	0	0	8,180	6,098	3,349	2,600	244	235
Sperm whale	Hawaii	2,466	30	0	0	0.14	2,496	1,317	1,656	1,317	151	147

Note: For the HI take estimates, we compare predicted takes to abundance estimates generated from the same underlying density estimates (as described in the *Estimated Take of Marine Mammals* section of the 2018 HSTT final rule), 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.

Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing activities.

The annual mortality of 0.14 is the result of no more than one mortality over the course of seven years from vessel strikes as described above in the *Estimated Take of Marine Mammals* section.

Table 21. Annual estimated takes by Level B harassment, Level A harassment, and mortality for sperm whales, dwarf sperm whales, and pygmy sperm whales 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)					Total Takes	Abundance		Instances of total take as percent of abundance	
		Level B Harassment		Level A Harassment							
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 in Action Area	Total take as percentage of total SAR abundance
Kogia whales	CA/OR/WA	2,779	6,353	38	0	0	9,170	757	4,111	1,211	223
Sperm whale	CA/OR/WA	2,437	56	0	0	0	2,493	273	1,997	913	125

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 (as described in the *Estimated Take of Marine Mammals* section of the 2018 HSTT final rule).

Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing activities.

Below we compile and summarize the information that supports our preliminary determination that the Navy's activities would not adversely affect any species or stocks through effects on annual rates of recruitment or survival for any of the affected species and stocks addressed in this section.

Sperm Whales, Dwarf Sperm Whales, and Pygmy Sperm Whales (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 proposed for authorization 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 are 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 21). 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 Level B harassment takes by behavioral disruption, 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, 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 sperm 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 discussed in the 2018 HSTT final rule, 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 seven 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. We also 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 preliminarily determined that the authorized take proposed would 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 proposed authorization. NMFS proposes to authorize one mortality over the seven years covered by this rule, which is 0.14 mortalities annually. The addition of this 0.14 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 20). This information and the sperm whale stock range suggest that likely only a smaller portion of the stock would be impacted, over one to several days per year, with little likelihood of take across sequential days. Regarding the severity of those individual Level B harassment takes by behavioral disruption, 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, 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 anticipated 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 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 preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take proposed would 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 anticipated or proposed for authorization. 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 20). 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 taken over one to perhaps five days per year, with little likelihood of take across sequential days. Regarding the severity of those individual Level B harassment takes by behavioral disruption, 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 discussed 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, 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 instances of Level B harassment by behavioral disruption. 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 preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the expected and authorized take proposed would have a negligible impact on the Hawaii stocks of pygmy and dwarf sperm whales.

Beaked Whales

In Tables 22 and 23 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. Tables 22 and 23 are unchanged from Tables 75 and 76 in the 2018 HSTT final rule. For additional information and analysis supporting the negligible-impact analysis, see the *Odontocetes* discussion as well as the *Beaked Whales* discussion in the *Group and Species-Specific Analyses* section of the 2018 HSTT final rule, all of which remains applicable to this proposed rule unless specifically noted.

Table 22. Annual estimated takes by Level B harassment, Level A harassment, and mortality for beaked whales 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)					Total Takes		Abundance		Instances of total take as percent of abundance	
		Level B Harassment		Level A Harassment								
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 inside and outside EEZ (HRC)	Within EEZ Navy abundance (HRC)	Total take as percentage of total Navy abundance (HRC)	EEZ take as percentage of EEZ abundance (HRC)
Blainville's beaked whale	Hawaii	5,369	16	0	0	0	5,385	4,140	989	768	545	539
Cuvier's beaked whale	Hawaii	1,792	4	0	0	0	1,796	1,377	345	268	521	514
Longman's beaked whale	Hawaii	19,152	81	0	0	0	19,233	14,585	3,568	2,770	539	527

Note: For the HI take estimates, we compare predicted takes to abundance estimates generated from the same underlying density estimates (as described in the *Estimated Take of Marine Mammals* section of the 2018 HSTT final rule), 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.

Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing activities.

Table 23. Annual estimated takes by Level B harassment, Level A harassment, and mortality for beaked whales 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)					Total Takes	Abundance		Instances of total take as percent of abundance	
		Level B Harassment		Level A Harassment							
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 in Action Area	Total take as percentage of total SAR abundance
Baird's beaked whale	CA/OR/WA	2,030	14	0	0	0	2,044	74	2,697	2,762	76
Cuvier's beaked whale	CA/OR/WA	11,373	127	1	0	0	11,501	520	3,274	2,212	351
Mesoplodon spp.	CA/OR/WA	6,125	68	1	0	0	6,194	89	3,044	6,960	203

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 (as described in the *Estimated Take of Marine Mammals* section of the 2018 HSTT final rule).

Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing activities.

Below we compile and summarize the information that supports our determination that the Navy's activities would not adversely affect any species or stocks through effects on annual rates of recruitment or survival for any of the affected species or 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 proposed for authorization 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 22). 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 Level B harassment takes by behavioral disruption, 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, 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 anticipated to be 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 have impacts on annual rates of recruitment or survival. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take proposed would 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 is expected or proposed for authorization for any of these three stocks and only two takes by Level A harassment (PTS) are proposed for authorization.

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 Hubbs' 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 2,762, 2,212, and 6,960 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 23). 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, and potentially more for Cuvier's)—potentially over a fair number of sequential days, especially where individuals spend extensive time in the SOCAL Range. Note that we predict lower days of repeated exposure for these stocks than their percentages might have suggested because of the number of overall takes—*i.e.,* using the higher percentage would suggest that an unlikely portion of the takes are taken up by a small portion of the stock incurring a very large number of repeat takes, with little room for take resulting from few or moderate numbers of repeats, which is unlikely. 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 Level B harassment takes by behavioral disruption, 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). In addition, as noted, some of these takes could occur on a fair number of sequential days for these stocks.

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 (as described in the 2018 HSTT final rule) 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 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 seven 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, 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 seven 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 preliminarily determined that the authorized take proposed would 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

In Tables 24 and 25 below for dolphins and small whales, we indicate the total annual mortality, Level A and Level B harassment, and a number indicating the instances of total take as a percentage of abundance. Tables 24 and 25 are updated from Tables 77 and 78 in the 2018 HSTT final rule as appropriate with the 2018 final SARs and with updated information on mortality, as discussed above. For additional information and analysis supporting the negligible-impact analysis, see the *Odontocetes* discussion as well as the *Small Whales and Dolphins* discussion in the *Group and Species-Specific Analyses* section of the 2018 HSTT final rule, all of which remains applicable to this proposed rule unless specifically noted.

Table 24. Annual estimated takes by Level B harassment, Level A harassment, and mortality for dolphins and small whales 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)					Total Takes		Abundance		Instance of total take as percent of abundance	
		Level B Harassment		Level A Harassment								
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 inside and outside of EEZ (HRC)	Within EEZ Navy abundance (HRC)	Total take as percentage of total Navy abundance (HRC)	EEZ take as percentage of Navy EEZ abundance (HRC)
Bottlenose dolphin	Hawaii Pelagic	3,196	132	0	0	0	3,328	2,481	1,528	1,442	218	172
Bottlenose dolphin	Kauai & Niihau	534	31	0	0	0	565	264	184	184	307	143
Bottlenose dolphin	Oahu	8,600	61	1	0	0	8,662	8,376	743	743	1,169	1,130
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	1,041	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	39,784	1,289	2	0	0	41,075	31,120	5,408	18,763	760	166
Killer whale	Hawaii	118	6	0	0	0	124	93	69	54	180	172
Melon-headed whale	Hawaii Islands	3,261	231	0	0	0	3,492	2,557	1,782	1,782	196	143
Melon-headed whale	Kohala Resident	341	9	0	0	0	350	182	447	447	78	41
Pantropical spotted dolphin	Hawaii Island	3,767	227	0	0	0	3,994	2,576	2,405	2,405	166	107
Pantropical spotted dolphin	Hawaii Pelagic	9,973	476	0	0	0	10,449	7,600	5,462	4,637	191	164
Pantropical spotted dolphin	Oahu	4,284	45	0	0	0	4,329	4,194	372	372	1,164	1,127
Pantropical spotted dolphin	4-Island	701	17	0	0	0	718	634	657	657	109	96
Pygmy killer whale	Hawaii	8,122	402	0	0	0	8,524	6,538	4,928	3,931	173	166
Pygmy killer whale	Tropical	710	50	0	0	0	760	490	159	23	478	2,130
Risso's dolphin	Hawaii	8,950	448	0	0	0	9,398	7,318	1,210	4,199	777	174
Rough-toothed dolphin	Hawaii	6,112	373	0	0	0	6,485	4,859	3,054	2,808	212	173
Short-finned pilot whale	Hawaii	12,499	433	0	0	0	12,932	9,946	6,433	5,784	201	172
Spinner dolphin	Hawaii Island	279	12	0	0	0	291	89	629	629	46	14
Spinner dolphin	Hawaii Pelagic	4,332	202	0	0	0	4,534	3,491	2,885	2,229	157	157
Spinner dolphin	Kauai & Niihau	1,683	63	0	0	0	1,746	812	604	604	289	134
Spinner dolphin	Oahu & 4-Island	1,790	34	1	0	0	1,825	1,708	354	354	516	482
Striped dolphin	Hawaii	7,379	405	0	0	0	7,784	6,034	4,779	3,646	163	165

Note: For the HI take estimates, we compare predicted takes to abundance estimates generated from the same underlying density estimates (as described in the *Estimated Take of Marine Mammals* section of the 2018 HSTT final rule), 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.

Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing activities.

Table 25. Annual estimated takes by Level B harassment, Level A harassment, and mortality for dolphins and small whales 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)					Total Takes	Abundance		Instance of total take as percent of abundance	
		Level B Harassment		Level A Harassment							
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	1,771	38	0	0	0	1,809	238	453	760	399
Bottlenose dolphin	CA/OR/WA Offshore	51,727	3,695	3	0	0	55,425	5,946	1,924	932	2,881
Killer whale	Eastern North Pacific (ENP) Offshore	96	11	0	0	0	107	4	300	2,675	36
Killer whale	ENP Transient/ West Coast Transient	179	20	0	0	0	199	30	243	663	82
Long-beaked common dolphin	California	233,485	13,787	18	2	0	247,292	10,258	101,305	2,411	244
Northern right whale dolphin	CA/OR/WA	90,052	8,047	10	1	0	98,110	7,705	26,556	1,273	369
Pacific white-sided dolphin	CA/OR/WA	69,245	6,093	5	0	0	75,343	6,626	26,814	1,137	281
Risso's dolphin	CA/OR/WA	116,143	10,118	9	0	0	126,270	7,784	6,336	1,622	1,993
Short-beaked common dolphin	CA/OR/WA	1,374,048	118,525	79	10	1.14	1,492,664	261,438	969,861	571	154
Short-finned pilot whale	CA/OR/WA	1,789	124	1	0	0	1,914	208	836	920	229
Striped dolphin	CA/OR/WA	163,640	11,614	3	0	0	175,257	39,862	29,211	440	600

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 (as described in the *Estimated Take of Marine Mammals* section of the 2018 HSTT final rule).

Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing activities.

For mortality takes there is an annual average of 1.14 short-beaked common dolphins (*i.e.*, where eight takes could potentially occur divided by seven years to get the annual number of mortalities/serious injuries).

Mortality for the CA/OR/WA stock of short-beaked common dolphins was unintentionally presented incorrectly as 2 in Table 78 of the 2018 HSTT final rule. The correct value (updated for seven years of activity) is provided here. This transcription errors do not affect the analysis or conclusions in the 2018 HSTT final rule, as the correct values were used in the analysis presented in the *Analysis and Negligible Impact Determination* section.

Below we compile and summarize the information that supports our determination that the Navy's activities would not adversely affect any species or stocks through effects on annual rates of recruitment or survival for any of the affected species or 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. Eight mortalities or serious injuries of short-beaked common dolphins are proposed for authorization over the seven-year rule, or 1.14 M/SI annually. The addition of this 1.14 annual mortality still leaves the total human-caused mortality well under the insignificance threshold for residual PBR. The three stocks are expected to accrue 2, 1, and 10 Level A harassment takes from tissue damage resulting from exposure to explosives, respectively. As described in detail in the 2018 HSTT final rule, 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 seven, 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 seven five years very low), 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 2,411, 1,273, and 571 percent (respective to the stocks listed in the heading) and 244, 369, and 154 percent (respective to the stocks listed in the heading) (Table 25). 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 Level B harassment takes by behavioral disruption, 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 the percentage is not that high).

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 in the 2018 HSTT final rule, 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 above, 1.14 annual lethal takes of short-beaked common dolphins are proposed for authorization, 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 seven, 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 seven years very low) 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 8,353, 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 preliminarily determined that the authorized take proposed would 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 proposed for authorization 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 to 2,675 percent and 36 to 2,881 percent, respectively (Table 25). 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 Level B harassment takes by behavioral disruption, 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.

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 seven, 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 seven 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 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 preliminarily determined that the authorized take proposed would 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 proposed for authorization 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 to 1,169 percent and 41 to 2,130 percent, respectively (Table 24). 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 (2,130), 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 Level B harassment takes by behavioral disruption, 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, 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 seven 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 preliminarily determined that the authorized take proposed would have a negligible impact on all of the stocks of dolphins found in the vicinity of the HRC.

Dall's Porpoise

In Table 26 below for porpoises, we indicate the total annual mortality, Level A and Level B harassment, and a number indicating the instances of total take as a percentage of abundance. Table 26 is unchanged from Table 79 in the 2018 HSTT final rule. For additional information and analysis supporting the negligible-impact analysis, see the *Odontocetes* discussion as well as the *Dall's Porpoise* discussion in the *Group and Species-Specific Analyses* section of the 2018 HTT final rule, all of which remains applicable to this proposed rule unless specifically noted.

Table 26. Annual estimated takes by Level B harassment, Level A harassment, and 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)					Total Takes	Abundance		Instances of total take as percent of abundance	
		Level B Harassment		Level A Harassment							
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 in Action Area	Total take as percentage of total SAR abundance
Dall's porpoise	CA/OR/WA	14,482	29,891	209	0	0	44,582	2,054	25,750	2,170	173

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 (as described in the *Estimated Take of Marine Mammals* section of the 2018 HSTT final rule).

Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing activities.

Below we compile and summarize the information that supports our determination that the Navy's activities would not adversely affect Dall's porpoises through effects on annual rates of recruitment or survival.

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 proposed for authorization for this stock.

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 (as compared to harbor porpoises which have a lower threshold for Level B harassment by behavioral disruption and more distant cutoff) but, rather, are analyzed similarly to other odontocetes. Therefore, the majority of Level B harassment takes are expected to be in the form of milder responses compared to higher level exposures. As discussed more fully in the 2018 HSTT final rule, we anticipate more severe effects from takes when animals are exposed to higher received levels.

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 2,170 and 173 percent, respectively (Table 26). 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 this stock 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 Level B harassment takes by behavioral disruption, 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.

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 seven, 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 seven five years very low) 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 Level B harassment takes by behavioral disruption 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 preliminarily determined that the authorized take proposed would have a negligible impact on Dall's porpoise.

Pinnipeds

In Tables 27 and 28 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. Tables 27 and 28 have been updated from Tables 80 and 81 in the 2018 HSTT final rule, as appropriate, with the 2018 final SARs and updated information on mortality, as discussed above. For additional information and analysis supporting the negligible-impact analysis, see the *Pinnipeds* discussion in the *Group and Species-Specific Analyses* section of the 2018 HSTT final rule, all of which remains applicable to this proposed rule unless specifically noted.

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Table 27: Annual estimated takes by Level B harassment, Level A harassment, and mortality for pinnipeds 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)					Total Takes		Abundance		Instance of total take as percent of abundance	
	Level B Harassment		Level A Harassment								
Species	Behavioral Disturbance	TTS (may also include disturbance)	PTS	Tissue Damage	Mortality	Total Takes (entire Study Area)	Takes (within NAVY EEZ)	Total Navy abundance inside and outside of EEZ (HRC)	Within EEZ Navy abundance (HRC)	Total take as percentage of total Navy abundance (HRC)	EEZ take as percentage of Navy 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 (as described in the *Estimated Take of Marine Mammals* section of the 2018 HSTT final rule), 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.

Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing activities.

Table 28: Annual estimated takes by Level B harassment, Level A harassment, and 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)					Total Takes	Abundance		Instance of total take as percent of abundance	
		Level B Harassment		Level A Harassment							
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.	113,419	4,789	87	9	0.71	118,305	4,085	257,606	2,896	46
Guadalupe fur seal	Mexico	1,442	15	0	0	0	1,457	1,171	20,000	124	7
Northern fur seal	California	15,167	124	1	0	0	15,292	886	14,050	1,726	109
Harbor seal	California	2,450	2,994	8	0	0	5,452	321	30,968	1,698	18
Northern elephant seal	California	42,916	17,955	97	2	0	60,970	4,108	179,000	1,484	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.

For mortality takes there is an annual average of 0.71 California sea lions (*i.e.*, where five takes could potentially occur divided by seven years to get the annual number of mortalities/serious injuries).

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Below we compile and summarize the information that supports our determination that the Navy's activities would not adversely affect any pinnipeds through effects on annual rates of recruitment or survival for any of the affected species or stocks addressed in this section.

Five M/SI takes of California sea lions are proposed for authorization 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 (13, 685). A small number of Level A harassment takes by tissue damage are also proposed for authorization (9 and 2 for California sea lions and northern elephant seals, respectively), which, as discussed in the 2018 HSTT final rule, 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 seven years, 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 seven years very low) 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 to 2,896 percent and 18 to 40 percent, respectively (Table 27). 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 Level B harassment takes by behavioral disruption, 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 in the 2018 HSTT final rule, 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.

The severity of TTS takes 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 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 stocks, even if this occurred, it would not adversely impact rates of recruitment or survival (residual PBR of 13,686 and 4,873, respectively).

Altogether, an individual Hawaiian monk seal and Guadalupe fur seal would 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 seven, 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 seven five years very low) 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 (257,606 and 13,685, respectively), as well as the increasing status of the stock in the presence of similar levels of Navy activities over past years—the impacts of 0.71 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, respectively), 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 (M/SI, Level A harassment, and Level B harassment), we have preliminarily determined that the authorized take proposed would have a negligible impact on all pinniped species and stocks.

Determination

The 2018 HSTT final rule included a detailed discussion of all of the anticipated impacts on the affected species and stocks from serious injury or mortality, Level A harassment, and Level B harassment; impacts on habitat; and how the Navy's mitigation and monitoring measures reduce the number and/or severity of adverse effects. We have evaluated how these impacts and mitigation measures are expected to combine, annually, to affect individuals of each species and stock. Those effects were then evaluated in the context of whether they are reasonably likely to impact reproductive success or survivorship of individuals and then, if so, further analyzed to determine whether there would be effects on annual rates of recruitment or survival that would adversely affect the species or stock.

As described above, the basis for the negligible impact determination is the assessment of effects on annual rates of recruitment and survival. Accordingly, the analysis included in the 2018 HSTT final rule used annual activity levels, the best available science, and approved methods to predict the annual impacts to marine mammals, which were then analyzed in the context of whether each species or stock would incur more than a negligible impact based on anticipated adverse impacts to annual rates of recruitment or survival. As we have described above, none of the factors upon which the conclusions in the 2018 HSTT final rule were based have changed. Therefore, even though this proposed rule includes two additional years, because our findings are based on annual rates of recruitment and survival, and little has changed that would change our 2018 HSTT final rule annual analyses, it is appropriate to rely on those analyses, as well as the new information and analysis discussed above, for this proposed rule.

Based on the applicable information and analysis from the 2018 HSTT final rule as updated with the information and analysis contained herein on the potential and likely effects of the specified activities on the affected marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS preliminarily finds that the incidental 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 subsistence uses or harvest of marine mammals in the geographic area affected by the specified activities. Therefore, NMFS has preliminarily determined that the total taking affecting species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

ESA

There are 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 Hawaiian 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 Islands Insular false killer whales. The Navy consulted with NMFS pursuant to section 7 of the ESA for HSTT activities. NMFS also consulted internally on the issuance of the 2018 HSTT regulations and LOAs under section 101(a)(5)(A) of the MMPA. NMFS issued a Biological Opinion on December 10, 2018 concluding that the issuance of the 2018 HSTT final rule and subsequent LOAs are 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.* NMFS' Permits and Conservation Division is currently discussing the 2019 Navy application with NMFS' ESA Interagency Cooperation Division.

National Marine Sanctuaries Act

Federal agency actions that are likely to injure national marine sanctuary resources are subject to consultation with the Office of National Marine Sanctuaries (ONMS) under section 304(d) of the National Marine Sanctuaries Act (NMSA). There are two national marine sanctuaries in the HSTT Study Area, the Hawaiian Islands Humpback Whale National Marine Sanctuary and the Channel Islands National Marine Sanctuary. NMFS will work with NOAA's Office of National Marine Sanctuaries to fulfill our responsibilities under the NMSA as warranted and will complete any NMSA requirements prior to a determination on the issuance of the final rule and LOAs.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must evaluate our proposed actions and alternatives with respect to potential impacts on the human environment. NMFS participated as a cooperating agency on the 2018 HSTT FEIS/OEIS (published on October 26, 2018, *http://www.hstteis.com*) which evaluated impacts from Navy training and testing activities in the HSTT Study Area for the reasonably foreseeable future (including through 2025). In accordance with 40 CFR 1506.3, NMFS independently reviewed and evaluated the 2018 HSTT FEIS/OEIS and determined that it was adequate and sufficient to meet our responsibilities under NEPA for the issuance of the 2018 HSTT final rule and associated LOAs. NOAA therefore adopted the 2018 HSTT FEIS/OEIS. In accordance with 40 CFR 1502.9 and the information and analysis contained in this proposed rule, the Navy and NMFS as a cooperating agency have made a preliminary determination that this proposed rule and any subsequent LOAs would not result in impacts that were not fully considered in the 2018 HSTT FEIS/OEIS. As indicated in this proposed rule, the Navy has made no substantial changes to the activities nor are there significant new circumstances or information relevant to environmental concerns or their impacts. NMFS will make a final NEPA determination prior to a decision whether to issue a final rule.

Classification

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The RFA requires Federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a Federal agency may certify, pursuant to 5 U.S.C. 605(b), that the action will not have a significant economic impact on a substantial number of small entities. The Navy is the sole entity that would be affected by this rulemaking, and the Navy is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Any requirements imposed by an LOA issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, would be applicable only to the Navy. NMFS does not expect the issuance of these regulations or the associated LOAs to result in any impacts to small entities pursuant to the RFA. Because this action, if adopted, would directly affect the Navy and not a small entity, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 218

Exports, Fish, Imports, Incidental take, Indians, Labeling, Marine mammals, Navy, Penalties, Reporting and recordkeeping requirements, Seafood, Sonar, Transportation.

Dated: August 26, 2019.

Samuel D. Rauch III,

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

For reasons set forth in the preamble, 50 CFR part 218 is proposed to be amended as follows:

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 218 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.,* unless otherwise noted.

■ 2. Revise subpart 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 and 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;

(vi) Surface warfare; and

(vii) Pile driving.

(2) *Testing.*

(i) Naval Air Systems Command Testing Activities;

(ii) Naval Sea System Command Testing Activities;

(iii) Office of Naval Research Testing Activities; and

(iv) Naval Information Warfare Systems Command.

§ 218.71 Effective dates.

Regulations in this subpart are effective from [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**] through December 20, 2025.

§ 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 § 218.70(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.

TABLE 1 TO § 218.72—Continued

Species	Stock
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.
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 will complete one or more modules of the U.S Navy Afloat Environmental Compliance Training Series, as identified in their career path training plan. Modules include: Introduction to the U.S. Navy Afloat Environmental Compliance Training Series, 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 at 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).

(ii) [RESERVED]

(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 and jellyfish aggregations; if floating vegetation or jellyfish aggregations are 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 also must visually 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 for marine mammals and jellyfish aggregations; if marine mammals or jellyfish aggregations 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 also 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 also 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 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.

(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 and jellyfish aggregations; if floating vegetation or jellyfish aggregations are 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; if marine mammals 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 also 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, or 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, or 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) 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.

(F) 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 also 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 until the mitigation zone is clear. 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.

(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.* 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 also 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 also 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).

(*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.

(*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 harassment 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 within three months after the end of the calendar year, or within 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 can 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 where mitigation was implemented:

(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 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.

(f) *Seven-year close-out comprehensive training and testing activity report.* This report must be included as part of the 2025 annual training and testing report. This report must provide the annual totals for each sound source bin with a comparison to the annual allowance and the seven-year total for each sound source bin with a comparison to the seven-year allowance. Additionally, if there were any changes to the sound source allowance, this report must include a discussion of why the change was made and include the analysis to support how the change did or did not result in a change in the 2018 HSTT FEIS/OEIS and final rule determinations. The draft report must be submitted within three months after the expiration of this subpart to the Director, Office of Protected Resources, NMFS. NMFS must submit comments on the draft close-out report, if any, within three months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or 3 months after the submittal of the draft if NMFS does not provide comments.

§ 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, 2025.

(c) If an LOA expires prior to December 20, 2025, 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 is 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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Part III

Securities and Exchange Commission

Proposed Amendments to the National Market System Plan Governing the Consolidated Audit Trail; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86901; File No. S7–13–19]

RIN 3235–AM60

Proposed Amendments to the National Market System Plan Governing the Consolidated Audit Trail

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to national market system plan.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is proposing amendments to the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan''). The proposed amendments impose public transparency requirements on the self-regulatory organizations that are participants to the CAT NMS Plan (each, a ''Participant'' and collectively, the ''Participants''). The Participants would be required to file with the Commission and publish a complete implementation plan for the Consolidated Audit Trail (''CAT'') and quarterly progress reports, each of which must be approved by a supermajority vote of the Operating Committee of CAT NMS, LLC. The proposed amendments also establish financial accountability provisions.

DATES: Comments should be received on or before October 28, 2019.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. S7–13–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. S7–13–19. This file number should be included on the subject line if email is used. To help us 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/proposed.shtml*). Comments are also 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. All comments received will be posted without change. Persons submitting comments are cautioned that the Commission does not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Erika Berg, Special Counsel, at (202) 551–5925; Leigh Duffy, Special Counsel, at (202) 551–5928; or Susan Poklemba, Attorney-Advisor, at (202) 551–3360, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to the CAT NMS Plan.[1]

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VII. Statutory Authority and Text of the Proposed Amendments to the CAT NMS Plan

I. Background

In July 2012, the Commission adopted Rule 613 of Regulation NMS, which requires the national securities exchanges and national securities associations (''self-regulatory organizations'') to jointly develop and submit to the Commission a national market system plan to create, implement and maintain a consolidated audit trail (''CAT'').[2] Back then, and even today, trading data was and is inconsistent across the self-regulatory organizations and certain market activity is difficult to compile because it is not aggregated in one, directly accessible consolidated audit trail system. The goal of Rule 613 was to create a system that provides regulators with more timely access to a sufficiently comprehensive set of trading data, enabling regulators to more efficiently and effectively reconstruct market events, monitor market behavior, and identify and investigate misconduct. Rule 613 thus aims to modernize a reporting infrastructure to oversee the trading activity generated across numerous markets in today's national market system.

On November 15, 2016, the Commission approved the national market system plan required by Rule 613 (''CAT NMS Plan'' or ''Plan'') that was submitted by the self-regulatory organizations (the ''Participants'').[3] In

[1] *See* Securities Exchange Act Release No. 78318 (November 15, 2016), 81 FR 84696 (November 23, 2016), at 84943.

[2] *See* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012) (''Rule 613 Adopting Release'').

[3] The National Market System Plan Governing the Consolidated Audit Trail was filed with the Commission by the Participants who include BATS Exchange, Inc. (n/k/a Cboe BZX Exchange, Inc.), BATS–Y Exchange, Inc. (n/k/a Cboe BYX Exchange, Inc.), BOX Options Exchange LLC, C2 Options Exchange, Incorporated (n/k/a Cboe C2 Exchange, Inc.), Chicago Board Options Exchange, Incorporated (n/k/a Cboe Exchange, Inc.), Chicago Stock Exchange, Inc. (n/k/a NYSE Chicago, Inc.), EDGA Exchange, Inc. (n/k/a Cboe EDGA Exchange, Inc.), EDGX Exchange, Inc. (n/k/a Cboe EDGX Exchange, Inc.), Financial Industry Regulatory Authority, Inc. (''FINRA''), International Securities

the CAT NMS Plan,[4] the Participants described the numerous elements they proposed to include in the CAT, including (1) requirements for the plan processor responsible for building, operating and maintaining the Central Repository (''Plan Processor''),[5] (2) requirements for the creation and functioning of the Central Repository, (3) requirements applicable to the reporting of CAT Data[6] by Participants and their members (''Industry Members''),[7] (4) requirements relating to the security and confidentiality of CAT Data, (5) governance principles for CAT NMS LLC (''Company''),[8] and (6) provisions for the establishment of funding to pay for the operation of the CAT, including the establishment of fees that the Participants and Industry Members will pay.[9]

The Participants also set forth, in the CAT NMS Plan, deadlines related to the implementation of the CAT, including (1) the requirement that the Participants select a Plan Processor within two months following approval of the CAT NMS Plan,[10] (2) the requirement that the Participants begin recording and reporting data to the Central Repository by November 15, 2017,[11] and (3) the requirement that each Participant require Industry Members and Small Industry Members[12] to begin reporting information to the Central Repository by November 15, 2018,[13] and November 15, 2019, respectively.[14]

On January 18, 2017, the Participants filed with the Commission notice of their selection of the Plan Processor.[15] On January 17, 2017, the Participants selected Thesys Technologies LLC to build the CAT system, pending execution of a Plan Processor Agreement between Thesys Technologies LLC and the Participants.[16] The Plan Processor Agreement was executed on April 6, 2017, after which Thesys CAT LLC (''Thesys CAT''), a wholly owned subsidiary of Thesys Technologies LLC, became the Plan Processor for the CAT.

The next critical deadline required by the CAT NMS Plan was for the Participants to begin recording and reporting data to the Central Repository by November 15, 2017.[17] The Participants, however, did not begin reporting data by that deadline. On November 13, 2017, two days before the deadline for Participant reporting, and having previously provided assurances as late as the summer of 2017 that initial data reporting would commence on schedule and in accordance with the CAT NMS Plan, the Participants filed a request for exemptive relief in which they sought, among other things, to delay the deadline by which they must report to the CAT for one year, and to extend the deadlines by which Industry Members and Small Industry Members must report by 17 months.[18] The Commission did not grant this request.[19] SEC Chairman Clayton instead issued a statement on November 14, 2017 noting that he would not support extensions of the CAT deadlines on the terms proposed by the Participants.[20] Chairman Clayton stated the importance of the CAT in enhancing the protection of investors and the markets by providing regulators with consolidated oversight of the securities markets. Chairman Clayton also instructed Commission staff to engage with the Participants as necessary and appropriate.[21]

Since then, Commission staff has engaged with the Participants with a focus on trying to ensure that project management, resource, and governance deficiencies are addressed, including development of a credible and comprehensive work plan with verifiable milestones.[22] Among other things, Commission staff has encouraged the Participants to enhance their focus on project management and accountability.[23] As sophisticated market participants with vast experience related to various data systems and data management protocols, the Participants are capable of

Exchange, LLC (n/k/a NASDAQ ISE, LLC), ISE Gemini, LLC (n/k/a NASDAQ GEMX, LLC), Miami International Securities Exchange LLC, NASDAQ OMX BX, Inc. (n/k/a NASDAQ BX, Inc.), NASDAQ OMX PHLX LLC (n/k/a NASDAQ PHLX LLC), The NASDAQ Stock Market LLC, National Stock Exchange, Inc. (n/k/a NYSE National, Inc.), New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

[4] *See* Securities Exchange Act Release No. 78318 (November 15, 2016), 81 FR 84696, (November 23, 2016) (''CAT NMS Plan Approval Order''). The CAT NMS Plan is Exhibit A to the CAT NMS Plan Approval Order. *See* CAT NMS Plan Approval Order, at 84943–85034. In approving the CAT NMS Plan, the Commission added ISE Mercury, LLC (n/k/a Nasdaq MRX, LLC) and Investors Exchange LLC as Participants to the CAT NMS Plan. *See id.* at 84728. On January 30, 2017 and March 1, 2019, the Commission noticed for immediate effectiveness amendments to the Plan to add MIAX Pearl, LLC and MIAX Emerald, LLC, respectively, as Participants. *See* Securities Exchange Act Release Nos. 79898 (January 30, 2017), 82 FR 9250 (February 3, 2017), and 85230 (March 1, 2019), 84 FR 8356 (March 7, 2019). Unless otherwise noted, capitalized terms are used as defined in Rule 613, in the CAT NMS Plan, or in this release.

[5] The Central Repository is the repository responsible for the receipt, consolidation, and retention of all information reported to the CAT. *See* CAT NMS Plan, *supra* note 4, at Section 1.1.

[6] ''CAT Data'' is defined in the CAT NMS Plan as ''data derived from Participant Data, Industry Member Data, SIP Data, and such other data as the Operating Committee [of the Company] may designate as 'CAT Data' from time to time.'' *See id.* The Operating Committee is the governing body of the Company. *See id.*

[7] ''Industry Member'' is defined in the CAT NMS Plan as ''a member of a national securities exchange or a member of a national securities association.'' *See id.*

[8] The CAT NMS Plan is the limited liability company agreement of the Company, a jointly owned limited liability company formed under Delaware state law, through which the Participants conduct the activities of the CAT. Each Participant is a member of the Company and jointly owns the Company on an equal basis. The Participants submitted to the Commission a proposed amendment to the CAT NMS Plan on August 29, 2019, which they designated as effective on filing. With the proposed amendment, the limited liability company agreement of a new limited liability company named Consolidated Audit Trail, LLC would serve as the CAT NMS Plan, replacing in its entirety the CAT NMS Plan. *See* Notice of Filing of Amendment to the National Market System Governing the Consolidated Audit Trail, *available at https://catnmsplan.com/wp-content/uploads/2019/09/CAT-2.0-Plan-Amendment(as-filed-with-SEC-8.29.19)_(175663431)_(1).pdf.*

[9] *See* CAT NMS Plan, *supra* note 4, at Section 11.1. The CAT NMS Plan notes that the Participants shall file with the Commission under Section 19(b) of the Act any such fees on Industry Members that the Operating Committee of the Company approves. *See id.* at Section 11.1(b).

[10] 17 CFR 242.613(a)(3)(i). *See also* CAT NMS Plan, *supra* note 4, at Section 6.1(a). Two months following approval of the CAT NMS Plan was January 15, 2017 (a Sunday).

[11] *See* CAT NMS Plan, *supra* note 4, at Section 6.7(a)(iii).

[12] The CAT NMS Plan defines Small Industry Member as ''an Industry Member that qualifies as a small broker-dealer as defined in SEC Rule 613.'' *See id.* at Section 1.1. Rule 613(a)(3)(vi) uses the definition of small broker-dealer as defined in Rule 0–10(c), which defines such a broker-dealer as (1) having had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in Rule 0–10. *See* Rule 613 Adopting Release, *supra* note 2, at 45804; 17 CFR 242.613(a)(3)(vi); 17 CFR 240.0–10(c).

[13] *See* CAT NMS Plan, *supra* note 4, at Section 6.7(a)(v).

[14] *See id.* at Section 6.7(a)(vi).

[15] *See* Letter from Participants to Brent J. Fields, Secretary, Commission, dated January 18, 2017, *available at https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf.*

[16] *Id.*

[17] *See supra* note 11.

[18] *See* Letter from the Participants to Brent J. Fields, Secretary, Commission, dated November 13, 2017 (''November 2017 Exemption Request'').

[19] *See* Statement on Status of the Consolidated Audit Trail (November 14, 2017), *available at https://www.sec.gov/news/public-statement/statement-status-consolidated-audit-trail-chairman-jay-clayton.*

[20] *Id.*

[21] *Id.*

[22] *See* Statement on Status of the Consolidated Audit Trail (August 27, 2018), *available at https://www.sec.gov/news/public-statement/tm-status-consolidated-audit-trail.*

[23] *Id.*

managing—and uniquely situated to manage—the implementation of the CAT.

On May 1, 2018, the SEC's Division of Trading and Markets (''Division'') sent a letter to the Participants expressing concern about the lack of progress on CAT implementation. The Division called on senior personnel at each Participant to focus on completing the CAT as soon as practicable with all of the functionality required by the CAT NMS Plan. The Division also requested a master plan (''Master Plan'') for completing the CAT,[24] including a timeline with development and completion milestones.[25] The Division requested that the Master Plan detail all material steps to fully implement both Participant and Industry Member reporting, and describe how the Participants will better manage the Plan Processor's performance. The Participants submitted the requested Master Plan on May 25, 2018. The Master Plan stated that Participant reporting would begin on November 15, 2018, one year past the deadline in the CAT NMS Plan.[26]

On November 15, 2018, the Participants began reporting quote, order, trade and other transaction data to the Central Repository; however, as the Participants acknowledge, the CAT system did not include all of the functionality required by the CAT NMS Plan, such as linkages between reported events and regulators' query functionality.[27] On November 16, 2018, the Participants stated that Thesys CAT would complete all of the required functionality by March 31, 2019.[28] But on February 1, 2019, the Company announced that it would be transitioning from Thesys CAT to a new Plan Processor,[29] and on February 26, 2019, the Operating Committee voted to select FINRA as the successor Plan Processor to Thesys CAT.[30] As a result of this and various other factors, the functionality the Participants represented Thesys CAT would complete by March 31, 2019 was not delivered.

The Participants are responsible for their selection of a Plan Processor, for the management of the Plan Processor, and for compliance with the CAT NMS Plan. The Participants and the Plan Processor failed to comply with the following deadlines in the CAT NMS Plan and missed the following milestone completion dates:

- The November 15, 2017 milestone completion date for the Plan Processor publishing final technical specifications for the submission of order data for Industry Members; [31]
- the May 15, 2018 milestone completion date for the Plan Processor publishing technical specifications for Industry Member submission of customer data; [32]
- the May 15, 2018 milestone completion date for the Plan Processor making the testing environment available on a voluntary basis and beginning connectivity testing and accepting order data from Industry Members for testing purposes; [33]
- the August 15, 2018 milestone completion date for Industry Member order submission testing; [34]
- the October 15, 2018 milestone completion date for Industry Member reporting of customer information to the Central Repository; [35] and
- the November 15, 2018 deadline for full Industry Member reporting.[36]

In light of these missed deadlines and milestone completion dates, Chairman Clayton determined that it was necessary to dedicate additional oversight resources to this project. Accordingly, Chairman Clayton appointed a staff person to coordinate the Commission's efforts to monitor the Participants' development of the CAT.[37]

The Commission is concerned by the continued potential for delays to the implementation of the CAT. In an April 3, 2019 Industry Update presentation, the Operating Committee presented a revised implementation timeline for Industry Member reporting with deadlines that extend even further beyond those previously shared with Industry Members.[38] The revised deadline for Industry Member reporting of all transaction data to the CAT is December 2021, with the exception of customer and account information which the Participants will require the reporting of by July 2022.[39] These deadlines further extend the initially established November 15, 2018 Industry Member reporting deadline in the CAT NMS Plan,[40] the phased deadlines for Industry Member reporting in the Master Plan, and the April 13, 2020 and the April 20, 2021 deadlines for Industry Member and Small Industry Member reporting proposed in the November 2017 Exemptive Request. The Commission has not approved these implementation deadlines.

The Commission preliminarily believes that amendments to the CAT NMS Plan are appropriate and necessary to help ensure the Participants' fulfillment of their obligations to deliver a functional CAT in a reasonable time frame. While the Commission believes that the Commission staff's continued engagement with the Participants is important to the effort to deliver a functional CAT, the Commission also preliminarily believes that increased transparency through formalized and public documentation of the Participants' implementation progress will increase the Participants' accountability for the efficient completion of CAT. The Commission also preliminarily believes that modifying the CAT NMS Plan to require

[24] The Division of Trading and Markets also requested that the Participants streamline their decision-making and governance processes to ensure more timely implementation. *See* Letter from Brett Redfearn, Director, Division of Trading and Markets, Commission, to Michael J. Simon, Chair, CAT NMS Plan Operating Committee, dated May 1, 2018. *See also* note 22.

[25] The Master Plan projects Industry Member reporting will commence in phases, with equities reporting beginning in November 2019 and simple options reporting beginning in May 2020, with final implementation of the CAT through Small Industry Member reporting occurring by November 2022. *See* Industry Update on the Consolidated Audit Trail (June 28, 2018), at 4, *available at https://www.catnmsplan.com/wp-content/uploads/2018/06/CAT-Industry-Webcast-6.28.18.pdf.*

[26] *See supra* note 22.

[27] *See* CAT NMS Announces Initiation of Reporting to the Consolidated Audit Trail (November 16, 2018), *available at https://www.catnmsplan.com/wp-content/uploads/2018/11/Press-Release-CAT-Launch-final.pdf.*

[28] *Id.*

[29] *See* News, *available at https://www.catnmsplan.com/news-page/index.html* (February 1, 2019).

[30] *See* Letter from Michael J. Simon, Chair, CAT NMS, LLC Operating Committee, to Brent J. Fields, Secretary, Commission, dated April 9, 2019, *available at https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection-040919.pdf.*

[31] *See* CAT NMS Plan, *supra* note 4, at Appendix C, Section C.10(b).

[32] *See id.* at Appendix C, Section C.10(a).

[33] *See id.* at Appendix C, Section C.10(b).

[34] *See id.* at Appendix C, Section C.10(a); *id.* at Appendix C, Section C.10(b).

[35] *See id.* at Appendix C, Section C.10(a).

[36] *See id.* at Section 6.4; Section 6.7(a)(v).

[37] *See* SEC Names Manisha Kimmel as Senior Policy Advisor to the Chairman on the Consolidated Audit Trail (January 29, 2019), *available at https://www.sec.gov/news/press-release/2019-5.*

[38] *See* Consolidated Audit Trail: CAT Reporting Technical Specifications for Industry Members Draft 2 Version 1.1 Key Changes (April 3, 2019), *available at https://www.catnmsplan.com/wp-content/uploads/2019/04/CAT_Industry_Call_04032019_Presentation.pdf. See also* CAT Reporting Timelines, *available at https://www.catnmsplan.com/timelines/.* The Commission notes that it has not approved these dates.

[39] *See* Consolidated Audit Trail: CAT Reporting Technical Specifications for Industry Members Draft 2 Version 1.1 Key Changes (April 3, 2019), *available at https://www.catnmsplan.com/wp-content/uploads/2019/04/CAT_Industry_Call_04032019_Presentation.pdf,* at 3, 4.

[40] *See* CAT NMS Plan, *supra* note 4, at Section 6.7(a)(v).

additional financial accountability to meet implementation deadlines is appropriate to achieve the CAT's timely completion.

The Commission therefore proposes to amend the CAT NMS Plan to require the Participants to develop a complete implementation plan containing a detailed timeline with objective milestones to achieve full CAT implementation (the ''Implementation Plan''). This Implementation Plan would be filed with the Commission and made publicly available after approval by a Supermajority Vote [41] of the Operating Committee. The Implementation Plan must be submitted by the Operating Committee to the Chief Executive Officer (''CEO''), President, or an equivalently situated senior officer of each Participant, prior to being voted on by the Operating Committee. Additionally, to further improve implementation transparency, the Commission proposes requiring the Participants to provide the Commission and the public with quarterly progress reports (''Quarterly Progress Reports'' or ''Reports'') approved by at least a Supermajority Vote of the Operating Committee.[42] The Quarterly Progress Reports must also be submitted by the Operating Committee to the CEO, President, or an equivalently situated senior officer of each Participant, prior to being voted on by the Operating Committee. The proposed amendments also include provisions regarding financial accountability to facilitate implementation of the CAT in an expeditious and efficient manner.

II. Description of Proposed Amendments

In order to address shortcomings in the completeness, accuracy, accessibility, and timeliness of existing audit trail systems, the Commission adopted Rule 613 in 2012 to direct the Participants to create and file the CAT NMS Plan.[43] The CAT was intended not only to replace an existing regulatory data infrastructure that was ''outdated and inadequate to effectively oversee a complex, dispersed, and highly automated national market system,'' [44] but also to provide benefits to market participants in the form of improved market surveillance and related analyses.[45] Today, almost seven years after the adoption of Rule 613, the need for a better audit trail system is no less pressing. Yet, as described above,[46] the Participants' progress towards implementing the CAT has suffered multiple setbacks, and the Participants have repeatedly missed relevant deadlines.[47] These delays to CAT implementation have left the Commission and the Participants without access to a comprehensive database to help facilitate analyses of market events and other matters. Moreover, the repeated delays in CAT implementation have resulted in uncertainty for Industry Members and other market participants.[48]

A. Amendments To Increase Operational Transparency

Public disclosure of information about CAT implementation would furnish a better understanding of progress on the CAT to market participants and members of the investing public, all of whom stand to benefit from the improved efficiencies and regulatory capabilities of the CAT. Moreover, CAT implementation also affects Industry Members, who are required to report data to the CAT and are therefore keenly interested in the details and timing of CAT implementation. Currently, the CAT NMS Plan does not contain disclosure provisions that require the Participants to provide public updates on implementation progress and developments.

To address concerns about insufficient transparency and accountability regarding the CAT's implementation, the Commission proposes to amend Section 6.6 of the CAT NMS Plan. Specifically, the Commission proposes to amend the CAT NMS Plan by adding a new Section 6.6(c) to require the Participants to file with the Commission and publish on their own websites (or, if the Participants wish to publish collectively, on the CAT NMS Plan website) the Implementation Plan setting forth how and when the Participants will achieve full CAT implementation, including the Participants' timeline for achieving both (1) the objective milestones that are set forth in Section C.10 of Appendix C of the CAT NMS Plan to assess the progress of CAT implementation [49] (''Objective Milestones'') and (2) the CAT implementation milestones associated with the proposed financial accountability provisions discussed below (''Financial Accountability Milestones'') [50] (collectively, the ''Implementation Milestones'').[51]

If the Participants decide to complete any of the Implementation Milestones by releasing functionality in a phased approach, the proposed rule would require the Implementation Plan to also describe each phased release necessary to achieve the completion of the relevant Implementation Milestone and to provide completion dates for each such release.[52] The proposed rule also requires the Participants to include the completion date and a description of the status for each Implementation Milestone identified in the Implementation Plan, which, for example, could include discussion about the extent to which an

[41] Section 1.1 of the CAT NMS Plan defines a ''Supermajority Vote'' as an ''affirmative vote of at least two-thirds of all of the members of the Operating Committee or any Subcommittee, as applicable, authorized to cast a vote with respect to a matter presented for a vote (whether or not such a member is present at any meeting at which a vote is taken) by the Operating Committee or any Subcommittee, as applicable (excluding, for the avoidance of doubt, any member of the Operating Committee or any Subcommittee, as applicable, that is recused or subject to a vote to recuse from such matter pursuant to Section 4.3(d)); *provided* that if two-thirds of all such members authorized to cast a vote is not a whole number then that number shall be rounded up to the nearest whole number.''

[42] The Commission does not believe, on a preliminary basis, that the requirements of the Implementation Plan or the Quarterly Progress Reports, discussed below in Part II.A., require the Participants to disclose any confidential or sensitive information related to the security of the CAT, the security of CAT Data, or the operation of the CAT.

[43] *See supra* note 2.

[44] *Id.* at 45723.

[45] *Id.* at 45730–33.

[46] *See* Part I *supra.*

[47] *See, e.g.,* Industry Update on the Consolidated Audit Trail 9/7/2017 (August 25, 2017), *available at https://catnmsplan.com/news-page/industry-update-on-the-consolidated-audit-trail/index.html* (stating that ''the implementation timelines for establishing the CAT are in effect''); Industry Update on the Consolidated Audit Trail (September 7, 2017), *available at https://catnmsplan.com/wp-content/uploads/2017/09/Industry-Update-on-the-Consolidated-Audit-Trail-090817.pdf* (indicating that the Participants were implementing the CAT according to the timeline set forth in the CAT NMS Plan).

[48] *See, e.g.,* Part IV.A.2.

[49] *See* CAT NMS Plan, *supra* note 4, at Appendix C Section C.10.

[50] The Financial Accountability Milestones, and their relation to proposed financial accountability provisions, are described in more detail in Part II.B. *infra.*

[51] The Participants would be free to include, as may be appropriate, additional Implementation Milestones not otherwise required by the proposed plan amendment. For example, the Participants may choose to add Implementation Milestones regarding system security or external testing with CAT Reporters.

[52] For example, the CAT NMS Plan identifies ''Industry Members (other than Small Industry Members) begin reporting customer/institutional/firm account information to the Central Repository for processing'' as one of the Objective Milestones. *See* CAT NMS Plan, *supra* note 4, at Appendix C, Section 10. Recent timelines published by the Participants indicate, however, that the Participants have decided to complete this milestone by releasing functionality in a phased approach—first implementing Industry Member reporting for equities transactions and then implementing Industry Member reporting for options in a separate phase. *See, e.g.,* CAT Reporting Timelines, *available at https://catnmsplan.com/timelines/.* The proposed amendment would therefore require the Implementation Plan to provide completion dates for each of these phases.

Implementation Milestone has been successfully completed. The Implementation Plan would be required to be filed with the Commission and published on each Participant website or the CAT NMS Plan website no later than 30 calendar days following the effective date of this amendment.

The Commission preliminarily believes that requiring the proposed Implementation Plan is appropriate to facilitate public transparency of the CAT's development. The Commission believes 30 calendar days is a sufficient amount of time to create the Implementation Plan because the Participants have previously engaged in the exercise of considering and developing timelines and milestones for implementation purposes when developing the Master Plan, and many of the Participants are active in data systems development and operation.

The Commission further believes that requiring this added transparency will aid the public in more easily monitoring the status of the implementation of the CAT. The CAT NMS Plan currently requires the Chief Compliance Officer of the Company to appropriately document objective milestones to the Commission. The Commission understands from the Participants' status update calls and discussions that the Participants are already engaged in documenting their progress toward CAT implementation for the Objective Milestones.[53] Therefore, the proposed amendment is requiring the incremental step that the information related to this documentation be made public via the Implementation Plan. The Commission does not expect that this incremental step would be unduly burdensome. The proposed amendment also requires the Participants to provide information regarding progress toward and completion of the Financial Accountability Milestones. Requiring the Participants to disclose their progress toward and completion of Financial Accountability Milestones will provide information not contained in the Objective Milestones regarding the development and availability of critical regulatory tools. The Commission believes that it is important to provide this information in a comprehensive timeline. Information related to the production of critical regulatory tools is also of interest to market participants, who will benefit from the increased regulatory capabilities of the CAT.[54]

Moreover, the Commission preliminarily believes it is appropriate to require the Participants to disclose whether they intend to complete any of the Implementation Milestones in phases and any related completion dates, because recent timelines published by the Participants indicate that the Participants intend to release certain functionality in phases. For example, while the CAT NMS Plan identifies only one implementation date for Industry Member reporting, the Participants have indicated that Industry Member reporting will be implemented in several phases that each have a different implementation deadline.[55] The Implementation Plan should reflect the current, phased approach to CAT implementation for this milestone, not the approach to CAT implementation that was contemplated at the time the CAT NMS Plan was approved. By requiring phasing to be addressed, the Implementation Plan will both furnish a common understanding of the status of CAT implementation at the time the Implementation Plan is made public, as well as indicate how completing the Implementation Milestones will lead to the achievement of full CAT implementation.

The Commission also believes that, to the extent the Participants meet the dates specified in the timeline, the publication of such timeline will reduce uncertainty as to the expected implementation timeline for Industry Members, which would aid Industry Members in staging their resources and otherwise managing implementation planning, which should reduce the risk of additional delays. The Commission further believes that the Implementation Plan's timeline, paired with Implementation Milestones, will serve to clarify what level of CAT system functionality will be delivered on a given date. Finally, the Commission anticipates that requiring the Participants to disclose their deadlines and the status of Implementation Milestones to the public through the Implementation Plan will provide accountability both to the Commission and to Industry Members regarding the Participants' progress toward CAT implementation.

The Commission also proposes to amend the CAT NMS Plan to add proposed Section 6.6(c)(ii) to require Participants to file with the Commission and publish on each Participant website, or collectively on the CAT NMS Plan website, complete Quarterly Progress Reports. These Reports would be filed and made public no later than fifteen business days following the end of each calendar quarter (*e.g.,* by April 21, 2020; July 22, 2020; October 22, 2020; or January 25, 2021) and would describe in detail the progress made by the Participants during the prior calendar quarter toward achieving each of the Implementation Milestones set forth in the Implementation Plan.[56] The initial Report to be filed by the Participants would be filed and made public no later than fifteen business days following the end of the calendar quarter in which the Implementation Plan was filed and made public.[57] The Reports would divide the Implementation Milestones into the following three categories: (1) Implementation Milestones that have been completed, (2) Implementation Milestones that are still in progress and (3) Implementation Milestones that have not yet been initiated.

For each Implementation Milestone completed by the end of a given calendar quarter, the Report would include the following: (1) The completion date provided in the Implementation Plan, (2) the date on which the Implementation Milestone was actually completed, and (3) a description of any variance from the Implementation Plan.[58]

For each Implementation Milestone in progress at the end of a given calendar quarter, the Report would include the following: (1) The completion date provided in the Implementation Plan, (2) the currently targeted completion date, and (3) a description of (a) the current status of the Implementation Milestone, (b) any difference between the Implementation Plan completion date and the currently targeted completion date, including the basis for

[53] *See also* CAT NMS Plan, *supra* note 4, at Section 6.7(b).

[54] Moreover, inclusion of the Financial Accountability Milestones in the Implementation Plan will provide the Commission and the public with more information regarding the implementation deadlines. *See* Part II.B. *infra* for additional discussion of the financial accountability provisions.

[55] *See* note 52 *supra.*

[56] If, subsequent to the publication of the Implementation Plan, the Participants decide to complete any of the Implementation Milestones by releasing functionality in a phased approach, the proposed amendment requires the Participants to reflect this change in the Quarterly Progress Reports by describing the phases necessary to achieve the completion of the relevant milestones and providing specified information on the progress made for each release.

[57] For example, if the Participants filed and made public the Implementation Plan on March 18, 2020 the initial Report would have to be filed no later than April 21, 2020.

[58] For example, a description of any variance from the Implementation Plan could explain why the completion of a given Implementation Milestone was delayed from the date set forth in the Implementation Plan or, if the Implementation Milestone was broken out into multiple phases, the extent to which the completed Implementation Milestone satisfied the functionality required by the Implementation Plan for that milestone.

making the adjustment and the impact of this adjustment on any other Implementation Milestone, and (c) any other factual indicators that demonstrate the current level of completion with respect to the Implementation Milestone.[59] Factual indicators could include any data relevant to the Objective Milestone (*e.g.,* (1) for milestones related to the publication of documentation: The current version of the documentation under development or published; the number of and explanation for any open issues not yet resolved; (2) for milestones related to connectivity and acceptance testing: The status of the publication of test plans; statistics on the amount of expected or actual activity in the test environment (*e.g.,* number of testers, number of reportable events, error rates/trends observed), the number of Plan Processor functional requirements[60] for which defects were found categorized by criticality; progress remediating defects; (3) for milestones related to reporting: Development progress as defined by the number of functional requirements not yet started, in progress, or complete; the number and percentage of functional requirements for which internal testing is in progress and the related pass/fail percentages of associated test cases; the number and percentage of functional requirements that have completed internal testing with all defects remediated; the number of Plan requirements met or outstanding; a list of Plan requirements met or outstanding).

For each Implementation Milestone that has not yet been initiated by the end of a given calendar quarter, the Report would include the following: (1) The completion date provided in the Implementation Plan, (2) the currently targeted completion date, and (3) a description of (a) the current status of the Implementation Milestone, and (b) any difference between the Implementation Plan completion date and the currently targeted completion date, including the basis for making the adjustment and the impact of this adjustment on any other Implementation Milestone.

The Commission preliminarily believes that the Quarterly Progress Reports will facilitate transparency by ensuring that current and comprehensive information about the CAT's state of development is regularly communicated to the Commission, Industry Members, and the public at large.[61] Moreover, the Commission preliminarily believes that the requirements set forth for the proposed Quarterly Progress Reports are appropriate. Because the Participants should already be actively monitoring their progress on the implementation of the CAT, the Commission believes 15 business days is a reasonable amount of time in which to prepare Reports based on the information the Participants have already gathered.[62]

The Participants are required to provide both the Implementation Plan completion date and the actual or currently targeted completion date for each Implementation Milestone so that the original completion date will serve as a baseline against which to measure progress if there is a difference between the two dates, as supplemented by the information provided in the commentary. The Commission preliminarily believes that progress can be effectively evaluated based upon whether the Implementation Plan completion dates are being met.

The Commission also preliminarily believes that information provided in the required descriptions for the Implementation Milestones will yield valuable insights into the progress of CAT implementation, for example by providing an early indication of the potential for delays. The Commission also preliminarily believes that requiring the disclosure of the information provided in the descriptions would encourage the Participants to consider whether resources need to be realigned, so that adjustments can be made to the implementation process. In regard to the Implementation Milestones completed by the end of a given calendar quarter, the proposed amendments would require the Participants to describe any variance from the Implementation Plan. The Commission preliminarily believes that such information could reflect whether the Participants have only partially achieved the functionality required by certain Implementation Milestones. In regard to the Implementation Milestones in progress at the end of a given calendar quarter, the proposed amendments would require the Participants to describe the status of the Implementation Milestone, any difference between the completion dates provided, including the basis for making the adjustment and the impact such adjustment might have on any other Implementation Milestone, and other factual indicators that demonstrate the current level of completion with respect to the milestone. The Commission preliminarily believes that such information could reveal if there is an increasingly negative variance between the Implementation Plan completion date and the targeted completion date, as well as the cause for such variance. The required information could also provide an indication of whether corrections are needed to get the implementation process back on track and whether the currently targeted completion dates provided in a Report are realistic. In regard to the Implementation Milestones that have not yet been initiated by the end of a given calendar quarter, the proposed amendments would require the Participants to describe the current status for the Implementation Milestone and any difference between the completion dates provided, including the basis for making the adjustment.

The Commission expects that quarterly communication of this information will aid Industry Members by providing more information on the timing of their CAT reporting obligations, which, correspondingly, should aid them in efficiently developing and implementing their regulatory data collection systems and allow them to make their own

[59] For example, if an Implementation Milestone is the publication of Industry Member technical specifications, a description of the status could state: That the Plan Processor produced a draft that was circulated to Industry Members on [insert date]; that the Participants are reviewing feedback and expect to issue final technical specifications by [insert date]; and that the draft is complete except for a [specified topic], because of a [specified reason]. As an example of a description identifying any difference between the Implementation Plan completion date and the current targeted completion date, including the basis for making the adjustment and the impact of this adjustment on any other Implementation Milestone, the Participants could state: That the Implementation Plan completion date was [insert date], but the Participants are revising such date to [insert new targeted completion date], because [insert topic] proved to be more complicated than anticipated due to [insert reason]. The description could continue to state that the Participants believe the new targeted completion date is appropriate because, for example, they have designed a new approach to deliver the required functionality to address the issue in the technical specifications that is currently under development as of [insert date].

[60] Appendix D outlines minimum functional and technical requirements established by the Participants of the CAT NMS Plan for the Plan Processor. *See* CAT NMS Plan, *supra* note 4, Appendix D–1. Examples of such functional requirements for the CAT system include the ability to provide feedback on the reasons for errors in data submissions, and the ingestion of data submitted to the Central Repository by Industry Members. *See id.* at Appendix D, Sections 7.4, 7.5.

[61] For example, the Commission expects that the Quarterly Progress Reports will provide the Commission and the public with more granular and up-to-date information regarding the likelihood that the Participants will meet the target deadlines associated with the Financial Accountability Milestones and/or the likelihood that the Participants will be permitted to recover related fees, costs, or expenses from Industry Members. The Financial Accountability Milestones, and their related financial accountability provisions, are discussed in Part II.B. *infra.*

[62] *See, e.g.,* note 53 *supra.*

adjustments as needed. In addition, the Commission anticipates that the Quarterly Progress Reports will aid the Commission, Industry Members and others in monitoring and better understanding the progress of CAT implementation.

The Commission also proposes to amend the CAT NMS Plan to add proposed Section 6.6(c)(iii) to require that the Implementation Plan and each Quarterly Progress Report be approved by at least a Supermajority Vote of the Operating Committee before such documents are filed with the Commission or made publicly available on each of the Participant websites or collectively on the CAT NMS Plan website. However, if the Implementation Plan or any Quarterly Progress Report is approved only by a Supermajority Vote of the Operating Committee, and not by a unanimous vote of the Operating Committee (including, for the avoidance of doubt, all members of the Operating Committee, whether or not present and whether or not recused), proposed Section 6.6(c)(iii) would require each Participant whose Operating Committee member did not vote to approve the Implementation Plan or Quarterly Progress Report separately file with the Commission and make publicly available on each of the Participant websites, or collectively on the CAT NMS Plan website, a statement identifying itself and explaining why the member did not vote to approve the Implementation Plan or Quarterly Progress Report. Prior to the Operating Committee's vote, the Implementation Plan and Quarterly Progress Reports shall also be submitted by the Operating Committee to the CEO, President, or an equivalently situated senior officer (or, ''senior management'') of each Participant.[63]

The Commission preliminarily believes that the Operating Committee should vote on the Implementation Plan and each Quarterly Report because the Operating Committee, as the manager of the Company, already votes on all actions for which a vote is required under the CAT NMS Plan.[64] The Commission further preliminarily believes that specifically requiring the approval of the Operating Committee by at least a Supermajority Vote will lend credibility to the timelines presented by Participants in the Implementation Plan and Reports, which may otherwise be lacking given that the timelines for Industry Member CAT implementation have been revised multiple times.[65] In addition, the requirement that the Implementation Plan and Quarterly Progress Reports be submitted to the CEO, President, or an equivalently situated senior officer of each Participant, prior to the Operating Committee's vote, is intended to promote senior management attention and promote accountability with respect to CAT implementation.

If the Operating Committee does not unanimously vote to approve the Implementation Plan or any Quarterly Progress Report, the proposed amendments require each Participant whose Operating Committee member did not vote to approve the Implementation Plan or Quarterly Progress Report to separately file with the Commission and make publicly available on each of the Participant websites, or collectively on the CAT NMS Plan website, a statement identifying itself and explaining why the member did not vote to approve the Implementation Plan or Quarterly Progress Report. The Commission preliminarily believes that the requirement may aid the Commission and the public to better monitor the progress of CAT implementation, because such an explanation may reveal critical information regarding whether currently targeted completion dates are realistic, whether milestones are being or have been completed in accordance with the requirements of the CAT NMS Plan, and/or whether potential risks or delays may impede the progress of CAT implementation.

The Commission requests comment on the amendments to increase operational transparency. Specifically, the Commission solicits comment on the following:

1. Are the Implementation Plan and the Quarterly Progress Report effective mechanisms for providing the Commission and Industry Members with transparency into CAT implementation? Why or why not?

2. Are the details and requirements of the Implementation Plan appropriate and reasonable? Why or why not? Would additional details or requirements for the Implementation Plan be beneficial?

3. The proposed amendment requires the Participants to file and publish the Implementation Plan within 30 calendar days following the effective date of proposed Section 6.6(c). Is 30 calendar days a reasonable period of time in which to file and publish such a document? Why or why not? Does this timeline give the Operating Committee a sufficient amount of time to approve the Implementation Plan? Why or why not? Would a longer or shorter period of time, such as 45 calendar days or 15 calendar days, be more appropriate?

4. The proposed Amendment requires the Participants to file and publish a Quarterly Progress Report each calendar quarter on each Participant website or collectively on the CAT NMS Plan website. Is a quarterly interval the right interval? Would a longer or shorter interval be more effective?

5. The proposed amendment requires the Participants to file and publish the Quarterly Progress Report no later than fifteen business days following the end of each calendar quarter. Is fifteen business days a reasonable period of time in which to file and publish such a report? Why or why not? Does this timeline give the Operating Committee a sufficient amount of time to approve the Quarterly Progress Reports? Why or why not? Would a longer or shorter period of time, such as thirty business days or five business days, be more appropriate?

6. The proposed amendment establishes the deadline for filing and publishing the Quarterly Progress Report on the basis of business days. Are business days an appropriate measure by which to establish this deadline? Or would calendar days be more appropriate? Why or why not?

7. Are the details and requirements of the Quarterly Progress Report appropriate and reasonable? Why or why not? Would additional details or requirements for the report be beneficial? For example, should the Quarterly Progress Reports include financial information detailing the fees, costs, and expenses that the Participants have incurred to build and implement the CAT? If so, should these fees, costs, and expenses be clearly tied to the relevant Financial Accountability Milestone? Why or why not?

8. The proposed amendment requires the Operating Committee to approve the Implementation Plan and each Quarterly Progress Report by at least a Supermajority Vote. Is it appropriate to require a Supermajority Vote, or should the Commission require a majority vote or a unanimous vote of the Operating Committee? Why or why not? Is it appropriate to require that the Operating Committee vote on this matter? Why or why not? If this matter should be

[63] In addition to the senior management personnel who will receive the Implementation Plan and Quarterly Progress Reports under the proposed amendment, each Participant has a voting member (and an alternate voting member) representing it on the Operating Committee who will receive these documents. One individual may serve as the voting member of the Operating Committee for multiple affiliated Participants. *See* CAT NMS Plan, *supra* note 4, at Section 4.2(a).

[64] *See* CAT NMS Plan, *supra* note 4, at Sections 4.1 and 4.3.

[65] *See* Part I *supra*.

delegated to a Subcommittee, please explain which Subcommittee should vote to approve the Implementation Plan and Quarterly Progress Report and why.

9. If the Implementation Plan or any Quarterly Progress Report is not approved by a unanimous vote of the Operating Committee, the proposed amendment requires each Participant whose Operating Committee member did not vote to approve the Implementation Plan or Quarterly Progress Report separately file with the Commission and make publicly available on each of the Participant websites, or collectively on the CAT NMS Plan website, a statement identifying itself and explaining why the member did not vote to approve the Implementation Plan or Quarterly Progress Report. Is this an appropriate requirement? Why or why not? Should the Commission require the Implementation Plan or the Quarterly Progress Reports, or the members who did not vote to approve the Implementation Plan or a Quarterly Report, as the case may be, to provide any additional information? If so, what information should be provided, and why?

10. The proposed amendment requires that the Implementation Plan and each Quarterly Progress Report be submitted to the CEO, President, or an equivalently situated senior officer of each Participant, prior to being voted on by the Operating Committee. Is this an appropriate requirement to promote senior management attention and promote accountability with respect to CAT implementation? Why or why not? Should the Commission specify when the Implementation Plan and Quarterly Progress Reports should be submitted to the CEO, President, or equivalently situated senior officer of each Participant? If so, how many days prior to the Operating Committee vote should the Implementation Plan and Quarterly Progress Reports be submitted to senior management? To the extent that the Commission implements such a requirement, would the deadlines set forth in the proposed amendment for the submission of the Implementation Plan and Quarterly Progress Reports to the Commission need to be adjusted? Why or why not? By how many days should they be adjusted? Please explain your responses.

11. Please identify any alternative means to promote senior management attention and promote accountability with respect to CAT implementation. For example, should the Commission require the senior management of each Participant (*e.g.,* the CEO, President, or an equivalently situated senior officer) to certify that the contents of the Implementation Plan and each Quarterly Progress Report are accurate and complete in all material respects? What should qualify as material? Should the certification be made to the best of an officer's knowledge and reasonable belief after reasonable investigation? Is the CEO or President the appropriate person to make the certification? If not, please explain why. If the CEO or President is not the appropriate person, which equivalently situated senior officer would be appropriate? Would additional details or requirements for such certifications be beneficial? If so, what are those details or requirements? Please explain your responses.

12. Are there other factors that impact the ability of the Participants to implement the CAT NMS Plan that would not be addressed by further disclosure that the Commission should address?

B. Financial Accountability Amendments for Implementation of the CAT

As discussed above, there have been multiple delays in CAT implementation since the adoption of Rule 613. To prevent additional delays, the Commission proposes to amend the CAT NMS Plan to include financial accountability provisions that are designed to align financial accountability with regulatory obligations and contribute to an expeditious implementation of the CAT.

Currently, Section 11.1 of the CAT NMS Plan contemplates that the Operating Committee will establish, and the Participants will implement, fees for Participants and Industry Members to recover the costs and expenses incurred by the Participants in connection with the development, implementation, and operation of the CAT.[66] Proposals for any such fees must be filed with the Commission pursuant to Section 19(b) of the Exchange Act and are subject to Commission review for consistency with the Exchange Act and Article XI of the CAT NMS Plan.[67] Specifically, each Participant must demonstrate, under Sections 6(b)(4) and 15A(b)(5) of the Exchange Act, that such fee filings provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.[68] The proposed amendment would not alter this basic structure, but would add a new Section 11.6 to govern the recovery of any fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred[69] by or for the Company in connection with the development, implementation, and operation of the CAT,[70] from the effective date of this amendment, if adopted by the Commission, until such time that the Participants have completed Full Implementation of CAT NMS Plan Requirements[71] (collectively, the ''Post-Amendment Expenses'').

Proposed Section 11.6 would apply new conditions to the collection of any fees established by the Operating Committee, or implemented by the Participants, to recover a portion of Post-Amendment Expenses from Industry Members (''Post-Amendment Industry Member Fees''). Specifically, proposed Section 11.6 would require the Participants to meet four critical CAT implementation milestones—the Financial Accountability Milestones—by certain dates in order to collect the full amount of any related Post-Amendment Industry Member Fees

[66] *See, e.g.,* CAT NMS Plan, *supra* note 4, at Section 11.1(c).

[67] Section 19(b) of the Exchange Act requires the Participants to submit proposed rule changes to the Commission. 15 U.S.C. 78s(b); *see also* CAT NMS Plan, *supra* note 4, at Section 11.1(b) (noting that the Participants must file proposed fees for Industry Members with the Commission).

[68] *See* 15 U.S.C. 78f(b)(4) (applicable to the national securities exchanges); 15 U.S.C. 78*o*–3(b)(5) (applicable to FINRA, a national securities association).

[69] For the purposes of proposed Section 11.6, determination of when a fee, cost, or expense is considered ''incurred'' shall be based on Generally Accepted Accounting Principles (''GAAP''), as those principles must also be applied to all accounting or financial statements prepared by the Operating Committee under Section 9.2 of the CAT NMS Plan. *See* note 4 *supra.* For example, a fee, cost, or expense related to a good or service would generally be considered incurred upon acquisition of the good or service in accordance with GAAP.

[70] *See,* CAT NMS Plan, *supra* note 4, at Section 11.1(b)–(c), Section 11.2(a)–(b), and Section 11.3(c) (relating to the funding of the development, implementation and operating costs of the Company).

[71] As part of the proposed amendment, Section 1.1 of the CAT NMS Plan will be amended to include a definition of ''Full Implementation of CAT NMS Plan Requirements.'' This term will mean ''the point at which: (a) The Participants have satisfied all of their obligations to build and implement the CAT, such that all CAT system functionality required by Rule 613 and the CAT NMS Plan has been developed, successfully tested, and fully implemented with the initial Error Rates specified by Section 6.5(d)(i) of the CAT NMS Plan, including, but not limited to, functionality that efficiently permits the Participants and the Commission to access all CAT Data required to be stored in the Central Repository pursuant to Section 6.5(a) of the CAT NMS Plan and to analyze the full lifecycle of an order, from order origination through order execution or order cancellation, across the national market system. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).'' This definition is discussed further below. *See* Part II.B.1.d. *infra.*

established by the Operating Committee or implemented by the Participants. If the Participants fail to meet the target deadlines set forth in proposed Section 11.6, they would only be entitled to collect a portion of the amount of the relevant Post-Amendment Industry Member Fees, as determined by the amount of time by which the Participants have missed the target deadlines.

The Commission preliminarily believes applying these new conditions to the Post-Amendment Industry Member Fees is appropriate. At the time the Commission approved the CAT NMS Plan, the Commission believed it was reasonable, in accordance with Section 6(b)(4) of the Exchange Act,[72] for the Participants to recover a portion of the fees, costs, and expenses associated with the development and implementation of the CAT from Industry Members.[73] This belief, however, was based on the Commission's expectation that the Participants would be complying with the CAT NMS Plan, which required the implementation of certain CAT functionality by the dates set forth in the CAT NMS Plan. As noted above, the Participants have missed multiple dates codified in the CAT NMS Plan.[74] Accordingly, the regulatory aims of the CAT NMS Plan have yet to be achieved. Accordingly, the Commission is proposing financial accountability rules that address the Commission's view of what it would consider to be ''reasonable fees'' and a reasonable exercise of the Participants' funding authority under the CAT NMS Plan in the context of CAT implementation going forward.

The specific terms of the proposed amendment are discussed in more detail below.

1. Financial Accountability Milestones and Target Deadlines

Proposed Section 11.6 identifies four critical CAT implementation milestones: (1) Initial Industry Member Core Equity Reporting, (2) Full Implementation of Core Equity Reporting Requirements, (3) Full Availability and Regulatory Utilization of Transactional Database Functionality, and (4) Full Implementation of CAT NMS Plan Requirements (collectively, the ''Financial Accountability Milestones'' [75]). For each Financial Accountability Milestone, the Commission has also identified a target deadline for completion.

a. Initial Industry Member Core Equity Reporting

The Commission proposes to amend Section 1.1 of the CAT NMS Plan to define ''Initial Industry Member Core Equity Reporting'' as the point at which Industry Members (excluding Small Industry Members [76] that are do not report to the Order Audit Trail System (''OATS'')) have begun to report equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information,[77] to the CAT.[78] This Financial Accountability Milestone shall be considered complete as of the date identified in a published Quarterly Progress Report meeting the requirements of proposed Section 6.6(c).[79] The Commission also proposes to add Section 11.6(a)(i)(A) to provide that the Participants will be entitled to collect the full amount of any Post-Amendment Industry Member Fees established or implemented to recover Post-Amendment Expenses incurred from the date of this amendment's adoption by the Commission[80] to the date of Initial Industry Member Core Equity Reporting (''Period 1''), so long as such date is no later than April 30, 2020.[81]

The Commission preliminarily believes that Initial Industry Member Core Equity Reporting is an appropriate Financial Accountability Milestone, because this milestone requires the Participants to develop, test, and implement essential infrastructure needed to support Industry Member reporting—one of the major goals identified by the CAT NMS Plan.[82] Before Industry Members may begin reporting any equities transaction data to the CAT, the Participants must develop, and Industry Members must thoroughly test, file submission tools, data integrity controls, and various security measures to ensure that the CAT can safely receive and process this data, as well as identify data that may not be accurate. These are core operations that are fundamental to the success of the CAT. By requiring Industry Members—excluding Small Industry Members that are not OATS reporters [83]—to begin reporting the first phase of equities transaction data to the CAT, the Participants will demonstrate that they have made significant progress towards implementing foundational CAT functionality.

Furthermore, the Commission preliminarily believes that it is appropriate to require the Participants to achieve Initial Industry Member Core Equity Reporting by April 30, 2020 in order to recover the full amount of any related Post-Amendment Industry

[72] 15 U.S.C. 78f(b)(4) (requiring the rules of a national securities exchange to provide for ''equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities'').

[73] *See, e.g.,* CAT NMS Plan Approval Order, *supra* note 4, at 84794.

[74] *See* Part I *supra.*

[75] This term is defined at proposed Section 1.1.

[76] As defined by Section 1.1 of the CAT NMS Plan, and for the purposes of this proposing release, ''Small Industry Member'' an Industry Member that qualifies as a small broker-dealer as defined in SEC Rule 613. *See also* 17 CFR 242.613(a)(3)(vi) (defining small broker-dealers by reference to 17 CFR 240.0–10(c), which defines a small broker dealer as one with ''total capital . . . of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared or, if not required to file such statements, a broker or dealer that had total capital . . . of less than $500,000 on the last business day of the preceding fiscal year'' and one that is ''not affiliated with any person . . . that is not a small business or small organization'').

[77] Customer Account Information, Customer-ID, and Customer Identifying Information are defined terms in Section 1.1 of the CAT NMS Plan and are the same definitions in the context of this proposing release.

[78] The Commission notes that the equities transaction data required at this stage is consistent with the functionality that the Participants currently plan to implement at ''Phase 2a'' in the latest draft of the Technical Specifications. *See* CAT Reporting Technical Specifications for Industry Members, Version 2.2 (June 24, 2019), at vii, *available at https://www.catnmsplan.com/wp-content/uploads/2019/06/Industry-Member-Tech-Specs-v2.2-Clean.pdf.*

[79] The target deadline for Initial Industry Member Core Equity Reporting falls on April 30, 2020—between scheduled Quarterly Progress Reports. If the Participants wait to submit the Quarterly Progress Report to the Commission, it may delay their ability to begin recovering any Post-Amendment Industry Member Fees to which they may be entitled. Accordingly, the Commission notes that the Participants may file an interim Quarterly Progress Report, if they so choose, on the day they achieve this Financial Accountability Milestone (or any other Financial Accountability Milestone) in order to expedite their recovery of Post-Amendment Industry Member Fees.

[80] The proposed amendment will not affect the Participants' ability to collect CAT-related fees, costs, or expenses incurred up to the date that proposed Section 11.6 is adopted. *See* proposed Section 11.6.

[81] *See* proposed Section 11.6(a)(i)(A). To the extent that the Initial Industry Member Core Equity Reporting milestone is achieved at some later date, the Participants will only be entitled to collect a portion of the amount of the Post-Amendment Industry Member Fees established or implemented for Period 1. *See* proposed Section 11.6(a)(ii); *see also* Part II.B.2. *infra* for additional discussion regarding the conditions attached to Post-Amendment Industry Member Fee collection.

[82] *See* CAT NMS Plan, *supra* note 4, at Section 6.7(a)(v).

[83] The Commission preliminarily believes that it is appropriate to exclude Small Industry Members that do not report to OATS from this Financial Accountability Milestone in order to mirror the timelines projected by the Participants. *See, e.g.,* Industry Update on CAT Reporting Technical Specifications for Industry Members (April 3, 2019), *available at https://www.catnmsplan.com/wp-content/uploads/2019/04/CAT_Industry_Call_04032019_Presentation.pdf; see also* CAT Reporting Timelines, *available at https://www.catnmsplan.com/timelines/.*

Member Fees, because the Participants have indicated that they plan to implement basic equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters) by that date. Recent timelines published by the Participants indicate that the production environment for Industry Member equities reporting will go live in April 2020.[84] Based on this representation, the Commission preliminarily believes the proposed deadline of April 30, 2020 for Initial Industry Member Core Equity Reporting is both reasonable and feasible.

b. Full Implementation of Core Equity Reporting Requirements

The Commission proposes to amend Section 1.1 of the CAT NMS Plan to define ''Full Implementation of Core Equity Reporting Requirements'' as the point at which: (a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information,[85] is developed, tested, and fully implemented at a 5% Error Rate[86] or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation;[87] and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 of the CAT NMS Plan incorporates the Industry Member equity transaction data described in condition (a) and is available to the Participants and to the Commission. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).[88] The Commission also proposes to add Section 11.6(a)(i)(B) to provide that the Participants will be entitled to collect the full amount of any Post-Amendment Industry Member Fees established or implemented to recover Post-Amendment Expenses incurred from the date immediately following the achievement of Initial Industry Member Core Equity Reporting to the date of Full Implementation of Core Equity Reporting Requirements (''Period 2''), so long as such date is no later than December 31, 2020.[89]

The Commission preliminarily believes that Full Implementation of Core Equity Reporting Requirements is an appropriate Financial Accountability Milestone, because this milestone requires the Participants to show that they have taken significant steps towards achieving one of the primary goals identified in the CAT NMS Plan—Industry Member reporting.[90] Whereas the previous Financial Accountability Milestone only required that the Participants sufficiently develop and test the CAT so as to allow Industry Members (excluding Small Industry Members that are not OATS reporters) to begin reporting equities transaction data, this Financial Accountability Milestone requires Participants to have fully implemented the first phase of equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters) at an Error Rate that is consistent with the initial Error Rate threshold set forth in the CAT NMS Plan.[91] Equities transaction data produced by the CAT at this stage must also be sufficiently interlinked so as to permit full analysis of an order's lifecycle across the national market, excluding full linkage of representative orders.[92] These requirements are designed to ensure that the Participants have developed, tested, and implemented an audit trail system that produces meaningful and accurate equities transaction data, including data that can be used to evaluate the full lifecycle of an equities order.[93] The achievement of such benchmarks would demonstrate that the Participants have made significant progress towards full implementation of Industry Member reporting.[94]

The second prong of this Financial Accountability Milestone requires that the equities transaction data collected by the CAT at this stage be made available to regulators through two basic query tools required by the CAT NMS Plan—a targeted query tool that will enable regulators to retrieve data via an online query screen with a variety of predefined selection criteria, and a user-defined direct query tool that will provide regulators with the ability to query data using all available attributes and data sources.[95] These query tools

[84] *See, e.g., id.* The Participants have also released finalized technical specifications for Industry Member reporting, as well as a symbol list providing the scope of securities for which Industry Member reporting will be required, which the Commission believes are critical steps towards achieving Initial Industry Member Core Equity Reporting by April 30, 2020. With this information, the Industry Members should be able to make meaningful progress towards developing the internal infrastructure needed to report to the CAT. *See* note 78 *supra. See also, e.g.,* Industry Update on the Consolidated Audit Trail (February 20, 2019), *available at https://www.catnmsplan.com/wp-content/uploads/2019/02/CAT_Industry_Webcast_02.20.2019_vF.pdf* (stating that there will be no material design changes to the technical specifications for Industry Member reporting and instructing Industry Members to continue as planned with development efforts); CAT Reportable Equity Securities Symbol Master, *available at https://www.catnmsplan.com/symbol-master/index.html.*

[85] *See* note 77 *supra.*

[86] ''Error Rate'' is a term defined in Section 1.1 of the CAT NMS Plan to mean ''the percentage of reportable events collected by the central repository in which the data reported does not fully and accurately reflect the order even that occurred in the market.'' *See also* 17 CFR 242.613(j)(6).

[87] The equities transaction data required at this stage is consistent with the functionality that the Participants currently plan to implement at ''Phase 2a'' in the latest draft of the Technical Specifications. *See* note 78 *supra.*

[88] *See also* note 79 *supra.*

[89] *See* proposed Section 11.6(a)(i)(B). To the extent that the Full Implementation of Core Equity Reporting Requirements milestone is achieved at some later date, the Participants will only be entitled to collect a portion of the amount of the Post-Amendment Industry Member Fees established or implemented for Period 2. *See* proposed Section 11.6(a)(iii); *see also* Part II.B.2. *infra* for additional discussion regarding the conditions attached to Post-Amendment Industry Member Fee collection.

[90] *See* CAT NMS Plan, *supra* note 4, at Section 6.7(a)(v).

[91] *See, e.g.,* CAT NMS Plan, *supra* note 4, at Section 6.5(d)(i) of the CAT NMS Plan (specifying that the ''initial maximum Error Rate shall be set to 5%'').

[92] Although full linkage of representative orders is not required by this milestone, the technical specifications provided to Industry Members indicate that, by April 2020, linkage ''between the representative street side order and the order being represented when the representative order was originated specifically to represent a single order . . . and there is: (1) an existing direct electronic link in the firm's system between the order being represented and the representative order, and (2) any resulting executions are immediately and automatically applied to the represented order in the firm's system[.]'' *See* CAT Reporting Technical Specifications for Industry Members, Version 2.2 (June 24, 2019), *available at https://www.catnmsplan.com/wp-content/uploads/2019/06/Industry-Member-Tech-Specs-v2.2-Clean.pdf.*

[93] *See, e.g., id.* at 6, 154 (setting forth specifications for a firm-designated ID and representative order flag, which are examples of two fields not available through OATS).

[94] The Commission preliminarily believes that it is appropriate to exclude Small Industry Members that do not report to OATS from this Financial Accountability Milestone, in order to mirror the timelines projected by the Participants. *See, e.g.,* Industry Update on CAT Reporting Technical Specifications for Industry Members (April 3, 2019), *available at https://www.catnmsplan.com/wp-content/uploads/2019/04/CAT_Industry_Call_04032019_Presentation.pdf;* see also CAT Reporting Timelines, available at *https://www.catnmsplan.com/timelines/.*

[95] *See, e.g.,* CAT NMS Plan, *supra* note 4, at Section 6.10(c)(i)(A)–(B); *see id.* at Appendix D, Sections 8.1.1–8.1.3, and Section 8.2.1. Section 6.10(c)(i)(A) of the CAT NMS Plan requires the Plan Processor to ''provide Participants and the SEC with access to all CAT Data stored in the Central Repository'' via an ''online targeted query tool.'' Appendix D, Section 8.1.1–8.1.3 of the CAT NMS

Continued

should enable regulators to access and use the provided data to perform essential analyses of the equities markets, including equity market reconstruction, and to pursue data-driven policy-making. By requiring the Participants to develop these tools and make them available to the Commission and other regulators at this stage, the second prong of this Financial Accountability Milestone is designed to ensure that the CAT is built in a manner that will allow regulators to access CAT Data in order to realize the regulatory benefits associated with the CAT.

The Commission preliminarily believes that it is appropriate to require the Participants to achieve Full Implementation of Core Equity Reporting Requirements by December 31, 2020 in order to receive the full amount of any related Post-Amendment Industry Member Fees. This deadline is consistent with the Participants' most recent projections—for example, the most recent timelines published by the Participants indicate that the Participants intend to substantially complete implementation of equities reporting for Industry Member (excluding Small Industry Members that do not report to OATS) by October 2020,[96] and the Commission understands that the relevant query tool functionality should go live into production on a timeline that is generally consistent with the proposed deadline of December 31, 2020. Accordingly, the Commission preliminarily believes the target deadline of December 31, 2020 for Full Implementation of Core Equity Reporting Requirements is both reasonable and feasible.

c. Full Availability and Regulatory Utilization of Transactional Database Functionality

The Commission proposes to amend Section 1.1 of the CAT NMS Plan to define ''Full Availability and Regulatory Utilization of Transactional Database Functionality'' as the point at which: (a) reporting to the Order Audit Trail System (''OATS'') is no longer required for new orders; (b) Industry Member reporting for equities transactions, simple electronic options transactions, manual options transactions, and complex options transactions, including Allocation Reports,[97] but excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and fully implemented; (c) representative order linkages, as well as intra-firm linkages, inter-firm linkages, national securities exchange linkages, and trade reporting facilities linkages, are developed, tested, and fully implemented in a manner that permits the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any related allocation information provided in an Allocation Report;[98] (d) CAT Error Rates satisfy the threshold specified by Section 6.5(d)(i); (e) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b) and (c) and is available to the Participants and to the Commission; and (f) the requirements of Section 6.10(a) are met. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report published meeting the requirements of Section 6.6(c).[99]

The Commission also proposes Section 11.6(a)(i)(C) to provide that the Participants will be entitled to collect the full amount of any Post-Amendment Industry Member Fees established or implemented to recover Post-Amendment Expenses incurred from the date immediately following the achievement of Full Implementation of Core Equity Reporting Requirements to the date of Full Availability and Regulatory Utilization of Transactional Database Functionality (''Period 3''), so long as such date is no later than December 31, 2021.[100]

The Commission preliminarily believes that Full Availability and Regulatory Utilization of Transactional Database Functionality is an appropriate Financial Accountability Milestone, because this milestone will require the Participants to demonstrate substantial completion of CAT implementation. Whereas the previous Financial Accountability Milestone focused only on the implementation of basic equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters), this Financial Accountability Milestone requires the Participants to have fully implemented the first phase of reporting for equities, simple options, manual options, and complex options. This Financial Accountability Milestone also requires the Participants to implement representative order linkages, in addition to intra-firm linkages, inter-firm linkages, national securities exchange linkages, and trade reporting linkages, including any related allocation information included in an Allocation Report. Therefore, at this stage, the CAT should contain sufficient equities and options transactional data and order linkages to enable regulators to analyze the full lifecycle of an order, from order origination through order execution or order cancellation, including any related allocation information provided in an Allocation Report, as well as conduct other sophisticated analyses of the markets. For instance, the CAT should give regulators access to an options audit trail system that, for the first time, makes possible options market reconstruction and cross-market analyses across full order lifecycles.[101]

Full Availability and Regulatory Utilization of Transactional Database Functionality further requires that core elements of the CAT are reasonably accurate, reliable, and accessible to regulators. For instance, this Financial Accountability Milestone requires that CAT Error Rates satisfy the 5% initial maximum Error Rate set forth in Section

Plan describes the required functionality associated with this regulatory tool. Appendix D, Section 8.2.1 describes the required functionality associated with a user-defined direct query tool that will ''deliver large sets of data that can then be used in internal surveillance or market analysis applications.'' *See id.* at Sections 8.2. This tool is also described at Section 6.10(c)(i)(B) of the CAT NMS Plan.

[96] *See, e.g.,* Industry Update on CAT Reporting Technical Specifications for Industry Members (April 3, 2019), *available at https://www.catnmsplan.com/wp-content/uploads/2019/04/CAT_Industry_Call_04032019_Presentation.pdf;* see also CAT Reporting Timelines, available at *https://www.catnmsplan.com/timelines/.*

[97] ''Allocation Report'' is defined term in Section 1.1 of the CAT NMS Plan and carries the same meaning in the context of this proposing release.

[98] The allocation information provided in an Allocation Report will be linked to person(s) having the authority to trade on behalf of the account using Firm Designated ID—a unique identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member for each business date. *See* CAT NMS Plan, *supra* note 4, at Section 1.1. Allocations are not required to be directly linked to orders or executions. *See id.*

[99] *See also* note 79 *supra.*

[100] *See* proposed Section 11.6(a)(i)(C). To the extent that Full Availability and Regulatory Utilization of Transactional Database Functionality is achieved at some later date, the Participants will only be entitled to collect a portion of the amount of the Post-Amendment Industry Member Fees established or implemented for Period 3. *See* proposed Section 11.6(a)(iii); *see also* Part II.B.2. *infra* for additional discussion regarding the conditions attached to Post-Amendment Industry Member Fee collection.

[101] Although the Consolidated Options Audit Trail System (''COATS'') provides an audit trail for options, CAT will contain broker-dealer data and order data not currently available through COATS, enabling regulators to perform more sophisticated analyses on options data. Moreover, CAT will contain equities data as well as options data, which will enable regulators to conduct cross-market analyses and surveillances.

6.5(d)(i) of the CAT NMS Plan.[102] The Commission preliminarily believes this is appropriate because the Participants have, in the past, expressed the belief that an initial Error Rate of 5% ''strikes the balance of making allowances for adapting to a new reporting regime while ensuring that the data provided to regulators will be capable of being used to conduct surveillance and market reconstruction.'' [103] This Financial Accountability Milestone also requires that certain regulatory tools incorporate Industry Member data, are available to regulators, and have been implemented pursuant to the provisions of the CAT NMS Plan, including not only the online targeted query tool and the user-defined direct query tool discussed above,[104] but also surveillance systems reasonably designed to make use of CAT data.[105] Moreover, achievement of Full Availability and Regulatory Utilization of Transactional Database Functionality requires the Participants to demonstrate, through retirement of the existing OATS system,[106] that the CAT is sufficiently accurate, reliable, and accessible to regulators to be adopted as the audit trail system for equities transactions. The Commission believes that all of these requirements should ensure that regulators are able to use and rely on the CAT at this stage to conduct the kind of improved market surveillance that the Commission envisioned when it adopted Rule 613.[107]

The Commission preliminarily believes that it is appropriate to require the Participants to achieve Full Availability and Regulatory Utilization of Transactional Database Functionality by December 31, 2021 in order to recover the full amount of any related Post-Amendment Industry Member Fees. This deadline is consistent with the Participants' most recent projections for completion of Industry Member reporting, representative order linkages, and the development of regulatory query tools for options and equities. The most recent timelines issued by the Participants suggest that Industry Member reporting and representative order linkages will be implemented by December 2021,[108] and the Commission further understands that the online targeted query tool and user-directed direct query tool for both options and equities should go live into production on a timeline that is generally consistent with the proposed deadline of December 31, 2021. Therefore, the Commission's proposed deadline of December 31, 2021 is consistent with the Participants' timeline for these items.

Moreover, so long as the Participants diligently work towards building the CAT according to the requirements of the CAT NMS Plan, the Commission preliminarily believes that the Participants should reasonably be able to demonstrate, by December 31, 2021, both that the CAT is fully and effectively functional for equities data such that the CAT is capable of replacing OATS such that reporting to OATS will no longer be required for new orders. The Participants' timelines indicate that, by December 31, 2021, Industry Members and Small Industry Members that report to OATS will have been reporting equities transaction data to CAT for approximately 20 months,[109] which should give the Participants and other CAT Reporters a reasonable opportunity to address or correct any material data quality issues. The Commission further notes that the conditions of Full Availability and Regulatory Utilization of Transactional Database Functionality are designed to ensure that regulators are able to perform at least their normal range of regulatory tasks using CAT Data instead of OATS data. The Commission therefore preliminarily believes that it is reasonable and feasible to establish December 31, 2021 as the deadline for this Financial Accountability Milestone.[110]

With respect to the additional requirements designed to ensure that the CAT Data provided by Industry Members will be reasonably accurate, reliable, and accessible to regulators, the Commission also preliminarily believes that the Participants should be able to meet these requirements by December 31, 2021. For example, proposed Section 11.6(a)(i)(C) and proposed Section 1.1 would provide the Participants with approximately two years from the date of this amendment's adoption to develop, test, and implement the surveillance systems required by Section 6.10(a) of the CAT NMS Plan,[111] whereas the CAT NMS Plan indicates that a shorter span of fourteen months would be a sufficient period of time to accomplish that task.[112] The Commission therefore preliminarily believes the target deadline of December 31, 2021 for Full Availability and Regulatory Utilization of Transactional Database Functionality is both reasonable and feasible.

d. Full Implementation of CAT NMS Plan Requirements

The Commission proposes to amend Section 1.1 of the CAT NMS Plan to define ''Full Implementation of CAT NMS Plan Requirements'' as the point at which the Participants have satisfied all of their obligations to build and implement the CAT, such that all CAT system functionality required by Rule 613 and the CAT NMS Plan has been developed, successfully tested, and fully implemented at the initial Error Rates specified by Section 6.5(d)(i) of the CAT NMS Plan or less, including functionality that efficiently permits the Participants and the Commission to access all CAT Data required to be stored in the Central Repository pursuant to Section 6.5(a) of the CAT NMS Plan, including Customer Account

[102] *See* proposed Section 1.1, ''Full Availability and Regulatory Utilization of Transactional Database Functionality,'' at (b). *See also* CAT NMS Plan, *supra* note 4, at Section 6.5(d)(i).

[103] *See* CAT NMS Plan Approval Order, *supra* note 4, at 84717.

[104] *See* Section II.B.1.b. *supra.*

[105] Full Availability and Regulatory Utilization of Transactional Database Functionality requires that the requirements of Appendix D, Section 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 of the CAT NMS Plan, which describe the performance requirements and service level agreements for necessary regulatory tools, have been met for any data contained in the CAT. The ''surveillance systems'' required by Section 6.10(a) and the query tool functionality required by Section 6.10(c)(i)(A) of the CAT NMS Plan must also be implemented. *See* proposed Section 1.1, ''Full Availability and Regulatory Utilization of Transaction Database Functionality,'' at (e)–(f).

[106] To achieve this Financial Accountability Milestone, OATS reporting must no longer be required for new orders. This prong can only be accomplished by retiring OATS. Although FINRA is the only Participant in direct control of OATS retirement, the Commission still believes it is appropriate to apply this milestone to all Participants. All of the Participants are jointly responsible for creating a CAT that is capable of replacing OATS. All Participants are regulators that will benefit from the full implementation of the CAT. *See, e.g.,* CAT NMS Plan, *supra* note 4, at Appendix C, Section C.9. (discussing retirement of OATS).

[107] *See* Rule 613 Adopting Release, *supra* note 2, at 45788.

[108] *See, e.g.,* note 96 *supra.*

[109] *See supra* note 96 and associated text. The Participants do not currently intend to implement transaction reporting for Small Industry Members that do not report to OATS until December 2021. However, because these Industry Members do not report to OATS, the Commission preliminarily believes that this should not impact the ability of the Participants to retire OATS by the target deadline of December 31, 2021.

[110] The Commission also believes that tying full recovery of CAT-related expenses to this Financial Accountability Milestone will increase the likelihood that OATS will be retired by the proposed date, thereby reducing uncertainty amongst Industry Members and, potentially, compressing the period of duplicative reporting to which Industry Members might otherwise be subjected.

[111] Section 6.10(a) of the CAT NMS Plan requires the Participants to use the tools described in Appendix D to ''develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository.'' *See* note 4 *supra.*

[112] *See* CAT NMS Plan, *supra* note 4, at Section 6.7(a)(iv); *see also id.* at Section 6.10(a).

Information, Customer-ID, Customer Identifying Information, and Allocation Reports, and to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any related allocation information provided in an Allocation Report.[113] This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).[114] The Commission also proposes to add Section 11.6(a)(i)(D) to provide that the Participants will be entitled to collect the full amount of any Post-Amendment Industry Member Fees established or implemented to recover Post-Amendment Expenses incurred from the date immediately following the achievement of Full Availability and Regulatory Utilization of Transactional Database Functionality to the date of Full Implementation of CAT NMS Plan Requirements (''Period 4''), so long as such date is no later than December 30, 2022.[115]

The Commission preliminarily believes that Full Implementation of CAT NMS Plan Requirements is appropriate as the final Financial Accountability Milestone.[116] This Financial Accountability Milestone will require the Participants to show that they have satisfied all of their obligations to build and implement the CAT system functionality required by Rule 613, including functionality that would allow the Participants and the Commission to efficiently access all transactional data and, for the first time, customer information stored in the Central Repository. Whereas the previous Financial Accountability Milestones do not require the Participants to provide customer information like Customer Account Information, Customer-ID, and Customer Identifying Information, the Participants must have developed, tested, and implemented reporting functionality for these elements to satisfy the parameters of Full Implementation of CAT NMS Plan Requirements.

The creation of a unique Customer-ID under the CAT NMS Plan, is critical to achieving the full regulatory benefit of the CAT.[117] In the Commission's experience, it is now common for individuals and entities to trade through multiple broker-dealer accounts and for individuals engaged in wrongdoing to execute trades through multiple broker-dealers. A Customer-ID will be the key that ties all of the trading by one Customer together and as such, will facilitate the ability of regulators to identify all the orders and actions attributable to a specific Customer regardless of where that Customer routes orders or executes trades—a linkage which does not exist now.

Moreover, currently available audit trail data does not directly identify the customer associated with trading activity, so regulators conducting market surveillance must undertake multiple steps to request additional information after identifying suspect trades in order to link those trades with specific individuals. The inclusion of Customer-IDs in the CAT, at Full Implementation of CAT NMS Plan Requirements, would therefore significantly improve the capabilities of regulators because the CAT will be able to connect suspicious trading activity directly to a particular Customer through the Customer-ID. In addition, the Customer-ID will also enable a regulator to surveil the trading activity of market participants in both equity and options markets by Customer-ID, and thus a Customer-ID will improve regulators' efficiency in conducting cross-market and cross-product surveillance, which could in turn reduce violative behavior and protect investors from harm.

Accordingly, the Commission believes that it is important to require the Participants to demonstrate that the Participants have developed, tested, and fully implemented functionality that efficiently permits the Commission and other regulators to access Customer-IDs, along with other Customer and Account information.

In addition to providing this integral customer information, achievement of Full Implementation of CAT NMS Requirements would also mean that the Participants have created an audit trail system that provides reasonably accurate, reliable and useful information. Full Implementation of CAT NMS Requirements mandates that the CAT produce data at the initial Error Rate specified by the CAT NMS Plan,[118] as well as functionality that would efficiently permit the Participants and the Commission to analyze the full lifecycle of an order, including any subsequent allocation, across the national market system. These requirements are designed to help facilitate the implementation of the CAT functions in a manner that enables the Commission and other regulators to conduct the improved market surveillance envisioned by the Commission when it adopted Rule 613—the ultimate goal of this project.

Furthermore, the Commission preliminarily believes that it is appropriate to require the Participants to achieve Full Implementation of CAT NMS Plan Requirements by December 30, 2022 in order to recover the full amount of any Post-Amendment Industry Member Fees. This deadline is consistent with the Participants' most recent projections, which indicate that the Participants intend to achieve full CAT implementation by July 2022.[119] In fact, the Commission's target deadline of December 30, 2022 gives the Participants an additional five months to achieve Full Implementation of CAT NMS Plan Requirements. Accordingly, the Commission preliminarily believes that the proposed target deadline of December 30, 2022 for Full Implementation of CAT NMS Plan Requirements is both reasonable and feasible.

2. Collection of Post Amendment Industry Member Fees

As noted above, the Commission is proposing that the Participants will be entitled to collect the full amount[120] of any Post-Amendment Industry Member Fees related to the achievement of the Financial Accountability Milestones described above so long as they meet specified dates, which dates are consistent with the timelines most recently published by the Participants.[121] If the Participants do

[113] *See* notes 97–98 *supra.*

[114] *See also* note 79 *supra.*

[115] *See* proposed Section 11.6(a)(i)(D). To the extent that Full CAT NMS Plan Requirements is achieved at some later date, the Participants will only be entitled to collect a portion of the amount of the Post-Amendment Industry Member Fees established or implemented for Period 4. *See* proposed Section 11.6(a)(iii); *see also* Part II.B.2. *infra* for additional discussion regarding the conditions attached to Post-Amendment Industry Member Fee collection.

[116] Because the provisions of proposed Section 11.6 are meant to incentivize full CAT implementation, under the proposal, these provisions will not apply once Full Implementation of CAT NMS Plan Requirements is achieved.

[117] *See, e.g.,* Rule 613 Adopting Release, *supra* note 2, at 45756.

[118] *See* CAT NMS Plan, *supra* note 4, at Section 6.5(d)(i). *See also* note 103 *supra.*

[119] *See, e.g.,* note 96 *supra.*

[120] ''Full amount'' in this context does not mean that the Participants may collect all of their Post-Amendment Expenses from Industry Members. Rather, pursuant to the provisions of Article XI of the CAT NMS Plan, the Participants may recover an appropriate portion of these fees from Industry Members. Specifically, to recover any Post-Amendment Expenses from Industry Members, the Participants must file with the Commission proposed rule changes under Section 19(b) of the Act, setting for their proposed allocation and justifying why the proposed allocation is consistent with the Act. The Commission would then review the proposed rule changes for consistency with the Exchange Act and the CAT NMS Plan.

[121] *See* proposed Section 11.6(a)(i).

not meet the specified date for the achievement of Initial Industry Member Core Equity Reporting, proposed Section 11.6(a)(ii) will provide that the Participants' recovery of Post-Amendment Industry Member Fees will be reduced according to the following schedule:

- By 25% if the Participants miss the deadline set forth in proposed Section 11.6(a)(i)(A) by less than 60 days;
- By 50% if the Participants miss the deadline set forth in proposed Section 11.6(a)(i)(A) by 60 days or more, but less than 120 days;
- By 75% if the Participants miss the deadline set forth in proposed Section 11.6(a)(i)(A) by 120 days or more, but less than 180 days;
- By 100% if the Participants miss the deadline set forth in proposed Section 11.6(a)(i)(A) by 180 days or more.

If the Participants do not meet the specified dates for the achievement of Full Implementation of Core Equity Reporting Requirements, Full Availability and Regulatory Utilization of Transactional Database Functionality, or Full Implementation of CAT NMS Plan Requirements, proposed Section 11.6(a)(iii) will provide that the Participants' recovery of Post-Amendment Industry Member Fees will be reduced according to the following schedule:

- By 25% if the Participants miss the deadline set forth in proposed Section 11.6(a)(i) by less than 90 days;
- By 50% if the Participants miss the deadline set forth in proposed Section 11.6(a)(i) by 90 days or more, but less than 180 days;
- By 75% if the Participants miss the deadline set forth in proposed Section 11.6(a)(i) by 180 days or more, but less than 270 days; and
- By 100% if the Participants miss the deadline set forth in proposed Section 11.6(a)(i) by 270 days or more.

Proposed Section 11.6(a)(iv) provides that the Participants will only be entitled to collect Post-Amendment Industry Member Fees for Period 1, Period 2, Period 3, or Period 4 at the end of each respective Period.

The Commission preliminarily believes these conditions on CAT funding are appropriate. It has been almost three years since the Commission approved the CAT NMS Plan, but insufficient progress has been made towards the implementation of CAT, and the Participants have repeatedly missed deadlines set forth by the CAT NMS Plan. The Commission preliminarily believes that the proposed rules will provide accountability to facilitate implementation of the CAT in an expeditious and efficient manner, and according to a schedule that is consistent with the most recent timelines published by the Participants.[122]

As explained above, the Commission has identified four meaningful Financial Accountability Milestones and paired those Financial Accountability Milestones with reasonable and feasible target deadlines set approximately eight months to one year apart. The Participants will be able to recover the full amount of any Post-Amendment Industry Member Fees if the Participants achieve the Financial Accountability Milestones identified in the proposed rule amendment by the specified dates. However, the Commission preliminarily believes that it is appropriate to impose financial accountability on the Participants by incrementally reducing the amount of CAT funding that Participants may recover from Industry Members, according to the schedules set forth above.

Fee recovery for most of the Financial Accountability Milestones—Full Implementation of Core Equity Reporting Requirements, Full Availability and Regulatory Utilization of Transactional Database Functionality, and Full Implementation of CAT NMS Plan Requirements—will be governed by a fee schedule that gradually reduces the amount of recovery that the Participants are entitled to by 25% for each quarter by which the Participants miss the target deadline. The Commission preliminarily believes this structure will appropriately balance the need to keep Participants on a firm implementation schedule with the need to incentivize the Participants to continue their progress towards implementation even if the target deadlines identified in the proposed amendment are missed. As discussed above,[123] the Commission believes that the target deadlines identified for these three milestones are reasonable and feasible, because these deadlines are consistent with recent timelines provided by the Participants. The Commission therefore does not believe that it is necessary to allow for a grace period before reducing the Participants' recovery. However, by providing a full quarter before each subsequent, and additional, reduction to fee recovery, the proposed schedule gives the Participants an ample amount of time to achieve each milestone before further reductions are imposed. Moreover, the Commission believes that the proposed amount of the reduction—25% per quarter—is appropriate, because it is sufficiently large to incentivize prompt implementation, but not so large as to be unnecessarily punitive.

A slightly different schedule is proposed for Initial Industry Member Core Equity Reporting. For that milestone, the proposal would reduce the initial recovery by 25% if the Participants miss the proposed deadline by less than 60 days and by an additional 25% for every additional 60 days by which the Participants miss the proposed deadline. While the Commission is imposing the same 25% fee reduction in this instance, the proposed fee recovery schedule for Initial Industry Member Core Equity Reporting is tighter than the schedule for the other three Financial Accountability Milestones. The Commission preliminarily believes that this is an appropriate schedule because this Financial Accountability Milestone should be the easiest for the Participants to achieve. Industry Members have developed relevant experience in reporting equities transaction data to OATS, and the Participants have made significant progress towards development of the necessary technical specifications, suggesting that the Participants remain on track with their own projections. In addition, the Commission believes it is critically important that the Participants remain on schedule to achieve the first Financial Accountability Milestone, in order to minimize the possibility that the deadlines for subsequent Financial Accountability Milestones will be missed.[124] For those reasons, the Commission believes the fee recovery schedule for Initial Industry Member Core Equity Reporting is appropriate.

The Commission preliminarily believes that the incremental approach followed by both fee recovery schedules, which provide the Participants with a considerable amount of recovery unless the Participants miss the target deadline by a considerable amount of time, will also promote implementation of the CAT in accordance with the deadlines outlined by this proposed amendment. The sooner the Participants achieve each Financial Accountability Milestone, the sooner the Participants will be able to begin recovering any related Post-Amendment Industry Member Fees.[125]

[122] *See* Part II.B.1. for more discussion of the deadlines established by the proposed amendments.

[123] *See* Part II.B.1.b.–d. *supra.*

[124] *See, e.g.,* Part IV.E.1.

[125] *See, e.g.,* proposed Section 11.6(a)(iv) (providing that the Participants may only collect

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Moreover, so long as the Participants complete each particular Financial Accountability Milestone substantially before the target deadline for the next Financial Accountability Milestone arrives, the Participants should be able to recover a portion of their fees, costs, and expenses from Industry Members, subject to the Exchange Act and the provisions of the CAT NMS Plan. Although failing to meet one target deadline might make it more difficult to comply with the next target deadline, the proposed amendment does not preclude the possibility that the Participants may be entitled to some measure of recovery going forward.[126] The Commission preliminarily believes that the Participants will continue to make progress towards full CAT implementation even if one target deadline is missed because they still will have the opportunity to recover fees, costs, and expenses from Industry Members, albeit a smaller portion of those fees, costs, and expenses.[127]

As noted above, the Commission must review fee filings submitted by the Participants pursuant to Section 19(b) of the Exchange Act to implement fees to recover the costs and expenses incurred by the Participants in connection with the development, implementation, and operation of the CAT.[128] These filings must specify the percentage of the costs and expenses that will be allocated to the Participants on the one hand and the Industry Members on the other hand, as well as explain how costs and expenses will be allocated within each group. Each Participant must also demonstrate, under Sections 6(b)(4) and 15A(b)(5), that such fee filings provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.[129] In light of the continued delays to CAT implementation, the Commission preliminarily believes that it is appropriate, at this time, to set forth the circumstances under which the full recovery of fees, costs, and expenses from Industry Members would not be reasonable under Sections 6(b)(4) or 15A(b)(5) of the Exchange Act or reasonably related to the Participants' self-regulatory obligations under the CAT NMS Plan.[130] The Commission preliminarily believes that it would not be a reasonable exercise of the Participants' funding authority under the CAT NMS Plan to fully recover fees, costs, and expenses from Industry Members if the Participants miss the target deadlines specified in the proposed amendment, because any delays by the Participants could increase uncertainty for and, potentially, impose additional costs on Industry Members.[131] In addition, the proposed amendments will increase transparency for Industry Members by setting forth the circumstances under which the full recovery of fees, costs, and expenses from Industry Members would not be reasonable.

3. Identification of Post-Amendment Expenses in Submissions to the Commission

Under proposed Section 11.6(b), all CAT NMS Plan amendments submitted by the Operating Committee to the Commission pursuant to Rule 608(b)(3)(i),[132] and all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act,[133] to establish or implement Post-Amendment Industry Member Fees pursuant to Article XI of the CAT NMS Plan, must clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4. Requiring the Participants to specify whether any proposed fees are related to Post-Amendment Expenses, and the Period to which they are related, will help the Commission to determine whether it must consider the provisions of proposed Section 11.6 in evaluating the proposed fees.

The Commission requests comment on these proposed financial accountability provisions. To the extent possible, please provide specific data, analyses, or studies for support. The Commission particularly solicits comment on the following issues:

13. Is it appropriate for the Commission to apply the financial accountability provisions of proposed Section 11.6 to Post-Amendment Expenses? Why or why not? Should the financial accountability provisions of proposed Section 11.6 be applied to fees, costs, or expenses incurred by the Company in connection with the development, implementation, and operation of the CAT, or to some other set of fees, costs, or expenses? Why or why not? Would it be appropriate to limit Section 11.6 to apply only to fees, costs, or expenses incurred by the Company in connection with the development or implementation of the CAT? Why or why not? Should the Commission further define what it means to ''incur'' an expense? If so, how? Can the current definition of ''incurred'' in the proposing release be used to avoid the application of proposed Section 11.6? If so, please explain and describe how the Commission should address this.

14. Is it appropriate for the Commission to tie CAT funding to the achievement of Financial Accountability Milestones? Why or why not? Please explain your response.

15. With respect to Period 1:

a. Is the proposed Financial Accountability Milestone of Initial Industry Member Core Equity Reporting appropriate? Why or why not? What other milestone should be used to end Period 1? Why?

b. Is the definition of Initial Industry Member Core Equity Reporting appropriate? Why or why not? Please explain your response.

i. Should the definition of Initial Industry Member Core Equity Reporting be amended to include additional types of reporting or data? Should it be amended to remove some of the reporting or data requirements currently identified? Why or why not? Please explain your response.

ii. If the definition is amended, should the target deadline for Period 1 be amended? Why or why not? Please explain your response.

c. Is the target deadline of April 30, 2020 appropriate? Why or why not? What alternative deadline would be more appropriate? Why? Please explain your response.

16. With respect to Period 2:

a. Is the proposed Financial Accountability Milestone of Full Implementation of Core Equity Reporting Requirements appropriate?

relevant Post-Amendment Industry Member Fees at the end of Period 1, 2, 3 and/or 4).

[126] For example, suppose the Participants missed the deadline for Initial Industry Member Core Equity Reporting by 180 days or more and were therefore not entitled to any recovery for Period 1. In this scenario, the Participants might still be able to meet the deadline for the next Financial Accountability Milestone, Full Implementation of Core Equity Reporting Requirements, or achieve that Financial Accountability Milestone within 270 days of the proposed deadline, thus entitling them to partial recovery under the proposed amendment. As another example, suppose the Participants did not achieve Full Implementation of Core Equity Reporting Requirements until January 1, 2021, but were able to meet the target deadline for the next Financial Accountability Milestone—Full Availability and Regulatory Utilization of Transactional Database Functionality. Because the Participants did not achieve Full Implementation of Core Equity Reporting Requirements on schedule, but were less than 90 days late, the Participants would be entitled to collect 75% of the Post-Amendment Industry Member Fees established for Period 2 upon achievement of Full Implementation of Core Equity Reporting Requirements and the full amount of Post-Amendment Industry Member Fees for Period 3 upon achievement of Full Availability and Regulatory Utilization of Transactional Database Functionality.

[127] *See, e.g.,* note 191 *infra.*

[128] *See* notes 66–68 *supra.*

[129] *See* note 68 *supra.*

[130] *See* notes 72–73 and associated text *supra.*

[131] *See, e.g.,* Section IV.B. *infra.*

[132] 17 CFR 242.608(b)(3)(i).

[133] 15 U.S.C. 78s(b).

Why or why not? What other milestone should be used to end Period 2? Why? Please explain your response.

b. Is the definition of Full Implementation of Core Equity Reporting Requirements appropriate? Why or why not? Please explain your response.

i. Should the definition of Full Implementation of Core Equity Reporting Requirements be amended to include other kinds of Industry Member reporting or linkages? If so, which additional kinds of Industry Member reporting or linkages should be included and why? Please explain your response.

ii. Should the definition of Full Implementation of Core Equity Reporting Requirements be amended to reduce or strike the reporting linkages requirement? If reduced, how should the requirements be reduced? Why? Please explain your response.

iii. Should the definition of Full Implementation of Core Equity Reporting Requirements be amended to require a less stringent Error Rate? If so, what should the Error Rate be and why? Please explain your response.

iv. Should the definition of Full Implementation of Core Equity Reporting Requirements amend the requirement that the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates Industry Member equities data or the requirement that the query tool functionality is available to the Participants and the Commission? How should the requirement be amended? Why? Please explain your response.

v. If the definition is amended, should the target deadline for Period 2 be amended? Why or why not? Please explain your response.

c. Is the start date for Period 2 appropriate? Why or why not? Please explain your response.

d. Is the target deadline of December 31, 2020 appropriate? Why or why not? What alternative deadline would be more appropriate? Why? Please explain your response.

17. With respect to Period 3:

a. Is the proposed Financial Accountability Milestone of Full Availability and Regulatory Utilization of Transactional Database Functionality appropriate? Why or why not? What other milestone should be used to end Period 3? Why? Please explain your response.

b. Is the definition of Full Availability and Regulatory Utilization of Transactional Database Functionality appropriate? Why or why not? Please explain your response.

i. Should the definition of Full Availability and Regulatory Utilization of Transactional Database Functionality be amended to require that the Commission must have approved a filing from FINRA to retire OATS, as well as any filings from the Participants to remove OATS-related provisions from their rules, or to remove the requirement that OATS reporting is no longer required for new orders? Why or why not? Please explain your response.

ii. Should the definition of Full Implementation of Core Equity Reporting Requirements be amended to include other kinds of Industry Member reporting or linkages? If so, which additional kinds of Industry Member reporting or linkages should be included and why? Please explain your response.

iii. Should the definition of Full Availability and Regulatory Utilization of Transactional Database Functionality be amended to require a less stringent Error Rate? If so, what should the Error Rate be and why? Please explain your response. Should the Commission require the Participants to demonstrate that Error Rates are stable? If so, how would Participants do that? If the Participants are in compliance with Appendix C, Section 3 of the CAT NMS Plan, would that sufficient? How long should the Error Rate remain below the specified threshold in order to be considered ''stable''?

iv. Should the Commission amend the requirement that the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data required by conditions (b) and (c) or the requirement that the query tool functionality is available to the Participants and the Commission? How should the requirement be amended? Why? Please explain your response.

v. Should the Commission amend the requirement that the requirements of Section 6.10(a) are met? How should the requirement be amended? Why? Please explain your response.

vi. If the definition is amended, should the target deadline for Period 3 be amended? Why or why not? Please explain your response.

c. Is the start date for Period 3 appropriate? Why or why not? Please explain your response.

d. Is the target deadline of December 31, 2020 appropriate? Why or why not? What alternative deadline would be more appropriate? Why? Please explain your response.

e. Are there any conditions that the Commission should consider in evaluating whether OATS can be retired? Please explain your response.

18. With respect to Period 4:

a. Is the proposed Financial Accountability Milestone of Full Implementation of CAT NMS Plan Requirements appropriate? Why or why not? What other milestone should be used to end Period 4? Why? Please explain your response.

b. Is the definition of Full Implementation of CAT NMS Plan Requirements appropriate? Why or why not? Please explain your response.

i. Is additional detail needed to describe the obligations of the Participants under Rule 613 and the CAT NMS Plan? If so, why, and what language would sufficiently describe these obligations? Please explain your response.

ii. If the definition is amended, should the target deadline for Period 4 be amended? Why or why not? Please explain your response.

c. Is the start date for Period 4 appropriate? Why or why not? Please explain your response.

d. Is the target deadline of December 30, 2022 appropriate? Why or why not? What alternative deadline would be more appropriate? Why? Please explain your response.

19. Are the selected Financial Accountability Milestones appropriate? If not, what other Financial Accountability Milestones should be included?

20. Is it appropriate for the Commission to permit the Participants to submit updated, interim or addendum Quarterly Progress Reports for completed Financial Accountability Milestones? Why or why not? What information should be required in these interim or addendum Quarterly Progress Reports so that the Commission can rely on such reports? Should the Participants only be able to submit interim or addendum Quarterly Progress Reports in connection with certain Financial Accountability Milestones? If so, which ones? Please explain your response.

21. Is it appropriate to end the application of proposed Section 11.6 once Full Implementation of CAT NMS Requirements has been achieved? Why or why not? Please explain your response.

22. Should the Commission establish more than 4 Periods and/or use more than 4 Financial Accountability Milestones? If so, how many Periods should the Commission establish? What should the other Financial Accountability Milestones be? Why? Please explain your response.

23. Should the Commission establish fewer than 4 Periods and/or use fewer Financial Accountability Milestones? If so, how many Periods should the

Commission establish? What milestones should be removed, or how should the existing milestones be edited? Please explain your response.

24. Is it appropriate for the Commission to incrementally reduce the amount of Post-Amendment Industry Member Fees that the Participants may recover if they miss the target deadlines specified in Period 1, Period 2, Period 3, or Period 4? Why or why not? Would a different percentage of recovery be more appropriate if target deadlines are missed? If so, what percentage and on what schedule? Why? Is it appropriate for the Commission to use different recovery schedules for Period 1 and for Periods 2–4? Why or why not? Should a different recovery schedule be used for Period 1? If so, how should the recovery schedule be amended? Why? Please explain your response.

25. Is it appropriate that the Participants may only collect Post-Amendment Industry Member Fees at the end of Period 1, Period 2, Period 3, or Period 4? Why or why not? If not, at what other point(s) should the Participants be able to collect these fees, and how would the Commission determine whether and how the provisions of Section 11.6 apply? Please explain your response.

26. Do commenters believe that the proposed incentives will motivate the Participants to implement the CAT in an expeditious and efficient manner? Why or why not? Would an alternative methodology be more effective? If so, please describe this methodology and explain why it would be more effective.

27. Is it appropriate for the Commission to require the Operating Committee or the Participants to clearly label any CAT NMS Plan amendments or fee filings submitted to establish or implement Post-Amendment Industry Member Fees to indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4? Why or why not? If not, how would the Commission determine whether and how the provisions of Section 11.6 apply? Please explain your response.

28. Should the Commission require the Participants to provide an independent audit of the fees, costs, and expenses incurred from the effective date of this proposed amendment? Why or why not?

III. Paperwork Reduction Act

Certain provisions of the proposed rule contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[134] The Commission is submitting these collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.[135] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a currently valid control number.[136] The title of the new collection of information is ''CAT NMS Plan Reports.''

A. Summary of Collection of Information

The proposed amendment would require two new categories of information collection: (1) The Implementation Plan and (2) the Quarterly Progress Reports.[137] These categories are described more fully below.

1. Implementation Plan

Proposed Section 6.6(c)(i) would require the Participants, within 30 calendar days following the effective date of this amendment, to file with the Commission and make publicly available on a website a complete Implementation Plan that includes the Participants' timeline for achieving Implementation Milestones setting forth how and when the Participants will facilitate the achievement of Full Implementation of CAT NMS Plan Requirements. Under proposed Section 6.6(c)(iii), the Operating Committee shall be required to submit the Implementation Plan to the CEO, President, or an equivalently situated senior officer of each Participant. A Supermajority Vote of the Operating Committee shall then be required to approve the Implementation Report. However, if the Implementation Plan is approved only by a Supermajority Vote of the Operating Committee, and not by a unanimous vote of the Operating Committee, each Participant whose Operating Committee member did not vote to approve the Implementation Plan shall separately file with the Commission and make publicly available on a website a statement identifying itself and explaining why the member did not vote to approve the Implementation Plan.

2. Quarterly Progress Reports

Proposed Section 6.6(c)(ii) would further require the Participants, within 15 business days after the end of each calendar quarter, to file with the Commission and make publicly available on a website a complete Report that provides a detailed description of the progress made by the Participants towards each of the Implementation Milestones. The Participants must provide specified information regarding Implementation Milestones that have been completed, Implementation Milestones that are in progress, and Implementation Milestones that have not yet been initiated, such as updated information on currently targeted completion dates and descriptions of the current status of the Implementation Milestone, any adjustments to the targeted completion date, and supporting information demonstrating the current level of completion. Under proposed Section 6.6(c)(iii), the Operating Committee shall be required to submit each Quarterly Progress Report to the CEO, President, or an equivalently situated senior officer of each Participant. A Supermajority Vote of the Operating Committee shall be required to approve each Quarterly Progress Report. However, if a Quarterly Progress Report is approved only by a Supermajority Vote of the Operating Committee, and not by a unanimous vote of the Operating Committee, each Participant whose Operating Committee member did not vote to approve that Quarterly Progress Report shall separately file with the Commission and make publicly available on a website a statement identifying itself and explaining why the member did not vote to approve the Report.

B. Proposed Use of Information

1. Implementation Plan

The Commission believes that the publication of the proposed Implementation Plan will make available critical information to the Commission, other regulators, and market participants regarding the

[134] 44 U.S.C. 3501 *et seq.*

[135] 44 U.S.C. 3507; 5 CFR 1320.11.

[136] 5 CFR 1320.11(l).

[137] The proposed amendment also requires the Participants to include certain information in certain CAT NMS Plan amendments submitted by the Operating Committee to the Commission pursuant to Rule 608(b)(3) and all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act to establish or implement Post-Amendment Industry Member Fees. However, the Commission does not expect the baseline number of CAT NMS Plan amendments or Section 19(b) filings, or the burdens associated with these submissions, to increase as a result of the proposed amendment. The Commission therefore believes that these burdens are already accounted for in the Paperwork Reduction Act Information Collection submissions for Form 19b–4 and Rule 11Aa3–2. *See* OMB Control No. 3235–0045 (Aug. 19, 2016), 81 FR 57946 (Aug. 24, 2016) (Request to OMB for Extension of Rule 19b–4 and Form 19b–4 PRA); OMB Control No. 3235–0500 (December 22, 2004), 70 FR 929 (January 5, 2005) (Proposed Collection for Rule 11Aa3–2 and Request for Comment).

intended goals and deadlines of the Participants. Access to this information will help the Commission and market participants to monitor the progress of CAT implementation, thereby reducing uncertainty surrounding this process. The Commission also anticipates that requiring the Participants to make public target dates submitted to senior management of each Participant and approved by a Supermajority Vote of the Operating Committee in the Implementation Plan will increase the Participants' accountability to their intended timeline. In addition, the Commission believes that requiring any Participants whose Operating Committee members do not vote to approve the Implementation Plan to disclose the basis for that decision may aid the Commission and the public to better monitor the progress of CAT implementation, because such an explanation may reveal critical information regarding whether currently targeted completion dates are realistic, whether milestones are being or have been completed in accordance with the requirements of the CAT NMS Plan, and/or whether potential risks or delays may impede the progress of CAT implementation.

2. Quarterly Progress Reports

The Commission believes that the publication of the proposed Quarterly Progress Reports will make available critical information to the Commission, other regulators, and market participants regarding the intended goals and deadlines of the Participants. Access to this information will help the Commission and market participants to monitor the progress of CAT implementation. The Commission also anticipates that requiring the Participants to make public their accomplishments in the Quarterly Progress Reports will keep the Participants accountable to their intended timeline. Finally, the Commission expects that the provision of updated quarterly information in a Report, submitted to senior management of each Participant and approved by a Supermajority Vote of the Operating Committee, regarding the Participants' progress towards CAT implementation, as well as any explanatory statements by Participants whose Operating Committee members do not vote to approve the Report, may reduce uncertainty regarding CAT's implementation deadlines and flag any concerns regarding the implementation process for the Commission and market participants.

C. Respondents

The respondents to all collections of information would be the Participants.

D. Total Initial and Annual Reporting and Recordkeeping Burdens

The estimated burdens associated with the proposed amendments are described fully below, but the below table briefly summarizes the relevant burdens set forth in this Proposing Release.

Category	Annual ongoing burden per participant (burden hours/external costs)	One-time burden per participant (burden hours/external costs)
Implementation Plan	N/A	76.8/$8,695.65
Quarterly Progress Reports	307.2/$34,782.60	N/A

1. Implementation Plan

The Commission preliminarily believes that each Participant will incur, on average, a one-time burden of approximately 57.2 hours to confer with other Participants, to draft an Implementation Plan, and to vote as to whether to approve the Implementation Plan, as required by proposed Section 6.6(c)(iii). In the CAT NMS Plan Approval Order, the Commission noted that the Participants had estimated that approximately 20 full-time employees took approximately 30 months to develop the CAT NMS Plan, including ''staff time contributed by each Participant to, among other things, determine the technological requirements for the Central Repository, develop the RFP, evaluate Bids received, design and collect the data necessary to evaluate costs and other economic impacts, meet with Industry Members to solicit feedback, and complete the CAT NMS Plan submitted to the Commission for consideration.'' [138] The Commission then used this information to estimate that the development of the CAT NMS Plan would require, in aggregate, 14,407 burden hours for 12 months.[139]

This estimate, based on information provided by the Participants about the burdens they actually incurred in developing a related project, reflects the best data available to the Commission in estimating the number of initial burden hours required to develop the Implementation Plan. The Commission notes that developing the CAT NMS Plan was a far more complex project than the development of the Implementation Plan and that the burdens incurred in developing the CAT NMS Plan may be different in nature than the costs that the Participants would incur in developing the Implementation Plan. In this instance, for example, the Participants will only have 30 calendar days from the effective date of this amendment to prepare the Implementation Plan, and the Participants have already created a Master Plan that contains much of the information required by proposed Section 6.6(c)(i). In addition, the Commission believes that the Participants should already have gathered much of the information needed to create the Implementation Plan.[140] For these reasons, the Commission preliminarily believes that the estimated burden for preparing the Implementation Plan should be one-twelfth the amount of the burden estimated for the development of the CAT NMS Plan,[141] or, on average, 52.2 initial, one-time burden hours for each Participant.[142]

In addition, the Commission estimates that it will take each Participant approximately 10 hours, on average, for

[138] *See* CAT NMS Plan Approval Order, *supra* note 4, at n.3285.

[139] *See id.*

[140] *See, e.g.,* note 53 *supra.*

[141] Because the proposed amendment gives the Participants approximately one month to prepare and publish the Implementation Plan, the Commission has preliminarily used an estimate that mirrors the one-month burden that was incurred by the Participants in developing the CAT NMS Plan.

[142] 14,407 CAT NMS Plan burden hours / 12 months = 1,200.6 burden hours for all Participants. 1,200.6 aggregate burden hours / 23 Participants = 52.2 burden hours per Participant for the Implementation Plan. The Commission preliminarily estimates that each Participant will spend, on average, 52.2 internal burden hours = (Attorney at 7 hours) + (Systems Analyst at 22.6 hours) + (Compliance Manager at 22.6 hours). As discussed further in Section IV.C., all estimates in this section represent an average; the Commission expects that some Participants may incur greater costs and some lesser costs due to variances in economies of scale for Participants who share a common corporate parent. *See* note 217 *infra.*

its member of the Operating Committee to ensure that the Operating Committee submits the Implementation Plan to the CEO, President, or equivalently situated senior officer of each Participant, for each Participant to review the information contained in the Implementation Plan and for senior management consultations as needed, and to vote on approving the Implementation Plan.[143] The Commission expects each member of the Operating Committee to be familiar with the process of CAT implementation, which should ease the task of determining whether to vote in favor of the Implementation Plan. Accordingly, the Commission estimates that each Participant will incur, on average, a one-time burden of 62.2 hours to prepare the Implementation Plan and to vote as to whether to approve it,[144] for a one-time aggregate burden of approximately 1,430.6 hours.[145]

If the Implementation Plan is approved only by a Supermajority Vote, and not by a unanimous vote, the proposed amendments require each Participant whose Operating Committee member did not vote to approve the Implementation Plan to separately file with the Commission and make available on a public website an explanatory statement identifying itself and explaining why it did not vote to approve the Implementation Plan.[146] Because there are currently 23 Participants, an Implementation Plan would need to be approved by at least 16 members of the Operating Committee to satisfy the Supermajority Vote provisions of the CAT NMS Plan.[147] At maximum, then, only seven Participants would file an explanatory statement in connection with an Implementation Plan approved only by Supermajority Vote.[148] The Commission preliminarily estimates that each of the seven Participants submitting an explanatory statement will incur, on average, an initial, one-time burden of 15 hours to draft such statement.[149] When this aggregate burden is averaged across all Participants, it amounts to approximately 4.6 hours per Participant or 105 hours in aggregate.[150]

Finally, the Commission estimates that each Participant will incur, on average, a one-time burden of approximately 10 hours to ensure that the Implementation Plan, and any explanatory statement (if applicable), is filed with the Commission and made publicly available on a website.[151] The Commission therefore estimates an aggregate burden of approximately 230 hours for the Participants to publicly post and submit to the Commission the Implementation Plan.[152]

In total, therefore, the Commission estimates that each Participant will incur, on average, a one-time burden of approximately 76.8 hours [153] and approximately 1,766.4 hours in aggregate to comply with the provisions of the proposed amendments that relate to the Implementation Plan.[154]

The Commission further estimates that each Participant will expend approximately $8,695.65, on average, in external public relations, legal, and consulting costs related to the development of the Implementation Plan. In the CAT NMS Plan Approval Order, the Commission estimated, based on information provided by the Participants, that the Participants had collectively spent approximately $2,400,000 in preparation of the CAT NMS Plan on external public relations, legal, and consulting costs.[155] The Commission preliminarily believes that the estimated burden for the Implementation Plan should be one-twelfth the amount estimated for the development of the CAT NMS Plan, because the Participants will only have 30 calendar days from the effective date of this amendment to prepare the Implementation Plan and because preparation of the Implementation Plan is a much less complex project. Accordingly, the Commission estimates that the Participants will expend approximately $200,000 in aggregate, and $8,695.65 per Participant, in external public relations, legal, and consulting costs related to the preparation of the Implementation Plan.[156]

2. Quarterly Progress Reports

The Commission preliminarily believes that each Participant will incur, on average, an ongoing quarterly burden of approximately 62.2 hours to confer with other Participants, to draft a Quarterly Progress Report, to ensure that the Operating Committee submits each Quarterly Progress Report to the CEO, President, or equivalently situated senior officer of each Participant, and to vote as to whether to approve each Quarterly Progress Report, as required by proposed Section 6.6(c)(iii).[157] This estimate is approximately the same as the burden related to the development and approval of the Implementation Plan, because the Quarterly Progress Reports require the Participants to prepare a detailed description explaining, quantifying, and voting to approve the description of their progress towards the Implementation Milestones laid out in the Implementation Plan, including the impact that any such progress might have on the target completion dates for Implementation Milestones that have not yet been achieved. The Commission believes this estimate is appropriate because the Participants are likely already tracking some of the information required to be included in the Quarterly Progress Reports.[158] Accordingly, the Commission estimates, on average, an

[143] For the purposes of the Paperwork Reduction Act, the Commission is assuming that the member of the Operating Committee is a Chief Regulatory Officer or a Chief Compliance Officer and will spend 5 hours on these tasks. However, the Commission notes that this task could be performed by any person designated by the Participant to serve as its representative on the Operating Committee. *See* Section 4.2(a) of the CAT NMS Plan. In addition, the Commission estimates that senior management who receive the Implementation Plan from the Operating Committee will spend 5 hours in consultations, including with their member of the Operating Committee regarding the Implementation Plan. Because one individual may serve as the representative for multiple affiliated Participants, the Commission expects that some Participants may incur greater costs and some lesser costs due to variances in economies of scale for Participants who share a common corporate parent.

[144] 52.2 burden hours + 10 burden hours = 62.2 burden hours.

[145] 62.2 burden hours × 23 Participants = 1,430.6 burden hours.

[146] For the purposes of the Paperwork Reduction Act, the Commission is assuming that this task will be performed by a Chief Regulatory Officer or a Chief Compliance Officer. *See* note 143 *supra.*

[147] 23 Participants × ⅔ Participants = 15.33 Participants. Section 1.1 of the CAT NMS Plan indicates that, ''if two-thirds of all . . . members authorized to cast a vote is not a whole number then that number shall be rounded up to the nearest whole number.''

[148] 23 Participants − 16 Participants = 7 Participants.

[149] The Commission bases this estimate on a full-time Compliance Manager and the Chief Regulatory Officer or Chief Compliance Officer each spending 7.5 hours to prepare the explanatory statement.

[150] 7 Participants * 15 burden hours = 105 burden hours in aggregate. 105 burden hours / 23 Participants = 4.6 burden hours.

[151] The Commission bases this estimate on a full-time Compliance Manager and Programmer Analyst each spending approximately 5 hours, for a combined total of approximately 10 hours, to prepare and publicly post the relevant documents.

[152] 10 burden hours per Participant × 23 Participants = 230 burden hours.

[153] 52.2 hours + 10 hours + 4.6 hours + 10 hours = 76.8 burden hours.

[154] 76.8 hours × 23 Participants = 1,766.4 burden hours. *See* Section IV.C. *infra* for a dollar cost estimate of this burden.

[155] *See* CAT NMS Plan Approval Order, at n.3287, *supra* note 4.

[156] $2,400,000 CAT NMS Plan costs / 12 months = $200,000 for all Participants. $200,000 / 23 Participants = $8,695.65 per Participant for the Implementation Plan.

[157] As discussed further in Section IV.C., all estimates in this section represent an average; the Commission expects that some exchanges may incur greater costs and some lesser costs due to variances in economies of scale for Participants who share a common corporate parent. *See* note 217 *infra.*

[158] *See, e.g.,* note 53 *supra.*

ongoing quarterly burden of approximately 62.2 hours for each Participant,[159] an ongoing annual burden of approximately 248.8 hours for each Participant,[160] and an aggregate annual burden of approximately 5,722.4 hours.[161]

If any Quarterly Progress Report is approved only by a Supermajority Vote, and not by a unanimous vote, the proposed amendments require each Participant whose Operating Committee member did not vote to approve that Quarterly Progress Report to separately file with the Commission and make available on a public website an explanatory statement identifying itself and explaining why it did not vote to approve the Report.[162] Because there are currently 23 Participants, each Quarterly Progress Report would need to be approved by at least 16 members of the Operating Committee to satisfy the Supermajority Vote provisions of the CAT NMS Plan.[163] At maximum, then, only seven Participants would file an explanatory statement in connection with a Quarterly Progress Report approved only by Supermajority Vote.[164] The Commission preliminarily estimates that each of the seven Participants submitting an explanatory statement will incur, on average, an ongoing burden of 15 hours to draft such statement.[165] When this aggregate burden is averaged across all Participants, it amounts to an ongoing quarterly burden of approximately 4.6 hours per Participant,[166] an ongoing annual burden of approximately 18.3 hours per Participant,[167] and an aggregate annual burden of approximately 420 hours.[168]

Additionally, the Commission estimates that each Participant will incur an ongoing quarterly burden, on average, of approximately 10 hours to ensure that each Quarterly Progress Report, and any explanatory statement (if applicable), is filed with the Commission and made publicly available on a website.[169] The Commission therefore estimates an annual burden, on average, of approximately 40 hours for each Participant,[170] and an aggregate annual burden of 920 hours for all Participants,[171] to publicly post and submit to the Commission the Reports.

In total, therefore, the Commission estimates that each Participant will incur, on average, an ongoing burden of approximately 76.8 hours per Quarterly Progress Report,[172] for an annual average estimated burden of 307.2 hours [173] and approximately 7,065.6 hours in aggregate.[174]

Similarly, the Commission estimates that each Participant will expend, on an ongoing basis, approximately the same amount of external public relations, legal, and consulting costs associated with the Implementation Plan on each Quarterly Progress Report. Accordingly, the Commission estimates, on average, an ongoing quarterly cost of approximately $8,695.65 for each Participant, an ongoing annual cost of $34,782.60 for each Participant,[175] and an aggregate annual cost of approximately $799,999.80.[176] The Commission notes that a portion of these costs may be recoverable from Industry Members, if consistent with the Exchange Act and the CAT NMS Plan.[177]

E. Collection of Information Is Mandatory

Each collection of information discussed above would be a mandatory collection of information.

F. Confidentiality of Responses to Collection of Information

Neither the Implementation Plan nor the Quarterly Progress Reports would be confidential. Rather, each would be publicly posted by the Participants on a website.

G. Retention Period for Recordkeeping Requirements

National securities exchanges and national securities associations are required to retain records and information pursuant to Rule 17a–1 under the Exchange Act.[178]

H. Request for Comments

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

29. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

30. Evaluate the accuracy of our estimates of the burden of the proposed collection of information;

31. Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and

32. Evaluate whether there are ways to minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also

[159] The Commission preliminarily estimates that each Participant will spend, on average, 52.2 internal burden hours to confer with other Participants and to compile the Quarterly Progress Report = (Attorney at 7 hours) + (Systems Analyst at 22.6 hours) + (Compliance Manager at 22.6 hours). In addition the Commission preliminarily estimates, for the purposes of the Paperwork Reduction Act, that the chief Compliance Officer or Chief Regulatory Officer of each Participant will spend 5 hours, on average, to submit the Quarterly Progress Report to the CEO, President, or equivalently situated senior officer of each Participant, to review the information contained in each Quarterly Progress Report and for senior management consultations as needed, and to vote on approving the Quarterly Progress Report. In addition, the Commission estimates that the CEO, President, or equivalently situated senior officer of each Participant will spend 5 hours in consultations, including with their member of the Operating Committee regarding each Quarterly Progress Report. 52.2 hours + 5 hours + 5 hours = 62.2 hours. Because one individual may serve as the representative for multiple affiliated Participants, the Commission expects that some Participants may incur greater costs and some lesser costs due to variances in economies of scale for Participants who share a common corporate parent.

[160] 62.2 burden hours per Participant per Quarterly Progress Report * 4 Quarterly Progress Reports = 248.8 annual burden hours per Participant for the Quarterly Progress Reports.

[161] 248.8 annual burden hours per Participant * 23 Participants = 5,722.4 aggregate annual burden hours.

[162] For the purposes of the Paperwork Reduction Act, the Commission is assuming that this task will be performed by a Chief Regulatory Officer or a Chief Compliance Officer. *See* note 143 *supra.*

[163] *See* note 147 *supra.*

[164] *See* note 148 *supra.*

[165] *See* note 149 *supra.*

[166] 7 Participants * 15 burden hours = 105 burden hours in aggregate. 105 burden hours / 23 Participants = 4.6 burden hours.

[167] 4.6 burden hours × 4 Quarterly Progress Reports = 18.3 burden hours.

[168] 18.3 annual burden hours × 23 Participants = 420 burden hours.

[169] The Commission bases this estimate on a full-time Compliance Manager and Programmer Analyst each spending approximately 5 hours, for a combined total of approximately 10 hours, to prepare and publicly post the relevant documents.

[170] 10 burden hours per Quarterly Progress Report × 4 quarters = 40 annual burden hours per Participant.

[171] 40 annual burden hours per Participant × 23 Participants = 920 aggregate annual burden.

[172] 62.2 hours + 4.6 hours + 10 hours = 76.8 burden hours.

[173] 76.8 hours × 4 Quarterly Progress Report = 307.2 hours.

[174] 307.2 hours × 23 Participants = 7,065.6 burden hours. *See* Section IV.C. *infra* for a dollar cost estimate of this burden.

[175] $8,695.65 per Participant per Quarterly Progress Report * 4 Quarterly Progress Reports = $34,782.60 per Participant per year for the Quarterly Progress Reports.

[176] $34,782.60 per Participant * 23 Participants = $799,999.80 aggregate annual cost.

[177] *See, e.g.,* Article XI of the CAT NMS Plan.

[178] 17 CFR 240.17a–1.

send a copy of their comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File Number 4–698. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, with reference to File Number 4–698 and be submitted to the Securities and Exchange Commission, Office of FOIA/PA Services, 100 F Street NE, Washington, DC 20549–2736. As OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

IV. Economic Analysis

Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.[179] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[180] Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The discussion below addresses the likely economic effects of the proposed rule, including the likely effect of the proposed rule on efficiency, competition, and capital formation.

As discussed above, since the adoption of Rule 613 in 2012, CAT implementation has experienced recurrent delays.[181] These implementation delays postpone the benefits of the CAT NMS Plan to investors [182] and may result in additional costs to Industry Members.[183] In the Notice, the Commission discussed how the governance structure of the CAT NMS Plan could affect the costs and benefits of the CAT NMS Plan and noted that the Commission retains the ability to modify the CAT NMS Plan.[184] The CAT NMS Plan does not require the Participants to provide transparency to industry or investors regarding implementation, nor does it create financial accountability for the Participants to complete the implementation process. The Commission preliminarily believes that modifying the CAT NMS Plan to require operational transparency and provide financial accountability for meeting implementation milestones will impose more structure on the process and is appropriate to achieve timely completion of the CAT. The proposed amendments would: (1) Provide more accountability and transparency by requiring the Operating Committee to approve by Supermajority Vote and file with the Commission and publish on a public website certain information, including the Implementation Plan as well as quarterly reports detailing progress made toward achieving the Implementation Milestones set forth in the Implementation Plan and (2) introduce financial accountability to the CAT NMS Plan by requiring the Participants to meet four critical CAT implementation milestones—the Financial Accountability Milestones—by certain dates in order to collect the full amount of any related Post-Amendment Industry Member Fees established by the Operating Committee or implemented by the Participants.[185]

The proposed amendments would increase operational transparency by requiring Participants to publish a complete CAT implementation plan, and publish a complete progress report quarterly.[186] Further, the proposed amendments require approval by a Supermajority Vote of the Operating Committee for both the implementation plan and the quarterly progress reports.[187] These operational transparency provisions of the proposed amendments should provide Industry Members with more certainty surrounding the implementation timeline of CAT, reducing associated and unnecessary implementation costs.[188]

The proposed amendments also establish Financial Accountability Milestones and Reduced Fee Recovery Rates (''RFRRs'') that take effect and increase in magnitude in response to delays in meeting certain Financial Accountability Milestones.[189] Thus, the proposed amendments would shift some costs from Industry Members to Participants if the Participants fail to meet certain Financial Accountability Milestones.[190] The Commission preliminarily believes this cost shifting would offset any Industry Member costs imposed by delays in implementation. The Commission further believes that the RFRRs incentivize the Participants to implement the CAT NMS Plan expeditiously and efficiently, which would result in investors realizing the benefits of the CAT NMS Plan sooner. If the Participants miss the deadline for Initial Industry Member Core Equity Reporting by more than 180 days, or the deadlines for the other three Financial Accountability Milestones by more than 270 days, the structure of the RFRRs would not allow them to recover expenses incurred during the Period. The Commission acknowledges that after 270 days or 180 days, as applicable, the amendments would no longer directly incentivize the Participants, because the 0% recovery rate cannot be further reduced by continued delays. However, the Participants would continue to incur and be solely responsible for the operating costs of the Central Repository, and could not share any ongoing operational costs incurred during the Period with Industry Members.[191] Participants would only be

[179] 15 U.S.C. 78c(f).

[180] 15 U.S.C. 78w(a)(2).

[181] *See* Part I *supra.*

[182] *See* CAT NMS Plan Approval Order, *supra* note 4, at Section V.E.

[183] *See* Part IV.A. *infra.*

[184] *See* Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016) (File No. 4–698) (''Notice''), at Section IV.E.3.d.1.

[185] *See* Part II *supra.*

[186] *See* Part II.A. *supra.*

[187] *See* Part IV.B, *infra* for further discussion of this approval requirement.

[188] The Commission preliminarily believes that uncertainty in the CAT NMS Plan implementation timeline may potentially increase Industry Member implementation costs. *See* Part IV.B, *infra* for further discussion.

[189] The Plan allows Participants to recover a percentage of certain CAT costs from Industry Members. The Plan anticipates that the Participants will submit a fee filing that establishes what percentage of CAT expenses will be passed on to Industry Members, and how CAT expenses will be shared among Participants and among Industry Members. Because no CAT fee filing has been approved, the proportion of CAT costs that will be borne by Industry Members is unknown. The magnitude of the incentives from RFRRs ultimately depends on the proportion of fees that Participants are permitted to recover from Industry Members.

In the event that RFRRs are triggered, the Commission proposes to reduce the amount of fees that the Participants are allowed to recover from Industry Members according to the fee schedule described in Part II.B.2. *supra.*

[190] Although some Industry Members provide advice to the Participants through the actions of the CAT Advisory Committee, they do not have votes on the CAT Operating Committee and thus cannot initiate or control actions taken by the Operating Committee that might facilitate expeditious and efficient implementation of the Plan. Furthermore, in later stages of CAT implementation, in the event that Industry Members' actions might delay implementation of the Plan, the Participants have regulatory authority over Industry Members and can use that authority to address failures by Industry Members to comply with reporting requirements under the Plan.

[191] The Participants' Central Repository costs consist of both implementation costs and operating costs, as discussed below; *see* note 227 *infra.* If

allowed to partially recover from Industry Members those expenses incurred after the Period ended, which could only be achieved by meeting the applicable Financial Accountability Milestones. Furthermore, to the extent that Financial Accountability Milestones are inherently sequential, Participants would continue to be incentivized to complete the current Period by achieving the Financial Accountability Milestones to avoid triggering RFRRs in the subsequent Period. Consequently, although incentives would be diminished, the Participants would continue to be incentivized to complete the Period by meeting the Financial Accountability Milestones.

Wherever possible, the Commission has quantified the likely economic effects of the amendments, including the direct costs to the Participants. However, some of the costs, benefits, and other economic effects we discuss are inherently difficult to quantify, including the benefits of accelerating the realization of the improvements to investor protection that are expected to result from the implementation of the CAT, the benefits of transparency to industry members and the public, and the potential impact on competition among exchanges. Additionally, the Commission preliminarily believes costs caused by uncertainty in the timeline for CAT implementation and retirement of duplicative reporting systems may vary significantly across Industry Members because of the diversity of their approaches to regulatory data reporting. Therefore, much of our discussion is qualitative in nature. Our inability to quantify certain costs, benefits, and effects does not imply that such costs, benefits, or effects are less significant. We request that commenters provide relevant data and information to assist us in analyzing the economic consequences of the proposed amendments.

Participants missed a Financial Accountability Milestone by 270 days and triggered a 0% RFRR, none of the expenses the Participants incurred during the Period could be recovered from Industry Members. However, the Participants would continue to incur operating costs for the Central Repository, and the magnitude of those operating costs during the period would be a function of the duration of the Period. To minimize the financial impact of the RFRRs, the Participants would continue to be incentivized to meet the Financial Accountability Milestones and end the Period, so that they would no longer be solely responsible for the operating costs of the Central Repository and could again, potentially, resume sharing these costs with Industry Members.

A. Baseline

1. Transparency of CAT Implementation Status

Industry Members obtain information about the implementation status of the CAT NMS Plan through several mechanisms.[192] These include information gleaned from participation in the CAT Advisory Committee; information provided on websites operated by the CAT Operating Committee; presentations to industry sponsored by the CAT Operating Committee; and information presented at meetings of the Industry Technical Specifications Working Group.

A few representatives of Industry Members are privy to information through their participation on the CAT Advisory Committee, but this information is not widely available to industry. These advisory committee members ''have the right to attend meetings of the Operating Committee or any Subcommittee, to receive information concerning the operation of the Central Repository,'' subject to certain limitations outlined in the CAT NMS Plan.[193] Further, ''Members of the Advisory Committee shall receive the same information concerning the operation of the Central Repository as the Operating Committee; provided, however, that the Operating Committee may withhold information it reasonably determines requires confidential treatment. Any information received by members of the Advisory Committee in furtherance of the performance of their functions pursuant to this Agreement shall remain confidential unless otherwise specified by the Operating Committee.'' [194] The Commission preliminarily believes that Industry Members of the CAT Advisory Committee may be provided with significant information regarding the status of implementation, but given the confidential treatment required by the CAT NMS Plan, the Industry Members on the Advisory Committee are not free to share it with other Industry Members. Consequently, the Commission preliminarily believes that most Industry Members obtain little information about CAT implementation through this mechanism.

[192] The Plan requires that the Chief Compliance Officer shall appropriately document objective milestones to assess progress toward the implementation of the Plan, but has no requirement that this information be disseminated to industry or the Commission. *See* CAT NMS Plan, *supra* note 4, at Section 6.7(b).

[193] *See* CAT NMS Plan, *supra* note 4, at Section 4.13.

[194] *See* CAT NMS Plan Approval Order, *supra* note 4, at Section VI.D.1.a, note 3243.

In addition, the Operating Committee provides a website with information on the CAT NMS Plan, but there is no requirement in the CAT NMS Plan to keep it current.[195] The website provides access to the current CAT NMS Plan, current technical specifications, an archive of information presented at past industry events, and other information about the CAT of interest to industry.

Furthermore, the Operating Committee provides occasional updates to industry on the state of implementation. These updates are documented on the CAT NMS Plan website. These updates include the April 3, 2019, Industry Outreach presentation in which the Operating Committee presented a revised implementation timeline for Industry Member reporting with deadlines that extend even further beyond those in the CAT NMS Plan.[196] Subsequent to this presentation, the CAT NMS Plan website added a ''Timeline'' section. The CAT NMS Plan, however, has no requirement that this be updated.

Another source of information about CAT implementation available to the industry is the Industry Technical Specifications Working Group. This working group, which makes recommendations on Industry Member-specific implementation issues, is comprised of members of the Advisory Committee and additional industry organization representatives, with subject matter experts from the industry invited to lead or facilitate discussion of a particular issue. This working group is not bound by confidentiality agreements, so some information discussed in the working group is shared with members of the industry, primarily through outreach efforts by industry associations.

2. Status of Implementation

As discussed previously, there have been repeated delays to implementation and it remains uncertain when CAT will be fully implemented.[197] Although the Participants have not yet published a timeline detailing when full functionality of Participant reporting would be completed by the new plan processor, in a April 2019 Industry Outreach presentation, the Operating Committee presented a revised implementation timeline for Industry Member reporting with deadlines that extend even further beyond those in the CAT NMS Plan. The revised deadline

[195] *See https://www.catnmsplan.com/index.html.* The public can also glean information about Plan implementation from this website.

[196] *See* note 47 *supra.*

[197] *See* Part I *supra* for a detailed discussion of Plan implementation status.

for Industry Member reporting to the CAT would require the reporting by Industry Members of equities data by April 2020 and simple options data by May 2020.[198] These delays to implementation of the CAT NMS Plan delay the time at which investors will realize the significant benefits of the CAT contemplated in the CAT NMS Plan Approval Order.[199] Specifically, delays in the implementation of the CAT have delayed improvements in regulatory activities such as market analysis and reconstruction, surveillance, and investigations, leading to delays in increased investor protection.[200]

In addition, the Commission preliminarily believes that the multiple missed deadlines in the CAT NMS Plan has led to uncertainty for Industry Members surrounding the timeline of CAT implementation.[201] In the CAT NMS Plan Approval Order, the Commission discussed the complexities of, and diversity of approaches to, Industry Member regulatory data reporting,[202] and the costs that Industry Members face in implementing CAT reporting.[203] The Commission understands that for many Industry Members, significant changes to regulatory data reporting systems require planning for the allocation of financial, technological, and human resources. The Commission lacks specific information on the status of Industry Member CAT reporting implementation efforts, but recognizes the possibility that some Industry Members, particularly those that self-report regulatory data, may already be incurring costs due to this uncertainty, as discussed further below.[204]

Therefore, the Commission recognizes that it is possible that Industry Members may be incurring additional costs, beyond those anticipated due to the delay.[205] Finally, the Commission believes that any Industry Members that have begun implementation activities are likely incurring costs for tracking and planning for CAT implementation and notes that the length of the implementation period has extended longer than anticipated. This may increase costs to Industry Members.

B. Benefits

The Commission preliminarily believes the proposed amendments offer two primary benefits. First, because the amendments include financial accountability provisions that may cause the CAT to be implemented more expeditiously and efficiently, investors could realize the benefits of the CAT sooner than they would be realized without the proposed amendments. Second, the Commission preliminarily believes that Industry Members would have more certainty surrounding the implementation timeline of CAT, and the timeline for retirement of OATS,[206] reducing possible associated and unnecessary implementation and maintenance costs.[207]

The amendment's financial accountability provisions may cause the CAT to be implemented more expeditiously and efficiently, which could allow investors to realize the benefits of the CAT sooner than they would be realized without the proposed amendments. While the Commission continues to believe that implementation of CAT will allow the Participants to improve their regulatory activities to the benefit of investors,[208] the Commission also notes that implementation of the proposed amendments may accelerate the Participants' realization of costs relative to the current state of development. These include costs to build and operate the Central Repository, report Participant data to CAT, and to update their regulatory surveillance to take advantage of data available in the Central Repository.[209] Consequently, the Commission preliminarily believes that the Participants may have a financial disincentive to implement CAT expeditiously and efficiently because delays in CAT implementation delay realization of some of these costs, such as costs to update their regulatory surveillance. By amending the CAT NMS Plan to provide RFRRs to encourage implementation, the Commission preliminarily believes the Participants will be more likely to implement CAT expeditiously and efficiently to the benefit of investors.[210]

As discussed in more detail in the CAT NMS Plan Approval Order, by providing regulators with more complete, accurate, accessible, and timely trade and order data, the CAT is expected to improve regulatory activities such as market analysis and reconstruction, surveillance, and investigations, leading to increased investor protection.[211] If the Participants complete the implementation of the CAT more expeditiously and efficiently as a result of the proposed amendments, these benefits will be realized more quickly.

The Commission preliminarily believes that the proposed amendments should provide Industry Members with more certainty surrounding the implementation timeline of CAT and the retirement schedule for OATS, which should help reduce any unnecessary implementation and maintenance costs associated with this uncertainty.[212] As discussed previously, the Commission recognizes that there is significant uncertainty regarding the CAT implementation timeline. Further, based on discussions with Industry Members and staff expertise, the Commission preliminarily believes that this uncertainty may be causing Industry Members to incur costs they would not have incurred had the CAT been completed on its original

[198] *See* note 47 *supra.*

[199] *See* CAT NMS Plan Approval Order, supra note 4, at Section V.E.

[200] *See id.* The Approval Order noted that, by providing regulators with more complete, accurate, accessible, and timely trade and order data, the CAT would improve regulatory activities such as market analysis and reconstruction, surveillance, and investigations, leading to increased investor protection.

[201] As discussed in the CAT NMS Plan Approval Order, many Industry Members rely on service bureaus to report their regulatory data. These service bureaus face the same uncertainty that is described here for Industry Members. Some but not all service bureaus are Industry Members. *See* CAT NMS Plan Approval Order, *supra* note 4, at Section V.F.1.c.(2).

[202] *See id.*

[203] *See id.* at Section V.F.2.

[204] In the case of the majority of Industry Members that rely on service providers for their regulatory data reporting, those service providers face significant CAT implementation costs and similar uncertainty as large self-reporting Industry Members, and any additional costs the service providers face in implementing CAT reporting due to this uncertainty are likely to be passed on to their Industry Member customers.

[205] *See* Part IV.B, *infra.*

[206] The Commission continues to believe that the period of duplicative reporting of OATS data will be less than 2–2.5 years, but recognizes that the multiple delays in CAT implementation has increased uncertainty about when the duplicative reporting period will commence and end. Neither the Plan nor the Participants' industry outreach materials currently offer guidance to Industry Members on when duplicative reporting systems are likely to be retired. Consequently, Industry Members cannot reasonably estimate the expected duration of the period of duplicative reporting, or when it might begin and/or end. In the CAT Approval Order, duplicative reporting was anticipated to cost Industry Members up to $1.4 billion annually between the time when Industry Members begin to report data to the CAT and when duplicative regulatory data reporting systems are retired. *See* CAT NMS Plan Approval Order, *supra* note 4, at Section V.F.2.b.

[207] *See* Part IV.D.1. *infra* for discussion of impacts on efficiency of Industry Member CAT implementation.

[208] *See* CAT NMS Plan Approval Order, *supra* note 4, at Section V.E.2.

[209] *See* CAT NMS Plan Approval Order, *supra* note 4, at Section V.F.

[210] Missing Financial Accountability Milestones will result in Participants not being able to recoup certain costs from Industry Members. This will increase the costs for which Participants will ultimately be responsible, with those costs increasing as implementation delays persist.

[211] *Id.* at Section V.E.

[212] *See* Part IV.A.2. *supra* for discussion of uncertainty surrounding CAT implementation timing.

schedule.[213] As noted above, for many Industry Members, significant changes to regulatory data reporting systems require planning for the allocation of financial, technological, and human resources, and the Commission preliminarily believes that uncertainty surrounding CAT implementation timelines may be hampering Industry Members' ability to efficiently perform that planning. The amendments may result in the Participants implementing CAT more expeditiously and efficiently and should reduce uncertainty because Industry Members will be aware of the financial accountability measures that Participants face if Financial Accountability Milestones are missed, and are likely to assume that the Participants will be incentivized to meet those milestones. Further, information in the Implementation Plan and Quarterly Progress Reports, and the associated requirement for approval by a Supermajority Vote of the Operating Committee, combined with any statement identifying Participants that did not vote to approve and explaining why the member did not vote to approve, would provide Industry Members with more complete and possibly more reliable information on implementation requirements and timing. This may allow them to implement CAT reporting more efficiently, particularly if the content of the disclosures provides sufficient information to provide greater certainty on implementation progress. However, the Commission preliminarily believes this benefit may be limited somewhat by the fact that Participants may be incentivized not to vote against approval of the Implementation Plan or Quarterly Progress Reports because doing so would cause them to incur costs associated with preparing, filing with the Commission and publishing an explanatory statement of their Operating Committee Member's vote. Consequently, in the event that a Participant is inclined to vote against approval of the Implementation Plan or a Quarterly Progress Report, in the absence of enough votes to prevent approval, the Participant may be incentivized to vote to approve the Implementation Plan or Quarterly Progress Report and thus not provide an explanatory statement that might contain information useful to Industry Members.

Based on staff expertise and discussions with Industry Members,[214] the Commission preliminarily believes that potential reductions in cost due to uncertainty could be attributed to a number of factors. Less uncertainty about the CAT implementation timeline may allow Industry Members and service bureaus to make efficient decisions regarding when to commence implementation activities and how to implement in the most cost-efficient manner. More certainty may allow Industry Members to negotiate more favorable contracts with vendors because they will have more certainty about date ranges when vendor services would be required for CAT reporting implementation activities. Furthermore, as discussed in the CAT NMS Plan Approval Order, maintaining legacy data reporting systems like those used to report OATS is likely to entail allocation of technological and human resources. If Industry Members have more certainty regarding how long these resources are required, they may make more cost-efficient decisions regarding maintaining or replacing hardware and software used to report legacy regulatory data. Finally, the uncertainty surrounding the timeline of CAT implementation may impose significant opportunity costs on Industry Members. Because changes to regulatory data reporting systems can be significant IT projects for Industry Members, Industry Members may defer other large projects that might require an overlapping set of resources until the operational and financial requirements and timing for CAT implementation are better known. Decreasing uncertainty may allow Industry Members to better plan for and proceed with other projects that may have been deferred due to uncertainty in the CAT implementation timeline.

The Commission recognizes that if the Participants continue to miss deadlines under the amendments, it would result in more uncertainty for Industry Members with respect to whether and when the Participants are capable of achieving CAT implementation, particularly if the Participants are unable to make progress with the financial accountability measures. The Commission preliminarily believes this uncertainty is mitigated by the increased transparency afforded by the Quarterly Progress Reports, which should allow Industry Members to see progress toward meeting Implementation Milestones.

Finally, the requirement that the Implementation Plan and Quarterly Progress Reports be submitted to the CEO, President, or an equivalently situated senior officer of each Participant prior to the Operating Committee approval vote, is intended to promote senior management attention and promote accountability with respect to CAT implementation. The Commission preliminarily believes that this requirement may thereby facilitate the expeditious and efficient implementation of CAT.

C. Costs

The Commission preliminarily believes the proposed amendments are likely to have both direct and indirect costs, detailed below. The Commission preliminarily estimates that the direct costs to the Participants from the proposed amendments include up to approximately $3.7 MM in ongoing annual costs and total one-time costs of up to approximately $932,000.[215] If the RFRRs are triggered, during a one-year period during implementation, up to $120MM in costs of CAT implementation and operation could be shifted from Industry Members to Participants, but this would not change total costs to industry as a whole from the CAT NMS Plan. The Commission expects, however, that the proposed amendments would have additional indirect costs. These consist of potentially accelerated implementation costs to Participants, Industry Members, and Service Bureaus; possible costs related to the potential for inefficient acceleration of the implementation of the CAT; and costs related to the possible market exit of exchanges if the RFRRs in the amendments are triggered. These costs are likely to be passed on to investors.

For purposes of the PRA,[216] the Commission preliminarily estimates that the direct costs to Participants from the proposed amendments[217] include

[213] In the course of reviewing the CAT NMS Plan and preparing the Notice, Commission staff gathered information in conversations with Industry Members on how Industry Members implement changes in regulatory data reporting requirements and what factors drive Industry Member costs when those requirements change. *See Notice, supra Note 184, at n880.*

[214] *See* Notice, *supra* Note 184, at n880.

[215] These maximum totals assume that upon each approval vote, seven Participants incur costs to prepare and publish statements explaining why they did not vote to approve the document in question. These costs are discussed further below.

[216] Direct costs cited in this paragraph are quantified from estimates in the PRA. *See* Part III *supra.* Discussion of other direct costs follows discussion of costs from the PRA.

[217] The PRA estimates cost represent an average; the Commission expects that some Participants will incur greater costs, some lesser. In calculating the costs to prepare, review, and vote on the Implementation Plan and Quarterly Progress Reports on a per Participant basis, the Commission recognizes that its estimates per Participant may be overstated to the extent that there are economies of scale for Participants who share a common corporate parent. Specifically, the voting

Continued

up to approximately $3.7MM [218] in annual costs and total one-time costs of up to approximately $932,000.[219] The ongoing annual costs per Participant are comprised of approximate labor costs of up to $145,000 [220] and external consulting costs of $35,000 [221] to prepare, approve through Supermajority Vote of the Operating Committee, publish, and when applicable, for each Participant whose Operating Committee member did not vote to approve the Implementation Plan to separately file with the Commission and make available on a public website an explanatory statement identifying itself and explaining why it did not vote to approve the Quarterly Progress Report.[222] The one-time costs per Participant include up to $36,000 [223] in labor costs and $8,700 [224] in external consulting costs to prepare, approve through Supermajority Vote of the Operating Committee, publish, and when applicable, for each Participant whose Operating Committee member did not vote to approve the Implementation Plan to separately file with the Commission and make available on a public website an explanatory statement identifying itself and explaining why it did not vote to approve the Implementation Plan.

The Proposed Amendments require that both the Implementation Plan and Quarterly Progress Reports be submitted to the President, CEO or equivalently situated senior officer of each Participant prior to the approval vote by the Operating Committee. In connection with this requirement, the Commission preliminarily estimates that each SRO will incur one-time consultation costs of $8,200 for the Implementation Plan, and ongoing annual costs of $33,000 for Quarterly Progress Reports until such time as CAT is fully implemented.[225]

If the RFRRs are triggered, during a one-year period during implementation, up to $120MM in costs of CAT implementation and operation could be shifted from Industry Members to Participants, but this would not change total costs to industry as a whole from the CAT NMS Plan.[226] In the absence of

representative for one Participant may serve as the voting representative on the Operating Committee for multiple affiliated Participants under Section 4.2(a) of the CAT NMS Plan. Once this representative conducts the necessary background work to vote on the Implementation Plan or a Quarterly Progress Report, and, if applicable, for the Participant to prepare an explanation of why this representative did not vote to approve the Implementation Plan or Quarterly Progress Report, the representative would not need to duplicate all of his or her efforts for another Participant. Thus, the Commission believes that its estimates may be overstated for some Participants in the sense that one representative reviewing and voting on the Implementation Plan or Quarterly Progress Reports might not require 5 hours for each exchange for which he or she is performing this task. On the other hand, the Commission believes that its estimates for Participants who are not affiliated with other Participants might be understated for some Participants because they are unable to benefit from economies of scale. Representatives for unaffiliated exchanges may require more than 5 hours to perform this same task. The Commission preliminarily believes that 5 hours is a reasonable estimate of average representative time required.

[218] Assuming that each Supermajority Vote has the minimum of 16 Participants voting to approve each Quarterly Progress Report, total annual ongoing maximum cost is (23 Participants × $119,471 per Participant + 28 explanatory statements × $6,472.50 per statement = $2,747,838) in labor costs plus (23 Participants × $34,800 = $800,400) in external consulting costs = $3,729,468 in total costs. *See* Note 220, *infra.*

[219] Assuming that each Supermajority Vote has the minimum of 16 Participants voting to approve the Implementation Plan, total one-time maximum cost is (23 Participants × $29,868 per Participant = $686,959) in labor costs plus (23 Participants × $8,700 = $200,100) in external consulting costs = $932,367 in total costs. See Note 223, infra.

[220] *See* Part III.D. *supra.* Annual labor costs per Participant assume preparation, approval through Supermajority Vote of the Operating Committee, and publication of four Quarterly Progress Reports and any accompanying statements explaining why a Participant did not vote to approve the Quarterly Progress Report. Preparation of each Quarterly Progress Report requires 7 hours of Attorney labor at $427 per hour; 22.6 hours of Systems Analyst labor at $270 per hour; 22.6 hours of Compliance Manager labor at $318 per hour. 4 × [($427 × 7) + ($270 × 22.6) + ($318 × 22.6)] = $65,111. Time for the Participant's Operating Committee Member to prepare for and vote on the Quarterly Progress Reports is assumed to be 5 hours at a rate of $545 per hour. 4 × ($545 × 5) = $10,900, using the hourly rate for a Chief Compliance Officer. Publication and filing of the Quarterly Progress Reports and any explanatory statements of the Operating Committee Member's vote is assumed to require 5 hours of Compliance Manager labor at $318 per hour and 5 hours of Programmer/Analyst labor at $220 per hour. 4 × ($318 × 5) + ($220 × 5) = $10,760. The Quarterly Progress Report shall be submitted to the President, CEO or equivalently situated senior officer of each Participant prior to the approval vote of the Operating Committee, and any subsequent consultation, including with their Operating Committee member, is assumed to require five hours of labor at $1,635 per hour. 4 × ($1,635 × 5) = $32,700. *See* Note 225 *infra,* for discussion of this hourly rate. Total annual costs for each Participant are thus $65,111 + $10,900 + $10,760 + $32,700 = $119,471. If a Participant is required to prepare a statement explaining why it did not vote to approve a Quarterly Progress Report, preparation requires 7.5 hours of Compliance Manager Labor at $318 per hour and 7.5 hours of Chief Compliance Officer labor at $545 per hour. ($318 × 7.5) + ($545 × 7.5) = $6472.5. For each Quarterly Progress Report, 23 Participants will incur costs to prepare the report, but no more than 7 will incur costs to prepare statements explaining why they did not vote to approve the Quarterly Progress Report. *See* Part III.D.2, *supra.* Consequently, there may be up to 28 such quarterly statements (4 × 7) required annually. Thus, Quarterly Progress Report preparation, depending on the number of explanatory statements required, would have an annual aggregate maximum labor cost of (23 × $119,471) + (28 × $6472.5) = $3,729,468 with a per Participant average labor cost of $3,729,468 ÷ 23 = $127,351. Hourly rates are based on hourly rates for Attorneys, Systems Analysts, and Compliance Managers from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. Salary information for voting representatives uses the Chief Compliance Officer rate of from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified as above to $545 per hour.

[221] *See* Part III.D. *supra.* External consulting costs assume four Quarterly Progress Reports. 4 × $8,696 = $34,784.

[222] These annual costs would be incurred until completion of the CAT Implementation Plan. *See* Part III.D.2. *supra.*

[223] *See* Part III.D.2. *supra.* Preparation and approval through Supermajority Vote of the Operating Committee of the Implementation Plan requires 7 hours of Attorney labor at $427 per hour; 22.6 hours of Systems Analyst labor at $270 per hour; 22.6 hours of Compliance Manager labor at $318 per hour. ($427 × 7) + ($270 × 22.6) + ($318 × 22.6) = $16,278. Time for the Participant's Operating Committee Member to prepare for and vote on the Implementation plan is assumed to be 5 hours at a rate of $545 per hour. ($545 × 5) = $2,725, using the hourly rate for a Chief Compliance Officer. Publication and filing of the Implementation Plan and any explanatory statement of the Operating Committee Member's vote is assumed to require 5 hours of Compliance Manager labor at $318 per hour and 5 hours of Programmer/Analyst labor at $220 per hour. ($318 × 5) + ($220 × 5) = $2,690. The Implementation Plan shall be submitted to the President, CEO or equivalently situated senior officer of each Participant prior to the approval vote of the Operating Committee, and any subsequent consultation, including with their Operating Committee Member, is assumed to require five hours of labor at $1,635 per hour. ($1,635 × 5) = $8,175. See Note 225, infra, for discussion of this hourly rate. Total one time labor costs are $16,278 + $2,725 + $2,690 + $8,175 = $29,868. If an explanatory statement of the Operating Committee Member's vote needs to be prepared, this would require 7.5 hours of labor by a Compliance Manager at $318 per hour and 7.5 hours of labor by the Chief Compliance Officer at $545 per hour. ($318 × 7.5) + ($545 × 7.5) = $6,473. Thus, Implementation Plan preparation, depending on the number of explanatory statements required, would have an annual aggregate maximum labor cost of (23 × $29,868) + (7 × $6472.5) = $732,267 with a per Participant average labor cost of $732,267 ÷ 23 = $31,838. Aggregate totals assume 23 Participants and 7 explanatory statements.

[224] *See* Part III.D.2. *supra.*

[225] The Commission estimates that the President, CEO or equivalently situated senior officer of each Participant will spend approximately five hours in consultations, including with the Participant's Operating Committee member, and estimates this will cause each Participant to incur labor costs of (5 × $1635) = $8,175 for the Implementation Plan and (4 × $8,175) = $32,700 annually for Quarterly Progress Reports. Hourly rates are based on hourly rates for Chief Compliance Officers from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. Salary information for CEO/presidents of exchanges are not generally publically available as they might be for CEO/presidents of exchange holding groups. The Commission estimates an hourly rate for the President, CEO or equivalently situated senior officer of an exchange by using the hourly rate for a Chief Compliance Officer of $545 and multiplying by 3 to account for the expected salary differential.

[226] The Commission estimates a maximum cost during a Period of up to one year by making certain

an approved fee filing, the Commission is unable to precisely estimate the magnitude of the costs associated with RFRRs that individual Participants would incur under such a scenario; however, the Commission believes RFRR costs during any one-year period for individual Participants are unlikely to exceed $46.4MM for the largest Participant and $0.4MM for the smallest Participant, and are likely to be significantly lower than these maximums.[227] If RFRRs are triggered, there would be a reduction in exchange profitability and there might be transitory effects on exchange capital formation because the exchanges would face additional costs and may not be able to invest in projects or return profits to shareholders as they would have otherwise.[228] In the case of FINRA, which is organized as a nonprofit member organization, costs from RFRRs could not be passed to FINRA's Industry Members.[229] This may affect FINRA's ability to invest in other projects that could promote investor protection.

The Commission preliminarily believes that the proposed amendments are likely to have indirect costs to some Participants, Industry Members, and service bureaus due to acceleration of CAT implementation costs relative to the current delayed timeline. In the CAT NMS Plan Approval Order, the Commission estimated CAT implementation costs for Participants, Industry Members, and service bureaus that provide certain order handling, connectivity, and clearing services to Industry Members.[230] These three groups may have indirectly benefited from implementation delays as implementation costs were deferred, while the benefits to investors anticipated by the CAT NMS Plan Approval Order have likewise been deferred. To the extent that the proposed amendments reduce those delays, the unintended cost deferral to these groups will be ended.

The Commission preliminarily believes that the amendments could result in an inefficiently accelerated implementation of the CAT, which could potentially increase overall CAT implementation costs to Participants, Industry Members, and ultimately to investors.[231] Because the Participants would have financial accountability for meeting the Financial Accountability Milestones, the Participants might choose to incur additional and inefficient costs to avoid missing deadlines because the magnitude of the additional costs incurred to meet the Financial Accountability Milestone dates may be less than the magnitude of the reduction in expenses the Participants could recover due to the RFRRs outlined in these amendments.[232] If the Participants do not exceed Financial Accountability Milestone dates by more than 180 or 270 days, as applicable, Industry Members would share in funding some of those additional costs.[233] Because the proposed amendments have provisions that improve transparency, these effects could be magnified to the extent that the Participants seek to avoid missing Implementation Milestones required in the amendments. Furthermore, accelerated implementation might result in inefficient implementation decisions. For example, Participants could deliver less help desk functionality, reporter portal features, or infrastructure design so that they can avoid missing a Financial Accountability Milestone deadline. While these reductions in functionality might still meet the requirements of the CAT NMS Plan, they might make the CAT less effective or efficient for reporters and users of CAT data than it would have been with greater functionality. The costs of such reductions in functionality may accrue primarily to Industry Members or users of CAT data.

The Commission preliminarily believes that the likelihood of an inefficiently accelerated CAT implementation is low for two reasons. First, the deadlines for Financial Accountability Milestones are aligned with the most recent timelines published by Participants. Therefore the Commission preliminarily believes that the dates are feasible and thus are unlikely to pressure the Participants to inefficiently accelerate CAT implementation to avoid triggering RFRRs. Second, the financial accountability measures in the proposed amendments are designed in a manner that should mitigate this risk because RFRRs continue to increase as delays persist, until the fee recovery rate becomes zero. Specifically, the costs associated with missing a deadline for a Financial Accountability Milestone by a short period (for example, less than 90 days) would be less than the costs associated with missing a deadline for a Financial Accountability Milestone by a longer period (for example, more than 90 days). Consequently, Participants may be less likely to inefficiently accelerate implementation to avoid RFRRs because the RFRRs reduce rather than eliminate the Participants' ability to recoup costs from Industry Members

assumptions. First, in the CAT NMS Plan Approval Order, the Commission estimated maximum implementation costs and annual operating costs for the Central Repository of $65MM and $55MM respectively; *see* CAT NMS Plan Approval Order, *supra* note 4, at Section V.F.1.a. If the Participants were allowed to recover 100% of those costs from Industry Members, if milestones under these amendments were achieved, and if all implementation costs were incurred during a single Period, Central Repository costs for a Period of up to one year would likely be no higher than $65MM + 55MM = $120MM. In such a scenario, Participants could incur maximum RFRR costs during a single year of $120MM if they missed the Financial Accountability Milestone by more than 270 days. Because the first Period's duration is less than one year, its maximum would be lower because a full year's operating costs for the Central Repository would not be incurred.

[227] Assuming equity exchanges bore 100% of Participant fees and using widely reported equity trading volume for February 2019, and assuming fees were allocated by market share of equity trading volume, the largest equity venue would incur 38.7% × $120MM = $46.4MM and the smallest equity venue would incur 0.3% × $120MM = $0.4MM in RFRR costs. For an example of widely reported equity trading volume, see the CBOE's compilation of equity trading volume at *http://markets.cboe.com/us/equities/market_statistics/historical_market_volume/*. The actual RFRR costs would likely be significantly lower than these maximums. For example, it is unlikely that 100% of implementation costs that presumably cover expenses from pre-implementation through the entire implementation period would be incurred in a single year, and the Commission preliminarily believes that some of these costs have already been incurred. This is a maximum single one-year RFRR cost because the estimated Central Repository operating cost is an annual figure. During a one-year implementation Period, the Commission assumes the Central Repository would incur one year of operating costs. However, when a Financial Accountability Milestone is missed, the Period may exceed one year in duration and additional operating costs would be incurred. Consequently, the implementation Period RFRR cost incurred by the Participants would be a function of the length of the delay and the actual operating costs incurred by the Plan Processor during that implementation Period.

[228] *See* Part IV.D.3. *infra*.

[229] All of FINRA's members are Industry Members, while most but not all Industry Members are FINRA members.

[230] *See* CAT NMS Plan Approval Order, *supra* note 4, at Section V.F.1.

[231] *See* CAT NMS Plan Approval Order, *supra* note 4, at Section V.F.2.a.

[232] For example, Participants might incur $50MM in additional costs to avoid missing a Financial Accountability Milestone date by a week and incurring resultant RFRR costs of $30MM. Because the $50MM cost would be partially funded by Industry Members, incurring this expense might be financially rational for the Participants. Such an acceleration may be inefficient in the sense that accelerating implementation by one week might not provide benefits to industry and investors that warrant an additional $50MM in investment in the CAT. Inefficient acceleration might also result in missed opportunities for value-added features of CAT. For example, inefficient acceleration of implementation might cause the Participants to delay implementing an effective Help Desk, or to defer improvements to the reporters' portal.

[233] The CAT NMS Plan Approval Order contemplated a fee structure in which costs of developing, implementing, and operating the Central Repository would be shared between Participants and Industry Members. *See* CAT NMS Plan Approval Order, *supra* note 4, at Section IV.F.1.

for delays of less than 270 (or in the case of Period 1,180) days.

The Commission also notes that additional indirect costs may accrue to market participants due to exchanges leaving the market for trading services, which could result from the impact of the amendments on competition, as discussed further below.[234] Market participants face certain fixed costs in establishing connectivity to exchanges and adapting their trading strategies for changes in available trading venues. Consequently, competitor exits from the market for exchange services may be costly to other market participants who must update trading strategies to reflect what trading venues are available. The Commission believes it is unlikely that such costs will accrue because the failure of exchanges due to the financial accountability provisions in the proposed amendments is unlikely. The Commission preliminarily believes that exchanges that might require additional capital to meet their financial obligations under the CAT NMS Plan could acquire it through financial markets because exchanges are generally profitable and investors in exchanges are likely to view costs from RFRRs as one-time events that do not affect long-term exchange profitability. Also, in many cases, exchanges are part of a larger exchange group that could provide additional capital if needed.[235]

Finally, while triggering the RFRRs in these amendments would cause Participants to accrue additional costs because they could not recover these costs from Industry Members, there would be a corresponding financial benefit to Industry Members because they would not have to pay those costs. Consequently, the cost transfers from the RFRRs in the proposed amendments do not impose a net cost on industry as a whole. The Participants could attempt to shift the costs to Industry Members through changes to their broader fee structures. However, changes to the Participants' fees would need to be filed with the Commission.

D. Impact on Efficiency, Competition, and Capital Formation

1. Efficiency

The Commission preliminarily believes that the proposed amendments will have an effect on efficiency. In general, the Commission preliminarily believes that the proposed amendments will improve the efficiency of Plan implementation activities by Industry Members. However, the Commission preliminarily believes that the financial accountability provisions could also potentially reduce the efficiency of Plan implementation by the Participants by incentivizing them to delay certain later-period implementation activities if Participants believe there is a significant risk of missing a Financial Accountability Milestone date in an earlier period.

The Commission preliminarily believes that the proposed amendments will improve the efficiency of Industry Member implementation of CAT reporting. As discussed previously, uncertainty and delays in CAT implementation and OATS retirement could have costs for broker-dealers.[236] The financial accountability and public disclosures required by the proposed amendments should provide more certainty to Industry Members regarding when they will be required to begin reporting data to CAT and when they will be able to retire duplicative reporting systems. This should aid Industry Members in efficiently developing and implementing their CAT data reporting systems, planning the maintenance and eventual retirement of duplicative systems, and allowing them to make adjustments to those plans as needed.

However, the Commission preliminarily believes that the financial accountability provisions could incentivize Participants to inefficiently delay certain later-period implementation activities if Participants believe there is a significant risk of missing a Financial Accountability Milestone date in an earlier Period. To illustrate, during Period 1, in the absence of the proposed amendments, it may be efficient for Participants to invest in activities that enable meeting Financial Accountability Milestones in Periods 2, 3, and 4. If, however, Participants believe that they likely will not meet the Period 1 Financial Accountability Milestone and will thus likely trigger an RFRR during Period 1, Participants may defer investing in Period 2, 3, and 4 activities during Period 1 because investments that enable meeting later Period Financial Accountability Milestones would be subject to a Period 1 RFRR because the expenses were incurred during Period 1. Furthermore, some Participants might delay financial investment in some implementation activities if additional costs from triggering RFRRs provoke financial distress. The Commission preliminarily believes this outcome is unlikely because the Commission preliminarily believes that exchanges that might require additional capital to meet their financial obligations under the CAT NMS Plan could acquire it through financial markets. Exchanges are generally profitable, and investors in exchanges are likely to view costs from RFRRs as one-time events that do not affect long-term exchange profitability.[237] The Commission preliminarily believes that the structure of the financial accountability provisions may attenuate the risk of inefficient delay of financial investment in later Period Financial Accountability Milestones to some degree because delaying such investment is likely to increase the risk of triggering an RFRR in a later Period. This would make it relatively more costly to delay later Period implementation investments when facing potential RFRRs for those periods.

2. Competition

a. Competitive Baseline

The Commission described the structure of the market for trading in NMS securities, as of that time, in the Notice and the CAT NMS Plan Approval Order.[238] While the Commission's analysis of the state of competition in the Notice is fundamentally unchanged, the market for trading services in options and equities currently consists of 23 national securities exchanges, all but one of which are Plan Participants,[239] as well as off-exchange trading venues, including broker-dealer internalizers, and 31 ATSs,[240] which are not Plan Participants. The exchanges are currently controlled by 7 separate entities; three of these operate a single exchange.[241]

b. Competitive Effects

The Commission preliminarily believes that the proposed amendments might have competitive effects on the

[234] *See* Part IV.D.2. *infra.*

[235] *See* Part IV.D.2. *infra* for a more in depth discussion of the competitive effects of the proposed amendments.

[236] *See* Part IV.A.1. *supra.*

[237] *See* Part IV.C.4. *infra.*

[238] *See* CAT NMS Plan Approval Order, *supra* note 4, at Section V.G.1.

[239] LTSE is not yet a Participant to the CAT NMS Plan.

[240] As of 8/26/19 there are 31 NMS Stock ATSs operating pursuant to an initial Form ATS–N. A list of NMS Stock ATSs, including access to initial Form ATS–N filings that are effective, can be found on the Commission website at *https://www.sec.gov/divisions/marketreg/form-ats-n-filings.htm.*

[241] Cboe Global Markets, Inc. controls BYX, BZX, C2, EDGA, EDGX, and CBOE; Miami Internal Holdings, Inc. controls Miami International, MIAX Emerald, and MIAX PEARL; NASDAQ, Inc. controls BX, GEMX, ISE, MRX, PHLX, and Nasdaq; Intercontinental Exchange, Inc. controls NYSE, Arca, American, Chicago, and National. The three entities that control a single-exchange are IEX Group which controls IEX, a consortium of broker-dealers which controls BOX, and Long Term Stock Exchange, Inc. which controls LTSE.

market for NMS security trading services and the market for equity listings. In the case that RFRRs are triggered, one or more exchanges might exit these markets, although the Commission preliminarily believes this is unlikely.[242] The Commission preliminarily believes that triggering an RFRR could also temporarily affect competition between exchanges and ATSs and broker-dealer internalizers, but does not believe the effects will be significant.

The Commission preliminarily believes that is it unlikely that exchanges that are part of an exchange group would exit the market for NMS security trading services or equity listings if the RFRRs in the proposed amendments are triggered because the larger exchange group could provide additional capital to an exchange that would otherwise exit the market. Such costs are one-time events and are unlikely to change an exchange operator's assessment of the long-term economics of operating the exchange.[243]

However, for smaller exchanges that are not part of a larger exchange family that could provide additional capital, the Commission recognizes that it is possible that such exchanges could be forced to exit the market, although the Commission believes this is unlikely to occur. Specifically, the Commission believes it is unlikely that exchanges would be forced to leave the market because the Commission preliminarily believes that exchanges that required additional capital to meet their financial obligations under the CAT NMS Plan would be able to secure it through financial markets.

Even if an exchange were to exit, the Commission does not believe this would significantly impact competition in the market for exchange trading services or the market for equity listings because these markets are served by multiple competitors. Consequently, demand for these services in the event of the exit of a competitor is likely to be swiftly met by existing competitors. The Commission recognizes that small exchanges may have unique business models that are not currently offered by competitors to these independent exchanges, but the Commission preliminarily believes a competitor could create similar business models if demand were adequate, and if they did not do so, it seems likely new entrants would do so if the exiting exchange were otherwise profitable.

If the RFRRs are triggered, the Commission preliminarily believes that it could temporarily affect competition between exchanges and ATSs and broker-dealer internalizers. However, the Commission preliminarily believes that these effects would not be significant. As discussed previously, in the event RFRRs are triggered, up to $120MM in costs could be shifted from Industry Members to Participants in a one-year Period.[244] This increase in costs to Participants could have transient negative effects on Participants' ability to invest in their exchanges.[245] The corresponding cost savings to Industry Members could have transient positive effects on Industry Members' abilities to invest in their ATSs or internalization operations, which could include temporarily reducing fees in order to attract order flow. Although this may temporarily provide ATSs and broker-dealer internalizers with a competitive advantage over exchanges in attracting order flow, the Commission preliminarily believes that these effects will not be significant because broker-dealers make strategic decisions to expose orders on exchanges or route orders to ATSs or internalizers based on other factors, such as order characteristics and temporary market conditions, that will not be impacted by the proposed amendments.

3. Capital Formation

The Commission preliminarily believes the amendments will have negligible mixed effects on capital formation. The Commission preliminarily believes that it is possible the amendments' improvements to investor protections may allow improvements to capital formation anticipated in the CAT NMS Plan Approval Order to be realized sooner than they would be in the absence of the proposed amendments. As discussed previously, delays in implementation of the CAT NMS Plan have delayed investors' realization of improvements to investor protection anticipated in the CAT NMS Plan Approval Order. By incentivizing the Participants to implement the CAT NMS Plan expeditiously, the amendments may permit investors to realize these benefits sooner than they would otherwise. These improvements to investor protections may improve capital formation.[246] However, some costs of the amendments—particularly the direct costs—are likely to be passed on to investors.[247] Because these are not ongoing costs, the Commission preliminarily believes any negative effects on capital formation will be transitory. If RFRRs are triggered, the exchanges could face significant costs associated with expenses that could not be shared with Industry Members. These additional costs to Participants would be offset by savings by Industry Members. The Commission preliminarily believes these transfers between Participants and Industry Members are unlikely to affect capital formation because while the costs to Participants might be passed on to investors through relatively higher prices to transact on exchanges for broker-dealers that would then pass these costs on to their customers, the savings to Industry Members might be passed on by broker-dealers to their customers as well, so the net impact to investors should be negligible.

If RFRRs are triggered, exchanges could experience short-term, transitory negative effects on exchange capital formation because the exchanges would

[242] A potential entrant to the market might be marginally more likely to delay entry due to the proposed amendments, but given that a new entrant's fee burden would be a function of its market share, presumably a new entrant would begin with a relatively low market share. The Commission, therefore, does not preliminarily believe that an entity considering forming an exchange would decline to do so because of additional uncertainty about CAT NMS Plan financial responsibilities. Consequently, the Commission preliminarily believes that the proposed amendments are unlikely to have effects on innovation by new entrants.

[243] The Commission preliminarily believes that the license to operate an exchange is a valuable asset even when the extant exchange has low volume because exchange families and new entrants sometimes acquire both high and low volume exchanges. *See, e.g., https://ir.theice.com/press/press-releases/all-categories/2018/07-18-2018-133237540* and *http://cdn.batstrading.com/resources/press_releases/CBOE-Holdings-Announces-Close-of-Acquisition-of-Bats-Global-Markets-FINAL-3-1-17.pdf.* As long as the RFRR-related costs incurred by an exchange are less than the cost of registering and implementing a new exchange from scratch, exchange families with adequate financial resources are likely to invest additional capital in an exchange that would otherwise fail due to the RFRRs.

The Commission recognizes that under the proposed amendments, exchanges do not incur RFRR costs in isolation; if one exchange incurs RFRR costs, all exchanges incur RFRR costs. Consequently, an exchange family might need to further capitalize multiple exchanges. The Commission believes failure of entire exchange groups is unlikely because the Commission preliminarily believes that exchange groups that might require additional capital to meet their financial obligations under the Plan could acquire it through financial markets because exchanges are generally profitable and investors in exchanges are likely to view costs from RFRRs as one-time events that do not affect long-term exchange profitability.

[244] *See* Part IV.C. *supra.*

[245] *See* Part IV.D.3. *infra.*

[246] *See* CAT NMS Plan Approval Order, *supra* note 4, at Section V.G.1.

[247] Costs associated with triggering RFRRs would not increase the cost of the CAT, but rather constitute a transfer between Participants and Industry Members. The Commission preliminarily believes these costs are unlikely to be directly transferred to investors, but notes competitive effects of these transfers in Part IV.D.2. *supra.*

face additional costs and may not be able to invest in projects or return profits to shareholders that they would otherwise. However, the Commission preliminarily believes costs from RFRRs would be viewed as transitory by investors because they would end with full CAT implementation. Consequently, the Commission preliminarily believes that the amendments would not permanently affect investors' assessment of expected profitability for exchanges, and thus would not reduce this capital formation long-term.

E. Alternatives

1. Fixed versus Relative Financial Accountability Milestone Dates

The Commission considered an alternative approach that would use relative Financial Accountability Milestone dates in a scenario when a Financial Accountability Milestone was not met on schedule. Under the proposed amendments, Financial Accountability Milestone dates are fixed calendar dates. Under this alternative approach, the duration of the time period between two Financial Accountability Milestone dates would be static but the Financial Accountability Milestone dates would be relative. Thus, if a Financial Accountability Milestone were not achieved on schedule, the next Financial Accountability Milestone date would be delayed such that the duration of Periods between Financial Accountability Milestone dates was unchanged.[248] For example, if sequential Financial Accountability Milestone dates are April 30, 2020 and December 31, 2020, achieving the first Financial Accountability Milestone on May 31, 2020 would automatically reset the next Financial Accountability Milestone date to January 31, 2021, leaving the duration of the period between the two dates unchanged.

The primary economic impact of this approach relative to the proposal is that it avoids a risk inherent in the fixed Financial Accountability Milestone date approach of the proposal. Under the fixed Financial Accountability Milestone date approach, if the Participants encounter a delay early in the implementation process that causes them to miss a Financial Accountability Milestone date by a significant margin, it may become more difficult for them to meet future Financial Accountability Milestone dates. Under such a scenario, the proposed amendments may lose some of their incentive value because the Participants may not be able to avoid triggering at least some of the RFRRs after missing an early Financial Accountability Milestone date. Under the alternative approach with relative Financial Accountability Milestone dates, if the Participants miss a deadline early in the implementation timeline and trigger the RFRRs, they would not necessarily find later deadlines so difficult to meet that they lose their economic incentive to meet the later Financial Accountability Milestone dates.

This alternative approach has two significant costs relative to the proposed amendments. First, in a case where a significant delay arises in an early implementation Period such that financial RFRRs are triggered during that Period, the Participants may be incentivized to delay meeting the Period-ending requirement in order to give themselves more time to achieve later-Period Financial Accountability Milestones in order to decrease their risk of triggering RFRRs in later Periods. Such a scenario could significantly delay the retirement of OATS, which would be costly to Industry Members if it extended their period of duplicative reporting.[249] Under both the proposed amendments and in this alternative, the structure of the financial accountability provisions might mitigate but not eliminate this risk because RFRRs increase over time; consequently, if a Financial Accountability Milestone is missed and an RFRR is triggered, Participants should remain incentivized to implement in an expeditious manner to avoid triggering a higher RFRR during the same Period of implementation. However, under the alternative approach, the Financial Accountability Milestone date for OATS retirement could be pushed back due to missing an earlier Financial Accountability Milestone, which could necessitate a longer period of costly duplicative reporting for Industry Members.

The second likely additional cost relative to the proposal is that the alternative approach would make the ultimate CAT implementation timeline less certain than in the proposal, because delays in early Periods would push back implementation dates for later Periods of implementation. However, under the proposed approach, missing an early-Period Financial Accountability Milestone could also result in delays in meeting later Financial Accountability Milestones, and because the potential length of future delays would not be defined by the structure of the proposed amendments, they would be less transparent to Industry Members. However, under the proposed amendments, realized delays would be documented in Quarterly Progress Reports and thus should aid Industry Members in updating expectations on implementation timelines.

2. Different Timelines for Onset of RFRRs

The Commission considered alternative approaches with different Financial Accountability Milestone dates. These approaches would have certain additional benefits and costs as compared to the proposal. For example, earlier Financial Accountability Milestones might accelerate the time at which investors realize the benefits of the CAT, but would increase the likelihood that the implementation of CAT would be accelerated to a degree that is inefficient.[250] Alternatively, delaying Financial Accountability Milestone dates would increase the time that investors do not realize the benefits of CAT and that Industry Members experience uncertainty that increases their implementation costs, but might avoid the risk of inefficiently accelerating the implementation of CAT.[251] The Commission further notes that alternative milestone dates that are not generally aligned with dates published by or discussed with the Participants are less likely to reflect realistic expectations for the Participants in implementing the CAT.[252]

3. Alternate Magnitudes of RFRRs

The Commission considered alternative approaches with different levels of RFRRs. Under the proposed amendments, for each period of up to 90 days by which the Participants miss Financial Accountability Milestone dates, they would trigger RFRRs such that they would be allowed to recover 25% less of the CAT costs they would otherwise recover from Industry

[248] The alternative could be structured such that upon the end of a Period, the next Financial Accountability Milestone date would become the later of the Financial Accountability Milestone date in the amendments or the relative date from this alternative approach. This approach would prevent the subsequent relative Financial Accountability Milestone date from becoming earlier in the event that the Participants achieve a Financial Accountability Milestone ahead of schedule. This would avoid the problem of incentivizing the Participants to delay Financial Accountability Milestone achievement to avoid accelerating Financial Accountability Milestone dates, and would mitigate any risk Industry Members would have from accelerating Financial Accountability Milestone dates.

[249] *See* CAT NMS Plan Approval Order, *supra* note 4, at Section V.F.2.b.

[250] *See* Note 232, *supra.*

[251] *See* Part IV.C. *supra.*

[252] *See* Part II.B.1. *supra.*

Members. Alternative approaches could have higher or lower marginal RFRRs.

The Commission preliminarily believes that alternative approaches with higher marginal RFRRs (allowing the Participants to recover a lower share of CAT costs from Industry Members when RFRRs are triggered) would potentially further incentivize the Participants to meet Financial Accountability Milestone deadlines, but would also increase the risk of inefficient acceleration of CAT implementation.[253]

The Commission preliminarily believes that alternative approaches with lower RFRRs (allowing the Participants to recover a higher share of CAT costs from Industry Members when RFRRs are triggered) would decrease the incentives Participants have to meet Financial Accountability Milestone deadlines, but would reduce the risk of inefficient acceleration of CAT implementation.

F. Request for Comment on the Economic Analysis

The Commission is sensitive to the potential economic effects, including the costs and benefits, of the proposed amendments to the CAT NMS Plan. The Commission has identified above certain costs and benefits associated with the proposal and requests comment on all aspects of its preliminary economic analysis. The Commission encourages commenters to identify, discuss, analyze, and supply relevant data, information, or statistics regarding any such costs or benefits. In particular, the Commission seeks comment on the following:

33. Do you believe the Commission's analysis of the potential effects of the proposed amendments to the CAT NMS Plan is reasonable? Why or why not? Please explain in detail.

34. Do you believe the Commission's description of the state of implementation of the CAT NMS Plan is accurate? Why or why not? Please explain in detail.

35. Do you believe that the multiple delays in implementation of the CAT NMS Plan has led to uncertainty surrounding CAT implementation that may be causing Industry Members to incur costs they would not have incurred had the CAT been completed on its original schedule? Why or why not? Please explain in detail.

36. The structure of the RFRRs provides that after missing a Financial Accountability Milestone by 270 days (or 180 days as applicable), Participants would not be allowed to recover any implementation costs for the delayed implementation Period. For the remainder of the implementation Period, Participants would continue to incur expenses associated with the Plan Processor's operation of the Central Repository, and would not be able to share those expenses with Industry Members. Do you believe the Participants' inability to share those expenses with Industry Members will continue to incentivize the Participants to proceed with Plan implementation? Why or why not? Please explain in detail.

37. Do you agree with the Commission's assessment of the transparency of Plan implementation? Why or why not? Please explain in detail.

38. Do you agree with the Commission's assessment of the status of Plan implementation? Why or why not? Please explain in detail.

39. The Commission requests that commenters provide relevant data and information to assist us in analyzing the economic consequences of the proposed amendments. In particular, the Commission requests data and information regarding the costs incurred by Industry Members because of uncertainty surrounding CAT implementation.

40. Do you agree with the Commission's assessment of the benefits of the proposed amendments? Why or why not? Please explain in detail.

41. Do you believe that the proposed amendments increase the likelihood that OATS will be retired by December 31, 2021? Do you believe that the amendments are likely to compress the period of duplicative reporting by Industry Members? Why or why not? Please explain in detail.

42. Do you believe the proposed amendments will decrease uncertainty for Industry Members regarding the timing and requirements of Plan implementation? Why or why not? Please explain in detail.

43. Do you believe this reduction in uncertainty will reduce costs of Plan Implementation by Industry Members? Why or why not? Please explain in detail.

44. Do the Participants have economic disincentives to Plan implementation that the Commission has not recognized? What are they? Please describe in detail.

45. Are there other economic incentives the Commission could propose to incentivize the Participants to implement the CAT NMS Plan expeditiously and efficiently? Please describe them in detail.

46. Do you agree with the Commission's analysis of the direct costs of the proposed amendments? Why or why not?

47. Do commenters agree that Participants' costs related to approval of the Implementation Plan and Quarterly Progress Reports are likely to have economies of scale, whereby the representatives of Participants that are members of exchange groups may spend less time per exchange on this task, while representatives of Participants that are not part of an exchange group may require more time to review and vote on the Implementation Plan and/or Quarterly Progress Reports, and prepare and publish on each of the Participant websites or collectively on the CAT NMS Plan website any statements identifying Participants that did not vote to approve and explaining why? Why or why not?

48. Do commenters agree with the Commission's estimate for hourly costs for Operating Committee members performing activities necessary for approval by a Supermajority Vote under the amendments? If not, please provide alternate estimates if possible.

49. Do commenters agree with the Commission's estimate for hourly costs associated with the President, CEO or equivalently situated senior officer of each Participant? If not, please provide alternative estimates of the hourly costs for the President, CEO or equivalently situated senior officer of each Participant to consult as needed with the Participant's Operating Committee member.

50. Please provide estimates of the time required for a Participant and publish a statement identifying itself and explaining why it did not vote to approve the Implementation Plan or Quarterly Report. Also, please identify who (*i.e.* General Counsel, Chief Compliance Officer or other executive) would be involved in preparing such a statement.

51. Please comment on the Commission's estimate of the maximum cost of RFRRs to the Participants. Are there alternative methodologies to estimate these costs? Please describe and provide detailed analysis if possible.

52. Do you agree with the Commission's analysis of the indirect costs of the proposed amendments? Why or why not?

53. Are the proposed amendments likely to cause an inefficient acceleration as described above of Plan implementation as described above? Why or why not?

54. Do you believe the proposed amendments are likely to improve the

[253] *See* Note 233, *supra.*

efficiency of Plan implementation? Why or why not?

55. Do you believe the proposed amendments' incentive structure could potentially reduce the efficiency of Plan implementation by incentivizing Participants to delay certain later-Period implementation activities if Participants believe there is a significant risk of missing a Financial Accountability Milestone date in an earlier Period? Why or why not? Please describe how in detail.

56. The Commission requests comment on all aspects of this analysis and, in particular, on whether the Proposed Amendments would place a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, as well as the effect of the proposal on efficiency, competition, and capital formation.

57. Do you agree with the Commission's assessment of the current state of competition in the market for trading services? Why or why not?

58. Do you agree with the Commission's assessment of the current state of competition in the market for NMS stock listings? Why or why not?

59. Do you believe that in the event that RFRRs are triggered, one or more exchanges might exit the market for trading services? Please explain in detail.

60. If one or more exchanges were to exit the market for trading services, would competition in this market suffer? Why or why not? Are there exchanges that might leave this market that have business models that could not be copied by an existing competitor or new entrant? Would such business models be likely to be copied by an existing competitor or new entrant? Why or why not? Please explain in detail.

61. Do you believe that some Participants might be motivated to trigger RFRRs to financially distress competitors? Why or why not? Please explain in detail.

62. Do you believe the proposed amendments will have effects on capital formation that the Commission has not recognized? Please explain in detail.

63. Do you agree that the proposed amendments may improve capital formation by accelerating the investor protection benefits anticipated by the CAT Approval Order? Why or why not?

64. Would an alternative approach that used relative Financial Accountability Milestone dates rather than fixed Financial Accountability Milestone dates better incentivize the Participants to implement the CAT NMS Plan expeditiously and efficiently? Why or why not? Would such an approach have benefits or costs that the Commission has not recognized? Please explain in detail.

65. Are there alternative Financial Accountability Milestone dates that the Commission should use? What economic benefits and costs would those alternative dates have? Please describe in detail.

66. The Commission requests comment on alternative incentive structures. Is the proposed schedule for reducing the fee recovery levels by 25% for each period of up to 90 days that the Participants miss implementation Financial Accountability Milestone dates adequate to incentivize the Participants to implement CAT expeditiously and efficiently? Is there some other RFRR level that is more appropriate? Should the time period between reductions in RFRR levels be shorter or longer than 90 days? Please explain.

V. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[254] the Commission requests comment on the potential effect of this proposal on the United States economy on an annual basis. The Commission also requests comment on any potential increases in costs or prices for consumers or individual industries, and any potential effect on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their views, to the extent possible.

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (''RFA'') [255] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a) [256] of the Administrative Procedure Act,[257] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on ''small entities.'' [258] Section 605(b) of the RFA states that this requirement shall not apply ''to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' [259]

The proposed rule amendments would only impose requirements on national securities exchanges registered with the Commission under Section 6 of the Exchange Act and FINRA. With respect to the national securities exchanges, the Commission's definition of a small entity is an exchange that has been exempt from the reporting requirements of Rule 601 of Regulation NMS, and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[260] None of the national securities exchanges registered under Section 6 of the Exchange Act that would be subject to the proposed rule are ''small entities'' for purposes of the RFA. In addition, FINRA is not a ''small entity.'' [261] For these reasons, the proposed rule will not apply to any ''small entities.'' Therefore, for the purposes of the RFA, the Commission certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

The Commission requests comment regarding this certification. In particular, the Commission solicits comment on the following:

67. Do commenters agree with the Commission's certification that the proposed rule would not have a significant economic impact on a substantial number of small entities? If not, please describe the nature of any impact on small entities and provide empirical data to illustrate the extent of the impact.

VII. Statutory Authority and Text of the Proposed Amendments to the CAT NMS Plan

Pursuant to the Exchange Act and, particularly, Sections 2, 3(b), 5, 6, 11A, 15, 15A, 17(a) and (b), 19, and 23(a) thereof, 15 U.S.C. 78b, 78c(b), 78e, 78f, 78k–1, 78o, 78o–3, 78q(a) and (b), 78s, 78w(a), and pursuant to Rule 608(a)(2) and (b)(2),[262] the Commission proposes

[254] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[255] 5 U.S.C. 601 *et seq.*

[256] 5 U.S.C. 603(a).

[257] 5 U.S.C. 551 *et seq.*

[258] The Commission has adopted definitions for the term ''small entity'' for purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in 17 CFR 240.0–10. *See* Securities Exchange Act Release No. 18451 (January 28, 1982), 47 FR 5215 (February 4, 1982) (File No. AS–305).

[259] 5 U.S.C. 605(b).

[260] *See* 17 CFR 240.0–10(e).

[261] *See* 13 CFR 121.201

[262] 17 CFR 242.608(a)(2) and (b)(2). These provisions enable the Commission to propose amendments to any effective NMS Plan by ''publishing the text thereof, together with a statement of the purpose of such amendment,'' and providing ''interested persons an opportunity to submit written comments.''

to amend the CAT NMS Plan in the manner set forth below.

Additions are *underlined;* deletions are [bracketed].

* * * * *

BILLING CODE 8011–01–P

ARTICLE I
DEFINITIONS

Section 1.1 Definitions. As used throughout this Agreement (including, for the avoidance of doubt, the Exhibits, Appendices, Attachments, Recitals and Schedules identified in this Agreement):

* * * * *

"Financial Accountability Milestone" means, as the case may be, Initial Industry Member Core Equity Reporting, Full Implementation of Core Equity Reporting, Full Availability and Regulatory Utilization of Transactional Database Functionality, and Full Implementation of CAT NMS Plan Requirements.

* * * * *

"Full Availability and Regulatory Utilization of Transactional Database Functionality" means the point at which: (a) reporting to the Order Audit Trail System is no longer required for new orders; (b) Industry Member reporting for equities transactions, simple electronic options transactions, manual options transactions, and complex options transactions, including Allocation Reports, but excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and implemented; (c) representative order linkages, as well as intra-firm linkages, inter-firm linkages, national securities exchange linkages, and trade reporting facilities linkages, are developed, tested, and implemented in a manner that permits the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any related allocation information provided in an Allocation Report; (d) CAT Error Rates satisfy the threshold specified by Section 6.5(d)(i); (e) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1-8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b) and (c) and is available to the Participants and to the Commission; and (f) the requirements of Section 6.10(a) are met. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

"Full Implementation of CAT NMS Plan Requirements" means the point at which the Participants have satisfied all of their obligations to build and implement the CAT, such that all CAT system functionality required by Rule 613 and the CAT NMS Plan has been developed, successfully tested, and fully implemented at the initial Error Rates specified by Section 6.5(d)(i) or less, including functionality that efficiently permits the Participants and the Commission to access all CAT Data required to be stored in the Central Repository pursuant to Section 6.5(a), including Customer Account Information, Customer-ID, Customer Identifying Information, and Allocation Reports, and to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any related allocation information provided in an Allocation Report. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

"Full Implementation of Core Equity Reporting Requirements" means the point at which: (a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1-8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

* * * * *

"Initial Industry Member Core Equity Reporting" means the point at which Industry Members (excluding Small Industry Members that are not OATS reporters) have begun to report equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, to the CAT. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

* * * * *

ARTICLE VI
FUNCTIONS AND ACTIVITIES OF CAT SYSTEM

Section 6.1. – Section 6.5. No change.

Section 6.6. Written Assessments, Audits and Reports.

* * * * *

(c) Implementation Plan and Quarterly Progress Reports.

(i) Within 30 calendar days following the effective date of this provision, the Participants shall file with the Commission and make publicly available on each of the Participant websites, or collectively on the CAT NMS Plan website, a complete CAT implementation plan that includes the Participants' timeline for achieving the objective milestones setting forth how and when the Participants will facilitate the achievement of Full Implementation of CAT NMS Plan Requirements (the "Implementation Plan"). The Implementation Plan shall include:

(A) For each of the objective milestones set forth in Section C.10 of Appendix C of this Agreement to assess progress toward implementation of the CAT, the completion date and a description of the status; and

(B) For each of the Financial Accountability Milestones, the completion date and a description of the status.

If the Participants decide to complete any of the milestones identified in the Implementation Plan by releasing functionality in a phased approach, the Implementation Plan shall describe each phased release necessary to achieve the completion of the relevant milestone and provide completion dates for each such release identified.

(ii) Within 15 business days after the end of each calendar quarter, Participants shall file with the Commission and make publicly available on each of the Participant websites, or collectively on the CAT NMS Plan website, a complete report that provides a detailed description of the progress made by the Participants during that calendar quarter toward achieving each of the milestones set forth in the Implementation Plan (the "Quarterly Progress Report"). If, subsequent to the publication of the Implementation Plan, the Participants decide to complete any of the milestones set forth therein by releasing functionality in a phased approach, each Quarterly Progress Report shall reflect this change by describing the phases necessary to achieve the completion of the relevant milestone and providing the information specified below for each phase. The first of such reports shall be filed and made publicly available within 15 business days after the end of the calendar quarter in which the Implementation Plan was filed and made publicly available.

(A) For each milestone completed by the end of a given calendar quarter, the report shall include the following: (1) the CAT implementation plan completion date, (2) the date on which the milestone was completed, and (3) a description of any variance from the Implementation Plan.

(B) For each milestone in progress at the end of a given calendar quarter, the report shall include the following: (1) the CAT implementation plan completion date, (2) the currently targeted completion date, and (3) a description of:

(a) the current status of the milestone;

(b) any difference between the CAT implementation plan completion date and the currently targeted completion date, including the basis for making the adjustment and the impact of this adjustment on any other milestone; and

(c) any other factual indicators that demonstrate the current level of completion with respect to the milestone.

(C) For each milestone that has not yet been initiated by the end of a given calendar quarter, the report shall include the following: (1) the CAT implementation plan completion date, (2) the currently targeted completion date, and (3) a description of:

(a) the current status of the milestone; and

(b) any difference between the Implementation Plan completion date and the currently targeted completion date, including the basis for making the adjustment and the impact of this adjustment on any other milestone.

(iii) The Implementation Plan and each Quarterly Progress Report shall be approved by at least a Supermajority Vote of the Operating Committee before such documents are filed with the Commission or made publicly available on each of the Participant websites or collectively on the CAT NMS Plan website. However, if the Implementation Plan or any Quarterly Progress Report is approved only by a Supermajority Vote of the Operating Committee, and not by a unanimous vote of the Operating Committee (including, for the avoidance of doubt, all members of the Operating Committee, whether or not present and whether or not recused), each Participant whose Operating Committee member did not vote to approve the Implementation Plan or Quarterly Progress Report shall separately file with the Commission and make publicly available on each of the Participant websites, or collectively on the CAT NMS Plan website, a statement identifying itself and explaining why the member did not vote to approve the Implementation Plan or Quarterly Progress Report. The Operating Committee shall submit the Implementation Plan and Quarterly Progress Reports to the Chief Executive Officer, President, or an equivalently situated senior officer of each Participant, prior to being voted on by the Operating Committee.

* * * * *

ARTICLE XI
FUNDING OF THE COMPANY

Section 11.1. – Section 11.5. No change.

Section 11.6. Funding Incentives for Post-Amendment Expenses. Notwithstanding the foregoing provisions, this Section shall apply with respect to all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development, implementation, and operation of the CAT from the effective date of this Section until such time as Full Implementation of CAT NMS Plan Requirements has been achieved ("Post-Amendment Expenses").

(a) The following conditions shall apply to the collection of any fees established by the Operating Committee or implemented by the Participants to recover a portion of Post-Amendment Expenses from Industry Members ("Post-Amendment Industry Member Fees").

(i) The Participants will be entitled to collect the full amount of:

(A) Any Post-Amendment Industry Member Fees established or implemented to recover Post-Amendment Expenses incurred from the effective date of this Section to the date of Initial Industry Member Core Equity Reporting ("Period 1"), so long as such date is no later than April 30, 2020;

(B) Any Post-Amendment Industry Member Fees established or implemented to recover the Post-Amendment Expenses incurred from the date immediately following the achievement of Initial Industry Member Core Equity Reporting to the date of Full Implementation of Core Equity Reporting Requirements ("Period 2"), so long as such date is no later than December 31, 2020;

(C) Any Post-Amendment Industry Member Fees established or implemented to recover the Post-Amendment Expenses incurred from the date immediately following the achievement of Full Implementation of Core Equity Reporting Requirements to the date of Full Availability and Regulatory Utilization of Transactional Database Functionality ("Period 3"), so long as such date is no later than December 31, 2021; and

(D) Any Post-Amendment Industry Member Fees established or implemented to recover the Post-Amendment Expenses incurred from the date immediately following the achievement of Full Availability and Regulatory Utilization of Transactional Database Functionality to the date of Full Implementation of CAT NMS Plan Requirements ("Period 4"), so long as such date is no later than December 30, 2022.

(ii) The amount of Post-Amendment Industry Member Fees that the Participants are entitled to collect for Period 1will be reduced according to the following schedule if the Participants miss the deadline set forth for that Period:

(A) By 25% if the Participants miss the deadline set forth in Section 11.6(a)(i)(A) by less than 60 days;

(B) By 50% if the Participants miss the deadline set forth in Section 11.6(a)(i)(A) by 60 days or more, but less than 120 days;

(C) By 75% if the Participants miss the deadline set forth in Section 11.6(a)(i)(A) by 120 days or more, but less than 180 days; and

(D) By 100% if the Participants miss the deadline set forth in Section 11.6(a)(i) by 180 days or more.

(iii) The amount of Post-Amendment Industry Member Fees that the Participants are entitled to collect for each Period will be reduced according to the following schedule if the Participants miss the deadline set forth for that Period:

(A) By 25% if the Participants miss the deadline set forth in Section 11.6(a)(i) by less than 90 days;

(B) By 50% if the Participants miss the deadline set forth in Section 11.6(a)(i) by 90 days or more, but less than 180 days;

(C) By 75% if the Participants miss the deadline set forth in Section 11.6(a)(i) by 180 days or more, but less than 270 days; and

(D) By 100% if the Participants miss the deadline set forth in Section 11.6(a)(i) by 270 days or more.

(iv) The Participants will only be permitted to collect Post-Amendment Industry Member Fees for Period 1, Period 2, Period 3, or Period 4 at the end of each respective Period.

(b) In all CAT NMS Plan amendments submitted by the Operating Committee to the Commission pursuant to Rule 608(b)(3)(i), and in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, the Operating Committee or the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4.

* * * * *

By the Commission.

Dated: September 9, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–19852 Filed 9–12–19; 8:45 am]

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FEDERAL REGISTER

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No. 178 September 13, 2019

Part IV

Department of Defense

Defense Acquisition Regulations System

48 CFR Parts 204, 209, 212, 213, et al.

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause ''Cancellation or Termination of Orders'' (DFARS Case 2018–D035); Case 2018–D045); Case 2019–D012); Modification of DFARS Clause ''Trade Agreements'' (DFARS Case 2019–D016); Modification of DFARS Clause ''Readjustment of Payments'' (DFARS Case 2019–D017); Modification of DFARS Clause ''Reporting and Payment of Royalties'' (DFARS Case 2019–D018); Repeal of DFARS Provision ''Award to Single Offeror'' (DFARS Case 2019–D017; Repeal of DFARS Clause ''Returnable Containers Other Than Cylinders'' (DFARS Case 2019–D025); Update to Performance Information System References (DFARS Case 2019–D033); Update to Performance Information System References (DFARS Case 2019–D033); Appendix A, Armed Services Board of Contract Appeals, Part 1—Charter; Technical Amendments; Final Rules;

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause ''Tax Relief'' (DFARS Case 2018–D049); Validation of Proprietary and Technical Data (DFARS Case 2018–D069); Proposed Rules

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 239 and 252

[Docket DARS–2019–0018]

RIN 0750–AJ97

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause ''Cancellation or Termination of Orders'' (DFARS Case 2018–D035)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the text of an existing DFARS clause to clarify DoD's liability in the event DoD cancels or terminates a telecommunications service order and include the text of another DFARS clause to streamline terms and conditions for contractors subject to both clauses, pursuant to action taken by the DoD Regulatory Reform Task Force.

DATES: Effective September 13, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 84 FR 18225 on April 30, 2019, to modify the DFARS clause 252.239–7007, Cancellation or Termination of Orders, in order to: (1) Clarify the limitations of the Government's obligation to reimburse a contractor for nonrecoverable costs when the Government cancels an order for telecommunications services; and (2) incorporate the information included in DFARS 252.239–7008, Reuse Arrangements. Combining these clauses results in 252.239–7008 being removed from the DFARS. The rule implements a recommendation of the DoD Regulatory Reform Task Force established under Executive Order (E.O.) 13777, ''Enforcing the Regulatory Reform Agenda.''

No public comments were received in response to the proposed rule. No changes from the proposed rule are made in the final rule.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-The-Shelf Items

This rule does not create any new provisions or clauses. The rule combines two clauses into a single clause and makes minor modifications to clarify current practices. This rule does not change the applicability of the affected clauses.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and E.O. 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. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

DoD is amending DFARS clause 252.239–7007, Cancellation or Termination of Orders, to: Clarify DoD's liability in the event DoD cancels or terminates a telecommunications services order; and incorporate the text of DFARS clause 252.239–7008, Reuse Arrangements. Combining these two clauses permits DFARS 252.239–7008 to be removed from the DFARS.

The objectives of this rule are to: Streamline contract terms and conditions pertaining to telecommunications services; prevent costs from being incurred in anticipation of, but prior to, the establishment of a formal agreement or contract and award of an order for telecommunications services; and to create an upfront mutual understanding of the maximum amount of reimbursement due to the contractor in the event of cancellation or termination. The modification of these DFARS clauses implements a recommendation from the DoD Regulatory Reform Task Force under E.O. 13771.

No public comments were received in response to the initial regulatory flexibility analysis.

This rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because it is simply combining two existing clauses that address the same topic into a single comprehensive clause, and clarifies the current practices regarding DoD liability to reimburse telecommunication services contractors in certain circumstances.

Based on fiscal year (FY) 2018 data from the Federal Procurement Data System, the Government awarded approximately 8,670 contracts and orders for services under the Product and Supply Code (PSC) D3—Information Technology and Telecommunications. Of the 8,670 contracts and orders awarded, approximately 28% of the awards were made to 1,050 unique small businesses entities. The PSC D3 does not breakdown further into information technology services and telecommunications services; therefore, the number of contracts and orders awarded in FY 2018 exclusively for telecommunications services is estimated to be fewer than the number awarded in FY 2018 under PSC D3 in its entirety.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses.

This rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the rule that would meet the stated objectives.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 239 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 239 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 239 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

239.7411 [AMENDED]

■ 2. Amend section 239.7411 by—

■ a. In paragraph (a) introductory text, removing the em dash and adding a period in its place;

■ b. In paragraphs (a)(1) through (5), removing the semicolons and adding periods in their places; and

■ c. Removing paragraph (a)(6).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Revise section 252.239–7007 to read as follows:

252.239–7007 Cancellation or Termination of Orders.

As prescribed in 239.7411(a), use the following clause:

Cancellation or Termination of Orders (SEP 2019)

(a) *Definitions.* As used in this clause—

Actual nonrecoverable costs means the installed costs of the facilities and equipment, less cost of reusable materials, and less net salvage value.

Basic cancellation liability means the actual nonrecoverable cost, which the Government shall reimburse the Contractor at the time services are cancelled.

Basic termination liability means the nonrecoverable cost amortized in equal monthly increments throughout the liability period.

Installed costs means the actual cost of equipment and materials specifically provided or used, plus the actual cost of installing (including engineering, labor, supervision, transportation, rights-of-way, and any other items which are chargeable to the capital accounts of the Contractor), less any costs the government may have directly reimbursed the Contractor under the Special Construction and Equipment Charges clause of this agreement/contract.

Net salvage value means the salvage value less the cost of removal.

(b) If the Government cancels any of the services ordered under this agreement/contract, before the services are made available to the Government, or terminates any of these services after they are made available to the Government, the Government will reimburse the Contractor for the actual nonrecoverable costs the Contractor has reasonably incurred in providing facilities and equipment for which the Contractor has no foreseeable reuse. The Government will not reimburse the Contractor for any actual nonrecoverable costs incurred after notice of award, but prior to execution of the order.

(c) When feasible, the Contractor shall reuse cancelled or terminated facilities or equipment to minimize the charges to the Government.

(d) If at any time the Government requires that telecommunications facilities or equipment be relocated within the Contractor's service area, the Government will have the option of paying the costs of relocating the facilities or equipment in lieu of paying any termination or cancellation charge under this clause. The basic cancellation liability or basic termination liability applicable to the facilities or equipment in their former location shall continue to apply to the facilities and equipment in their new location. Monthly recurring charges shall continue to be paid during the period.

(e) When there is another requirement or foreseeable reuse in place of cancelled or terminated facilities or equipment, no charge shall apply and the basic cancellation liability or basic termination liability shall be appropriately reduced. When feasible, the Contractor shall promptly reuse discontinued channels or facilities, including equipment for which the Government is obligated to pay a minimum service charge.

(f) The amount of the Government's liability upon cancellation or termination of any of the services ordered under this agreement/contract will be determined under applicable tariffs governing cancellation and termination charges which—

(1) Are filed by the Contractor with a governmental regulatory body, as defined in the Orders For Facilities and Services clause of this agreement/contract;

(2) Are in effect on the date of termination; and

(3) Provide specific cancellation or termination charges for the facilities and equipment involved or show how to determine the charges.

(g) The amount of the Government's liability upon cancellation or termination of any of the services ordered under this agreement/contract, which are not subject to a governmental regulatory body, will be determined under a mutually agreed schedule in the communication services authorization (CSA) or other contractual document.

(h) If no applicable tariffs are in effect on the date of cancellation or termination or set forth in the applicable CSA or other contractual document, the Government's liability will be determined under the following settlement procedures—

(1) The Contractor agrees to provide the Contracting Officer, in such reasonable detail as the Contracting Officer may require, inventory schedules covering all items of property or facilities in the Contractor's possession, the cost of which is included in the Basic Cancellation or Termination Liability for which the Contractor has no foreseeable reuse.

(2) The Contractor shall use its best efforts to sell property or facilities when the Contractor has no foreseeable reuse or when the Government has not exercised its option to take title under the Title to Telecommunications Facilities and Equipment clause of this agreement/contract. The Contractor shall apply any proceeds of the sale to reduce any payments by the Government to the Contractor under a cancellation or termination settlement.

(3) The Contractor shall record actual nonrecoverable costs under established accounting procedures prescribed by the cognizant governmental regulatory authority or, if no such procedures have been prescribed, under generally accepted accounting procedures applicable to the provision of telecommunication services for public use.

(4) The net salvage value shall be deducted from the Contractor's installed cost. In determining net salvage value, the Contractor shall consider the foreseeable reuse of the facilities and equipment by the Contractor. The Contractor shall make allowance for the cost of dismantling, removal, reconditioning, and disposal of the facilities and equipment when necessary either for the sale of facilities or their reuse by the Contractor in another location.

(5) Upon termination of services, the Government will reimburse the Contractor for the nonrecoverable cost less such costs amortized to the date services are terminated and establish the liability period as mutually agreed to but not to exceed ten years. In the case of either a cancellation or a termination, the Government's presumed maximum liability will be capped by the unpaid non-recurring charges and the monthly recurring charges set out in the contract/agreement. The presumed maximum liability for monthly recurring charges shall be capped at monthly recurring charges for the minimum service period and any required notice period.

(6) When the basic cancellation liability or basic termination liability established by the CSA or other contractual document is based on estimated costs, the Contractor agrees to settle on the basis of actual cost at the time of cancellation or termination.

(7) The Contractor agrees that, if after settlement but within the termination liability period of the services, should the Contractor make reuse of equipment or facilities which were treated as nonreusable or nonsalvable in the settlement, the Contractor shall reimburse the Government for the value of the equipment or facilities.

(8) The Contractor agrees to exclude—

(i) Any costs which are not included in determining cancellation and termination charges under the Contractor's standard practices or procedures; and

(ii) Charges not ordinarily made by the Contractor for similar facilities or equipment, furnished under similar circumstances.

(i) The Government may, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the cancelled or terminated portion of this agreement/contract. The Government may make these payments if the Contracting Officer determines that the total of the payments is within the amount the Contractor is entitled. If the total of the payments is in excess of the amount finally agreed or determined to be due under this clause, the Contractor shall pay the excess to the Government upon demand.

(j) Failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause.
(End of clause)

252.239–7008 [Removed and Reserved]

■ 4. Remove and reserve section 252.239–7008.

[FR Doc. 2019–19557 Filed 9–12–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 239 and 252

[Docket DARS–2019–0017]

RIN 0750–AK10

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause ''Orders for Facilities and Services'' (DFARS Case 2018–D045)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the text of an existing DFARS clause to include the text of another DFARS clause on the same subject in an effort to streamline contract terms and conditions for contractors, pursuant to action taken by the Regulatory Reform Task Force.

DATES: Effective September 13, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 84 FR 18228 on April 30, 2019, to modify the DFARS clause 252.239–7004, Orders for Facilities and Services, to incorporate the information in DFARS clause 252.239–7005, Rates, Charges, and Services, and make minor changes to simplify the clause text. Combining these clauses results in 252.239–7005 being removed from the DFARS. The rule implements a recommendation of the DoD Regulatory Reform Task Force established under Executive Order (E.O.) 13777, ''Enforcing the Regulatory Reform Agenda.''

No public comments were received in response to the proposed rule. No changes from the proposed rule are made in the final rule.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not create any new provisions or clauses. The rule combines two clauses into a single clause and makes minor modifications to simplify clause text. This rule does not change the applicability of the affected clauses.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and E.O. 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. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

DoD is amending DFARS clause 252.239–7004, Orders for Facilities and Services, to include the text of DFARS clause 252.239–7005, Rates, Charges, and Services. Combining these two clauses permits DFARS 252.239–7005 to be removed from the DFARS.

The objective of this rule is to streamline contract terms and conditions pertaining to telecommunications services. The modification of these DFARS clauses supports a recommendation from the DoD Regulatory Reform Task Force. The modification of these DFARS clauses implements a recommendation from the DoD Regulatory Reform Task Force under E.O. 13771.

No public comments were received in response to the initial regulatory flexibility analysis.

This rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because it is simply combining two existing clauses that address the same topic into a single comprehensive clause.

Based on fiscal year (FY) 2018 data from the Federal Procurement Data System, the Government awarded approximately 8,670 contracts and orders for services under the Product and Supply Code (PSC) D3—Information Technology and Telecommunications. Of the 8,670 contracts and orders awarded, approximately 28% of the awards were made to 1,050 unique small businesses entities. The PSC D3 does not breakdown further into information technology services and telecommunications services; therefore, the number of contracts and orders awarded in FY 2018 exclusively for telecommunications services is estimated to be fewer than the number awarded in FY 2018 under PSC D3 in its entirety.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses. This rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternative approaches to the rule that would meet the stated objectives. This rule is not expected to have a significant economic impact on small entities.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 239 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 239 and 252 are amended as follows:

■ 1. The authority citation for parts 239 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 239–ACQUISITION OF INFORMATION TECHNOLOGY

239.7411 [Amended]

■ 2. Amend section 239.7411 by—

■ a. Removing paragraph (a)(3); and

■ b. Redesignating paragraphs (a)(4) and (5) as paragraphs (a)(3) and (4), respectively.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Revise section 252.239–7004 to read as follows:

252.239–7004 Orders for Facilities and Services.

As prescribed in 239.7411(a), use the following clause:

ORDERS FOR FACILITIES AND SERVICES (SEP 2019)

(a) *Definitions.* As used in this clause—

Governmental regulatory body means the Federal Communications Commission, any statewide regulatory body, or any body with less than statewide jurisdiction when operating under the state authority. Regulatory bodies whose decisions are not subject to judicial appeal and regulatory bodies which regulate a company owned by the same entity that creates the regulatory body are not governmental regulatory bodies.

(b) The Contractor shall acknowledge a communication service authorization or other type order for supplies and facilities by—

(1) Commencing performance after receipt of an order; or

(2) Written acceptance by a duly authorized representative.

(c) The Contractor shall furnish the services and facilities under this agreement/contract in accordance with all applicable tariffs, rates, charges, regulations, requirements, terms, and conditions of—

(1) Service and facilities furnished or offered by the Contractor to the general public or the Contractor's subscribers; or

(2) Service as lawfully established by a governmental regulatory body.

(d) The Government will not prepay for services.

(e) For nontariffed services, the Contractor shall charge the Government at the lowest rate and under the most favorable terms and conditions for similar service and facilities offered to any other customer.

(f) Recurring charges for services and facilities shall, in each case, start with the satisfactory beginning of service or provision of facilities or equipment and are payable monthly in arrears.

(g) Expediting charges are costs necessary to get services earlier than normal. Examples are overtime pay or special shipment. When authorized, expediting charges shall be the additional costs incurred by the Contractor and the subcontractor. The Government shall pay expediting charges only when—

(1) They are provided for in the tariff established by a governmental regulatory body; or

(2) They are authorized in a communication service authorization or other contractual document.

(h) When services normally provided are technically unacceptable and the development, fabrication, or manufacture of special equipment is required, the Government may—

(1) Provide the equipment; or

(2) Direct the Contractor to acquire the equipment or facilities. If the Contractor acquires the equipment or facilities, the acquisition shall be competitive, if practicable.

(i) If at any time the Government defers or changes its orders for any of the services but does not cancel or terminate them, the amount paid or payable to the Contractor for the services deferred or modified shall be equitably adjusted under applicable tariffs filed by the Contractor with the regulatory commission in effect at the time of deferral or change. If no tariffs are in effect, the Government and the Contractor shall equitably adjust the rates by mutual agreement. Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(End of clause)

252.239–7005 [Removed and Reserved]

■ 4. Remove and reserve section 252.239–7005.

[FR Doc. 2019–19558 Filed 9–12–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[Docket DARS–2019–0049]

RIN 0750–AK49

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause ''Release of Past Infringement'' (DFARS Case 2019–D012)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update pronouns used in a clause.

DATES: Effective September 13, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to update the pronouns used in DFARS clause 252.227.7001, Release of Past Infringement. This clause is included, when necessary, in contracts that contain patent release and settlement agreements, license agreements, and assignments. The clause addresses the release of claims or demands of certain inventions associated with the contract. Within the clause text the contractor is identified using the pronouns ''he'' or ''him.'' Current drafting convention simplifies and clarifies clause language by referring to a contractor as ''the contractor'' in clause text. This rule updates this clause to conform the text to current drafting conventions.

II. Discussion and Analysis

The modification of this DFARS text implements a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, ''Enforcing the Regulatory Reform Agenda,'' which established a Federal policy ''to alleviate unnecessary regulatory burdens'' on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the **Federal Register** at 82 FR 35741 on August 1, 2017, and requested public input. One public comment was received on this clause.

Comment: The respondent advised that the clause is never used and should be deleted from the DFARS. The respondent recommended that, instead of the clause, a policy statement permitting DoD to enter into settlement agreements where patent and copyright infringement is alleged by a third party owner of a patent or copyright would suffice.

Response: DFARS clause 252.227–7001 serves as an agreement, through incorporation in the contract, between DoD and the contractor that, by execution of the contract, the contractor releases DoD from all claims and demands the contractor has (or will have) against DoD for the use or manufacture by DoD of inventions specifically covered by patents and applications identified under the contract. The clause applies to the requirements and content of the individual contract. As such, the clause is necessary, when applicable, in the contract to represent the agreement to such terms by both parties, as they relate to the specific contract. A general statement of policy does not fulfill the intent of this clause. Additionally, the clause is available for use, when applicable and necessary, and can be modified to meet particular

circumstances for the specific requirement, with consultation with cognizant patent or legal counsel.

This clause is beneficial to DoD by facilitating a standard and uniform incorporation of more common terms and conditions associated with patent and license agreements and assignments into applicable contracts, without having to draft the language of these more common terms and conditions with each contract. This approach also ensures the same language is incorporated into each contract, which helps DoD avoid miscommunications or misunderstanding and maintain consistency in negotiating such terms and conditions DoD-wide.

The DoD Regulatory Reform Task Force reviewed the requirements of DFARS clause 252.227–7001 and determined that the DFARS clause should only be updated to conform to current drafting standards.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule only updates pronouns used in DFARS clause 252.227–7001. The rule does not impose any new requirements on contracts at or below the simplified acquisition threshold and for commercial items, including commercially available off-the-shelf items

IV. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation is Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule merely updates the contact information already provided for in existing clauses.

V. Executive Orders 12866 and 13563

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. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VII. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section IV. of this preamble), 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, and none has been prepared.

VIII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

252.227–7001 [Amended]

■ 2. Amend section 252.227–7001 by—

■ a. Removing the clause date of ''(AUG 1984)'' and adding ''(SEP 2019)'' in its place; and

■ b. In the clause text, removing ''which he'', ''acquired by him'', and ''(description of subject matter)'' and adding ''which the Contractor'', ''acquired by the Contractor'', and ''*[description of subject matter]*'' in their places, respectively.

[FR Doc. 2019–19559 Filed 9–12–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[Docket DARS–2019–0055]

RIN 0750–AK53

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause ''Trade Agreements'' (DFARS Case 2019–D016)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update a paragraph citation in DFARS clause 252.225–7021, Trade Agreements.

DATES: Effective September 13, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule amends DFARS clause 252.225–7021, Trade Agreements, to update an outdated citation in paragraph (e) of the basic clause and paragraph (f) of the alternate II clause. The DFARS clause is included in solicitations and contracts for the acquisition of supplies subject to the World Trade Organization Government Procurement Agreement. The clause: Provides pertinent definitions and country listings for designated and qualifying countries; requires contractors to deliver only U.S.-made, qualifying country, or designated country end items, unless otherwise stated in the contract; prohibits the contract price from including duty for products for which the contractor will claim duty-free entry; and provides information on applicable sections of the Harmonized Tariff Schedule of the United States (HTSUS).

Paragraph (e) of the basic clause and paragraph (f) of the alternate II clause provide a link to the HTSUS and identify specific sections of the Schedule that provide more information

on the duty-free status of articles specified in paragraph (a)(2)(ii)(A) of the clause. Paragraph (a)(2)(ii)(A) used to be the location in the clause for the definition of ''Caribbean Basin country end product,'' but this paragraph number no longer exists. Instead, the clause has been renumbered and all of the definitions in the clause are include in alphabetical order under paragraph (a).

This rule removes the reference to paragraph (a)(2)(ii)(A) in the clause and replaces it with a reference to the definition of ''Caribbean Basin country end product'' in paragraph (a).

II. Discussion and Analysis

The modification of this DFARS text implements a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, ''Enforcing the Regulatory Reform Agenda,'' which established a Federal policy ''to alleviate unnecessary regulatory burdens'' on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the **Federal Register** at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on this clause. The DoD Regulatory Reform Task Force reviewed the requirements of DFARS clause 252.225–7021 and recommended its modification to correct the reference.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule only updates a citation in an existing clause. The rule does not impose any new requirements on contracts at or below the simplified acquisition threshold or for commercial items, including commercially available off-the-shelf items.

IV. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation is Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule is merely updating a reference in an existing clause.

V. Executive Orders 12866 and 13563

E.O.s 12866 and E.O. 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. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VII. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section IV. of this preamble), 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, and none has been prepared.

VIII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

252.225–7021 [Amended]

■ 2. Amend section 252.225–7021 by—

■ a. In the clause heading, removing the date ''(AUG 2019)'' and adding ''(SEP 2019)'' in its place;

■ b. In paragraph (e) introductory text, removing ''paragraph (a)(2)(ii)(A)'' and adding ''the definition of ''Caribbean Basin country end product'' within paragraph (a)'' in its place.

■ c. In the Alternate II clause—

■ i. In the clause heading, removing the date ''(AUG 2019)'' and adding ''(SEP 2019)'' in its place;

■ ii. In paragraph (f) introductory text, removing ''paragraph (a)(2)(ii)(A)'' and adding ''the definition of ''Caribbean Basin country end product'' within paragraph (a)'' in its place.

[FR Doc. 2019–19560 Filed 9–12–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[Docket DARS–2019–0046]

RIN 0750–AK54

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause ''Readjustment of Payments'' (DFARS Case 2019–D017)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update an existing DFARS clause to clearly identify the Government official to be contacted when applying the terms of the clause, pursuant to action taken by the Regulatory Reform Task Force.

DATES: Effective September 13, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to update the Government point of contact in DFARS clause 252.227–7002, Readjustment of Payments. DFARS clause 252.227–7002 is included in all contracts that contain patent release and settlement agreements, license agreements, and/or assignments, executed by the Government, under which the Government acquires rights, and provide for payment of a running royalty. The clause addresses royalty terms, conditions, and payments, and requires the contractor to notify ''the Secretary'' upon granting more favorable royalty terms to the Government under another agreement.

Contractors do not notify the Secretary of Defense, Army, Navy, or Air Force when complying with this clause, and DFARS conventions no longer use ''the Secretary'' as a way to identify the Department responsible for issuing the contract or oversight of subsequent contract performance. Instead, contractors notify the contracting officer when such a notification is necessary under the clause. The contracting officer is the appropriate point of contact, as they are the individual responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships.

This rule updates the clause to identify the contracting officer, not the Secretary, as the individual to be notified under the clause. As a result, this rule intends to clarify and simplify the notification required of contractors by the clause and avoid any miscommunication or misunderstanding between the Government and contractor when complying with the clause.

II. Discussion and Analysis

The modification of this DFARS text implements a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, ''Enforcing the Regulatory Reform Agenda,'' which established a Federal policy ''to alleviate unnecessary regulatory burdens'' on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the **Federal Register** at 82 FR 35741 on August 1, 2017, and requested public input. One public comment was received on this clause.

Comment: The respondent advised that the clause is never used and should be deleted from the DFARS. The respondent recommended that, instead of the clause, a policy statement permitting DoD to enter into settlement agreements where patent and copyright infringement is alleged by a third party owner of a patent or copyright would suffice.

Response: DFARS clause 252.227–7002 serves as an agreement, through incorporation in the contract, between DoD and the contractor that, by execution of the contract, DoD is entitled to apply the more favorable royalty terms of future license agreements between the contractor and DoD to the contract that includes the clause. The clause also requires the contractor to notify DoD if the contractor grants more favorable terms to the DoD, and identifies how royalty payments will be handled in the event of a patent claim or appeal. The clause applies to the requirements and content of the individual contract. As such, the clause is necessary, when applicable, in the contract to represent the agreement to such terms by both parties, as they relate to the specific contract. A general statement of policy does not fulfill the intent of this clause. Additionally, the clause is available for use, when applicable and necessary. This clause is beneficial to DoD by facilitating a standard and uniform incorporation of more common terms and conditions associated with patent and license agreements and assignments into applicable contracts, without having to draft the language of these more common terms and conditions with each contract. This approach also ensures the same language is incorporated into each contract, which helps DoD avoid miscommunications or misunderstanding and maintain consistency in negotiating such terms and conditions DoD-wide.

The DoD Task Force reviewed the requirements of DFARS clause 252.227–7002 and determined that the DFARS clause should only be modified to update the point of contact for notifications.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This proposed rule does not create any new provisions or clauses. The rule clarifies the point of contact for an existing clause. This rule does not change the applicability of the affected clause, which applies to those valued at or below the SAT, if applicable, but not to commercial or COTS items.

IV. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation is Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule merely updates the Government point of contact.

V. Executive Orders 12866 and 13563

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. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VII. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section IV. of this preamble), 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, and none has been prepared.

VIII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

252.227–7002 [Amended]

■ 2. Amend section 252.227–7002 by—

■ a. Removing the clause date of ''(OCT 1966)'' and adding ''(SEP 2019)'' in its place; and

■ b. In paragraph (a), removing ''the Secretary'' and adding ''the Contracting Officer'' in its place.

[FR Doc. 2019–19561 Filed 9–12–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[Docket DARS–2019–0045]

RIN 0750–AK55

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause ''Reporting and Payment of Royalties'' (DFARS Case 2019–D018)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update an existing DFARS clause to clarify instructions to contracting officers when completing the clause, pursuant to action taken by the Regulatory Reform Task Force.

DATES: Effective September 13, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to update the fill-in instructions for contracting officers contained in the clause at DFARS 252.227–7009, Reporting and Payment of Royalties. DFARS clause 252.227–7009 is available for use in all contracts that contain patent release and settlement agreements, license agreements, and/or assignments, executed by the Government, under which the Government acquires rights, and provide for payment of a running royalty. The clause addresses the terms and conditions for DoD reporting of annual royalties accrued under the contract and the contractor's resultant submission of a royalty payment request.

When applicable, DFARS 227.7009–4(d)(1) requires contracting officers to specify the name of the designated office within the applicable department or agency that is responsible for managing and reporting the extent of use of the licensed subject matter for the entire department or agency. The annual report generated by the designated office is provided to the contractor, in accordance with the clause. Depending on department or agency procedures, this report may be provided directly to the contractor by the designated office or to the contracting officer for further distribution.

Upon award of a contract that incorporates the DFARS clause, the contracting officer must fill in the clause with the name of the office or individual that will provide the annual report directly to the contractor. The clause includes parenthetical instructions to contracting officers on the information required in the clause. Currently, these instructions reference the ''procuring office'' as the entity to be named in the clause, but this guidance is no longer accurate.

This rule updates the parenthetical guidance to direct contracting officers to insert the name of the designated office or contracting officer, in accordance with agency procedures. As a result, this rule intends to clarify for contractors the source of the report provided under the clause and avoid any miscommunication or misunderstanding between the Government and contractor when complying with the clause.

II. Discussion and Analysis

The modification of this DFARS text implements a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, ''Enforcing the Regulatory Reform Agenda,'' which established a Federal policy ''to alleviate unnecessary regulatory burdens'' on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the **Federal Register** at 82 FR 35741 on August 1, 2017, and requested public input. One public comment was received on this clause.

Comment: The respondent advised that the clause is never used and should be deleted from the DFARS. Instead, the respondent advised that a policy statement that permits DoD to enter into settlement agreements where patent and copyright infringement is alleged by a third party owner of a patent or copyright would suffice, in lieu of the clause.

Response: DFARS clause 252.227–7009 serves as an agreement, through incorporation in the contract, between DoD and the contractor that, by execution of the contract, DoD and the contractor agree to the terms, conditions, and timeframes imposed for the reporting and payment of royalties, as they apply to the requirements and content of the specific contract. A general statement of policy does not fulfill the intent of this clause.

Additionally, the clause is available for use when applicable and necessary. As such, this clause is beneficial to DoD by facilitating a standard and uniform incorporation of more common terms and conditions associated with patent and license agreements and assignments into applicable contracts, without having to draft the language of these more common terms and conditions with each contract. This approach also ensures the same language is incorporated into each contract, which helps DoD avoid miscommunications or misunderstanding and maintain

consistency in negotiating such terms and conditions DoD-wide.

The DoD Task Force reviewed the requirements of DFARS clause 252.227–7009 and determined that only the instructions of the clause should be modified.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This proposed rule does not create any new provisions or clauses. The rule updates fill-in instructions to contracting officers within the existing clause. This rule does not change the applicability of the affected clause, which applies to those valued at or below the SAT, if applicable, but not to commercial or COTS items.

IV. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation is Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule merely updates the instructions for contracting officers provided for in an existing clause.

V. Executive Orders 12866 and 13563

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. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VII. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section IV. of this preamble), 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, and none has been prepared.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

252.227–7009 [Amended]

■ 2. Amend section 252.227–7009 by—

■ a. Removing the clause date of ''(AUG 1984)'' and adding ''(SEP 2019)'' in its place; and

■ b. In paragraph (a), removing ''(procuring office)'' and adding ''*[insert the Contracting Officer or the name of the designated office, in accordance with agency procedures]*'' in its place.

[FR Doc. 2019–19562 Filed 9–12–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 218, 237, and 252

[Docket DARS–2019–0054]

RIN 0750–AK61

Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Provision ''Award to Single Offeror'' (DFARS Case 2019–D024)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a clause that is no longer necessary.

DATES: Effective September 13, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

DFARS provision 252.237–7002, Award to Single Offeror, is included in solicitations for mortuary services that use sealed bidding procedures. The Alternate I provision is included in all solicitations for mortuary services that use negotiated procedures. The provision and the alternate advise offerors that an award will be made to a single offeror, that they must include a unit price for each item to be considered for award, and the Government will evaluate offers on the basis of the estimated quantities shown. The provision then advises offerors that award will be made to the responsive, responsible offeror whose total offer is the lowest price to the Government, while the alternate advises offerors that award will be made to the responsive, responsible offeror whose total offer is the best value to the Government.

However, the contents of this DFARS provision are contained in other parts of the solicitation. Specifically, DoD policy and DFARS 237.7001 require the solicitation and award of mortuary services to be accomplished using a requirements contract. Federal Acquisition Regulations (FAR) 16.503 advises that a requirements contract provides for filling all requirements of designated activities for supplies or services during a specified contract period from one contractor. FAR clause 52.216–21, Requirements, is included in all solicitations for and awards of requirements contracts, and advises

offerors of the Government's obligation described at FAR 16.503. As such, only single awards can be made in response to a mortuary services solicitation and the disclosure of this information in the DFARS provision is redundant.

When a solicitation is issued, a contracting officer identifies the type of contract that will be awarded via FAR clause 52.216–1, Type of Contract, and must include a section in the solicitation document that identifies the basis upon which award will be made, along with all relevant evaluation factors. The remaining information in the DFARS provision is addressed elsewhere in the solicitation and is no longer necessary.

II. Discussion and Analysis

The removal of this DFARS provision implements a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, ''Enforcing the Regulatory Reform Agenda,'' which established a Federal policy ''to alleviate unnecessary regulatory burdens'' on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS.

A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the **Federal Register** at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on this clause. The DoD Regulatory Reform Task Force reviewed the requirements of DFARS clause 252.237–7002, determined that the DFARS coverage was unnecessary, and recommended its removal from the DFARS.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule only removes obsolete DFARS provision 252.237–7002. The rule does not impose any new requirements on contracts at or below the simplified acquisition threshold or for commercial items, including commercially available off-the-shelf items.

IV. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule is merely removing an obsolete solicitation provision from the DFARS.

V. Executive Orders 12866 and 13563

E.O.s 12866 and E.O. 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. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VII. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section IV. of this preamble), 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, and none has been prepared.

VIII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 218, 237, and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 218, 237, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 218, 237, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 218—EMERGENCY ACQUISITIONS

218.170 [Amended]

■ 2. Amend section 218.170 in paragraph (k) by removing ''See 237.7003(b)'' and adding ''See 237.7003(a)'' in its place.

PART 237—SERVICE CONTRACTING

237.7003 [Amended]

■ 3. Amend section 237.7003 by—

■ a. Removing paragraph (a); and

■ b. Redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.237–7002 [Removed and Reserved]

■ 4. Remove and reserve section 252.237–7002.

252.237–7003 [Amended]

■ 5. Amend section 252.237–7003 introductory text by removing ''237.7003(b)'' and adding ''237.7003(a) and (a)(1)'' in its place.

252.237–7004 [Amended]

■ 6. Amend section 252.237–7004 introductory text by removing ''237.7003(b)'' and adding ''237.7003(a) and (a)(2)'' in its place.

252.237–7005 [Amended]

■ 7. Amend section 252.237–7005 introductory text by removing ''237.7003(b)'' and adding ''237.7003(a) and (a)(3)'' in its place.

252.237–7006 [Amended]

■ 8. Amend section 252.237–7006 introductory text by removing ''237.7003(b)'' and adding ''237.7003(a) and (a)(4)'' in its place.

252.237–7007 [Amended]

■ Amend section 252.237–7007 introductory text by removing ''237.7003(b)'' and adding ''237.7003(a) and (a)(5)'' in its place.

252.237–7008 [Amended]

■ Amend section 252.237–7008 introductory text by removing ''237.7003(b)'' and adding ''237.7003(a) and (a)(6)'' in its place.

252.237–7009 [Amended]

■ Amend section 252.237–7009 introductory text by removing ''237.7003(b)'' and adding ''237.7003(a) and (a)(7)'' in its place.

252.237–7011 [Amended]

■ Amend section 252.237–7011 introductory text by removing ''237.7003(b)'' and adding ''237.7003(a) and (a)(8)'' in its place.

[FR Doc. 2019–19563 Filed 9–12–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 247 and 252

[Docket DARS–2019–0053]

RIN 0750–AK62

Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Clause ''Returnable Containers Other Than Cylinders'' (DFARS Case 2019–D025)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a clause that is no longer necessary.

DATES: Effective September 13, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

DFARS clause 252.249–7021, Returnable Containers Other Than Cylinders, is included in solicitations and contracts for supplies involving contractor-furnished reels, spools, or other returnable containers (other than cylinders) when the contractor will retain title to the containers. The clause was implemented to standardize the processes and procedures included in DoD contracts regarding the use and return of shipping containers. The clause identifies the rates and fees the Government will pay to use the containers, and the terms and conditions on the loss or damage of the containers during use by DoD.

Upon review, DoD found that this clause is no longer used in transportation contracts and very rarely used in other DoD contracts. Instead, the processes and procedures addressing the use, return, reimbursement, loss, and damage of returnable shipping containers are included in a performance work statement, when necessary. As these specifications are rarely needed and can be negotiated and incorporated into a contract's performance work statement, this DFARS clause is no longer necessary and can be removed.

The removal of this DFARS text supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, ''Enforcing the Regulatory Reform Agenda,'' which established a Federal policy ''to alleviate unnecessary regulatory burdens'' on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the **Federal Register** at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on this clause. The DoD Task Force reviewed the requirements of DFARS clause 252.247–7021, and determined that the DFARS coverage was unnecessary and recommended removal.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule only removes obsolete DFARS clause 252.247–7021, Returnable Containers Other Than Cylinders. The rule does not impose any new requirements on contracts at or below the simplified acquisition threshold or for commercial items, including commercially available off-the-shelf items.

III. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation is Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule is merely removing an obsolete clause from the DFARS.

IV. Executive Orders 12866 and 13563

E.O.s 12866 and E.O. 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. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble), 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, and none has been prepared.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 247 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 247 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 247 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 247—TRANSPORTATION

247.305–70 [Removed]

■ 2. Remove section 247.305–70.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.247–7021 [Removed and Reserved]

■ 3. Remove and reserve section 252.247–7021.

[FR Doc. 2019–19564 Filed 9–12–19; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 209, 212, 213, and 252

[Docket DARS–2019–0035]

RIN 0750–AK70

Defense Federal Acquisition Regulation Supplement: Update to Performance Information System References (DFARS Case 2019–D033)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement changes regarding the discontinued use of the Past Performance Information Retrieval System and update all associated references in the DFARS.

DATES: Effective September 13, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bass, telephone 571–372–6174.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is issuing a final rule to amend the DFARS to update references to the Past Performance Information Retrieval System (PPIRS) for past performance information and replace with Contractor Performance Assessment Reporting System (CPARS) to implement changes following the official retirement of PPIRS and subsequent merger with the CPARS effective January 15, 2019.

This rule also amends the DFARS to replace references to ''Past Performance Information Retrieval System-Statistical Reporting'' with ''Supplier Performance Risk System'' and update the associated web addresses.

II. Discussion and Analysis

This final rule removes two references to PPIRS at DFARS 209.105–1(2) and replaces the references with CPARS and the Federal Awardee Performance and Integrity Information System (FAPIIS) module of CPARS.

In addition, in the title of DFARS provision 252.213–7000, ''Past Performance Information Retrieval System-Statistical Reporting'' is replaced with ''Supplier Performance Risk System.'' Conforming changes are also made to the title of the provision at DFARS 213.301(f)(v) and the obsolete PPIRS web addresses at DFARS 213.106–2(b)(i)(A), 213.106–2–70, and 252.213–7000(a) and (d).

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not impact or create any new provisions or clauses, and only makes technical corrections to the title of an existing provision and web addresses contained within the provision. The rule does not impose any new requirements on contracts at or below the simplified acquisition threshold or for commercial items, including commercially available off-the-shelf items.

IV. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation is 41 U.S.C. 1707 entitled ''Publication of Proposed Regulations.'' Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because the rule merely updates cross-references and makes technical corrections to address the system merger of PPIRS and CPARS, effective January 15, 2019.

V. Executive Order 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select 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, or reducing costs, or harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

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

VII. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C.1707(a)(1) (see section IV. of this preamble), the analytical requirement of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VIII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 209, 212, 213, and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 209, 212, 213, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 209, 212, 213, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 209—CONTRACTOR QUALIFICATIONS

■ 2. Amend section 209.105–1 by revising paragraph (2) to read as follows:

209.105–1 Obtaining information.

* * * * *

(2) A satisfactory performance record is a factor in determining contractor responsibility (see FAR 9.104–1(c)). One source of information relating to contractor performance is the Contractor Performance Assessment Reporting System (CPARS) available at *https://www.cpars.gov/*. Information relating to contract terminations for cause and for default is also available through the Federal Awardee Performance and Integrity Information System (FAPIIS) module of CPARS, available at *https://www.fapiis.gov* (see subpart 42.15). This termination information is just one consideration in determining contractor responsibility.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 212.301 by revising paragraph (f)(v) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(v) *Part 213—Simplified Acquisition Procedures.* Use the provision at 252.213–7000, Notice to Prospective Suppliers on Use of Supplier Performance Risk System in Past Performance Evaluations, as prescribed in 213.106–2–70.

* * * * *

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

213.106–2 [Amended]

■ 3. Amend section 213.106–2 in paragraph (b)(i)(A) by removing ''PPIRS website at *https://www.ppirssrng.csd.disa.mil*'' and adding ''SPRS website at *https://www.sprs.csd.disa.mil/reference.htm*'' in its place.

213.106–2–70 [Amended]

■ 4. Amend section 213.106–2–70 by removing ''Notice to Prospective Suppliers on the Use of Past Performance Information Retrieval System—Statistical Reporting in Past Performance Evaluations'' and adding ''Notice to Prospective Suppliers on Use of Supplier Performance Risk System in Past Performance Evaluations'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.213–7000 [Amended]

■ 5. Amend section 252.213–7000 by—

■ a. Removing clause date ''(MAR 2018)'' and adding ''(SEP 2019)'' in its place;

■ b. In paragraph (a), removing ''(*https://www.ppirssrng.csd.disa.mil/*)'' and adding ''(*https://www.sprs.csd.disa.mil*)'' in its place; and

■ c. In paragraph (d), removing ''*https://www.ppirssrng.csd.disa.mil/pdf/PPIRS-SR_UserMan.pdf*'' and ''*https://www.ppirssrng.csd.disa.mil/pdf/SPRS_DataEvaluationCriteria.pdf*'' and adding ''*https://www.sprs.csd.disa.mil/reference.htm*'' and ''*https://www.sprs.csd.disa.mil/pdf/SPRS_DataEvaluationCriteria.pdf*'', in their places, respectively.

[FR Doc. 2019–19565 Filed 9–12–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Chapter 2

[Docket DARS–2019–0058]

RIN 0750–AK73

Defense Federal Acquisition Regulation Supplement; Appendix A, Armed Services Board of Contract Appeals, Part 1—Charter

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing the updated Charter of the Armed Services Board of Contract Appeals (ASBCA), dated May 23, 2019. The ASBCA is chartered to serve as the authorized representative of the Secretary of Defense and the Secretaries of the Army, Navy, and Air Force in hearing, considering, and determining appeals by contractors from decisions of contracting officers or their authorized representatives or other authorities regarding claims on contracts under the Contract Disputes Act of 1978 or other remedy-granting provisions.

DATES: Effective September 13, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Hawes, Defense Acquisition Regulations System, OUSD(A&S)DPC(DARS), 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060, Telephone 571–372–6115.

SUPPLEMENTARY INFORMATION:

I. Background

This publication of Appendix A of the Defense Federal Acquisition Regulation Supplement (DFARS) updates the Charter of the ASBCA from the most recent prior version, dated April 9, 2018, to its latest version, dated May 23, 2019. The updated Charter revises paragraph 2 to reflect that appointment of ASBCA members and designation of the Chairman and Vice Chairmen of the ASBCA shall now be made by the Secretary of Defense, rather than by the Under Secretary of Defense responsible for acquisition, the General Counsel of the Department of Defense, and the Assistant Secretaries of the Military Departments responsible for acquisition.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule only publishes the updated ASBCA charter and is therefore not required to be published for public comment, because the rule does not have a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form.

III. Executive Orders 12866 and 13563

Executive Order (E.O.) 12866, Regulatory Planning and Review; and E.O. 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). E.O. 13563 emphasizes the importance of quantifying both costs

and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b). This rule is not a major rule as defined at 5 U.S.C. 804(2).

IV. Executive Order 13771

This rule is not an E.O. 13771 regulatory action, because this rule concerns regulations related to agency organization, management, or personnel.

III. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section II of this preamble), 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 and none has been prepared.

V. Paperwork Reduction Act

This rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Appendix A

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, DoD is amending 48 CFR Appendix A to Chapter 2 as follows:

Appendix A to Chapter 2—Armed Services Board of Contract Appeals

■ 1. The authority citation for Appendix A to Chapter 2 is revised to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Appendix A to chapter 2 is amended by revising the introductory text and Part 1—Charter, to read as follows:

Appendix A to Chapter 2—Armed Services Board of Contract Appeals

* * * * *

Armed Services Board of Contract Appeals

Approved 1 May 1962
Revised 1 May 1969
Revised 1 September 1973
Revised 1 July 1979
Revised 14 May 2007
Revised 9 April 2018
Revised 23 May 2019

Part 1—Charter

1. There is created the Armed Services Board of Contract Appeals which is hereby designated as the authorized representative of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force, in hearing, considering and determining appeals by contractors from decisions of contracting officers or their authorized representatives or other authorities on disputed questions. These appeals may be taken (a) pursuant to the Contract Disputes Act of 1978 (41 U.S.C. Sections 7101–7109), (b) pursuant to the provisions of contracts requiring the decision by the Secretary of Defense or by a Secretary of a Military Department or their duly authorized representative, or (c) pursuant to the provisions of any directive whereby the Secretary of Defense or the Secretary of a Military Department or their authorized representative has granted a right of appeal not contained in the contract on any matter consistent with the contract appeals procedure. The Board may determine contract disputes for other departments and agencies by agreement as permitted by law. The Board shall operate under general policies established or approved by the Under Secretary of Defense responsible for acquisition and may perform other duties as directed not inconsistent with the Contract Disputes Act of 1978. The Board shall decide the matters before it independently.

2. Membership of the Board shall consist of attorneys at law who have been qualified in the manner prescribed by the Contract Disputes Act of 1978. Appointment of Board members shall be made by the Secretary of Defense. Members of the Board are hereby designated Administrative Judges. There shall be designated from among the appointed Judges of the Board a Chairman and two or more Vice Chairmen. Designation of the Chairman and Vice Chairmen shall be made by the Secretary of Defense, of nominees from Judges of the Board recommended by the Under Secretary of Defense responsible for acquisition, in coordination with the General Counsel of the Department of Defense, and the Assistant Secretaries of the Military Departments responsible for acquisition. When there is a vacancy, the incumbent is unavailable, or for appropriate Board administrative reasons, the Under Secretary of Defense responsible for acquisition or the Chairman may designate a Judge of the Board to serve as an Acting Chairman or Acting Vice Chairman.

3. The Chairman of the Board shall be responsible for establishing appropriate divisions of the Board to provide for the most effective and expeditious handling of appeals. The Chairman shall have authority to establish procedures for the issuance of Board decisions. The Chairman may refer an appeal of unusual difficulty, significant precedential importance, or serious dispute within the normal decision process for decision by a Senior Deciding Group established by the Chairman which shall have the authority to overturn prior Board precedent.

4. It shall be the duty and obligation of the Judges of the Armed Services Board of Contract Appeals to decide appeals on the record of the appeal to the best of their knowledge and ability in accordance with applicable contract provisions and in accordance with law and regulation pertinent thereto.

5. Any Judge of the Board or any examiner, designated by the Chairman, shall be authorized to hold hearings, examine witnesses, and receive evidence and argument. A Judge of the Board shall have authority to administer oaths and issue subpoenas as specified in the Contract Disputes Act of 1978. In cases of contumacy or refusal to obey a subpoena, the Chairman may request orders of the court in the manner prescribed in the Contract Disputes Act of 1978.

6. The Board shall have all powers necessary and incident to the proper performance of its duties. The Board has the authority to issue methods of procedure and rules and regulations for its conduct and for the preparation and presentation of appeals and issuance of opinions.

7. The Chairman shall be responsible for the internal organization of the Board and for its administration. The Chairman shall provide within approved ceilings for the staffing of the Board with non-Judge personnel, including hearing examiners, as may be required for the performance of the functions of the Board. The Chairman shall appoint a Recorder of the Board. All personnel shall be responsible to and shall function under the direction, supervision and control of the Chairman.

8. The Board will be serviced by the Department of the Army for administrative support as required for its operations. Administrative support will include budgeting, funding, fiscal control, manpower control and utilization, personnel administration, security administration, supplies, and other administrative services. The Departments of the Army, Navy, Air

Force and the Office of the Secretary of Defense will participate in financing the Board's operations on an equal basis and to the extent determined by the Under Secretary of Defense (Comptroller). The cost of processing appeals for departments and agencies other than those in the Department of Defense will be reimbursed.

9. Within 30 days following the close of a fiscal year, the Chairman shall forward a report of the Board's transactions and proceedings for the preceding fiscal year to the Under Secretary of Defense responsible for acquisition, the General Counsel of the Department of Defense, and the Assistant Secretaries of the Military Departments responsible for acquisition.

10. The Board shall have a seal bearing the following inscription: ''Armed Services Board of Contract Appeals.'' This seal shall be affixed to all authentications of copies of records and to such other instruments as the Board may determine.

11. This revised charter is effective upon the date of the signature of the Secretary of Defense.

Approved: Patrick M. Shanahan (23 May 2019),

Acting Secretary of Defense.

[FR Doc. 2019–19566 Filed 9–12–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 212, 216, 217, 237, 252, and Appendix F to Chapter 2

[Docket DARS–2019–0001]

Defense Federal Acquisition Regulation Supplement: Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making needed technical amendments to update the Defense Federal Acquisition Regulation Supplement (DFARS).

DATES: Effective September 13, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer L. Hawes, Defense Acquisition Regulations System, OUSD(A&S)DPC(DARS), Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6115; facsimile 571–372–6094.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS as follows:

1. All references in DFARS text, clauses, and Appendix F to ''Electronic Document Access'' are updated to read ''Electronic Data Access''.

2. Part 204 heading ''Part 204–Administrative Matters'' is revised to read ''Part 204-Administrative and Information Matters'' to align with the Federal Acquisition Regulation. A conforming change is also made to section 212.301 paragraph (f)(ii) heading.

3. Section 212.301 is amended to add paragraph (f)(ii)(B) to correct the electronic Code of Federal Regulation. Paragraph (b)(ii)(B), DFARS clause 252.204–7008, Compliance with Safeguarding Covered Defense Information Controls, was added by publication of interim rule DFARS 2013–D018 in the **Federal Register** at 80 FR 51739 on August 26, 2015, and finalized by DFARS final rule 2013–D018 published in the **Federal Register** at 81 FR 72986 on October 21, 2016.

4. Sections 216.605–70 and 237.172 are amended to add a notice to contracting officers to see DFARS Procedures Guidance and Information (PGI) 216.505–70 for guidance regarding minimum labor category qualifications for orders issued under multiple-award services contracts.

5. A cross-reference is corrected in DFARS 217.7402, paragraph (b).

List of Subjects in 48 CFR Parts 204, 212, 216, 217, 237, 252, and Appendix F to Chapter 2

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 212, 216, 237, 252, and appendix F to chapter 2 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 212, 216, 237, 252, and appendix F to chapter 2 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE AND INFORMATION MATTERS

■ 2. Revise the heading to part 204 to read as set forth above.

204.270–1 [Amended]

■ 3. Amend section 204.270–1 in paragraph (a) by removing ''Electronic Document Access'' and adding ''Electronic Data Access'' in its place.

204.802 [Amended]

■ 4. Amend section 204.802 in paragraph (a) by removing ''Electronic Document Access'' and adding ''Electronic Data Access'' in its place.

204.1670 [Amended]

■ 5. Amend section 204.1670 by removing ''Electronic Document Access'' and adding ''Electronic Data Access'' in its place.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 6. Amend section 212.301 by-

■ a. Revising the paragraph heading for paragraph (f)(ii); and

■ b. Adding paragraph (f)(ii)(B).

The revision and addition read as follows:

212.301 —SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR THE ACQUISITION OF COMMERCIAL ITEMS

* * * * *

(f) * * *

(ii) *Part 204–Administrative and Information Matters.*

* * * * *

(B) Use the provision at 252.204–7008, Compliance with Safeguarding Covered Defense Information Controls, as prescribed in 204.7304(a).

* * * * *

PART 216—TYPES OF CONTRACTS

■ 7. Amend section 216.505–70 by—

■ a. Revising the section heading;

■ b. Designating the text as paragraph (a); and

■ c. Adding paragraph (b).

The revision and addition read as follows:

216.505–70 Orders under multiple-award contracts.

* * * * *

(b) See PGI 216.505–70 for guidance regarding minimum labor category qualifications for orders issued under multiple-award services contracts.

PART 217—SPECIAL CONTRACTING METHODS

217.7402 [Amended]

■ 8. Amend section 217.7402 in paragraph (b) by removing ''paragraph (a)(1), (3), or (4)'' and adding ''paragraph (a)'' in its place.

PART 237—SERVICE CONTRACTING

■ 9. Amend section 237.172 by—

■ a. Designating the text as paragraph (a); and

■ b. Adding paragraph (b).

The addition reads as follows.

237.172 Service contracts surveillance.

* * * * *

(b) See PGI 216.505–70 for guidance regarding minimum labor category

qualifications for orders issued under multiple award services contracts.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.216–7006 [Amended]

■ 10. Amend section 252.216–7006 by—

■ a. Removing the clause date ''MAY (2011)'' and adding ''(SEP 2019)'' in its place; and

■ b. In paragraph (c)(1), removing ''Electronic Document Access'' and adding ''Electronic Data Access'' in its place.

■ 11. Amend appendix F to chapter 2, in part 3, by revising F–301 paragraph (a)(3) introductory text to read as follows:

Appendix F to Chapter 2–Material Inspection and Receiving Report

* * * * *

Part 3 * * *

F–301 Preparation instructions.

(a) * * *

(3) If the contract is in Electronic Data Access (EDA) (DoD's contract repository), then the WAWF system will automatically populate all available and applicable contract data.

* * * * *

[FR Doc. 2019–19567 Filed 9–12–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 229 and 252

[Docket DARS–2019–0036]

RIN 0750–AK13

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause ''Tax Relief'' (DFARS Case 2018–D049)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the text of an existing DFARS clause to include the text of another DFARS clause on the same subject, in an effort to streamline contract terms and conditions for contractors, pursuant to action taken by the DoD Regulatory Reform Task Force.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before November 12, 2019, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2018–D049, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Search for ''DFARS Case 2018–D049.'' Select ''Comment Now'' and follow the instructions provided to submit a comment. Please include ''DFARS Case 2018–D049'' on any attached documents.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2018–D049 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Carrie Moore, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

This rule proposes to modify DFARS clause 252.229–7001, Tax Relief, to incorporate the information included in DFARS clause 252.229–7000, Invoices Exclusive of Taxes or Duties. Combining these clauses will result in DFARS clause 252.229–7000 being removed from the DFARS.

II. Discussion and Analysis

The U.S. Government is eligible for relief from several taxes and duties as a result of various treaties and agreements with foreign governments. To address this relief, the Federal Acquisition Regulation (FAR) prescribes the use of FAR clause 52.229–6, Taxes—Foreign Fixed-Price Contracts, and FAR 52.229–8, Taxes—Foreign Cost-Reimbursement Contracts, in solicitations and contracts expected to exceed the simplified acquisition threshold when a fixed-price or cost-reimbursement contract is contemplated and the contract will be performed wholly or in part in a foreign country. These FAR clauses provide offerors and contractors with information on the application of foreign taxes and duties, as they relate to Federal contracts. Specifically, these clauses advise offerors and contractors that contract prices shall not include taxes and duties that are not applicable to the U.S. Government, as a result of such treaties or agreements.

DFARS clause 252.229–7001 is included in solicitations and contracts when a contract will be awarded to a foreign concern and contract performance occurs in a foreign country. This clause supplements the FAR clauses by requiring offerors to list each of the taxes and duties, as well as its accompanying rate or percentage, that are excluded from the contract price; and, requiring the contractor to include certain price and tax information in each invoice to the Government.

As a result of the FAR clauses and DFARS clause 252.229–7001, offerors are aware that such taxes and duties should not be included in proposed prices under fixed-price or cost-reimbursement contracts performed in a foreign country. The additional information required by DFARS clause 252.229–7001 assists contracting officers in verifying that all applicable duties and taxes are excluded from proposed prices prior to contract award. The information also helps DoD and the contractor validate and ensure all taxes and duties, from which relief is available under the contract, are excluded from the invoiced prices.

DFARS clause 252.229–7000 is included in fixed-price solicitations and contracts that will be awarded to a foreign concern. The clause prohibits the contractor from including taxes or duties, for which relief is available, in invoices submitted for payment under the contract. Certain duties and taxes are commonly included in the price of an item and can be inadvertently overlooked during the invoicing and payment process. The clause was implemented to reinforce the prohibition on including such taxes or duties when preparing an invoice that contains fixed price items.

A separate DFARS clause 252.229–7000 is no longer necessary. The FAR clauses and DFARS clause 252.229–7001 are included in all contracts under which the U.S. Government may obtain foreign tax and duty relief. The text of DFARS 252.229–7000 and 252.229–7001 can be combined, while still conveying the same message and reaching the same community of contractors. As a result, this rule modifies DFARS clause 252.229–7001 to include the text of DFARS clause 252.229–7000 and removes DFARS clause 252.229–7000 from the DFARS.

Modification of this DFARS text supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, ''Enforcing the Regulatory Reform Agenda,'' which established a Federal policy ''to alleviate unnecessary regulatory burdens'' on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the **Federal Register** at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on these clauses. Subsequently, the DoD Task Force reviewed the requirements of DFARS clause 252.229–7000 and 252.229–7001 and determined that the clauses could be combined.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-The-Shelf Items

This proposed rule does not create any new provisions or clauses, nor does it impose any new requirements on contracts at or below he simplified acquisition threshold and for commercial items, including commercially available off-the-shelf items.

IV. Executive Orders 12866 and 13563

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. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 20, 1993. This rule is not a major rule as defined at 5 U.S.C. 804.

V. Executive Order 13771

This rule is not expected to be subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule is not creating any new requirements or changing any existing requirements and the rule only impacts foreign contractors. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This rule proposes to modify DFARS clause 252.229–7001, Tax Relief, to incorporate the information included in DFARS clause 252.229–7000, Invoices Exclusive of Taxes or Duties. Combining these clauses will result in DFARS clause 252.229–7000 being removed from the DFARS, pursuant to action taken by the Regulatory Reform Task Force.

The objective of this proposed rule is to streamline DoD contract terms and conditions and contractor responsibilities pertaining to foreign taxes and duties. The modification of these DFARS clauses supports a recommendation from the DoD Regulatory Reform Task Force under Executive Order 13771, ''Enforcing the Regulatory Reform Agenda.''

This rule is combining two existing clauses that address the same topic into a single comprehensive clause. These clauses apply to solicitations and contracts awarded to a foreign concern for contract performance in a foreign country. This rule is not expected to impact small business entities, because this rule only applies to foreign entities. The Small Business Administration (SBA) identifies a ''small business'' as ''a business entity organized for profit, with a place of business located in the United States, and which operated primarily within the United States or which makes a significant contribution to the U.S. economy through the payment of taxes or use of American products, materials, or labor'' (13 CFR 121.102(a)). This rule only applies to foreign contractors, which do not meet the SBA definition of ''small business'' entities.

This proposed rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses.

This rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the proposed rule that would meet the proposed objectives.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities. DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2018–D049) in correspondence.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 229 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 229 and 252 are proposed to be amended as follows:

■ 1. The authority citation for 48 CFR parts 229 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 229—TAXES

229.402–1 [Removed]

■ 2. Remove section 229.402–1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.229–7000 [Removed and Reserved]

■ 3. Remove and reserve section 252.229–7000.

■ 4. Amend section 252.229–7001 by—

■ a. Removing the clause date ''(SEP 2014)'' and adding ''(DATE)'' in its place;

■ b. Revising paragraph (b);

■ c. In Alternate I—

■ i. Removing the clause date of ''(SEP 2014)'' and adding ''(DATE)'' in its place; and

■ ii. Revising paragraph (b).

The revisions read as follows:

252.229–7001 Tax Relief

* * * * *

(b) Invoices submitted in accordance with the terms and conditions of this contract shall be exclusive of all taxes or duties for which relief is available. The Contractor's invoice shall list separately the gross price, amount of tax deducted, and net price charged.

* * * * *

Alternate I. * * *

* * * * *

(b) Invoices submitted in accordance with the terms and conditions of this contract shall be exclusive of all taxes or duties for which relief is available. The Contractor's invoice shall list separately the gross price, amount of tax deducted, and net price charged.

* * * * *

[FR Doc. 2019–19568 Filed 9–12–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 227 and 252

[Docket DARS–2019–0048]

RIN 0750–AK71

Defense Federal Acquisition Regulation Supplement: Validation of Proprietary and Technical Data (DFARS Case 2018–D069)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: DoD is seeking information that will assist in the development of a revision to the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the

National Defense Authorization Act for Fiscal Year 2019, which amended the statutory presumption of development exclusively at private expense for commercial items in the procedures governing the validation of asserted restrictions on technical data.

DATES: Interested parties should submit written comments to the address shown below on or before November 12, 2019, to be considered in the formation of any proposed rule.

DoD is also hosting public meetings to obtain the views of interested parties in accordance with the notice published in the **Federal Register** on August 16, 2019, at 84 FR 41953.

ADDRESSES: Submit written comments identified by DFARS Case 2018–D069, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Search for ''DFARS Case 2018–D069.'' Select ''Comment Now'' and follow the instructions provided to submit a comment. Please include ''DFARS Case 2018–D069'' on any attached documents.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2018–D069 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Jennifer D. Johnson, OUSD(A–S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, telephone 571–372–6100.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is seeking information from experts and interested parties in Government and the private sector that will assist in the development of a revision to the DFARS to implement section 865 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). Section 865 repeals several years of congressional adjustments to the statutory presumption of development at private expense for commercial items in the validation procedures at paragraph (f) of 10 U.S.C. 2321.

The presumption of development funding for commercial items was established in 1994 by section 8106 of the Federal Acquisition Streamlining Act (FASA) (Pub. L. 103–355). This statutory presumption has been amended numerous times, including by section 802(b) of the NDAA for FY 2007 (Pub. L. 109–364), section 815(a)(2) of the NDAA for FY 2008 (Pub. L. 110–181), section 1071(a)(5) of the NDAA for FY 2015 (Pub. L. 113–291), section 813(a) of the NDAA for FY 2016 (Pub. L. 114–92), and most recently by section 865.

The DFARS implementation of this mandatory presumption has evolved accordingly to track the statutory changes, with the primary coverage found at paragraph (c) of DFARS section 227.7103–13, and paragraph (b) of the clause at DFARS 252.227–7037. There is no DFARS coverage applying such a presumption of development funding to commercial computer software because, as a matter of policy also dating back to the FASA time frame, the underlying procedures for challenging and validating asserted restrictions have not been applied to commercial computer software—only to noncommercial computer software (*e.g.,* DFARS section 227.7203–13 and the clause at DFARS 252.227–7019).

II. Discussion and Analysis

Section 865 repeals the amendments to 10 U.S.C. 2321(f) made by the NDAAs for FYs 2007 through 2016, which required that contractors take certain steps to demonstrate that they paid for the development of commercial items if their restrictions on technical data are challenged. Section 865 returns the presumption of development funding for commercial items to its original form, as established in 1994 by FASA. More specifically, FASA provided that when challenging asserted restrictions on technical data pertaining to a commercial item, DoD is required to presume that the contractor or subcontractor has justified the asserted restriction on the basis that the item was developed exclusively at private expense, regardless of whether the contractor or subcontractor submits a justification in response to the challenge notice. The challenge may be sustained only if DoD provides information demonstrating that the item was not developed exclusively at private expense. Section 865 restores this paradigm.

Therefore, DoD is considering changes that would return the DFARS coverage at 227.7103–13 and 252.227–7037 substantially back to its original FASA-implementing language with regard to the presumption. The changes would incorporate minor wording differences due to slight changes in style and nomenclature over the years, such as referring to ''the Contracting Officer'' in lieu of ''the Department.''

In addition to seeking public comment on the substance of the draft DFARS revisions, DoD is also seeking information regarding any corresponding change in the burden, including associated costs or savings, resulting from contractors and subcontractors complying with the draft revised DFARS implementation. More specifically, DoD is seeking information regarding any anticipated increase or decrease in such burden and costs relative to the burden and costs associated with complying with the current DFARS implementing language.

List of Subjects in 48 CFR Parts 227 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 227 and 252 are proposed to be amended as follows:

■ 1. The authority citation for 48 CFR parts 227 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 227—PATENTS, DATA, AND COPYRIGHTS

■ 2. Amend section 227.7103–13 by revising paragraph (c)(2) to read as follows:

227.7103–13 Government right to review, verify, challenge, and validate asserted restrictions.

* * * * *

(c) * * *

(2) *Commercial items—presumption regarding development exclusively at private expense.* 10 U.S.C. 2320(b)(1) and 2321(f) establish a presumption and procedures regarding validation of asserted restrictions for technical data related to commercial items-on the basis of development exclusively at private expense. Contracting officers shall presume that a commercial item was developed exclusively at private expense whether or not a contractor or subcontractor submits a justification in response to a challenge notice. When a challenge is warranted for a commercial item, a contractor's or subcontractor's failure to respond to the challenge notice cannot be the sole basis for issuing a final decision denying the validity of an asserted restriction.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 252.227–7037 by—
■ a. In the clause heading, removing ''(SEP 2016)'' and adding ''(DATE)'' in its place;
■ b. Revising paragraph (b); and
■ c. In paragraph (c), removing ''paragraph (b)(1)'' and adding ''paragraph (b)'' in its place.

The revision reads as follows:

252.227–7037 Validation of Restrictive Markings on Technical Data.

* * * * *

(b) *Commercial items—presumption regarding development exclusively at private expense.* The Contracting Officer will presume that the Contractor's or a subcontractor's asserted use or release restrictions with respect to a commercial item is justified on the basis that the item was developed exclusively at private expense. The Contracting Officer will not challenge such assertions unless the Contracting Officer has information that demonstrates that the commercial item was not developed exclusively at private expense.

* * * * *

[FR Doc. 2019–19569 Filed 9–12–19; 8:45 am]

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FEDERAL REGISTER

Vol. 84 Friday,

No. 178 September 13, 2019

Part V

Department of Agriculture

Federal Crop Insurance Corporation
7 CFR 460

Farm Service Agency
7 CFR 760

Commodity Credit Corporation
7 CFR 1416

Agricultural Disaster Indemnity Programs; Final Rule

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 460

Farm Service Agency

7 CFR Part 760

Commodity Credit Corporation

7 CFR Part 1416

RIN 0560–AI52

[Docket ID FSA–2019–0012]

Agricultural Disaster Indemnity Programs

AGENCY: Federal Crop Insurance Corporation, Commodity Credit Corporation, and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes provisions for providing agricultural disaster assistance as authorized by the Additional Supplemental Appropriations for Disaster Relief Act, 2019 (Disaster Relief Act). The Wildfire and Hurricane Indemnity Program Plus (WHIP+) will provide payments to eligible producers who suffered eligible crop, tree, bush, and vine losses resulting from hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires that occurred in the 2018 and 2019 calendar years. The On-Farm Storage Loss Program will provide payments to eligible producers who suffered uncompensated losses of harvested commodities stored in farm structures as a result of hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires that occurred in the 2018 and 2019 calendar years. The Wildfire and Hurricane Indemnity Program (WHIP) Milk Loss Program will provide payments to eligible dairy operations for milk that was dumped or removed without compensation from the commercial milk market due to hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires that occurred in the 2018 and 2019 calendar years. This rule specifies the administrative provisions, eligibility requirements, application procedures, and payment calculations for WHIP+, On-Farm Storage Loss Program, and WHIP Milk Loss Program. As required by the Disaster Relief Act, this rule also expands eligibility for 2017 WHIP to include losses incurred from Tropical Storm Cindy, losses of peach and blueberry crops in calendar year 2017 due to extreme cold, and blueberry productivity losses in calendar year 2018 due to extreme cold and hurricane damage in calendar year 2017. This rule updates the regulations for the Tree Assistance Program (TAP) to provide assistance for eligible orchardists or nursery tree growers of pecan trees with a tree mortality rate that exceeds 7.5 percent (adjusted for normal mortality) and is less than 15 percent (adjusted for normal mortality) for losses incurred in calendar year 2018. Prevented planting supplemental disaster payments will provide support to producers who were prevented from planting eligible crops for the 2019 crop year due to excess precipitation, flood, storm surge, tornado, volcanic activity, tropical depressions, hurricanes, and cyclones in the 2019 calendar year. This rule specifies the administrative provisions, eligibility requirements, and payment calculations for prevented planting supplemental disaster payments.

DATES:

Effective date: September 13, 2019.

Comment date: We will consider comments on the Paperwork Reduction Act that we receive by: November 12, 2019.

ADDRESSES: We invite you to submit comments on this rule. In your comment, specify RIN [0560–AI52], and include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by either of the following methods:

- *Federal Rulemaking Portal:* Go to *http://www.regulations.gov* and search for Docket ID FSA–2019–0012. Follow the instructions for submitting comments.
- *Mail:* Director, SND, FSA, US Department of Agriculture, 1400 Independence Avenue SW, Stop 0522, Washington, DC 20250–0522.

Comments will be available for viewing online at *http://www.regulations.gov.* In addition, comments will be available for public inspection at the above address during business hours from 8 a.m. to 5 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: For WHIP+, 2017 WHIP, and TAP, Tona Huggins; telephone: (202) 720–7641; *tona.huggins@usda.gov.* For On-Farm Storage Loss, Shayla Watson-Porter; telephone: (202) 690–2350; or email: *shayla.watson-porter@usda.gov.* For WHIP Milk Loss, Douglas E. Kilgore: telephone: (202) 720–9011; or email: *douglas.e.kilgore@usda.gov.* For Crop Insurance, Francie Tolle; telephone: (816) 926–7829; or email: *francie.tolle@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

The Additional Supplemental Appropriations for Disaster Relief Act, 2019 (Disaster Relief Act; Pub. L. 116–20) provides $3,005,442,000, available until December 31, 2020, for disaster assistance for necessary expenses related to losses of crops (including milk, on-farm stored commodities, and harvested adulterated wine grapes), trees, bushes, and vines, as a consequence of hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires occurring in calendar years 2018 and 2019. The Secretary has directed the Farm Service Agency (FSA) to provide assistance for these losses through the following programs:

- WHIP+ for losses to eligible crops, trees, bushes, and vines;
- On-Farm Storage Loss Program; and
- WHIP Milk Loss Program.

The Disaster Relief Act authorizes TAP to cover eligible orchardists or nursery tree growers of pecan trees with a tree mortality rate that exceeds 7.5 percent (adjusted for normal mortality) and is less than 15 percent (adjusted for normal mortality) for losses incurred during the period beginning January 1, 2018, and ending December 31, 2018.

The Disaster Relief Act also expanded 2017 WHIP, authorized by the Bipartisan Budget Act of 2018 (BBA; Pub. L. 115–123), to cover losses due to Tropical Storm Cindy, losses of peach and blueberry crops in calendar year 2017 due to extreme cold, and blueberry productivity losses in calendar year 2018 due to extreme cold and hurricane damage in calendar year 2017.

Grazing and livestock losses are covered by existing programs that are funded by the Commodity Credit Corporation (CCC) and administered by FSA, such as the Livestock Indemnity Program (LIP), Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP) and the Livestock Forage Disaster Program (LFP), and therefore are not covered by additional programs under this rule, as such would be a duplication of benefits. TAP provides cost-share for replanting and rehabilitation of eligible trees, while 2017 WHIP and WHIP+ provide payments based on the loss of value of the tree, bush, or vine itself. Therefore, eligible participants who suffered tree, bush, and vine losses may receive both payment under both TAP and 2017 WHIP or WHIP+ for the same acreage

because they pay for different losses, if eligibility conditions are met. TAP is available only for expenses actually incurred by the eligible orchardist or nursery tree grower that are not covered, reimbursed, or paid for by anyone other than the eligible orchardist or nursery tree grower.

The On-Farm Storage Loss Program provides payments to eligible producers who suffered losses of harvested commodities, including hay, stored in on-farm structures as a result from hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires that occurred in the 2018 and 2019 calendar years.

The WHIP Milk Loss Program allows dairy operations the ability to receive payments for milk that was dumped or removed without compensation from the commercial milk market due to qualifying weather events that inhibited the delivery of milk including, but not limited to, the storage of milk due to a power outage or that caused impassable roads which prevented the milk hauler access to the farm for the 2018 and 2019 calendar years.

The Federal Crop Insurance Corporation (FCIC) provides additional assistance for prevented planting for producers with crop insurance, using the higher of the projected price or harvest price where applicable. FCIC will establish prevented planting supplemental disaster payments, as administered by RMA, to provide assistance to producers who were prevented from planting eligible 2019 crop year crops in the 2019 calendar year due to specified causes of loss.

Additionally, some of the available funding is being provided to certain States through block grants to address specific losses in those states. This final rule only covers disaster assistance for necessary expenses related to the programs mentioned above and does not discuss the terms and conditions of the block grants.

For clarity, throughout this final rule, the word producer is used to refer to those persons or legal entities who have suffered losses and can apply for assistance; the term participant is used for a producer who applied and has been determined eligible.

WHIP+

WHIP+ provides assistance to eligible producers who suffered an eligible loss to crops, trees, bushes, and vines or prevented planting due to a qualifying disaster event, which includes hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires that occurred in the 2018 or 2019 calendar year, and conditions related to those disaster events, such as excessive rain, high winds, mudslides, heavy smoke, and related conditions. WHIP+ provides assistance for yield-based and value loss crops that suffered losses prior to harvest. Losses of harvested crops while in storage will be covered under the On-Farm Storage Loss Program, and milk that was dumped due to the weather events under WHIP Milk Loss Program will be discussed later in this rule. In general, WHIP+ will be administered in a similar way as the 2017 WHIP, except for certain changes explained in this rule.

WHIP+ payments for crop losses cover only production losses; they do not cover quality losses except for qualifying losses to adulterated wine grapes. Eligible crops include those for which crop insurance or Noninsured Disaster Assistance Program (NAP) coverage is available, excluding crops intended for grazing. WHIP+ will provide assistance for Florida citrus tree losses, which were excluded from 2017 WHIP but were covered by a grant program administered by the State of Florida.

WHIP+ will be available for eligible farms located in counties that received a qualifying Presidential Emergency Disaster Declaration or Secretarial Disaster Designation due to one or more of the qualifying disaster events or a related condition. Only producers in primary disaster counties qualify for WHIP+ based on the declaration or designation. However, producers in counties that did not receive a qualifying declaration or designation may still apply for WHIP+, but they must also provide supporting documentation to establish that the crop was directly affected by a qualifying disaster event.

Due to the variety of eligible crops and the timing of the qualifying disaster events, eligible crops under WHIP+ include those that were intended for harvest in the 2018, 2019, and 2020 crop years. In some cases, a loss from a qualifying disaster event under WHIP+ may have also been eligible for 2017 WHIP if the event was considered an eligible related condition; in those cases, a producer may not receive payment under both programs and such producer cannot return their 2017 WHIP payment to become eligible for payment under WHIP+.

As under 2017 WHIP, the payment limitation for WHIP+ is determined by the person's or legal entity's average adjusted gross farm income (income from activities related to farming, ranching, or forestry). Specifically, a person or legal entity, other than a joint venture or general partnership, cannot receive, directly or indirectly, more than $125,000 in payments under WHIP+, if their average adjusted gross farm income is less than 75 percent of their average of their adjusted gross income (AGI) for 2015, 2016, and 2017. The $125,000 payment limitation is a single total combined limitation for payments for all WHIP+ payments received for the 2018, 2019, and 2020 crop years. If at least 75 percent of the person or legal entity's average AGI is derived from farming, ranching, or forestry related activities and the participant provides the required certification and documentation, as discussed below, the person or legal entity, other than a joint venture or general partnership, is eligible to receive, directly or indirectly, up to $250,000 per crop year in WHIP+ payments, with a total combined payment limitation for the 2018, 2019, and 2020 crop years of $500,000. The relevant tax years for establishing a producer's AGI and percentage derived from farming, ranching, or forestry related activities for WHIP+ are 2015, 2016, and 2017. This means that the average AGI will be the average of AGI for the 2015, 2016 and 2017 tax years regardless if a WHIP+ participant has losses in one or more crop years. For example, if a WHIP+ participant only suffered eligible losses in the 2018 crop year, their average AGI will be calculated based on their 2015, 2016 and 2017 tax years, the same as if a participant had losses in all three eligible crop years, 2018, 2019 and 2020.

To receive more than $125,000 in WHIP+ payments, applicants must submit form FSA–896, Request for an Exception to the WHIP Payment Limitation of $125,000, accompanied by a certification from a certified public accountant or attorney as to that person or legal entity's certification. If an applicant requesting the $250,000 per crop year payment limitation is a legal entity, all members of that entity must also complete FSA–896 and provide the required certification according to the direct attribution provisions in § 1400.105, ''Attribution of Payments.'' If a legal entity would be eligible for the $250,000 per crop year payment limitation based on the legal entity's average AGI from farming, ranching, or forestry related activities but a member of that legal entity either does not complete an FSA–896 or is not eligible for the $250,000 per crop year payment limitation, the payment to the legal entity will be reduced for the limitation applicable to the share of the WHIP+ payment attributed to that member.

Applicable general eligibility requirements, including recordkeeping

requirements and required compliance with Highly Erodible Land Conservation (HELC) and Wetland Conservation provisions, are similar to those for the previous ad hoc crop disaster programs and current permanent disaster programs. All information provided to FSA for program eligibility and payment calculation purposes, including average AGI certifications and production records, is subject to spot check.

WHIP+ Application Process

Producers must submit WHIP+ applications to their administrative FSA county office by the deadline that will be announced by the FSA Deputy Administrator for Farm Programs. A complete WHIP+ application consists of:

- FSA–894, Wildfires and Hurricanes Indemnity Program + Application;
- FSA–895, Crop Insurance and/or NAP Coverage Agreement;
- FSA–896, Request for an Exception to the WHIP Payment Limitation of $125,000, if 75 percent or more of an applicant's average AGI is from farming, ranching, or forestry related activities and the applicant wants to be eligible to receive WHIP+ payments of more than $125,000, up to the $250,000 per crop year payment limitation, with an overall WHIP+ limit of $500,000; and
- FSA–897, Actual Production History and Approved Yield Record (WHIP+ Select Crops Only), for applicants requesting payments for select crops.

An applicant must submit a separate FSA–894 for each crop year for which benefits are requested. Persons and legal entities who do not submit FSA–896 and a certification from a CPA or attorney are eligible only for the lower payment limitation of $125,000. If not already on file with FSA, applicants must also submit AD–1026, Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification; CCC–902, Farm Operating Plan for Payment Eligibility; and a report of acreage on FSA–578, Report of Acreage, or in another format acceptable to FSA for all acres of each crop for which WHIP+ payments are being requested. Applicants must also submit verifiable or reliable crop records if not already on file for crop insurance or NAP purposes; producers who do not have verifiable or reliable records will have WHIP+ payments determined based on the lower of either the actual loss certified by the producer and determined acceptable by FSA or the county expected yield and county disaster yield, which is the production that a producer would have been expected to make based on the eligible disaster conditions in the county, as determined by the FSA county committee. Yield means unit of production, measured in bushels, pounds, or other unit of measure, per area of consideration, usually measured in acres. In no case will WHIP+ payments be issued for losses that cannot be determined to have occurred to the satisfaction of FSA or for losses for which a notice of loss was previously disapproved by FSA, RMA, or an Approved Insurance Provider selling and servicing federal crop insurance policies unless that notice of loss was disapproved solely because it was filed after the applicable deadline.

WHIP+ Payments

In general, all WHIP+ payments for crop production losses will take into consideration the difference between the expected value of the crop and the actual value of the crop as a result of the applicable disaster events. The value is determined by FSA using crop insurance or NAP prices. As mandated by the Disaster Relief Act, the price used to calculate a WHIP+ payment for a crop for which the producer obtained a revenue plan of insurance is the greater of the projected price or the harvest price determined by FCIC. WHIP+ payments for tree, bush, and vine losses will be calculated the same as under 2017 WHIP based on the loss of value of the trees, bushes, and vines that were destroyed or damaged due to the qualifying disaster event.

Per the Disaster Relief Act, payments under WHIP+ cannot exceed 90 percent of the total losses. Therefore, a WHIP+ factor will be applied to reduce the participant's payment to ensure that total WHIP+ payments are no more than 90 percent of the total losses by all WHIP+ participants, as described below.

The specific payment calculations that will be used for each type of commodity are detailed below. Each of the calculations includes numerous elements to determine the accurate and equitable amount to pay for the various losses. Some of the data will come from the applications while other numbers used in the calculations will be determined by FSA. In general, the calculations are consistent with previous ad hoc disaster assistance programs administered by FSA, including 2017 WHIP.

Participants with crop insurance may receive WHIP+, crop insurance indemnity,[1] and supplementary disaster payments; however, as mandated by the Disaster Relief Act, the total amount of those payments combined cannot exceed 90 percent of the total losses for all 2018–2019 WHIP+ participants with crop insurance. The total amount of payments received under WHIP+ and the Noninsured Crop Disaster Assistance Program (NAP; 7 U.S.C. 7333) combined cannot exceed 90 percent of the total losses for all 2018–2019 WHIP+ participants with NAP coverage. Also, as required by the Disaster Relief Act, the total amount of payments received under WHIP+ cannot exceed 70 percent of the total losses for all 2018–2019 participants without crop insurance or NAP coverage.

As under 2017 WHIP, a payment factor (the ''WHIP+ factor'') will be applied based on the level of crop insurance coverage or NAP coverage a participant obtained for a crop. The coverage level is the percentage determined by multiplying the elected yield percentage for the crop year under a crop insurance policy or NAP coverage by the elected price percentage. Participants who elected higher levels of crop insurance or NAP coverage will receive a higher level of compensation from the combination of the WHIP+ payment amount plus the crop insurance indemnity or NAP payment, as compared to a participant who elected a lower level of crop insurance or NAP coverage. As detailed in the following table, the WHIP+ factors will be between 70 percent, for uninsured crops, and 95 percent, for crops for which a producer obtained greater than an 80 percent crop insurance coverage level.

Coverage level	WHIP+ payment factor (percent)
No crop insurance or No NAP coverage	70
Catastrophic coverage	75
More than catastrophic coverage but less than 55 percent	77.5
At least 55 percent but less than 60 percent	80
At least 60 percent but less than 65 percent	82.5
At least 65 percent but less than 70 percent	85
At least 70 percent but less than 75 percent	87.5
At least 75 percent but less than 80 percent	92.5
At least 80 percent	95

Total WHIP+ payments issued to all participants will not exceed 90 percent of their collective losses, as required by the Disaster Relief Act. Therefore, including payments to individual participants based on a WHIP+ payment

[1] Crop insurance indemnity payments are those made under the Federal Crop Insurance Act (FCIA; 7 U.S.C. 1501–1524).

factor of 95 percent, total WHIP+ payments cannot exceed 90 percent of the value of total losses.

WHIP+ Payment Calculation for Crop Losses

WHIP+ payments for yield-based crop losses will be calculated based on all acreage of the crop in a unit. Eligible acreage includes prevented planting acreage for participants without crop insurance, therefore, the eligible acreage excludes 2019 crop year prevented planting acres of insured crops. Disaster assistance for 2019 crop year insured prevented planting acreage will be provided through prevented planting supplemental disaster payments as explained in this rule. The eligible crop acres will be multiplied by the WHIP+ yield, the price for the crop, and the WHIP+ factor, and reduced by the participant's production multiplied by the price, and that result will be multiplied by the participant's share and reduced by the gross insurance indemnity or NAP payment already received by that producer for the same crop year, any salvage value, and the amount of any payment received under the Florida Citrus Recovery Block Grant Program for future economic losses. Additional adjustments will be applied to the WHIP+ payment calculation based on whether the crop was prevented from planted or unharvested to account for expenses that were not incurred.

As under 2017 WHIP, the WHIP+ yield is the approved yield based on the producer's actual production history (APH) for insured and NAP-covered crops, or the county expected yield for uninsured crops without NAP coverage and participants in Puerto Rico. Producers of select uninsured crops determined by the Deputy Administrator for Farm Programs may be provided the opportunity to submit records to establish their yield rather than use the county expected yield; those crops will be announced and publicized by FSA, and payments for those producers who choose not to submit those records will be based on the county expected yield.

FSA will adjust production of eligible adulterated wine grapes for quality deficiencies due to qualifying disaster events. Wine grapes are eligible for production adjustment only if adulteration occurred prior to harvest and as a result of a qualifying disaster event or as a result of a related condition (such as application of fire retardant). Losses due to all other causes of adulteration (such as addition of artificial flavoring or chemicals for economic purposes) are not eligible for WHIP+. Production will be eligible for quality adjustment if, due to a qualifying disaster event, it has a value of less than 75 percent of the average market price of undamaged grapes of the same or similar variety. Eligible wine grape production will be reduced by dividing the value per ton of the damaged grapes by the value per ton for undamaged grapes, and then multiplying the result by the number of tons of the eligible damaged grapes. Participants requesting payments for losses to adulterated wine grapes must submit verifiable sales tickets that document that the reduced price received was due to adulteration due to a qualifying disaster event. For adulterated wine grapes that have not been sold, participants must submit verifiable records obtained by testing or analysis to establish that the wine grapes were adulterated due to a qualifying disaster event and the price they would receive due to adulteration.

The participant's production for the crop year which suffered the loss (2018, 2019, or 2020, depending on the specific crop and when it would have been harvested) is based on their verifiable or reliable production records for that crop year. Reliable production records means evidence provided by the participant that is used to substantiate the amount of production reported when verifiable records are not available, including copies of receipts, ledgers of income, income statements of deposit slips, register tapes, invoices for custom harvesting, and records to verify production costs, contemporaneous measurements, truck scale tickets, and contemporaneous diaries that are determined acceptable by the FSA county committee. These records may already be on file if the crop was covered by crop insurance or NAP. If not already on file, or if the participant believes that RMA or NAP records are inaccurate or incomplete, the participant is responsible for providing verifiable or reliable records as specified in § 760.1512. Participants who do not have verifiable or reliable records will have their payments limited to the lower of either:

- The actual loss certified by the producer and determined acceptable by FSA, or
- The county disaster yield, as established by the FSA county committee.

Assessing loss for value loss crops, such as ornamental nursery and aquaculture, is significantly different than for yield-based crops. The participant's inventory of a typical value loss crop may fluctuate from week to week, sometimes rapidly, in the course of normal business operations for reasons that may be unrelated to a disaster. As a result, WHIP+ payments for value loss crops will be based on inventory before and after the qualifying disaster event.

WHIP+ payments for value loss crops will be based on the field market value of the crop before and after the qualifying disaster event. Specifically, payments for value loss crops will be calculated using the field market value of the crop before the disaster multiplied by the WHIP+ factor, reduced by the sum of the field market value after the disaster and the value of losses due to ineligible causes of loss, multiplied by the participant's share, reduced by the gross insurance indemnity or NAP payment amount and salvage value of the crop.

NAP value loss and tropical crop eligibility provisions in 7 CFR part 1437 apply to WHIP+ for value loss and tropical crops. Nursery stock of trees, bushes, and vines are considered value loss crops rather than a tree, bush, or vine loss for WHIP+ payment calculations.

WHIP+ Payment Calculation for Tree, Bush, and Vine Losses

Payments for trees, bush, and vine losses will be calculated as under 2017 WHIP, based on federal crop insurance principles and will be determined separately for different growth stages, as determined by FSA. Each growth stage will have an associated price and damage factor to determine the value lost when a tree, bush, or vine is damaged and requires rehabilitation but is not completely destroyed.

Payments will be calculated by multiplying the expected value of the eligible damaged and destroyed trees, bushes, or vines by the WHIP+ factor, reduced by the actual value of the trees, bushes, or vines, and multiplied by the producer's share. FSA will subtract the amount of any insurance indemnity received for trees, bushes, and vines covered by an insurance plan and any secondary use or salvage value. The expected value is determined by multiplying the total number of trees, bushes, or vines that were damaged or destroyed by a qualifying disaster event by the price based on the species of tree, bush, or vine and its growth stage. The actual value is the expected value minus the value of the producer's loss, which is calculated by multiplying the number of trees, bushes, or vines damaged by a qualifying disaster event by the damage factor, added to the number destroyed by a qualifying disaster event, and multiplied by the price.

The FSA county committee will adjust the number of damaged and destroyed trees, bushes, or vines, if it determines that the number of damaged or destroyed trees, bushes, or vines certified by the participant is inaccurate.

WHIP+ Requirement To Purchase Future Crop Insurance or NAP Coverage

The Disaster Relief Act requires all participants who receive WHIP+ payments to purchase crop insurance or NAP coverage for the next 2 available crop years. Due to potential conflicts or short time periods between WHIP+ sign-up dates and crop insurance and NAP application closing dates, FSA is requiring WHIP+ participants to obtain crop insurance or NAP for the next 2 available consecutive crop years after the crop year for which WHIP+ payments are paid, with the latest year for meeting compliance with this provision being the 2023 crop year. In other words, if the 2 consecutive years of coverage are not met by 2023 coverage year, the participant is ineligible for and must refund WHIP+ payments. Participants must obtain crop insurance or NAP, as may be applicable, at the 60 percent coverage level or higher. Unlike 2017 WHIP, WHIP+ does not require participants receiving payment for trees, bush, or vine losses to obtain a plan of insurance for those trees, bushes, or vines; only participants who receive payment for crop losses under WHIP+ must purchase crop insurance for the applicable years.

There are situations where a WHIP+ participant does not need to meet any AGI limit for the WHIP+ payment, if for example, the WHIP+ payment is $125,000 or less. Additionally, there may be situations for which crop insurance is not available for a specific crop and the Disaster Relief Act requires that a WHIP+ participant obtain NAP coverage. Section 1001D of the Food Security Act of 1985 (1985 Farm Bill) provides that a person or entity with AGI in amount greater than $900,000 is not eligible to participate in NAP. Accordingly, in order to reconcile this restriction in the 1985 Farm Bill and the Disaster Relief Act's requirement to obtain NAP or crop insurance coverage, WHIP+ participants may meet the Disaster Relief Act's purchase requirement by purchasing Whole-Farm Revenue Protection crop insurance coverage, if eligible, or they may pay the applicable NAP service fee and premium for the 60 percent coverage level despite their ineligibility for a NAP payment. In other words, the service fee and premium must be paid even though no NAP payment may be made because the AGI of the person or entity exceeds the 1985 Farm Bill limitation.

The crop insurance and NAP requirements are specific to the crop and county (physical location county for insurance and administrative county for NAP) for which WHIP+ payments are paid. This means that a producer who receives a WHIP+ payment for a crop in a county is required to purchase crop insurance or NAP coverage for the crop in the county for which the producer was issued a WHIP+ payment. Producers who receive a WHIP+ payment on a crop in a county and who have the crop or crop acreage in subsequent years, as provided in this rule, and who fail to obtain the 2 years of crop insurance or NAP coverage must refund all WHIP+ payments for that crop in that county with interest from the date of disbursement. This is a condition of payment eligibility specified by Disaster Relief Act and is therefore not subject to partial payment eligibility or other types of equitable relief. Producers who were paid under WHIP+ on a crop in a county but do not plant that crop in a subsequent year are not subject to the crop insurance or NAP purchase requirement.

2017 WHIP

The Disaster Relief Act expands eligible losses under 2017 WHIP to include losses of crops, trees, bushes, and vines due to Tropical Storm Cindy, which were not previously included under the BBA. It also expands 2017 WHIP to cover losses of peach and blueberry crops in calendar year 2017 due to extreme cold, and blueberry productivity losses in calendar year 2018 due to extreme cold and hurricane damage in calendar year 2017. The 2017 WHIP provisions were published in the **Federal Register** on July 18, 2018 (83 FR 33795); this rule amends 7 CFR 760.1516, subpart O to incorporate the additional changes to 2017 WHIP mandated by the Disaster Relief Act.

Producers who are eligible for 2017 WHIP under these provisions must submit a complete application according to § 760.1510 by the deadline announced by FSA to apply for a 2017 WHIP payment for these losses. The BBA requires all participants who receive 2017 WHIP payments to purchase crop insurance for the next 2 available crop years; therefore, producers receiving 2017 WHIP payments under the Disaster Relief Act's expansion to 2017 WHIP eligibility must obtain crop insurance or NAP for the next 2 available consecutive crop years, with the latest year for meeting compliance with this provision being the 2023 crop year. In other words, if the 2 consecutive years of coverage are not met by 2023 coverage year, the participant is ineligible for and must refund any 2017 WHIP payments.

TAP

The Disaster Relief Act provided coverage under TAP (7 CFR 1416, subpart E) for payments for 2018 pecan tree losses for growers who suffered a pecan stand mortality loss that exceeds 7.5 percent, as adjusted for normal mortality, (rather than a mortality loss that exceeds 15 percent) due to an eligible natural disaster. The provisions only apply to producers with 2018 calendar year mortality losses that exceed 7.5 percent, as adjusted for normal mortality. Similar loss thresholds were established for pecan trees under the Consolidated Appropriations Act, 2018; however, that funding only covered losses from January 1, 2017, until December 31, 2017. These provisions are specific and not open to interpretation; therefore, FSA has already implemented these provisions. This rule updates §§ 1416.400 and 1400.403 to reflect these changes. Pecan growers who suffered eligible 2017 losses can apply for these benefits through the deadline announced by FSA. Pecan growers who had more than a 15 percent mortality loss, as adjusted for normal mortality, are already eligible under regular 2018 TAP provisions and are not affected by this change. With the exception of the amended mortality rate required for eligibility, all other TAP provisions in 7 CFR part 1416 apply.

On-Farm Storage Loss Program

The On-Farm Storage Loss Program will provide payments to eligible producers who suffered losses of stored commodities, including hay, while such commodities were stored in on-farm structures as a result from hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires that occurred in the 2018 and 2019 calendar years.

Harvested commodities must have been stored in structures that will be determined eligible by the Deputy Administrator for Farm Programs, which under normal circumstances, would have protected and maintained the quality of the commodity for an extended period of time—from harvest to marketing. The damages incurred must have resulted directly from a disaster related weather event which rendered the commodity useless and non-merchantable.

Persons and legal entities are subject to the same payment limitation and AGI

requirements as WHIP+. Eligible producers will certify to their loss at the local service center. Producers of comingled commodities may submit joint applications to cover all losses.

Payments will be calculated by multiplying the loss quantity times a price determined by the Secretary then multiplied by a 75 percent factor. Payments will be issued after sign-up until February 2020 for losses incurred during calendar years 2018 and 2019.

WHIP Milk Loss Program

The WHIP Milk Loss Program will provide payments to dairy operations for milk that was dumped or removed without compensation from the commercial milk market due to the weather events.

The WHIP Milk Loss base period is the full month of milk production before the dumping or removal of milk occurred. Information from the base period provides the number of cows in the dairy operation, the pounds marketed for the month, and the number of days in the month. From this the average daily milk production is calculated and used with the price information to calculate the WHIP Milk Loss Program indemnity.

The claim period is for the part or whole month the dairy operation was off the commercial market. The claim eligible period begins the date the milk was removed or dumped and the end period is the date the dairy operation officially started marketing milk. The dairy operation will provide the milk marketing statement for the month that the milk dumping occurred. This will verify the days the dairy operation did not commercially produce milk. For the WHIP Milk Loss Program, the duration of claims is limited to 30 days per year for 2018 and 2019.

The dairy operation's fair market value of the dumped milk is what it would have been had the dairy operation commercially marketed the milk. The dairy operation's milk marketing statement from the affected month verifies the value calculation. The WHIP Milk Loss Program indemnity is calculated using the determined pounds of milk loss and using the pay price from the milk marketing statement including the monthly deductions for trucking and promotion. The net payment amount is multiplied by 75 percent to determine the WHIP Milk Loss Program payment.

Dairy operations that apply for the WHIP Milk Loss Program will provide, at application, a detailed personal letter of the circumstances of the milk removal, including the specifics of the weather event, what transportation limitations occurred, the milk marketing statement for the affected month, and any information on what was done with the removed milk production. Any other pertinent information should be included to provide FSA the needed information to determine eligibility for the WHIP Milk Loss Program. FSA County Offices will work with dairy operations in completing the WHIP Milk Loss Program application.

Persons and legal entities are subject to the same payment limitation and AGI requirements as WHIP+. Payments will be issued after sign-up until February 2020 for losses that incurred during calendar years 2018 and 2019.

Prevented Planting Supplemental Disaster Payments

Prevented planting supplemental disaster payments provide assistance to producers who were prevented from planting eligible crops due to excess precipitation, flood, storm surge, tornado, volcanic activity, tropical depressions, hurricanes, and cyclones in the 2019 crop year. In general, prevented planting supplemental disaster payments will be administered in the same way as other Federal crop insurance programs, except for certain changes explained in this rule.

Producers who purchased a crop insurance policy and were prevented from planting due to one of the specified causes of loss will be eligible for prevented planting supplemental disaster payments if the insured crop is eligible for such payments. Eligible crops are 2019 crop-year crops with a final planting date that falls in the 2019 calendar year.

Prevented planting supplemental disaster payments for prevented planting losses will be calculated based on all qualifying prevented planting payments received for insured crops. For insured crops with a plan of insurance that provides revenue protection, the qualifying prevented planting payments will be multiplied by a factor measuring yield and price loss. For all other crops, the qualifying prevented planting payments will be multiplied by a factor based on yield only. Adjustments will be made in the case the qualifying prevented planting payments after prevented planting supplemental disaster payments are issued. Additional adjustments may apply if the qualifying prevented planting payments are reduced due to errors or other irregularities. The payment limitations required under the WHIP+ program are not applicable for prevented planting supplemental disaster payments. The values used for the factors will be 15 percent for those producers with revenue protection except those who select the harvest price exclusion option and 10 percent for those producers who do not have revenue protection. USDA will then issue prevented planting supplemental disaster payment to the participant in a manner and at a time determined by the Administrator.

The Disaster Relief Act requires all participants who receive disaster payments to purchase crop insurance or NAP coverage for the next 2 available crop years. Participants who receive a prevented planting supplemental disaster payment must obtain crop insurance or NAP, as applicable, for the crop in the county. Participants may meet the Disaster Relief Act's purchase requirement by purchasing Whole-Farm Revenue Protection crop insurance coverage, if eligible.

The crop insurance and NAP requirements are specific to the crop and county (physical location county for insurance and administrative county for NAP) for which prevented planting supplemental disaster payments are paid. Producers who receive a prevented planting supplemental disaster payment on a crop in a county and who have the crop or crop acreage in subsequent years, as provided in this rule, and who fail to obtain the 2 years of crop insurance or NAP coverage must refund all such payments for that crop in that county with interest from the date of disbursement. This is a condition of payment eligibility specified by Disaster Relief Act and is therefore not subject to partial payment eligibility or other types of equitable relief. Producers who were paid under WHIP+ on a crop in a county but do not plant that crop in a subsequent year are not subject to the crop insurance or NAP purchase requirement.

Effective Date and Notice and Comment

The Administrative Procedure Act (5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. This rule involves programs for payments to certain agricultural commodity producers and therefore that exemption applies.

Due to the nature of the rule and the need to implement the regulations expeditiously to provide agricultural disaster assistance to producers who suffered certain losses in 2018 and 2019, CCC, FSA, and FCIC find that notice and public procedure are contrary to the public interest. Therefore, even though this rule is a major rule for purposes of

the Congressional Review Act, CCC is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Therefore, this rule is effective upon publication in the **Federal Register.**

Executive Orders 12866, 13563, 13771 and 13777

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. Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' established a federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has reviewed this rule. The costs and benefits of this rule are summarized below. The full cost benefit analysis is available on regulations.gov.

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. The OMB guidance in M–17–21, dated April 5, 2017, specifies that ''transfers'' are not covered by Executive Order 13771 but that changes in resource use that accompany transfer rules may qualify as costs or cost savings under Executive Order 13771.

Cost Benefit Analysis Summary

Natural disasters inflicted significant damage to agricultural producers across the country in 2018 and 2019:

- Hurricanes Florence and Michael brought wind and flooding to the Carolina coastal plains and to regions of Florida, Georgia and Alabama;
- The Carr, Woolsey and Camp Fires burned nearly 1 percent of California;
- Hawaii's Kīlauea volcano eruption, compounded by damage from Hurricane Lane affected high-value crops like macadamia, coffee and papaya;
- Snowstorms and heavy rains caused flooding throughout the country that destroyed crops; and
- In the spring of 2019, wet fields prevented planting on nearly 20 million acres.

The Disaster Relief Act authorizes about $3 billion in supplemental assistance for losses of crops (including milk, on-farm stored commodities, crops prevented from planting in 2019, and harvested adulterated wine grapes), trees, bushes, and vines, as a consequence of Hurricanes Michael and Florence, and other hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires occurring in calendar years 2018 and 2019. The Disaster Relief Act authorizes the Secretary of Agriculture to administer the assistance in the form of:

(1) Augmenting the Federal Crop Insurance Program (FCIP) and NAP providing coverage against losses from eligible natural disasters in 2018 and 2019;

(2) Payments to producers with 2019 prevented plantings;

(3) Payments for milk losses or on-farm stored commodity losses;

(4) Block Grants to eligible states and territories;

(5) Expansion of 2017 WHIP eligibility for Tropical Storm Cindy, peach and blueberry losses;

(6) TAP payments for pecan tree losses of less than 15 percent, but exceeding 7.5 percent; and

(7) Not more than $7 million to offset 2018 reductions to Whole Farm Revenue Protection due to payments to producers from state-controlled agricultural disaster assistance funds.

Implementation as outlined above and described in detail in this rule is expected to result in about $2.9 billion in combined payments out of the 2018 WHIP+ and remaining 2017 WHIP appropriations, with most benefits going to producers with 2018 hurricane losses in the Southeast and 2019 prevented plantings in the midwestern states.

This rule includes an estimated $1.223 billion in indemnities for 2018 and 2019 eligible disasters to date, and $535 million for a 10 to 15 percent expansion of existing coverage on prevented plantings by RMA. After factoring in estimated payments for on-farm storage losses of $50 million and eligible milk losses of $5 million, we anticipate expenditures of $1.813 billion to count against the $3 billion appropriated funds. Under the Disaster Relief Act, producers with 2019 losses due to eligible disasters are also eligible for WHIP+ payment. However, after accounting for prevented planting acres and without knowledge of other significant, eligible 2019 damage at this time, no assumptions are made in the cost benefit analysis about availability of funds for other 2019 disasters except that WHIP+ payments for 2019 and 2020 crop losses due to weather events in 2019 will be prorated at 50 percent in 2019 and subsequent payments in 2020 will be made up to the remaining 50 percent of losses to the extent that appropriated funds are still available. Estimated surplus funds of $1,187 million would be available for WHIP+ payments for 2019 and 2020 crop losses and block grants to states, the remainder could be returned to Treasury.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, Pub. L. 104–121), generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever an agency is required by the Administrative Procedure Act or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because USDA is not required by Administrative Procedure Act or any law to publish a proposed rule for this rulemaking.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulation for compliance with NEPA (7 CFR part 799). The (1) WHIP+, (2) changes to 2017 WHIP, (3) TAP, (4) On-Storage Loss Program, (5) WHIP Milk Loss Program, and (6) prevented planting supplemental disaster payments are mandated by Disaster Relief Act. (1) The legislative intent for implementing WHIP+ is to provide payments to the producers who suffered eligible crop, tree, bush, and vine losses resulting from qualifying disaster events in the 2018 and 2019 calendar years. (2) This rule also implements changes to 2017 WHIP to expand eligibility to producers with eligible losses due to Tropical Storm Cindy, losses of peach and blueberry crops in calendar year 2017 due to extreme cold, and blueberry productivity losses in calendar year 2018 due to extreme cold and hurricane damage in calendar year 2017. (3) It also provides authority for TAP for 2018

pecan tree losses for growers who suffered a pecan stand mortality loss that exceeds 7.5 percent but is less than 15 percent due to an eligible natural disaster. (4) The On-Farm Storage Loss Program provides payments to eligible producers who suffered losses of harvested commodities while stored in farm structures. (5) The WHIP Milk Loss Program provides payments to eligible dairy operations for milk that was dumped or removed without compensation from the commercial milk market. (6) Also, prevented planting supplemental disaster payments provide additional support to producers who were prevented from planting eligible crops for the 2019 crop year.

While OMB has designated this rule as ''economically significant'' under Executive Order 12866, ''. . . economic or social effects are not intended by themselves to require preparation of an environmental impact statement'' (40 CFR 1508.14), when not interrelated to natural or physical environmental effects. Except for TAP, the intent of the programs is to compensate producers who have suffered post- or pre-production market losses and do not have ground or other resource disturbing impacts. The limited discretionary aspects of the programs (for example, determining AGI and payment limitations) were designed to be consistent with established FSA disaster programs. As such, and with the exception of the TAP, the FSA Categorical Exclusions found in 7 CFR 799.31 apply, specifically 7 CFR 799.31(b)(6)(iii), (iv), and (vi) (that is, § 799.31(b)(6)(iii) Financial assistance to supplement income, manage the supply of agricultural commodities, or influence the cost or supply of such commodities or programs of a similar nature or intent (that is, price support programs); § 799.31(b)(6)(iv) Individual farm participation in FSA programs where no ground disturbance or change in land use occurs as a result of the proposed action or participation; and § 799.31(b)(6)(vi) Safety net programs administered by FSA). No Extraordinary Circumstances (7 CFR 799.33) exist. For TAP, due to the potential for ground disturbance and Extraordinary Circumstances, FSA will continue to require site-specific reviews as defined in §§ 799.32 and 799.33. The prevented planting supplemental disaster payments, as administered by RMA, are covered by the USDA Categorical Exclusion for the FCIC (7 CFR 1(b)(4)(a)(5), Exclusion of agencies, FCIC).

For the outlined reasons, FSA and RMA have determined that the implementation of the programs and the participation in the programs, with the exception of TAP, do not constitute major Federal actions that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action; for all covered programs except TAP, this rule serves as documentation of the programmatic environmental compliance decision for this federal action. TAP will continue to utilize the Environmental Screening Worksheet (FSA–850) as documentation of each site-specific environmental review.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials that would be directly affect by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons specified in the final rule related notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule will not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

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 USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian Tribes and determined that this rule may have significant Tribal implications that require ongoing adherence to Executive Order 13175. OTR notes that the programs are similar to programs that have been administered by FSA and RMA in the past; having not heard any concerns regarding the administration of these in the past, and the fact that provisions are mandated in the Disaster Relief Act, OTR recommended that consultation is not required at this time. Tribes can request consultation at any time. CCC, FSA, RMA, and FCIC will work with OTR to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by law.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of 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.

E-Government Act Compliance

CCC, FSA, and FCIC are committed to complying with the E-Government Act, 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.

Federal Assistance Programs

The titles and numbers of the Federal Domestic Assistance Program found in the Catalog of Federal Domestic Assistance to which this rule applies are:

10.129–Wildfire and Hurricanes Indemnity Program Plus
10.120–2017 Wildfires and Hurricanes Indemnity Program
10.111–Tree Assistance Program

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the following new information collection request that supports WHIP+ was submitted to OMB for emergency approval. OMB approved the 6-month emergency information collection. Since the information collection activities will continue for more than the approved 6 months, in addition, through this rule, FSA is requesting comments from interested individuals and organizations on the information collection activities related to WHIP+ as described in this rule. Following the 60-day public comment period for this rule, the information collection request will be submitted to OMB for the 3-year approval to ensure adequate time for the information collection for the duration of WHIP+ and will merge with 0560–0291.

Title: Wildfire and Hurricane Indemnity Program Plus (WHIP+).

OMB Control Number: 0560-New.

Form number(s) for WHIP+: FSA–894, Wildfires and Hurricanes Indemnity Program Plus Application; FSA–894 Continuation, Wildfires and Hurricanes Indemnity Program Plus Application Continuation; FSA–895, Crop Insurance and/or NAP Coverage Agreement; FSA–896, Request for an Exception to the WHIP+ Payment Limitation of $125,000, WHIP+ ONLY; and FSA–897, Actual Production History and Approve Yield Records (WHIP+ Select Crops Only). The On-Line Loss Certification, FSA–272, is for the producers who suffered losses of harvested commodities, including hay, stored in on-farm structures as a result from hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires that occurred in the 2018 and 2019 calendar years to get payments. Also, the Wildfire and Hurricane Indemnity Program (WHIP) Milk Loss Application, FSA–375, is used by the producers who is eligible as dairy operations for milk that was dumped or removed without compensation from commercial milk market.

Type of Request: New Collection.

Abstract: This information collection is required to support both the regulation in 7 CFR part 760, subpart O, for WHIP+ that establishes the requirements or eligible producers who suffered eligible crop, tree, bush, and vine losses resulting from hurricanes and wildfires as specified in the Disaster Relief Act. The information collection is necessary to evaluate the application and other required paperwork for determining the producer's eligibilities and assist in producer's payment calculations.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per response multiplied by the estimated total annual responses.

Estimate of Respondent Burden: Public reporting burden for this information collection is estimated to average 0.228 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collections of information.

Type of Respondents: Producers or farmers.

Estimated Annual Number of Respondents: 26,592.

Estimated Number of Reponses per Respondent: 3.053.

Estimated Total Annual Responses: 80,552.

Estimated Average Time per Response: 0.228 hours.

Estimated Annual Burden on Respondents: 18,405.

For WHIP+ and other WHIP+ programs, the per form estimated burden is:

Form name	Form No.	Number of respondents	Total burden hours
Wildfires and Hurricanes Indemnity Program Plus Application	FSA–894	21,738	10,689
Crop Insurance and/or NAP Coverage Agreement	FSA–895	21,738	1,710
Request for an Exception to the WHIP+ Payment Limitation of $125,000, WHIP+ ONLY.	FSA–896	16,332	1,307
Actual Production History and Approve Yield Records (WHIP+ Select only).	FSA–897	4,000	320
Wildfires and Hurricanes Indemnity Program Plus Application (Continuation Sheet).	FSA–894 (continuation)	12,250	3,063
On-Farm Storage Loss Certification	FSA–272	5,000	1,250
Wildfire and Hurricane Indemnity Program (WHIP) Milk Loss	FSA–375	200	66
AIP and RMA Agreement (non form)		14	1

FSA is requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of the FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

List of Subjects

7 CFR Part 460

Crop insurance, Disaster assistance.

7 CFR Part 760

Dairy products, Indemnity payments, Reporting and recordkeeping requirements.

7 CFR Part 1416

Administrative practice and procedure, Agriculture, Disaster assistance, Fruits, Livestock, Nursery stock, Seafood.

For the reasons discussed above, the FCIC, FSA, and CCC amend 7 CFR chapters IV, VII, and XIV as follows:

Federal Crop Insurance Corporation

Chapter IV

■ 1. Add part 460 to read as follows:

PART 460—ADDITIONAL DISASTER PAYMENTS

Subpart A—Prevented Planting Supplemental Disaster Payments

Sec.
460.1 Applicability.
460.2 Definitions.
460.3 Eligibility and qualifying causes of loss.
460.4 Calculating prevented planting supplemental disaster payments.
460.5 Timing and issuance of payments and payment limitations.
460.6 Adjusted prevented planting supplemental disaster payments and repayment.
460.7 Requirement to purchase crop insurance.

Subpart B—[Reserved]

Authority: 7 U.S.C. 1506(1) and 1506(o); and Title I, Pub. L. 116–20.

Subpart A—Prevented Planting Supplemental Disaster Payments

§ 460.1 Applicability.

This subpart specifies the terms and conditions of prevented planting supplemental disaster payments. Prevented planting supplemental disaster payments provide additional compensation to producers prevented from planting crops insured under crop insurance policy reinsured by the Federal Crop Insurance Corporation (FCIC) due to disaster related conditions. Prevented planting supplemental disaster payments are applicable to 2019 crop year crops prevented from planting in 2019, as determined by the Risk Management Agency (RMA).

§ 460.2 Definitions.

Approved Insurance Provider (AIP) means a legal entity which has entered into a reinsurance agreement with FCIC for the applicable reinsurance year and is authorized to sell and service policies or plans of insurance under the Federal Crop Insurance Act.

Assignment of Indemnity means a transfer of crop insurance policy rights whereby a policyholder assigns rights to an indemnity payment for the crop year to creditors or other persons to whom they have a financial debt or other pecuniary obligation.

Crop insurance policy means an insurance policy reinsured by FCIC under the provisions of the Federal Crop Insurance Act, as amended. It does not include private plans of insurance.

Crop year means the period within which the insured crop is normally grown and is designated by the calendar year in which the insured crop is normally harvested.

Federal Crop Insurance Act means the legal authority codified in 7 U.S.C. 1501–1524.

Final planting date means the latest date, established by RMA for each insurable crop, by which the crop must initially be planted in order to be insured for the full production guarantee or amount of insurance per acre.

FCIC means the Federal Crop Insurance Corporation, a wholly owned Government Corporation of USDA that administers the Federal crop insurance program.

FSA means the Farm Service Agency.

Insured crop means a crop for which the participant has purchased a crop insurance policy from an AIP.

NAP means the Noninsured Crop Disaster Assistance Program under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333) and part 1437 of this title and administered by FSA.

Person has the same meaning as defined in § 457.8(1) of this title.

Prevent plant base factor means the value announced by the Secretary used to calculate the payment for crops covered under a plan of insurance that is not a revenue protection plan of insurance, or is a revenue protection plan of insurance with the harvest price exclusion elected.

Prevent plant revenue factor means value announced by the Secretary used to calculate the payment for crops covered under a plan of insurance that provides revenue protection unless the harvest price exclusion is elected for that crop.

Prevented planting means the inability to plant an insured crop with proper equipment during the planting period as a result of an insured cause of loss, as determined by the AIP.

Prevented planting payment means a payment made under a crop insurance policy to compensate the policyholder when they are prevented from planting an insured crop.

Qualifying prevented planting payment means a prevented planting payment made under a crop insurance policy that qualifies for a prevented planting supplemental disaster payment, as specified in this subpart.

Revenue protection has the same meaning as defined in § 457.8(1) of this title.

Second crop has the same meaning as defined in § 457.8(1) of this title.

§ 460.3 Eligibility and qualifying causes of loss.

(a) To be eligible for a payment under this subpart, the participant must be a person that is eligible to receive Federal benefits and has purchased a crop insurance policy for the insured crop from an AIP.

(1) Participants will be eligible to receive a payment in this subpart only if they were prevented from planting an insured crop due to a qualifying cause of loss, as further specified in this subpart.

(2) A person is not eligible to receive benefits in this subpart if at any time that person is determined to be ineligible for crop insurance.

(b) Insured crops that are eligible for a payment under this subpart are those crops for which the final planting date for the 2019 crop year crop insurance policy is in the 2019 calendar year, as specified by the Administrator.

(1) For insured crops with more than one final planting date in the county, only those types or practices with a final planting date in the 2019 calendar year are eligible for payment under this subpart.

(2) Participants who are in violation of Highly Erodible Land or Wetlands Conservation (16 U.S.C. 3811–12, 3821) for Federal crop insurance are not eligible for payment under this subpart.

(c) A prevented planting payment will only be considered a qualifying prevented planting payment if the participant is prevented from planting the insured crop due to one of the following causes of loss:

(1) Excess precipitation;
(2) Flood;
(3) Cold wet weather;
(4) Storm surge;
(5) Tornado;
(6) Volcanic activity; and
(7) Tropical depression, hurricane, or cyclone.

(d) A prevented planting payment received for failure to plant due to any cause not included in paragraph (c) of

this section is not considered a qualifying prevented planting payment for the purpose of this subpart.

§ 460.4 Calculating prevented planting supplemental disaster payments.

(a) For insured crops covered under a crop insurance policy with a revenue protection plan of insurance that does not have the harvest price exclusion elected, the payment under this subpart for each insured crop will be calculated by summing the qualifying prevented planting payments for that insured crop and multiplying the total by the prevent plant revenue factor.

(b) For all other insured crops, the payment under this subpart for each insured crop will be calculated by summing the qualifying prevented planting payments for that insured crop and multiplying the total by the prevent plant base factor.

(c) If a qualifying prevented planting payment is reduced for any reason, such as the participant planting a second crop, the payment under this subpart will be based on the amount of the qualifying prevented planting payment after any such reduction.

§ 460.5 Timing and issuance of payments and payment limitations.

(a) The payment under this subpart will be issued, for each crop, to the same person or persons that received the qualifying prevented planting payment for that crop:

(1) If the insured has an assignment of indemnity in effect on the insured crop, the payment under this subpart will be made jointly in the name of the insured and all applicable assignees.

(2) In cases where there has been a death, disappearance, judicially declared incompetence, or dissolution of any insured person any payment under this subpart will be paid to the person or persons determined to be entitled to the qualifying prevented planting payment.

(b) Any payments under this subpart will be made by USDA in a manner and at a time determined by the Administrator.

(c) The total amount of payments received for prevented planting supplemental disaster payments under this subpart, applicable crop insurance policy indemnities, NAP payments, and any other applicable disaster relief payment will not exceed 90 percent of the loss as determined by the Secretary.

(d) The payment limitations stated in 7 CFR 760.1507 are not applicable to prevented planting supplemental disaster payments.

§ 460.6 Adjusted prevented planting supplemental disaster payments and repayment.

(a) In the event that any payment under this subpart is determined to be incorrect due to a change in a qualifying prevented planting payment, erroneous information, or a miscalculation, the payment will be recalculated until October 9, 2020, unless otherwise specified by the Administrator. After that date, the payment under this subpart will be final except in cases of fraud, scheme, or device, or failure to purchase crop insurance as specified in § 460.8.

(b) In the event that the qualifying prevented planting payment is adjusted after payment under this subpart has been issued and that adjustment results in:

(1) A higher qualifying prevented planting payment, the amount of payment will be increased to the amount determined to be correct; or

(2) A lower qualifying prevented planting payment, the amount of payment will be decreased to the amount determined to be correct and the participant will be required to repay, with interest if applicable, any excess payment already received.

(c) All persons with a financial interest in the person receiving payments under this subpart are jointly and severally liable for any refund, including related charges, which is determined to be due.

(d) Interest will accrue at the annual rate of 1.25 percent simple interest per calendar month. Interest will start to accrue on the first day of the month following the notification of the amount to be refunded, provided that a minimum of 30 days has passed from the date the notification was issued.

§ 460.7 Requirement to purchase crop insurance.

(a) For the first 2 consecutive crop years after receiving a payment under this subpart:

(1) A participant who receives a payment under this subpart for prevented planting for a crop in a county must obtain crop insurance for all acres planted to that crop in that county; or

(2) If crop insurance is no longer available for the crop in that county, the participant must obtain NAP coverage if available for the applicable crop year. A participant will only be considered to have obtained NAP coverage for the purposes of this section if the participant paid the NAP service fee and any premium by the applicable deadline and complied with all program requirements.

(b) If a participant fails to obtain crop insurance or NAP coverage as required in paragraph (a) of this section, the participant must reimburse the full amount of the payment under this subpart received for the applicable crop, plus interest calculated from the date of disbursement.

Subpart B—[Reserved]

Farm Service Administration

Chapter VII

PART 760—INDEMNITY PAYMENT PROGRAMS

■ 2. The authority citation for part 760 is revised to read as follows:

Authority: 7 U.S.C. 4501 and 1531; 16 U.S.C. 3801, note; 19 U.S.C. 2497; Title III, Pub. L. 109–234, 120 Stat. 474; Title IX, Pub. L. 110–28, 121 Stat. 211; Sec. 748, Pub. L. 111–80, 123 Stat. 2131; Title I, Pub. L. 115–123; and Title I, Pub. L. 116–20.

Subpart O—Agricultural Disaster Indemnity Programs

■ 3. Revise the heading for subpart O to read as set forth above.

■ 4. Revise § 760.1500 to read as follows.

§ 760.1500 Applicability.

(a) This subpart specifies the terms and conditions for the 2017 Wildfires and Hurricanes Indemnity Program (2017 WHIP) and the Wildfires and Hurricanes Indemnity Program Plus (WHIP+).

(b) The 2017 WHIP provides disaster assistance for necessary expenses related to crop, tree, bush, and vine losses related to the consequences of wildfires, hurricanes, and Tropical Storm Cindy that occurred in calendar year 2017, and for losses of peach and blueberry crops in calendar year 2017 due to extreme cold, and blueberry productivity losses in calendar year 2018 due to extreme cold and hurricane damage in calendar year 2017.

(c) WHIP+ provides disaster assistance for necessary expenses related to losses of crops, trees, bushes, and vines, as a consequence of Hurricanes Michael and Florence, other hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires occurring in calendar years 2018 and 2019.

§ 760.1501 [Amended]

■ 5. Amend § 760.1501 as follows:

■ a. In paragraph (a), remove the words ''The 2017 WHIP is'' both times it appears and add ''Programs under this subpart are'' in their place;

■ b. In paragraph (d), remove ''2017 WHIP'' and add ''this subpart'' in its place;
■ c. In paragraph (f), remove the words ''for 2017 WHIP'' and add ''under this subpart'' in their place.

■ 6. Amend § 760.1502 as follows:
■ a. Revise the definitions of ''Average adjusted gross farm income'' and ''Average adjusted gross income'';
■ b. In the definition of ''County disaster yield'', remove ''current'' and add ''applicable crop'' in its place;
■ c. In paragraph (3) of the definition of ''Crop year'', remove the words ''2017 crop year'' and add ''calendar year in which the qualifying disaster event occurred'' in their place;
■ d. In the definition of ''Multi-use crop'', remove ''calendar'' and add ''crop'' in its place;
■ e. In paragraph (1) of the definition of ''Price'', add '', and under WHIP+, the price for a crop for which the producer obtained a revenue plan of insurance is the greater of the projected price or the harvest price;'' after the word ''price'';
■ f. Revise the definition of ''Qualifying disaster event'';
■ g. In the definition of ''Related condition'', remove the words ''hurricane or wildfire'' and add ''specified qualifying disaster event'' in their place;
■ h. In the definition of ''Uninsured'', remove ''2017 WHIP'' and add ''under this subpart'' after the word ''requested''; and
■ i. Add in alphabetical order definitions for ''WHIP+ factor'' and ''WHIP+ yield''.

The revisions and additions read as follows:

§ 760.1502 Definitions.

* * * * *

Average adjusted gross farm income means the average of the portion of adjusted gross income of the person or legal entity that is attributable to activities related to farming, ranching, or forestry. The relevant tax years are:

(1) For 2017 WHIP, 2013, 2014, and 2015; and

(2) For WHIP+, 2015, 2016, and 2017.

Average adjusted gross income means the average of the adjusted gross income as defined under 26 U.S.C. 62 or comparable measure of the person or legal entity. The relevant tax years are:

(1) For 2017 WHIP, 2013, 2014, and 2015; and

(2) For WHIP+, 2015, 2016, and 2017.

* * * * *

Qualifying disaster event means:

(1) For 2017 WHIP, a hurricane, wildfire, or Tropical Storm Cindy or related condition that occurred in the 2017 calendar year; extreme cold in calendar year 2017 for losses of peach and blueberry crops in calendar year 2017; and extreme cold and hurricane damage in calendar year 2017 for blueberry productivity losses in calendar year 2018; and

(2) For WHIP+, a hurricane, flood, tornado, typhoon, volcanic activity, snowstorm, wildfire, or related condition that occurred in the 2018 or 2019 calendar year.

* * * * *

WHIP+ factor means the factor in § 760.1511, determined by the Deputy Administrator, that is based on the crop insurance or NAP coverage level elected by the WHIP+ participant for a crop for which a payment is being requested; or, as applicable, the factor that applies for a crop during a crop year in which the participant had no insurance or NAP coverage.

WHIP+ yield means, for a unit:

(1) For an insured crop, excluding crops located in Puerto Rico, the approved federal crop insurance APH, for the crop year;

(2) For a NAP covered crop, excluding crops located in Puerto Rico, the approved yield for the crop year;

(3) For a crop located in Puerto Rico or an uninsured crop, excluding select crops, the county expected yield for the crop year; and

(4) For select crops, the yield based on documentation submitted according to § 760.1511(c)(3), or if documentation is not submitted, the county expected yield.

* * * * *

§ 760.1503 [Amended]

■ 7. Amend § 760.1503 as follows:
■ a. In paragraph (a) remove ''2017 WHIP'';
■ b. In paragraph (b)(3), add ''solely of'' before ''citizens'';
■ c. In paragraph (b)(4), add ''consisting solely of citizens of the United States or resident aliens'' after ''law''; and
■ d. In paragraph (i), remove ''2017 WHIP benefits'' and add ''benefits under this subpart'' in their place.

■ 8. Amend § 760.1505 as follows:
■ a. In paragraph (b) introductory text, add ''or WHIP+ yield'' after ''yield'';
■ b. In paragraph (d) introductory text, remove the words ''for 2017 WHIP'' and add ''under this subpart'' in their place;
■ c. In paragraph (e), remove ''2017 WHIP'', and add ''under this subpart'' after ''purposes'';
■ d. In paragraph (g), add '', except as specified in § 760.1513(i)'' after ''quality'';
■ e. Revise paragraph (h); and
■ f. Add paragraph (i).

The revision and addition read as follows:

§ 760.1505 General provisions.

* * * * *

(h) FSA will use the most reliable data available at the time payments under this subpart are calculated. If additional data or information is provided or becomes available after a payment is issued, FSA will recalculate the payment amount and the producer must return any overpayment amount to FSA. In all cases, payments can only issue based on the payment formula for losses that affirmatively occurred.

(i) A participant who received a payment for a loss under 2017 WHIP cannot:

(1) Be paid for the same loss under WHIP+; or

(2) Refund the 2017 WHIP payment to be eligible for payment for that loss under WHIP+.

■ 9. Amend § 760.1506 as follows:
■ a. Redesignate paragraphs (a) through (c) as paragraphs (a)(1) through (3), respectively; and
■ b. Add new paragraph (a) introductory text and paragraph (b).

The additions read as follows:

§ 760.1506 Availability of funds and timing of payments.

(a) For 2017 WHIP:

* * * * *

(b) For WHIP:

(1) For the 2018 crop year, the calculated WHIP+ payment will be paid at 100 percent.

(2) For the 2019 and 2020 crop years, an initial payment will be issued for 50 percent of each WHIP+ payment calculated according to this subpart, as determined by the Secretary. Up to the remaining 50 percent of the calculated WHIP+ payment will be paid only to the extent that there are funds available for such payment as discussed in this subpart.

(3) In the event that, within the limits of the funding made available by the Secretary, approval of eligible applications would result in payments in excess of the amount available, FSA will prorate 2019 and 2020 payments by a national factor to reduce the payments to the remaining available funds, as determined by the Secretary. FSA will prorate the payments accordingly.

(4) Applications and claims that are unpaid or prorated for aforementioned reasons of fund availability will not be carried forward for payment and will be considered, as to any unpaid amount, void and non-payable.

■ 10. Amend § 760.1507 as follows:
■ a. Redesignate paragraphs (b) through (d) as paragraphs (c) through (e);

■ b. Add new paragraph (b);
■ b. Revise newly redesignated paragraph (c);
■ c. In newly redesignated paragraph (d), remove ''2017 WHIP'', and add ''for the applicable period specified in this section'' after ''payments''; and
■ d. In newly redesignated paragraph (e), remove ''2017 WHIP'' and add ''payments under this subpart'' in its place.

The addition and revision read as follows:

§ 760.1507 Payment limitation.

* * * * *

(b) For any WHIP+ payments, a person or legal entity, other than a joint venture or general partnership, is eligible to receive, directly or indirectly, WHIP+ payments of not more than:

(1) $125,000 combined for the 2018, 2019, and 2020 crop years, if less than 75 percent of the person or legal entity's average adjusted gross income is average adjusted gross farm income; or

(2) $250,000 for each of the 2018, 2019, and 2020 crop years, if 75 percent or more of the average adjusted gross income of the person or legal entity is average adjusted gross farm income, and such payments cannot exceed a total of $500,000 combined for all of the 2018, 2019, and 2020 crop years.

(c) A person or legal entity's average adjusted gross income and average adjusted gross farm income are determined based on the:

(1) 2013, 2014, and 2015 tax years for 2017 WHIP;

(2) 2015, 2016, and 2017 tax years for WHIP+.

* * * * *

■ 11. Amend § 760.1508 as follows:
■ a. In paragraph (a), remove the words ''2017 WHIP payments'', and add ''payments under this subpart'' in their place; and
■ b. Add paragraphs (e) and (f).

The additions read as follows:

§ 760.1508 Qualifying disaster events.

* * * * *

(e) For WHIP+, for a loss due to a qualifying disaster event, the crop, tree, bush, or vine loss must have occurred on acreage that was physically located in a county that received a:

(1) Presidential Emergency Disaster Declaration authorizing public assistance for categories C through G or individual assistance due to a qualifying disaster event occurring in the 2018 or 2019 calendar years; or

(2) Secretarial Disaster Designation for a qualifying disaster event occurring in the 2018 or 2019 calendar years.

(f) A producer with crop, tree, bush, or vine losses on acreage not located in a physical location county that was eligible under paragraph (b)(1) of this section will be eligible for WHIP+ for losses due to qualifying disaster events only if the producer provides supporting documentation that is acceptable to FSA from which the FSA county committee determines that the loss of the crop, tree, bush, or vine on the unit was reasonably related to a qualifying disaster event as specified in this subpart. Supporting documentation may include furnishing climatological data from a reputable source or other information substantiating the claim of loss due to a qualifying disaster event.

■ 12. Amend § 760.1509 as follows:
■ a. In paragraph (b) introductory text, remove the words ''for 2017 WHIP'' and add ''under this subpart'' in their place;
■ b. In paragraph (b)(4), remove ''or'' at the end;
■ c. In paragraph (b)(5), remove the period and add ''; or'' in its place;
■ d. Add paragraph (b)(6);
■ e. In paragraph (c)(6), remove ''or'' at the end;
■ f. In paragraph (c)(7), remove the period and add ''; or'' in its place;
■ g. Add paragraph (c)(8).

The additions read as follows:

§ 760.1509 Eligible and ineligible losses.

* * * * *

(b) * * *

(6) FSA or RMA have previously disapproved a notice of loss for the crop and disaster event unless that notice of loss was disapproved solely because it was filed after the applicable deadline.

* * * * *

(c) * * *

(8) Losses to crops that occur after harvest.

* * * * *

■ 13. Amend § 760.1510 as follows:
■ a. Revise the section heading;
■ b. Revise paragraph (a);
■ c. In paragraph (c), remove the words ''2017 WHIP payment'' and add ''payment under this subpart'' in their place, and remove the words ''eligibility for 2017 WHIP'' and add ''eligibility for payment under this subpart'' in their place;
■ d. Revise paragraphs (d)(1) through (4); and
■ e. Remove paragraph (d)(5).

The revisions read as follows:

§ 760.1510 Application for payment.

(a) An application for payment under this subpart must be submitted to the FSA county office serving as the farm's administrative county office by the close of business on a date that will be announced by the Deputy Administrator. Producers must submit:

(1) For 2017 WHIP, a completed form FSA–890, Wildfires and Hurricanes Indemnity Program Application; or

(2) For WHIP+, a completed form FSA–894, Wildfires and Hurricanes Indemnity Program + Application.

* * * * *

(d) * * *

(1) Report of all acreage for the crop for the unit for which payments under this subpart are requested, on FSA–578, Report of Acreage, or in another format acceptable to FSA;

(2) AD–1026, Highly Erodible Land Conservation (HELC) and Wetland Conservation Certification; and

(3) For 2017 WHIP:

(i) FSA–891, Crop Insurance and/or NAP Coverage Agreement;

(ii) FSA–892, Request for an Exception to the WHIP Payment Limitation of $125,000, if the applicant is requesting 2017 WHIP payments in excess of the $125,000 payment limitation; and

(iii) FSA–893, 2018 Citrus Actual Production History and Approved Yield Record, Florida Only, for participants applying for payment for a citrus crop located in Florida;

(4) For WHIP+:

(i) FSA–895, Crop Insurance and/or NAP Coverage Agreement;

(ii) FSA–896, Request for an Exception to the WHIP Payment Limitation of $125,000, if 75 percent or more of an applicant's average AGI is attributable to activities related to farming, ranching, or forestry and the applicant wants to be eligible to receive WHIP+ payments of more than $125,000, up to the $250,000 payment limitation per crop year, with an overall WHIP+ limit of $500,000; and

(iii) FSA–897, Actual Production History and Approved Yield Record (WHIP+ Select Crops Only), for applicants requesting payments for select crops.

* * * * *

■ 14. Amend § 760.1511 as follows:
■ a. In paragraph (a) introductory text, add ''subject to § 760.1514(i) and (j),'' after ''planting,'';
■ b. In paragraph (a)(1), add ''or the WHIP+ yield in paragraph (d) of this section'' after ''section'';
■ c. In paragraph (a)(2), add ''or WHIP+ factor'' after ''2017 WHIP factor'';
■ d. In paragraph (a)(7), remove ''and'';
■ e. In paragraph (a)(8), remove the period and add ''; and'' in its place;
■ f. In paragraph (b), remove the words ''second column'' and add ''second column, and the WHIP+ factor is listed in the third column'' in their place, and revise the table in paragraph (b);
■ g. Redesignate paragraphs (d) through (g) as paragraphs (e) through (h);

■ h. Add new paragraph (d);

■ i. In newly redesignated paragraph (e), remove the words ''2017 WHIP payment'' and add ''payment under this subpart'' in their place;

■ j. In newly redesignated paragraph (f), remove the words ''2017 WHIP payment'' and add ''payment under this subpart'' in their place, and remove ''for 2017 WHIP'' and add ''for payment'' in their place.

The revision and addition read as follows:

§ 760.1511 Calculating payments for yield-based crop losses.

* * * * *

(b) * * *

TABLE 1 TO § 760.1511(b)

Coverage level	2017 WHIP factor (percent)	WHIP+ factor (percent)
(1) No crop insurance or No NAP coverage	65	70
(2) Catastrophic coverage	70	75
(3) More than catastrophic coverage but less than 55 percent	72.5	77.5
(4) At least 55 percent but less than 60 percent	75	80
(5) At least 60 percent but less than 65 percent	77.5	82.5
(6) At least 65 percent but less than 70 percent	80	85
(7) At least 70 percent but less than 75 percent	85	87.5
(8) At least 75 percent but less than 80 percent	90	92.5
(9) At least 80 percent	95	95

* * * * *

(d) The WHIP+ yield is:

(1) The producer's APH for insured crops under a crop insurance policy that has an associated yield and for NAP covered crops, excluding all crops located in Puerto Rico;

(2) The county expected yield for crops located in Puerto Rico and uninsured crops, excluding select crops; or

(3) For select crops:

(i) Determined based on information provided on FSA–897 and supported by evidence that meets the requirements of § 760.1513(c), or

(ii) If FSA–897 and supporting documentation are not submitted, the county expected yield.

* * * * *

■ 15. Amend § 760.1512 by adding paragraph (e) to read as follows.

§ 760.1512 Production losses; participant responsibility.

* * * * *

(e) Under WHIP+, participants requesting payments for losses to adulterated wine grapes must submit verifiable sales tickets that document that the reduced price received was due to adulteration due to a qualifying disaster event. For adulterated wine grapes that have not been sold, participants must submit verifiable records obtained by testing or analysis to establish that the wine grapes were adulterated due to a qualifying disaster event and the price they would receive due to adulteration.

■ 16. Amend § 760.1513 by adding paragraph (i) to read as follows.

§ 760.1513 Determination of production.

* * * * *

(i) Under WHIP+, production for eligible adulterated wine grapes will be adjusted for quality deficiencies due to a qualifying disaster event. Wine grapes are eligible for production adjustment only if adulteration occurred prior to harvest and as a result of a qualifying disaster event or as a result of a related condition (such as application of fire retardant). Losses due to all other causes of adulteration (such as addition of artificial flavoring or chemicals for economic purposes) are not eligible for WHIP+. Production will be eligible for quality adjustment if, due to a qualifying disaster event, it has a value of less than 75 percent of the average market price of undamaged grapes of the same or similar variety. The value per ton of the qualifying damaged production and the average market price of undamaged grapes will be determined on the earlier of the date the damaged production is sold or the date of final inspection for the unit. Grape production that is eligible for quality adjustment will be reduced by:

(1) Dividing the value per ton of the damaged grapes by the value per ton for undamaged grapes; and

(2) Multiplying this result (not to exceed 1.000) by the number of tons of the eligible damaged grapes.

■ 17. Amend § 760.1514 as follows:

■ a. In paragraph (b), remove the words ''*2017* WHIP'' both times it appears and add ''under this subpart'' in their places;

■ b. In paragraphs (c) and (d), remove ''for *2017* WHIP'';

■ c. In paragraph (f), remove the words ''for 2*017* WHIP'' and add ''under this subpart in their place, and remove the words ''will apply to *2017* WHIP and add ''apply'' in their place;

■ d. In paragraph (h), remove ''for *2017* WHIP''; and

■ e. Add paragraphs (i) and (j).

The additions read as follows.

§ 760.1514 Eligible acres.

* * * * *

(i) For 2017 WHIP, prevented planting acres will be considered eligible acres if they meet all requirements of this subpart.

(j) For WHIP+:

(1) 2018 and 2020 crop year prevented planting acres and 2019 crop year uninsured and NAP-covered prevented planting acres will be eligible acres if they meet all requirements of this subpart; and

(2) 2019 crop year insured prevented planting acres will not be eligible acres.

■ 18. Amend § 760.1515 as follows:

■ a. In paragraph (a)(1), add ''or WHIP+ factor'' after ''factor'';

■ b. In paragraph (a)(5), remove ''and'';

■ c. Redesignate paragraph (a)(7) as paragraph (a)(6);

■ d. In newly redesignated paragraph (a)(6), remove the period and add ''; and'' in its place;

■ e. Add new paragraph (a)(7);

■ f. In paragraph (b), remove the words ''*2017* WHIP payment'', and add ''payment under this subpart'' in their place; and

■ g. In paragraph (c), remove ''*2017* WHIP''.

The addition reads as follows.

§ 760.1515 Calculating payments for value loss crops.

(a) * * *

(7) Subtracting the amount of any payment for future economic losses received under the Florida Citrus Recovery Block Grant Program.

* * * * *

§ 760.1516 [Amended]

■ 19. Amend § 760.1516 as follows:
■ a. In paragraph (b)(1), add ''or WHIP+ factor'' after ''factor''; and
■ b. In paragraph (f), remove the words ''this section'' and add ''2017 WHIP'' in their place.

■ 20. Amend § 760.1517 as follows:
■ a. Revise paragraph (a) introductory text;
■ b. In paragraph (b), remove the words ''but not later than the 2021 crop years'' and add ''subject to paragraph (c) of this section'' in their place;
■ c. Redesignate paragraph (c) as paragraph (d);
■ d. Add new paragraph (c); and
■ e. In newly redesignated paragraph (d), add ''or WHIP+ payment'' after ''payment'' in the first sentence.

The revision and addition read as follows:

§ 760.1517 Requirement to purchase crop insurance or NAP coverage.

(a) For the first 2 consecutive crop years for which crop insurance or NAP coverage is available after the enrollment period for 2017 WHIP or WHIP+ ends, subject to paragraph (c) of this section, a participant who receives payment under this subpart for a crop loss in a county must obtain:

* * * * *

(c) The final crop year to purchase crop insurance or NAP coverage to meet the requirements of paragraphs (a) and (b) of this section is the:

(1) 2021 crop year for 2017 WHIP payment eligibility, except as provided in paragraph (c)(2) of this section;

(2) 2023 crop year for:

(i) WHIP+ payment eligibility; and

(ii) 2017 WHIP payment eligibility for losses due to Tropical Storm Cindy, losses of peach and blueberry crops in calendar year 2017 due to extreme cold, and blueberry productivity losses in calendar year 2018 due to extreme cold and hurricane damage in calendar year 2017.

* * * * *

■ 21. Add subpart P, consisting of §§ 760.1600 through 760.1612, to read as follows:

Subpart P—On-Farm Storage Loss Program

Sec.
760.1600 Applicability.
760.1601 Administration.
760.1602 Definitions.
760.1603 Eligible producers.
760.1604 Eligible commodities.
760.1605 Miscellaneous provisions.
760.1606 General provisions.
760.1607 Availability of funds and timing of payments.
760.1608 Payment limitation and AGI.
760.1609 Qualifying disaster events.
760.1610 Eligible and ineligible losses.
760.1611 Application for payment.
760.1612 Calculating payments on-farm storage losses.

Subpart P—On-Farm Storage Loss Program

§ 760.1600 Applicability.

(a) This subpart specifies the terms and conditions for the On-Farm Storage Loss Program. The On-Farm Storage Loss Program will provide payments to eligible producers who suffered uncompensated losses of harvested commodities stored in on farm structures as a result from hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires that occurred in the 2018 and 2019 calendar years.

(b) The regulations in this subpart are applicable to crops of barley, small and large chickpeas, corn, grain sorghum, lentils, oats, dry peas, peanuts, rice, wheat, soybeans, oilseeds, hay and other crops designated by Commodity Credit Corporation (CCC) stored in on-farm structures. These regulations specify the general provisions under which the On-Farm Storage Loss Program will be administered by CCC. In any case in which money must be refunded to CCC in connection with this part, interest will be due to run from the date of disbursement of the sum to be refunded. This provision will apply, unless waived by the Deputy Administrator, irrespective of any other rule.

(c) Eligible on-farm structures include all on-farm structures deemed acceptable by the Deputy Administrator for Farm Programs.

(d) Adjusted Gross Income (AGI) and payment limitation provisions specified in part 760.1607 of this chapter apply to this subpart.

§ 760.1601 Administration.

(a) The On-Farm Storage Loss Program will be administered under the general supervision of the Executive Vice President, CCC and will be carried out in the field by FSA State and county committees, respectively.

(b) State and county committees, and representatives and their employees, do not have authority to modify or waive any of the provisions of the regulations, except as provided in paragraph (e) of this section.

(c) The FSA State committee will take any required action not taken by the FSA county committee. The FSA State committee will also:

(1) Correct or require correction of an action taken by a county committee that is not in compliance with this part; or

(2) Require a county committee to not take an action or implement a decision that is not under the regulations of this part.

(d) The Executive Vice President, CCC, or a designee, may determine any question arising under these programs, or reverse or modify a determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify non-statutory deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the On-Farm Storage Loss Program.

(f) A representative of CCC may execute applications and related documents only under the terms and conditions determined and announced by CCC. Any document not executed under such terms and conditions, including any purported execution before the date authorized by CCC, will be null and void.

(g) Items of general applicability to program participants, including, but not limited to, application periods, application deadlines, internal operating guidelines issued to State and county offices, prices, and payment factors established by the On-Farm Storage Loss Program, are not subject to appeal.

§ 760.1602 Definitions.

The definitions in this section apply for all purposes of program administration. Terms defined in §§ 760.1502 and 760.1421 of this chapter also apply, except where they conflict with the definitions in this section.

Administrative County Office is the FSA County Office where a producer's FSA records are maintained.

CCC means the Commodity Credit Corporation.

COC means the FSA county committee.

Covered commodity means wheat, oats, and barley (including wheat, oats, and barley used for haying), corn, grain sorghum, long grain rice, medium grain rice, seed cotton, pulse crops, soybeans, other oilseeds, and peanuts as specified in 7 CFR 1412 and produced and mechanically harvested in the United States.

Crop means with respect to a year, commodities harvested in that year. Therefore, the referenced crop year of a commodity means commodities that when planted were intended for harvest in that calendar year.

Crop year means the relevant contract or application year. For example, the 2014 crop year is the year that runs from October 1, 2013, through September 30,

2014, and references to payments for that year refer to payments made under contracts or applications with the compliance year that runs during those dates.

FSA means the Farm Service Agency of the United States Department of Agriculture.

Oilseeds means any crop of sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, crambe, sesame seed, and other oilseeds as designated by CCC or the Secretary.

Qualifying disaster event means a hurricane, flood, tornado, typhoon, volcanic activity, snowstorm, or wildfire or related condition that occurred in the 2018 or 2019 calendar year.

Recording FSA County Office is the FSA County Office that records eligibility data for producers designated as multi-county producers.

Related condition means damaging weather or an adverse natural occurrence that occurred as a direct result of a hurricane or wildfire qualifying disaster event, such as excessive rain, high winds, flooding, mudslides, and heavy smoke.

Secretary means the Secretary of the United States Department of Agriculture, or the Secretary's delegate.

STC means the FSA State committee.

§ 760.1603 Eligible producers.

(a) To be an eligible producer, the producer must:

(1) Be a person, partnership, association, corporation, estate, trust, or other legal entity that produces an eligible commodity as a landowner, landlord, tenant, or sharecropper, or in the case of rice, furnishes land, labor, water, or equipment for a share of the rice crop.

(2) Comply with all provisions of this part and, as applicable:

(i) 7 CFR part 12—Highly Erodible Land and Wetland Conservation;

(ii) 7 CFR part 707—Payments Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent;

(iii) 7 CFR part 718—Provisions Applicable to Multiple Programs;

(v) 7 CFR part 1400—Payment Limitation & Payment Eligibility; and

(vii) 7 CFR part 1403—Debt Settlement Policies and Procedures.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust is considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively. The production of the receiver, executor, administrator, guardian, or trustee is considered to be the production of the person or estate represented by the receiver, executor, administrator, guardian, or trustee. On-Farm Storage Loss Program documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer is eligible to receive a program payment only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are signed by the guardian;

(3) Any program application signed by the minor is cosigned by a person determined by the FSA county committee to be financially responsible; or

(e) A producer must meet the requirements of actively engaged in farming, cash rent tenant, and member contribution as specified in 7 CFR part 1400 to be eligible for program payments.

§ 760.1604 Eligible commodities.

(a) Commodities eligible to be compensated for loss made under this part are:

(1) Covered Commodities;

(2) Hay; and

(3) Stored in an on-farm structure that under normal circumstances, would have maintained the quality of the commodity throughout harvest until marketing or feed if not for the qualifying weather event.

(b) A commodity produced on land owned or otherwise in the possession of the United States that is occupied without the consent of the United States is not an eligible commodity.

§ 760.1605 Miscellaneous provisions.

(a) All persons with a financial interest in the legal entity receiving payments under this subpart are jointly and severally liable for any refund, including related charges, which is determined to be due to FSA for any reason.

(b) In the event that any application for payment under this subpart resulted from erroneous information or a miscalculation, the payment will be recalculated and any excess refunded to FSA with interest to be calculated from the date of the disbursement.

(c) Any payment to any participant under this subpart will be made without regard to questions of title under State law, and without regard to any claim or lien against the commodity, or proceeds, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings in part 792 of this chapter apply to payments made under this subpart.

(d) Any participant entitled to any payment may assign any payment(s) in accordance with regulations governing the assignment of payments in part 792 of this chapter.

(e) The regulations in 7 CFR parts 11 and 780 apply to determinations under this subpart.

§ 760.1606 General provisions.

Losses will be determined total production in storage at time of loss. Eligibility and payments will be based on physical location of storage. Payments will be made on commodities that were completely lost or destroyed while in storage due to the qualifying weather related event.

§ 760.1607 Availability of funds and timing of payments.

For the On-Farm Storage Loss Program, payments will be issued as applications are approved.

§ 760.1608 Payment limitation and AGI.

(a) Per loss year, a person or legal entity, other than a joint venture or general partnership, is eligible to receive, directly or indirectly payments of not more than $125,000.

(b) The direct attribution provisions in § 760.1507 of this part apply for payment limitation as defined and used in this rule.

§ 760.1609 Qualifying disaster events.

(a) The On-Farm Storage Loss Program will provide a payment to eligible producers who suffered losses of harvested commodities while such commodities were stored in on farm structures as a result from hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires that occurred in the 2018 and 2019 calendar years.

(b) For a loss due to or related to an event specified in paragraph (a) of this section, the loss must have occurred on acreage that was physically located in a county that received a:

(1) Presidential Emergency Disaster Declaration authorizing public assistance for categories C through G or individual assistance due to a hurricane occurring in the 2018 or 2019 calendar year; or

(2) Secretarial Disaster Designation for a hurricane occurring in the 2018 or 2019 calendar year.

(c) A producer with a loss not located in a physical location county that was eligible under paragraph (b)(1) of this section will be eligible for a program payment for losses due to hurricane and related conditions only if the producer provides supporting documentation that is acceptable to FSA from which the FSA county committee determines that the loss of the commodity was reasonably related to a qualifying disaster event as specified in this subpart and meets all other eligibility conditions. Supporting documentation may include furnishing climatological data from a reputable source or other information substantiating the claim of loss due to a qualifying disaster event.

(d) For a loss due to wildfires and conditions related to wildfire in the 2018 or 2019 calendar year, all counties where wildfires occurred, as determined by FSA county committees, are eligible program payments; a Presidential Emergency Disaster Declaration or Secretarial Disaster Designation for wildfire is not required. The loss must be reasonably related to wildfire and conditions related to wildfire, as specified in this subpart's definition of qualifying disaster event.

(e) For a loss due to floods, tornadoes, typhoons, volcanic activity, snowstorms or any other directly related weather disaster event, the loss must be reasonably related to the disaster event as specified in this subpart's definition of qualifying disaster event.

§ 760.1610 Eligible and ineligible losses.

(a) Except as provided in paragraphs (b) of this section, to be eligible for payments under this subpart the commodity stored in an eligible structure must have suffered a loss due to a qualifying disaster event.

(b) A loss will not be eligible for the On-Farm Storage Loss Program this subpart if any of the following apply:

(1) The cause of loss is determined by FSA to be the result of poor management decisions, poor farming practices, or previously damaged structures;

(2) The cause of loss was due to failure of the participant to store the commodity in an eligible structure before the qualifying disaster event; or

(3) The cause of loss was due to water contained or released by any governmental, public, or private dam or reservoir project if an easement exists on the acreage affected by the containment or release of the water.

(c) The following types of loss, regardless of whether they were the result of an eligible disaster event, are not eligible losses:

(1) Losses to crops that have not been harvested.

(2) Losses to crops not intended for harvest;

(4) Losses caused by improper storage;

(5) Losses caused by the application of chemicals; and

(6) Losses caused by theft.

§ 760.1611 Application for payment.

(a) An application for payment under this subpart must be submitted to the FSA county office serving as the farm's administrative county office by the close of business on a date that will be announced by the Deputy Administrator.

(b) Once signed by a producer, the application for payment is considered to contain information and certifications of and pertaining to the producer regardless of who entered the information on the application.

(c) The producer applying for the On-Farm Storage Loss Program under this subpart certifies the accuracy and truthfulness of the information provided in the application as well as any documentation filed with or in support of the application. All information is subject to verification or spot check by FSA at any time, either before or after payment is issued. Refusal to allow FSA or any agency of the Department of Agriculture to verify any information provided will result in the participant's forfeiting eligibility for this program. FSA may at any time, including before, during, or after processing and paying an application, require the producer to submit any additional information necessary to implement or determine any eligibility provision of this subpart. Furnishing required information is voluntary; however, without it FSA is under no obligation to act on the application or approve payment. Providing a false certification will result in ineligibility and can also be punishable by imprisonment, fines, and other penalties.

(d) The application submitted in accordance with paragraph (a) of this section is not considered valid and complete for issuance of payment under this subpart unless FSA determines all the applicable eligibility provisions have been satisfied and the participant has submitted all required documentation.

(e) Application approval and payment by FSA does not relieve a participant from having to submit any form required, but not filed.

§ 760.1612 Calculating payments on-farm storage losses.

(a) Payments made under this subpart to a participant for loss of stored commodities are calculated, except hay or silage, by:

(1) Multiplying the eligible quantity of the eligible commodity by the RMA determined price;

(2) Multiplying the result from paragraph (a)(1) of this section by a 75 percent factor.

(b) Payments made under this subpart to a participant for loss of stored hay or silage, by:

(1) Multiplying the eligible quantity of the eligible commodity by a price as determined by the Secretary;

(2) Multiplying the result from paragraph (b)(1) of this section by a 75 percent factor.

■ 22. Add subpart Q, consisting of §§ 760.1700 through 760.1718, to read as follows:

Subpart Q—Milk Loss Program

Sec.

760.1700 Applicability
760.1701 Administration.
760.1702 Definitions.
760.1703 Payments to dairy farmers for milk.
760.1704 Normal marketings of milk.
760.1705 Fair market value of milk.
760.1706 Information to be furnished.
760.1707 Application for payments for milk loss.
760.1708 Payment limitation and AGI.
760.1709 Limitation of authority.
760.1710 Estates and trusts; minors.
760.1711 Setoffs.
760.1712 Overdisbursement.
760.1713 Death, incompetency, or disappearance.
760.1714 Records and inspection of records.
760.1715 Assignment.
760.1716 Instructions and forms.
760.1717 Availability of funds.
760.1718 Calculating payments for milk losses.

Subpart Q—Milk Loss Program

§ 760.1700 Applicability

This subpart specified the terms and conditions for the Milk Loss Program. The Milk Loss Program will provide payments to dairy operations for milk that was dumped or removed without compensation from the commercial milk market due to the results from hurricanes, floods, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires that occurred in the 2018 and 2019 calendar year.

§ 760.1701 Administration.

This milk loss payment program will be carried out by FSA under the direction and supervision of the Deputy Administrator. In the field, the program will be administered by the State and county committees.

§ 760.1702 Definitions.

The following definitions apply to the Milk Loss Program.

Affected farmer means a person who produces whole milk which is removed from the commercial market any time or who produces but was unable to deliver milk to a commercial market as a result of a qualifying event limited to:

(1) Weather-related event prevented transportation of the milk,

(2) Weather-related event caused a power outage or structural damage causing milk to be unmerchantable.

Application period means any period during calendar year 2018 and 2019 which an affected farmer's whole milk is dumped or removed without compensation from the commercial market due to a qualified disaster event for which application for payment is made.

Base period means the calendar month or 4-week period immediately preceding when the producer was unable to deliver milk to a commercial market as a result of a qualifying disaster event.

Claim period means the calendar month, or months, in which milk was dumped or removed and usually is the calendar month immediately following the base period.

Commercial market means:

(1) The market to which the affected farmer normally delivers his whole milk and from which it was removed; or

(2) The market to which the affected manufacturer normally delivers his dairy products and from which they were removed.

County committee means the FSA county committee.

Deputy Administrator means the Deputy Administrator for Farm Programs, FSA.

FSA means the Farm Service Agency, U.S. Department of Agriculture.

Milk handler means the marketing agency to or through which the affected dairy farmer marketed his whole milk at the time he dumped milk or was unable to deliver milk to the commercial market due to a qualifying weather related event.

Pay period means:

(1) In the case of an affected farmer who markets his whole milk through a milk handler, the period used by the milk handler in settling with the affected farmer for his whole milk, usually biweekly or monthly; or

(2) In the case of an affected farmer whose commercial market consists of direct retail sales to consumers, a calendar month.

Payment subject to refund means a payment which is made by a milk handler to an affected farmer, and which such farmer is obligated to refund to the milk handler.

Person means an individual, partnership, association, corporation, trust, estate, or other legal entity.

Qualifying disaster event means a hurricane, flood, tornado, typhoon, volcanic activity, snowstorm, or wildfire or related condition that occurred in the 2018 or 2019 calendar year.

Removed from the commercial market means:

(1) Produced and destroyed or fed to livestock;

(2) Produced and delivered to a handler who destroyed it or disposed of it as salvage (such as separating whole milk, destroying the fat, and drying the skim milk); or

(3) Produced and otherwise diverted to other than the commercial market.

Same loss means the event or trigger that caused the milk to be removed from the commercial market.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the U.S. Department of Agriculture to whom the Secretary delegates authority to act as the Secretary.

State committee means the FSA State committee.

Whole milk means milk as it is produced by cows.

§ 760.1703 Payments to dairy farmers for milk.

A milk loss payment may be made to an affected farmer who is determined by the FSA county committee to be in compliance with all the terms and conditions of this subpart in the amount equal to 75 percent of the fair market value of the farmer's normal marketings for the application period, less:

(a) Any amount he received for whole milk marketed during the applications period; and

(b) Any payment not subject to refund which he received from a milk handler with respect to whole milk removed from the commercial market during the application period.

§ 760.1704 Normal marketings of milk.

(a) The FSA county committee will determine the affected farmer's dumped milk normal marketings which, for the purposes of this subpart, will be the sum of the quantities of whole milk for which the farmer would have sold in the commercial market in each of the pay periods in the application period be it not for the removal of his whole milk from the commercial market as a result of a qualifying disaster event.

(b) Normal marketings for each pay period are based on the average daily production during the base period.

(c) Normal marketings determined in paragraph (b) of this section are adjusted for any change in the daily average number of cows milked during each pay period the milk is off the market compared with the average number of cows milked daily during the base period.

(d) If only a portion of a pay period falls within the application period, normal marketings for such pay period will be reduced so that they represent only that part of such pay period which is within the application period.

§ 760.1705 Fair market value of milk.

(a) The FSA county committee will determine the fair market value of the affected farmer's dumped milk normal marketings, which, for the purposes of this subpart, will be the sum of the net proceeds such farmer would have received for his normal marketings in each of the pay periods in the application period but for the qualifying disaster event.

(b) The FSA county committee will determine the net proceeds the affected farmer would have received in each of the pay periods in the application period:

(1) In the case of an affected farmer who markets his whole milk through a milk handler, by multiplying the affected farmer's normal marketings for each such pay period by the average net price per hundred-weight of whole milk paid during the pay period by such farmer's milk handler in the same area for whole milk similar in quality and butterfat test to that marketed by the affected farmer in the base period used to determine his normal marketings; or

(2) In the case of an affected farmer whose commercial market consists of direct retail sales to consumers, by multiplying the affected farmer's normal marketings for each such pay period by the average net price per hundredweight of whole milk, as determined by the FSA county committee, which other producers in the same area who marketed their whole milk through milk handlers received for whole milk similar in quality and butterfat test to that marketed by the affected farmer during the base period used to determine his normal marketings.

(c) In determining the net price for whole milk, the FSA county committee will deduct from the gross price any transportation, administrative, and other costs of marketing which it determines are normally incurred by the affected farmer but which were not incurred because of the removal of his whole milk from the commercial market.

§ 760.1706 Information to be furnished.

The affected farmer must furnish to the FSA county committee complete and accurate information sufficient to enable the FSA county committee or the Deputy Administrator to make the determinations required in this subpart. Such information must include, but is not limited to:

(a) A copy of the notice from, or other evidence of action by, the public agency which resulted in the dumping or removal of the affected farmer's whole milk from the commercial market.

(b) The specific weather or disaster event and its results on milk marketing for the loss period.

(c) The quantity and butterfat test of whole milk produced and marketed during the base period. This information must be a certified statement from the affected farmer's milk handler or any other evidence the FSA county committee accepts as an accurate record of milk production and butterfat tests during the base period.

(d) The average number of dry cows, bred heifers, and cows milked during the base period and during each pay period in the application.

(e) If the affected farmer markets his whole milk through a milk handler, a statement from the milk handler showing, for each pay period in the application period, the average price per hundred-weight of whole milk similar in quality to that marketed by the affected farmer during the base period used to determine his normal marketings. If the milk handler has information as to the transportation, administrative, and other costs of marketing which are normally incurred by producers who market through the milk handler but which the affected farmer did not incur because of the dumping or removal of his whole milk from the market, the average price stated by the milk handler will be the average gross price paid producers less any such costs. If the milk handler does not have such information, the affected farmer will furnish a statement setting forth such costs, if any.

(f) The amount of proceeds, if any, received by the affected farmer from the marketing of whole milk produced during the application period.

(g) The amount of any payments not subject to refund made to the affected farmer by the milk handler with respect to the whole milk produced during the application period and remove from the commercial market.

(h) Such other information as the FSA county committee may request to enable the FSA county committee or the Deputy Administrator to make the determinations required in this subpart.

§ 760.1707 Application for payments for milk loss.

(a) The affected farmer or his legal representative must sign and file an application for payment on a form which is approved for that purpose by the Deputy Administrator. The form must be filed with the county FSA office for the county where the farm headquarters are located no later than 60 days after the designated deadline announced by the Secretary for 2018 and 2019 losses.

(b) The application for payment will cover application periods of at least 30 days, except that, if the entire application period, or the last application period, is shorter than 30 days, applications for payment may be filed for such shorter period. The application for payment must be accompanied by the information required for the Milk Loss Program as any other information which will enable the FSA county committee to determine whether the making of this payment is precluded for any of the reasons as determined ineligible by the Deputy Administrator.

§ 760.1708 Payment limitation and AGI.

(a) Per loss year, a person or legal entity, other than a joint venture or general partnership, is eligible to receive, directly or indirectly payments of not more than $125,000.

(b) The direct attribution provisions in § 760.1507 apply for payment limitation as defined and used in this subpart.

§ 760.1709 Limitation of authority.

(a) FSA county executive directors and State and county committees do not have authority to modify or waive any of the provisions of the regulations in this subpart.

(b) The FSA State committee may take any action authorized or required by the regulations in this subpart to be taken by the FSA county committee when such action has not been taken by the FSA county committee. The FSA State committee may also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations in this subpart; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations in this subpart.

(c) No delegation herein to a State or county committee will preclude the Deputy Administrator or his designee from determining any question arising under the regulations in this subpart or from reversing or modifying any determination made by a State or county committee.

§ 760.1710 Estates and trusts; minors.

(a) A receiver of an insolvent debtor's estate and the trustee of a trust estate will, for the purpose of this subpart, be considered to represent an insolvent affected farmer or manufacturer and the beneficiaries of a trust, respectively, and the production of the receiver or trustee will be considered to be the production of the person or manufacturer he represents. Program documents executed by any such person will be accepted only if they are legally valid and such person has the authority to sign the applicable documents.

(b) An affected dairy farmer or manufacturer who is a minor will be eligible for milk loss payments only if he meets one of the following requirements:

(1) The right of majority has been conferred on him by court proceedings or by statute;

(2) A guardian has been appointed to manage his property and the applicable program documents are signed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had he been an adult.

§ 760.1711 Setoffs.

(a) If the affected farmer or manufacturer is indebted to any agency of the United States and such indebtedness is listed on the county debt record, milk loss payments due the affected farmer the regulations in this part will be applied, as provided in the Secretary's setoff regulations, 7 CFR part 13, to such indebtedness.

(b) Compliance with the provisions of this section will not deprive the affected farmer of any right he would otherwise have to contest the justness of the indebtedness involved in the setoff action, either by administrative appeal or by legal action.

§ 760.1712 Overdisbursement.

If the milk loss payment disbursed to an affected farmer exceeds the amount authorized under the regulations in this subpart, the affected farmer or manufacturer will be personally liable for repayment of the amount of such excess.

§ 760.1713 Death, incompetency, or disappearance.

In the case of the death, incompetency, or disappearance of any affected farmer who would otherwise receive a milk loss payment, such payment may be made to the person or persons specified in the regulations

contained in part 707 of this chapter. The person requesting such payment must file Form FSA–325, ''Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent,'' as provided in that part.

§ 760.1714 Records and inspection of records.

(a) The affected farmer, as well as his milk handler and any other person who furnished information to such farmer or to the FSA county committee for the purpose of enabling such farmer to receive a milk loss payment under this subpart, must maintain any existing books, records, and accounts supporting any information so furnished for 3 years following the end of the year during which the application for payment was filed.

(b) The affected farmer, his milk handler, and any other person who furnishes such information to the affected farmer or to the FSA county committee must permit authorized representatives of the Department of Agriculture and the General Accounting Office, during regular business hours, to inspect, examine, and make copies of such books, records, and accounts.

§ 760.1715 Assignment.

No assignment will be made of any milk loss payment due or to come due under the regulations in this subpart. Any assignment or attempted assignment of any indemnity payment due or to come due under this subpart will be null and void.

§ 760.1716 Instructions and forms.

Affected farmers may obtain information necessary to make application for a milk loss payment from the county FSA office.

§ 760.1717 Availability of funds.

Milk loss program payments will be made on a first-come, first-served basis. Applications received after all funds are used will not be paid.

§ 760.1718 Calculating payments for milk losses.

(a) Payments made under this subpart to a participant for loss of milk as a result of a qualifying disaster event are calculated as follows:

(1) Amount of the fair market value of the farmer's normal marketings for the application period; less

(2) Any amount the farmer received for whole milk marketed during the applications period; and

(3) Any payment not subject to refund which the farmer received from a milk handler with respect to whole milk removed from the commercial market during the application period;

(4) Multiplied by a program factor of 75 percent.

(b) [Reserved]

Commodity Credit Corporation

Chapter XIV

PART 1416—EMERGENCY AGRICULTURAL DISASTER ASSISTANCE PROGRAMS

■ 23. The authority citation for part 1416 is revised to read as follows:

Authority: Title I, Pub. L. 113–79, 128 Stat. 649; Title I, Pub. L. 115–123; Title VII, Pub. L. 115–141; and Title I, Pub. L. 116–20.

Subpart E—Tree Assistance Program

■ 24. Amend § 1416.400 by revising paragraph (c) to read as follows:

§ 1416.400 Applicability.

* * * * *

(c) Eligible pecan tree losses incurred in the 2017 and 2018 calendar years not meeting the mortality loss threshold of paragraph (b) of this section with a tree mortality loss in excess of 7.5 percent (adjusted for normal mortality) will be compensated for eligible losses as specified in § 1416.406. For 2017 calendar year losses, up to a maximum of $15,000,000 is available.

Richard Fordyce,

Administrator, Farm Service Agency.

Robert Stephenson,

Executive Vice President, Commodity Credit Corporation.

Robert Johansson,

Chairman, Federal Crop Insurance Corporation.

[FR Doc. 2019–19932 Filed 9–11–19; 4:15 pm]

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FEDERAL REGISTER

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Part VI

The President

Proclamation 9924—Minority Enterprise Development Week, 2019

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Presidential Documents

Title 3—

The President

Proclamation 9924 of September 9, 2019

Minority Enterprise Development Week, 2019

By the President of the United States of America

A Proclamation

During Minority Enterprise Development Week, our Nation celebrates the success of minority-owned businesses and recognizes their significant role in strengthening our country's robust economy. The contributions of these enterprises ensure American companies remain world leaders in the global marketplace.

This year marks the 50th anniversary of the Minority Business Development Agency (MBDA), which was originally named the Office of Minority Business Enterprise. When President Richard Nixon signed the Executive Order creating the Office of Minority Business Enterprise in 1969, the Nation's minority population was less than 40 million. Today, the minority population has more than tripled to 130 million, or more than 39 percent of the total American population. Minorities own almost 30 percent of America's businesses, which employ 7.2 million Americans and generate over $1 trillion a year in revenue. Indeed, the number of minority-owned businesses in operation nationwide has increased by 38 percent since 2007.

As President, I have taken critical steps to ensure that all Americans have the opportunity to prosper. During my first year in office, I achieved significant regulatory reform and signed into law the historic Tax Cuts and Jobs Act, creating opportunity zones to help those in distressed communities. These opportunity zones have ushered in a new era of economic potential and access to capital in areas that need it the most. From the rural heartland to urban centers, traditionally overlooked communities are now destinations for financial growth with potential for unlimited prosperity. I also took action to help minority-owned businesses expand on their economic success by shedding burdensome regulations. Under my direction, Federal agencies removed 14 regulations for every new regulation added during the first 2 years of my Administration, and we remain committed to freeing minority-owned businesses from unnecessary Government restraints.

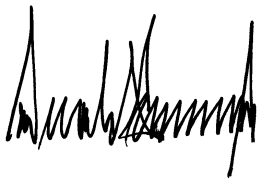
With renewed emphasis on innovation, policy development, international trade, and digital transformation, MBDA is promoting policies to encourage the continued growth of minority-owned businesses and prepare them for new and emerging industries, such as artificial intelligence and space commercialization. In 2018, I signed an Executive Order establishing the President's National Council for the American Worker so that the next generation of our country's resilient workforce receives the innovative education and job training needed to succeed in a 21st century global economy. The Pledge to America's Workers, an initiative created through this Executive Order, is helping minorities and all Americans become stronger members of our labor force. Today, more than 300 companies and organizations have signed the Pledge and committed to more than 13 million new education and training opportunities, many of which will help minority workers and students be better equipped to succeed.

Minority-owned businesses are helping to power the engine of American capitalism. The ambition of minority entrepreneurs secures a better future

for their families, their communities, and the Nation. This week, and throughout the year, we celebrate the great achievements of our minority-owned businesses.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 8 through September 14, 2019, as National Minority Enterprise Development Week. I call upon all Americans to celebrate this week with programs, ceremonies, and activities to recognize the many contributions of American minority business enterprises.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of September, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-fourth.



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FEDERAL REGISTER

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Part VII

The President

Notice of September 12, 2019—Continuation of the National Emergency With Respect to Certain Terrorist Attacks

Federal Register
Vol. 84, No. 178
Friday, September 13, 2019

Presidential Documents

Title 3—

The President

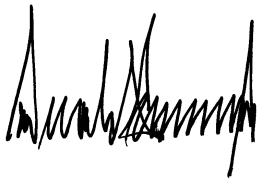
Notice of September 12, 2019

Continuation of the National Emergency With Respect to Certain Terrorist Attacks

Consistent with section 202(d) of the National Emergencies Act, 50 U.S.C. 1622(d), I am continuing for 1 year the national emergency previously declared on September 14, 2001, in Proclamation 7463, with respect to the terrorist attacks of September 11, 2001, and the continuing and immediate threat of further attacks on the United States.

Because the terrorist threat continues, the national emergency declared on September 14, 2001, and the powers and authorities adopted to deal with that emergency must continue in effect beyond September 14, 2019. Therefore, I am continuing in effect for an additional year the national emergency declared on September 14, 2001, in response to certain terrorist attacks.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
September 12, 2019.

[FR Doc. 2019–20070
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