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FEDERAL REGISTER

Vol. 85 Friday,

No. 21 January 31, 2020

Pages 5555–5902

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 172 and 177

[Docket No. FDA–2015–F–4317]

Food Additive Regulations; Synthetic Flavoring Agents and Adjuvants; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA or we) is responding to the submission styled as an objection submitted by Earthjustice on behalf of Breast Cancer Prevention Partners, Center for Environmental Health, Center for Food Safety, Center for Science in the Public Interest, Environmental Defense Fund, Environmental Working Group, and the Natural Resources Defense Council, on the final rule that amended the food additive regulations to no longer authorize the use of benzophenone, ethyl acrylate, eugenyl methyl ether, myrcene, pulegone, and pyridine as synthetic flavoring substances for use in food. The final rule also amended the food additive regulations to no longer provide for the use of benzophenone as a plasticizer in rubber articles intended for repeated use in contact with food. After reviewing the submission, we have concluded that the submission we received is not an objection and consequently does not provide a basis for modifying the regulations.

DATES: Effective date of final rule published in the **Federal Register** of October 9, 2018 (83 FR 50490) confirmed: October 9, 2018.

ADDRESSES: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this final rule into the ''Search'' box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mical Honigfort, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740–3835, 240–402–1278.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 4, 2016 (81 FR 42), we announced the filing of a food additive petition (FAP 5A4810) (''petition'') submitted jointly by the Center for Science in the Public Interest; Natural Resources Defense Council; Center for Food Safety; Consumers Union; Improving Kids' Environment; Center for Environmental Health; Environmental Working Group; Environmental Defense Fund, and Mr. James Huff (collectively, ''petitioners'') c/o Thomas Neltner, 1875 Connecticut Ave. NW, Suite 600, Washington, DC 20009. Subsequently, the Breast Cancer Fund (now known as the Breast Cancer Prevention Partners) and WE ACT for Environmental Justice joined as co-petitioners.

The petition proposed that we take two separate regulatory actions: (1) Amend the food additive regulations in § 172.515 *Synthetic flavoring substances and adjuvants* (21 CFR 172.515) to no longer authorize the use of seven listed synthetic flavoring food additives and (2) to establish zero tolerances in § 172.515 for these additives. As FDA explained in the filing notice (81 FR 42 at 42 through 43) and the final rule (83 FR 50490 at 50491) for this petition, the food additive regulation is not the appropriate section for a ''zero tolerance,'' and this request is not the proper subject of a food additive petition. A food additive petition must either propose the issuance of a regulation prescribing the conditions under which a food additive may be safely used (see section 409(b)(1) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 348(b)(1)), or propose the amendment or repeal of an existing food additive regulation (see section 409(i) of the FD&C Act). As we explained in the final rule, we interpreted the petitioners' request to establish zero tolerances for these additives as a request to issue a regulation prohibiting a substance from human food under part 189 (21 CFR part 189), a request that is not the proper subject of a food additive petition (83 FR 50490 at 50491). Therefore, because the petitioners' request to establish zero tolerances fell outside the scope of a food additive petition, we focused solely on the request in the petition to amend the food additive regulations pertaining to these seven synthetic flavoring food additives.

The seven food additives that were the subject of the petition are:

1. Benzophenone (also known as diphenylketone) (CAS No. 119–61–9);
2. Ethyl acrylate (CAS No. 140–88–5);
3. Eugenyl methyl ether (also known as 4-allylveratrole or methyl eugenol) (CAS No. 93–15–2);
4. Myrcene (also known as 7-methyl-3-methylene-1,6-octadiene) (CAS No. 123–35–3);
5. Pulegone (also known as p-menth-4(8)-en-3-one) (CAS No. 89–82–7);
6. Pyridine (CAS No. 110–86–1); and
7. Styrene (CAS No. 100–42–5)

Related to FAP 5A4810, in the **Federal Register** of June 15, 2016 (81 FR 38984), we announced that we filed a food additive petition (FAP 6A4817) proposing that we amend § 172.515 to no longer provide for the use of styrene as a synthetic flavoring substance and adjuvant in food because the use has been abandoned. We later issued a final rule in the **Federal Register** of October 9, 2018 (83 FR 50487) granting the petition and amending § 172.515 to no longer authorize the use of styrene as a synthetic flavoring substance and adjuvant in food because its use under § 172.515 had been permanently and completely abandoned.

Additionally, in the **Federal Register** of October 9, 2018 (83 FR 50490), we published a final rule partially granting FAP 5A4810 to amend the food additive regulations in § 172.515 to no longer authorize the use of benzophenone, ethyl acrylate, eugenyl methyl ether, myrcene, pulegone, and pyridine as synthetic flavoring substances for use in food. We also amended the food additive regulation in 21 CFR 177.2600 to no longer provide for the use of benzophenone as a plasticizer in rubber articles intended for repeated use in contact with food. We denied as moot the portions of the petition proposing that the food additive regulations be amended to no longer authorize the use

of styrene as a synthetic flavoring substance because this use has been permanently and completely abandoned (83 FR 50490 at 50492 through 50493). As discussed in detail in section III, we explained in the final rule that we declined to act on the petitioners' request to establish a zero tolerance for the use of these synthetic flavoring substances in food because that issue is not the proper subject of a food additive petition. The final rule advised that objections and requests for a hearing on the final rule were due by November 8, 2018.

II. Objections and Requests for Hearing

Section 409(f)(1) of the FD&C Act provides that, within 30 days after publication of an order relating to a food additive regulation, any person adversely affected by such order may file objections, specifying with particularity the provisions of the order deemed objectionable, stating reasonable grounds therefor, and requesting a public hearing upon such objections.

Under 21 CFR 171.110, objections and requests for a hearing are governed by 21 CFR part 12 of FDA's regulations. Under 21 CFR 12.22(a), each objection must meet the following conditions: (1) Must be submitted on or before the 30th day after the date of publication of the final rule; (2) must be separately numbered; (3) must specify with particularity the provision of the regulation or proposed order objected to; (4) must specifically state each objection on which a hearing is requested; failure to request a hearing on an objection constitutes a waiver of the right to a hearing on that objection; and (5) must include a detailed description and analysis of the factual information to be presented in support of the objection if a hearing is requested; failure to include a description and analysis for an objection constitutes a waiver of the right to a hearing on that objection.

Within the 30-day objection period following publication of the final rule, we received approximately 50 comments concerning the final rule. With the exception of one submission, the comments did not purport to raise objections and did not provide or identify any relevant new evidence. We will not address these comments further.

However, we received one submission that stated it was noting several concerns and raising one ''objection.'' Earthjustice, on behalf of Breast Cancer Prevention Partners, Center for Environmental Health, Center for Food Safety, Center for Science in the Public Interest, Environmental Defense Fund, Environmental Working Group, and the Natural Resources Defense Council, wrote to ''share our objection and concerns'' about the final rule (see Letter from Peter Lehner, Senior Attorney, and Carrie Apfel, Staff Attorney, Earthjustice, to Dockets Management Staff, Food and Drug Administration, dated November 8, 2018). (For the purposes of this document, we will refer to these entities as ''parties.'') The submission stated that the parties ''applaud[ed] FDA for acknowledging that it 'cannot consider these synthetic substances to be safe as a matter of law,'" but indicated that it objected to our ''failure to indicate expressly that these substances no longer qualify in any way as 'safe' for use in food, which amounts to an arbitrary and unlawful failure to protect the safety of food'' (id. at page 1). The submission also noted two concerns about our analyses of the substances (id.). The parties also stated in their submission that they waived their right to a hearing (id.).

As discussed in detail in section III, the provision for objections and a hearing under section 409(f) of the FD&C Act does not apply to this ''objection.'' For the purposes of this document, our use of the term ''objection'' does not mean that the provision for objections under section 409(f) of the FD&C Act applies.

III. Analysis of Objection

The submission's ''objection'' is not subject to the objections and hearing procedure in section 409(f) of the FD&C Act. Therefore, we will not address the arguments detailed in the submission.

The submission asserts that FDA's failure to indicate expressly in the final rule that substances found to induce cancer cannot qualify in any way as ''safe'' for use in food is arbitrary and unlawful (Earthjustice submission at pages 2 through 3). The submission further states that, ''To correct this deficiency, FDA must explain that substances found to induce cancer cannot qualify as ''safe'' for use in food, regardless of whether those substances purport to be food additives, GRAS substances, or both'' (id. at page 3). A substance is generally recognized as safe (GRAS) if there is general recognition, among qualified experts, to be safe under the conditions of its intended use. A substance that is GRAS under the conditions of its intended use is excluded from the statutory definition of food additive under section 201(s) of the FD&C Act (21 U.S.C. 321(s)). Thus, given a substance is, by definition, not a food additive if it is GRAS, whether the status of a substance is GRAS is outside the scope of the food additive petition process and the related provision for objections and public hearing.

Section 409(f)(1) of the FD&C Act states that within 30 days after publication of an order made pursuant to section 409(c) or (d) of the FD&C Act, any person adversely affected by such an order may file objections, specifying with particularity the provisions of the order deemed objectionable, stating reasonable grounds therefor. In the final rule, we stated that we partially granted the petition and partially denied the petition, completely responding to the food additive petition submitted by the petitioners (83 FR 50490 at 50492). FDA partially granted the petition by amending the food additive regulations to no longer authorize the use of benzophenone, ethyl acrylate, eugenyl methyl ether, myrcene, pulegone, and pyridine as synthetic flavoring substances for use in food based on data provided by the petitioners that demonstrated these additives induce cancer in laboratory animals, and, as a result of this finding in animals, FDA cannot as a matter of law maintain the listing of these synthetic flavoring substances in the food additive regulations (21 U.S.C. 348(c)(3)(A)). We further amended the food additive regulations to no longer provide for the use of benzophenone as a plasticizer in rubber articles intended for repeated use in contact with food because of evidence that benzophenone causes cancer in animals. FDA denied as moot the portions of the petition proposing that the food additive regulations be amended to no longer authorize the use of styrene as a synthetic flavoring substance because this use has been permanently and completely abandoned. Further, and most relevant here, FDA denied the petitioners' request to establish zero tolerances for these additives because such a request fell outside the scope of the food additive petition process (83 FR 50490 at 50491).

As a result of responding to these two food additive petitions, FDA revoked the uses of all seven synthetic flavoring substances either: (1) As a matter of law because data demonstrated that six of the seven synthetic flavoring substances have been shown to cause cancer in animals or (2) based on a determination that the use had been completely and permanently abandoned; we further made clear that the petitioners' ''zero tolerance'' request was not the proper subject of a food additive petition (83 FR 50487; 83 FR 50490).

Thus, when the parties state in their ''objection'' that FDA's ''failure to indicate expressly that these substances no longer qualify in any way as 'safe' for use in food.. . . amounts to an arbitrary and unlawful failure to protect the safety of food,'' it does not appear the parties have stated with particularity a specific provision of the synthetic flavoring substances order that they deem objectionable. The parties do not object to our determination to revoke the uses of the synthetic flavoring substances, and in fact in their submission, the parties stated they ''applaud FDA for acknowledging that it 'cannot consider these synthetic flavoring substances to be safe as a matter of law' '' (Earthjustice submission, page 1). Rather, by asserting in their submission that FDA is being arbitrary and unlawful by failing to indicate expressly in the final rule that substances found to induce cancer cannot qualify in any way as ''safe'' for use in food, we interpret the parties' ''objection'' to be related to the petitioners' request to establish zero tolerances for these synthetic flavoring additives, a request we declined to act on in the final rule because such a request was not the proper subject of a food additive petition.

As explained in the final rule (83 FR 50490 at 50491), a food additive petition must either propose the issuance of a regulation prescribing the conditions under which a food additive may be safely used or propose the amendment or repeal of an existing food additive regulation (sections 409(b)(1) and (i) of the FD&C Act). We explained in the final rule that we interpreted the request to establish zero tolerances for these flavoring additives as a request to issue a regulation prohibiting a substance from human food under part 189 and that this request fell outside the scope of a food additive petition because it does not propose the issuance of a new food additive regulation or the amendment or repeal of an existing food additive regulation (id.). Consequently, we did not address the zero tolerance request further in the final rule and thus this issue was not considered part of the order by regulation that revoked the uses for these synthetic flavoring additives, pursuant to section 409(c) of the FD&C Act. Therefore, because the parties failed to identify a provision of the order deemed objectionable and have also failed to raise an objection regarding the order made pursuant to section 409(c) or (d) of the FD&C Act, the provision for objections and public hearing under section 409(f) of the FD&C Act does not apply.[1]

Finally, even though we do not think the parties' submission legally rises to an objection under 409(f) of the FD&C Act, even if the submission was a properly raised objection, we would deny such an objection because the parties' request amounts to the same outcome as the petitioners' zero tolerance request and such a request falls outside the scope of the food additive petition process.

IV. Conclusion

After evaluating the submission from Earthjustice et al., we have concluded that the ''objection'' is not within the scope of the objections and hearing provision under section 409(f) of the FD&C Act. Therefore, we do not address the arguments related to this ''objection.'' We are confirming October 9, 2018, as the effective date of this regulation. FDA still intends to not enforce applicable requirements of the final rule with regard to food products manufactured (domestically and internationally) prior to October 9, 2020, that contain one or more of these six synthetic flavoring substances, to provide an opportunity for companies to reformulate products prior to enforcing the requirements of this final rule.

Dated: January 16, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–01060 Filed 1–30–20; 8:45 am]

BILLING CODE 4164–01–P

[1] We note that the parties' submission did not present any argument or evidence that FDA's determination that the petitioners' zero tolerance request was not the proper subject of a food additive petition, and was thus outside the scope of section 409 of the FD&C Act, was erroneous.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–558]

Schedules of Controlled Substances: Placement of Lasmiditan in Schedule V

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: On October 11, 2019, the U.S. Food and Drug Administration approved a new drug application for Reyvow (lasmiditan) tablets for oral use. Lasmiditan is chemically known as [2,4,6-trifluoro-*N*-(6-(1-methylpiperidine-4-carbonyl)pyridine-2-yl-benzamide]. Thereafter, the Department of Health and Human Services provided the Drug Enforcement Administration (DEA) with a scheduling recommendation to place lasmiditan in schedule V of the Controlled Substances Act (CSA). In accordance with the CSA, as revised by the Improving Regulatory Transparency for New Medical Therapies Act, DEA is hereby issuing an interim final rule placing lasmiditan, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, in schedule V of the CSA.

DATES: The effective date of this rulemaking is January 31, 2020. Interested persons may file written comments on this rulemaking in accordance with 21 U.S.C. 811(j)(3) and 21 CFR 1308.43(g). Electronic comments must be submitted, and written comments must be postmarked, on or before March 2, 2020. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Interested persons may file a request for hearing or waiver of hearing in accordance with 21 U.S.C. 811(j)(3) and 21 CFR 1308.44. Requests for hearing and waivers of an opportunity for a hearing or to participate in a hearing must be received on or before March 2, 2020.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–558'' on all correspondence, including any attachments.

- *Electronic comments:* The Drug Enforcement Administration 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 the electronic submission are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu of* an electronic comment, it should be sent via regular

or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, VA 22152.

• *Hearing requests:* All requests for hearing and waivers of participation must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing and waivers of participation should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT:

Scott A. Brinks, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, VA 22152, Telephone: (571) 362–3261.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act (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 and confidential business information identified as directed above will generally be made publicly available in redacted form. If a comment has so much confidential business information or personal identifying information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document and supplemental information, including the complete Department of Health and Human Services and Drug Enforcement Administration eight-factor analyses, to this interim final rule are available at *http://www.regulations.gov* for easy reference.

Request for Hearing, or Waiver of Participation in Hearing

Pursuant to 21 U.S.C. 811(a), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551–559. 21 CFR 1308.41–1308.45; 21 CFR part 1316, subpart D. Interested persons may file requests for a hearing, or notices of intent to participate in a hearing, in conformity with the requirements of 21 CFR 1308.44(a) or (b), and include a statement of interest in the proceeding and the objections or issues, if any, concerning which the person desires to be heard. Any interested person may file a waiver of an opportunity for a hearing or to participate in a hearing together with a written statement regarding the interested person's position on the matters of fact and law involved in any hearing as set forth in 21 CFR 1308.44(c).

All requests for a hearing and waivers of participation must be sent to DEA using the address information provided above.

Background and Legal Authority

Under the Improving Regulatory Transparency for New Medical Therapies Act (Pub. L. 114–89), which was signed into law on November 25, 2015, the DEA is required to commence an expedited scheduling action with respect to certain new drugs approved by the U.S. Food and Drug Administration (FDA). As provided in 21 U.S.C. 811(j), this expedited scheduling is required where both of the following conditions apply: (1) The Secretary of the Department of Health and Human Services (Secretary of HHS or the Secretary) has advised DEA that a New Drug Application (NDA) has been submitted for a drug that has a stimulant, depressant, or hallucinogenic effect on the central nervous system (CNS), and that it appears that such drug has an abuse potential; and (2) the Secretary recommends that DEA control the drug in schedule II, III, IV, or V, pursuant to 21 U.S.C. 811(a) and (b). In these circumstances, DEA is required to issue an interim final rule controlling the drug within 90 days.

The law further states that the 90-day timeframe starts the later of: (1) The date DEA receives the HHS scientific and medical evaluation/scheduling recommendation, or (2) the date DEA receives notice of the NDA approval by HHS. In addition, the law specifies that the rulemaking shall become immediately effective as an interim final rule without requiring DEA to demonstrate good cause therefor. Thus, the purpose of subsection (j) is to speed the process by which DEA schedules newly approved drugs that are currently either in schedule I or not controlled (but which have sufficient abuse potential to warrant control) so that such drugs may be marketed without undue delay following FDA approval.[1]

Subsection (j) further provides that the interim final rule shall give interested persons the opportunity to comment and to request a hearing. After the conclusion of such proceedings, DEA must issue a final rule in accordance with the scheduling criteria of subsections 21 U.S.C. 811(b), (c), and (d) and 21 U.S.C. 812(b).

Lasmiditan [2,4,6-trifluoro-*N*-(6-(1-methylpiperidine-4-carbonyl)pyridine-2-yl-benzamide] is a new molecular entity with central nervous system (CNS) depressant properties. Lasmiditan is a 5-hydroxytryptamine (5–HT, serotonin) 1F receptor agonist. One of its metabolites has low $GABA_A$ channel positive allosteric activity. On October 11, 2018, Eli Lilly and Company (Sponsor) submitted an NDA to FDA for Reyvow (lasmiditan) 50 and 100 mg oral tablets. On November 4, 2019, DEA received notification that FDA, on October 11, 2019, approved the NDA for Reyvow (lasmiditan), under section 505(c) of the FDCA, for the acute treatment of migraine with or without aura in adults.[2]

[1] Given the parameters of subsection (j), in DEA's view, it would not apply to a reformulation of a drug containing a substance currently in schedules II through V for which an NDA has recently been approved.

[2] *https://www.accessdata.fda.gov/drugsatfda_docs/appletter/2019/211280Orig1s000ltr.pdf.*

Determination To Schedule Lasmiditan

On November 4, 2019, DEA received from HHS a scientific and medical evaluation document (dated October 23, 2019) prepared by the FDA related to lasmiditan. This document contained an eight-factor analysis of the abuse potential of lasmiditan, along with HHS' recommendation to control lasmiditan under schedule V of the CSA.

On December 4, 2019, the DEA requested clarification from HHS regarding supporting evidence for factors 6 and 7 listed in 21 U.S.C. 811(c), as well as the third finding under 21 U.S.C. 812(b)(5), for placement of lasmiditan in schedule V. HHS responded to the DEA via a letter on January 15, 2020, with the necessary clarification.

In response, DEA reviewed the scientific and medical evaluation and scheduling recommendation provided by HHS, along with all other relevant data, and completed its own eight-factor review document pursuant to 21 U.S.C. 811(c). DEA concluded that lasmiditan met the 21 U.S.C. 812(b)(5) criteria for placement in schedule V of the CSA.

Pursuant to subsection 811(j), and based on the HHS recommendation, NDA approval by HHS/FDA, and DEA's determination, DEA is issuing this interim final rule to schedule lasmiditan as a schedule V controlled substance under the CSA.

Included below is a brief summary of each factor as analyzed by HHS and DEA, and as considered by DEA in its scheduling action. Please note that both the DEA and HHS analyses are available in their entirety under ''Supporting Documents'' in the public docket for this interim final rule at *http://www.regulations.gov,* under Docket Number ''DEA–558.'' Full analysis of, and citations to, the information referenced in the summary may also be found in the supporting and related material.

1. *Its Actual or Relative Potential for Abuse:* As noted by HHS, lasmiditan is a new molecular entity that has not been marketed in the United States or any other country. As a result, information on the actual abuse of lasmiditan is limited. According to HHS, lasmiditan is not currently available for medical treatment, lasmiditan has not been diverted from legitimate sources, and individuals have not taken the substance in amounts sufficient to create a hazard to public health and safety. DEA further notes that there are no reports for lasmiditan in the National Forensic Laboratory Information System (NFLIS),[3] which collects drug identification results from drug cases submitted to and analyzed by State and local forensic laboratories. There were also no reports in STARLiMS,[4] DEA's laboratory drug evidence data system of record.

Data from HHS outlined in Factors 2 and 3 demonstrate that lasmiditan is a 5-hydroxytryyptamine-1F (5–HT_{1F}) receptor agonist. There are no 5–HT_{1F} receptor agonists currently controlled in the CSA. Lasmiditan at the highest dose tested did produce reinforcing effects in a rat self-administration assay. Drug-liking visual analog scale (VAS) for lasmiditan were significantly higher than placebo and significantly lower than the schedule IV benzodiazepine alprazolam in an abuse potential study in humans (see Factor 3).

2. *Scientific Evidence of Its Pharmacological Effects, if Known:* According to HHS, lasmiditan functions as a 5–HT_{1F} receptor agonist. HHS also further stated that lasmiditan does not bind to various other receptor targets (opioid, cannabinoid, GABAergic, or other ion channels) that are typically associated with abuse.

As shown by the studies summarized by HHS, lasmiditan did not produce abuse-related behaviors in the toxicity studies within mice, rats, and dogs. HHS stated that the studies demonstrating depressant effects such as weight loss, sedation, and hypothermia produced by lasmiditan could be due to its toxic concentrations of lasmiditan. In addition, results of the drug discrimination assay demonstrated that lasmiditan did not generalize to the discriminative stimulus effects of the benzodiazepine lorazepam (schedule IV); however, lasmiditan did produce reinforcing effects in the self-administration assay.

HHS described results from a Phase 1, randomized, double-blind, placebo-and active-controlled, crossover clinical trial in adult subjects who were recreational poly-drug users. The primary objective of this study was to assess the abuse potential of lasmiditan compared to alprazolam and placebo using the maximal effect score (E_{max}) of the at-the-moment 100-mm bipolar Drug Liking VAS.

Lasmiditan was evaluated by the comparison of Drug Liking E_{max} between each dose of lasmiditan and placebo. All doses of lasmiditan (100 mg, 200 mg, and 400 mg) produced significantly higher E_{max} than that of placebo indicating that lasmiditan has abuse potential. However, these effects of all doses of lasmiditan were significantly lower than alprazolam on mean E_{max} of Drug Liking.

Lasmiditan 200 mg (therapeutic dose), lasmiditan 400 mg (supratherapeutic dose), and alprazolam 2 mg (43–49 percent) produced euphoric mood to a similar extent. The lower dose of lasmiditan (100 mg) produced euphoric moods in 25 percent of subjects. Alprazolam produced a feeling of relaxation in more subjects than that produced by any dose of lasmiditan. According to HHS, this pattern of adverse events (AEs) suggests that lasmiditan has a similar or slightly less potential for abuse than alprazolam.

According to HHS, the Sponsor conducted eighteen Phase 1 studies in which AEs, including abuse-related AEs, were evaluated. In Phase 1, single-dose studies with healthy subjects, lasmiditan produced somnolence, feeling drunk, and euphoric mood. Euphoric mood occurred in five out of twelve studies for lasmiditan, and one out of seven studies for a control group. According to HHS, overall, the data from Phase 1 studies indicated that lasmiditan had more abuse-related AEs than placebo, and alprazolam showed a greater incidence of abuse-related AEs as compared to lasmiditan in one study.

HHS reviewed data from five Phase 2 and 3 studies and stated that, at therapeutic doses, lasmiditan displays abuse-related AEs to a greater extent than placebo. However, these AEs occur at a low frequency (about one percent).

3. *The State of Current Scientific Knowledge Regarding the Drug or Other Substance:* Appearing as a white to off-white solid, lasmiditan is highly soluble in water and freely soluble in methanol. Per HHS, none of the steps in the manufacturing process of lasmiditan produces or utilizes substances that have a known potential for abuse, nor can they be easily modified to generate a substance with abuse potential. A high level of expertise in and knowledge of organic chemistry is required to synthesize lasmiditan.

Rat studies demonstrate that lasmiditan has a half-life of approximately 31 hours. HHS also described lasmiditan pharmacokinetic data from another study conducted in beagle dogs in the fasted (overnight) state versus the fed state. The time measurement for maximal concentration

[3] NFLIS is a national forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by State and local forensic laboratories in the United States. NFLIS data were queried on 11/14/2019.

[4] STARLiMS is a laboratory information management system that systematically collects results from drug chemistry analyses conducted by the DEA laboratories. On October 1, 2014, STARLiMS replaced STRIDE as the DEA laboratory drug evidence data system of record. STARLiMS data were queried on 11/18/2019.

(T_{max}) was the only parameter that significantly differed between the fed (3.5 hours) and the fasted (1.25 hours) state, indicating that food has a significant slowing effect on the oral absorption of lasmiditan.

A separate study in male rats was conducted to compare the plasma and brain pharmacokinetic parameters, in addition to evaluating the bioavailability of lasmiditan. Results indicate that lasmiditan crosses the blood brain barrier and collects in the brain, producing exposure levels 2.5- to 3-fold higher than those in plasma. The T_{max} in both plasma and brain was reached in 30 minutes. However, the maximum serum concentration was two- and three-fold higher in the brain as compared to plasma levels following oral and IV administration, respectively. The oral bioavailability of the drug was 63.3 percent.

As described by HHS, an in-vitro study was conducted to identify the human cytochrome P450 isozymes responsible for the in-vitro metabolism of lasmiditan. Results indicated the possible involvement of CYP1A2 in the production of metabolites M7, M8, and M18; CYP2D6 and CYP2C9 in the production of M7 and M18; and CYP2C19 and CYP3A4 in the production of M7 and M18.

4. *Its History and Current Pattern of Abuse:* Lasmiditan was approved by FDA on October 11, 2019. According to HHS, as a single active ingredient in a drug product formulation, lasmiditan has not been approved for therapeutic use in any other country. There is no information available relating to the history and current pattern of abuse of this formulation of lasmiditan or the active ingredient. As stated in Factor 1, DEA notes that there has been no diversion of lasmiditan based on NFLIS and STARLiMS data.

5. *The Scope, Duration, and Significance of Abuse:* As described in Factor 4, lasmiditan as a single entity has not been approved for therapeutic use outside of the United States. A search by DEA of the NFLIS and STARLiMS databases found no evidence of law enforcement encounters of lasmiditan in the United States. Based on the preclinical and clinical study data described by HHS (see Factor 2, above), and on available epidemiological data, the scope, duration, and significance of lasmiditan abuse would likely be lower than substances in schedule IV of the CSA and similar to that of a drug controlled in schedule V.

6. *What, if Any, Risk There Is to the Public Health:* As stated by HHS, the extent to which a drug has abuse potential is considered an indication of its public health risk. Based on the preclinical and clinical study data described by HHS (see Factor 2, above), lasmiditan has abuse potential and physical or psychological dependence (Factor 7) that is lower than substances in schedule IV of the CSA and similar to that of substances controlled in schedule V.

7. *Its Psychic or Physiological Dependence Liability:* HHS described an animal study that was conducted to assess the withdrawal effects of lasmiditan. Based on the data from the animal study, HHS concluded that lasmiditan does not produce signs consistent with physical dependence. HHS, in its clarification letter to DEA, stated that animal data, discussed in Factor 2, suggest that lasmiditan has the potential to produce psychological dependence less than that of substances in schedule IV and similar to that of substances in schedule V. HHS further added that these circumstances of uncertain physical dependence and limited psychological dependence have likewise been observed in their analyses of other schedule V drugs.

8. *Whether the Substance Is an Immediate Precursor of a Substance Already Controlled Under the CSA:* Lasmiditan is not an immediate precursor of a substance that is already controlled in the CSA as defined in 21 U.S.C. 802(23).

Conclusion: After considering the scientific and medical evaluation conducted by HHS, HHS' recommendation, and DEA's own eight-factor analysis, DEA has determined that these facts and all relevant data constitute substantial evidence of a potential for abuse of lasmiditan. As such, DEA hereby schedules lasmiditan as a controlled substance under the CSA.

Determination of Appropriate Schedule

21 U.S.C. 812(b) requires the evaluation of a substance's abuse potential, accepted medical use, and safety for use under medical supervision for scheduling under the CSA as a controlled substance. After consideration of the above eight factors determinative of control of a substance (21 U.S.C. 811(c)), and a review of the scientific and medical evaluation and scheduling recommendation provided by HHS, DEA finds that lasmiditan meets the following criteria for placement in schedule V of the CSA pursuant to 21 U.S.C. 812(b)(5).

(1) Lasmiditan has a low potential for abuse relative to the drugs or other substances in Schedule IV.

As stated by HHS, lasmiditan, a 5–HT_{1F} receptor agonist, did not bind to receptors typically associated with abuse (*e.g.,* opioid, cannabinoid, GABAergic). In the drug discrimination paradigm, lasmiditan did not generalize to the discriminative stimulus effects of the benzodiazepine lorazepam. Lasmiditan did, however, produce reinforcing effects in the self-administration assay.

As detailed by HHS, in a human abuse-potential study, all doses of lasmiditan produced drug-liking scores that were significantly higher than that of placebo, indicating its abuse potential. Subjects following lasmiditan reported drug-liking scores that were significantly smaller than that of alprazolam (schedule IV drug), indicating that its abuse potential is less than that of alprazolam. Lasmiditan produced abuse-related adverse events to a greater extent than that of placebo, but with low frequency (about 1 percent).

(2) Lasmiditan has a currently accepted medical use in the United States.

The FDA recently approved the NDA for lasmiditan oral tablets for the acute treatment of migraine with or without aura in adults. Therefore, lasmiditan has a currently accepted medical use in treatment in the United States.

(3) Abuse of Lasmiditan may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule IV.

As stated by HHS, based on the totality of the available scientific data, lasmiditan may lead to physical or psychological dependence that is low relative to substances in schedule IV and similar to that of substances in schedule V.

Based on these findings, the Acting Administrator of DEA concludes that lasmiditan warrants control in schedule V of the CSA. 21 U.S.C. 812(b)(5).

Requirements for Handling Lasmiditan

Lasmiditan is subject to the CSA's schedule V regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, dispensing, importing, exporting, research, and conduct of instructional activities and chemical analysis with, and possession involving, schedule V substances, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, dispenses, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses)

lasmiditan, or who desires to handle lasmiditan, must be registered with the DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. Any person who currently handles or intends to handle lasmiditan, and is not registered with the DEA, must submit an application for registration and may not continue to handle lasmiditan, unless the DEA has approved that application for registration, pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312.

2. *Disposal of Stocks.* Any person who does not desire, or is not able to obtain, a schedule V registration must surrender all quantities of currently held lasmiditan, or may transfer all quantities of currently held lasmiditan to a person registered with the DEA in accordance with 21 CFR part 1317, in addition to all other applicable federal, state, local, and tribal laws.

3. *Security.* Lasmiditan is subject to schedule III–V security requirements and must be handled and stored in accordance with 21 CFR 1301.71–1301.93.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of lasmiditan must comply with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302.

5. *Inventory.* Every DEA registrant who possesses any quantity of lasmiditan must take an inventory of lasmiditan on hand, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

Any person who becomes registered with the DEA to handle lasmiditan must take an initial inventory of all stocks of controlled substances (including lasmiditan) on hand on the date the registrant first engages in the handling of controlled substances, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

After the initial inventory, every DEA registrant must take a new inventory of all stocks of controlled substances (including lasmiditan) on hand every two years, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

6. *Records and Reports.* Every DEA registrant must maintain records and submit reports for lasmiditan, or products containing lasmiditan, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR parts 1304, 1312, and 1317.

7. *Prescriptions.* All prescriptions for lasmiditan, or products containing lasmiditan, must comply with 21 U.S.C. 829, and be issued in accordance with 21 CFR parts 1306 and 1311, subpart C.

8. *Manufacturing and Distributing.* In addition to the general requirements of the CSA and DEA regulations that are applicable to manufacturers and distributors of schedule V controlled substances, such registrants should be advised that (consistent with the foregoing considerations) any manufacturing or distribution of lasmiditan may only be for the legitimate purposes consistent with the drug's labeling, or for research activities authorized by the Federal Food, Drug, and Cosmetic Act and the CSA.

9. *Importation and Exportation.* All importation and exportation of lasmiditan must be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

10. *Liability.* Any activity involving lasmiditan not authorized by, or in violation of, the CSA or its implementing regulations, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Administrative Procedure Act

Section 553 of the Administrative Procedure Act (APA) (5 U.S.C.) generally requires notice and comment for rulemakings. However, 21 U.S.C. 811 provides that in cases where a certain new drug is (1) approved by HHS and (2) HHS recommends control in CSA schedule II–V, DEA shall issue an interim final rule scheduling the drug within 90 days. Additionally, the law specifies that the rulemaking shall become immediately effective as an interim final rule without requiring DEA to demonstrate good cause.

Executive Orders 12866, 13563, and 13771, Regulatory Planning and Review, Improving Regulation and Regulatory Review, and Reducing Regulation and Controlling Regulatory Costs

In accordance with 21 U.S.C. 811(a) and (j), this scheduling action is subject to formal rulemaking procedures performed ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the procedures and criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

This final rule is not an Executive Order 13771 regulatory action pursuant to Executive Order 12866 and OMB guidance.[5]

Executive Order 12988, Civil Justice Reform

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

Executive Order 13132, Federalism

This rulemaking does not have federalism implications warranting the application of Executive Order 13132. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

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

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA. Under 21 U.S.C. 811(j), DEA is not required to publish a general notice of proposed rulemaking. Consequently, the RFA does not apply.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* DEA has determined that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

[5] Office of Mgmt. & Budget, Exec. Office of the President, Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 Titled ''Reducing Regulation and Controlling Regulatory Costs'' (Feb. 2, 2017).

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This 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.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. This rule will not result in: An annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets. However, pursuant to the CRA, DEA has submitted a copy of this interim final rule to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. Amend § 1308.15 by:

■ a. Redesignating paragraph (e)(4) as (e)(5);

■ b. Adding new paragraph (e)(4).

The addition reads as follows:

§ 1308.15 Schedule V.

* * * * *

(e) * * *

(4) Lasmiditan [2,4,6-trifluoro-*N*-(6-(1-methylpiperidine-4-carbonyl)pyridine-2-yl-benzamide] 2790

* * * * *

Dated: January 28, 2020.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2020–01957 Filed 1–30–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 3280 and 3282

[Docket No. FR 6018–F–02]

RIN 2502–AJ42

Streamlining and Aligning Formaldehyde Emission Control Standards for Certain Wood Products in Manufactured Home Construction With Title VI of the Toxic Substance Control Act

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: HUD is issuing a final rule to implement the Formaldehyde Standards for Composite Wood Products Act of 2010, which added Title VI to the Toxic Substances Control Act (TSCA). The purpose of TSCA Title VI is to reduce exposures to formaldehyde emissions from composite wood products, thereby resulting in benefits from avoided adverse health effects. In addition, HUD is removing certain aspects of the current manufactured housing formaldehyde standards requirements that are not addressed by TSCA. This final rule follows publication of a March 22, 2019, proposed rule and takes into consideration the public comments received on the proposed rule. This final rule also incorporates by reference, ASTM D6007–14 and ASTM E1333–14, the current standard requirements for formaldehyde concentration and emissions rate air chamber testing.

DATES: This final rule is effective March 2, 2020. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of March 2, 2020.

FOR FURTHER INFORMATION CONTACT: Teresa B. Payne, Acting Administrator, Office of Manufactured Housing Programs, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; telephone 202–402–5365 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8389 (toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background—HUD's March 22, 2019 Proposed Rule

The Formaldehyde Standards for Composite Wood Products Act of 2010, which added TSCA Title VI (Pub. L. 111–199, enacted on July 7, 2010) (''Formaldehyde Act of 2010''), established new formaldehyde emissions standards for all hardwood plywood, medium-density fiberboard, and particleboard, including when incorporated into finished goods, that are sold, supplied, offered for sale, or manufactured (including imported) in the United States. TSCA Title VI directs HUD to update its regulation addressing formaldehyde emission standards to ensure consistency with the standards in TSCA not later than 180 days after the Environmental Protection Agency (EPA) promulgates regulations. EPA's final rule implementing the new requirements became effective May 22, 2017. See 81 FR 89674.

On March 22, 2019, HUD published a proposed rule in the **Federal Register**, at 84 FR 10738, to streamline and align formaldehyde emission control standards requirements for certain wood products in manufactured homes with Title VI of the Toxic Substance Control Act. The rule proposed revising HUD's current formaldehyde emission standards for composite wood products used in manufactured housing at 24 CFR parts 3280 and 3282 to ensure consistency with the requirements established by section 601 of TSCA and EPA requirements, including the scope of products tested and processes for testing.

In addition, HUD proposed to remove certain aspects of HUD's manufactured housing formaldehyde standards requirements that are not addressed by TSCA, including provisions for a health notice to be posted in every manufactured home, testing of panels treated after certification, and testing of certain plywood materials. Lastly, HUD's proposed rule also added the EPA required provision for labeling finished goods by requiring labeling of each manufactured home as being ''TSCA Title VI compliant'' to the data plate of each manufactured home in 24 CFR 3280.5,[1] as recommended by the

[1] On October 25–27, 2016, HUD held a meeting with the Manufactured Housing Consensus Committee (MHCC). See 81 FR 66288. The Committee voted to accept a working draft of the proposed rule which cross-referenced EPA's requirements in HUD's regulations and removed the health hazard warning requirement in 24 CFR 3280.309. See Minutes MHCC Meeting October 25–

Manufactured Housing Consensus Committee.[2] For additional information about HUD's proposed rule, see 84 FR 10738.

II. Changes and Clarifications Made in This Final Rule

In response to public comments on the proposed rule, a discussion of which is presented in the following section of this preamble, this final rule incorporates the following changes described below and minor technical changes.

A. Samples for Testing

HUD's new § 3280.406(c) incorporated the testing of composite wood product samples under 40 CFR 770.24. As drafted, the language of this provision was limited to samples not produced in the United States, but imported and transported across the country for testing. Recognizing that the provision was meant to permit samples to be sent for testing without automatically triggering a violation for both American producers as well as importers, HUD amends the language in the final rule to apply to all samples for testing.

B. Quality Control Testing

HUD's new § 3280.407(b) incorporated the composite wood product quality control test methods from 40 CFR 770.20(d). The language in the proposed rule provided that panels being tested with an equivalence, correlation, or ''alternative method'' must be in compliance with the requirements of 40 CFR 770.20(d). However, a commenter noted that almost all testing is done with reference to a correlation value, regardless of the testing method. The term ''alternative method'' is eliminated from the final rule for clarity.

C. Technical Changes

HUD amends for clarity the language on the data plate from ''TSCA Title VI compliant'' to compliant with Title VI, Toxic Substances Control Act. In addition, HUD makes minor changes to the language in § 3280.406 to clarify certification testing and quarterly testing.

III. Discussion of Public Comments Received on March 22, 2019, Proposed Rule

The public comment period for the proposed rule closed on April 22, 2019. HUD received five public comments in response to the proposed rule. These comments were submitted by a private citizen, industry associations, and manufactured housing associations.

Four commenters generally supported HUD's proposed rule. One commenter supported the removal of the provisions that were inconsistent with TSCA, and another commenter noted that the streamlining will avoid the need for duplicative testing. Commenters were generally supportive of the proposed rule, but, as provided in the following section of this Preamble, they also recommended changes or clarifications, two of which are discussed above.

Comments: Most commenters agreed that the removal of the health notice was appropriate and necessary. The commenters noted that requiring such a notice for manufactured homes, but not site-built homes is inconsistent and doing so created a stigma. One commenter wrote that the notice should not be removed because the change to ventilation standards may still have no effect on decreasing the risks derived from the formaldehyde emissions.

HUD Response: HUD believes the significant decrease in formaldehyde emissions required by EPA's rule and referenced by HUD's rule combined with HUD's whole house ventilation requirements mitigate issues identified in the health notice. Further, the substantial similarities in construction methods, materials, and ventilation features between manufactured and site-built housing, without such a notice required for site-built housing, supports the action to eliminate the health notice in manufactured housing.

Comments: One commenter suggested that HUD amend § 3280.406(c), which incorporates the testing of samples under 40 CFR 770.24. The commenter noted that HUD limited the sampling language to imported samples in the proposed rule, but the provision was drafted to permit samples to be sent for testing without automatically triggering a violation for both American producers as well as importers.

HUD Response: HUD agrees and has made appropriate clarifications within the final language in § 3280.406(c).

Comments: One commenter suggested HUD amend § 3280.407(b), which incorporates control testing under 40 CFR 770.20(d). The commenter noted that almost all quality control testing is done with reference to a correlation value, regardless of the test methodology. The commenter wrote that it is unclear what ''alternative method'' means in this context; ''equivalence and correlation'' must be determined in accordance with 40 CFR 770.20(d).

HUD Response: HUD agrees and has made appropriate clarifications within the final language in § 3280.407(b).

Comments: One commenter noted that the proposed rule restricts the merchantability of non-conforming material. Such restrictions on an end user may be unfairly burdensome for a homeowner trying to resell a home that was purchased in good faith and without knowledge of any defect. The commenter suggested that HUD adapt the EPA's remedy of this problem by providing an exception for ''any finished good that has previously been sold or supplied to an end user, an individual, or entity that purchased or acquired the finished good in good faith for purposes other than resale.'' The commenter also recommended that HUD go further to protect an end user who acquired a manufactured home in good faith and is now selling it, but is either currently unaware or was only recently made aware that the home is not in compliance.

HUD Response: HUD's regulations are intended for the design and construction of new manufactured homes. HUD does not regulate resale transactions. However, latent defects in manufactured housing are addressable under the Manufactured Home Procedural and Enforcement Regulations. If a manufacturer becomes aware that it has systematically introduced a failure to conform into a manufactured home, it must conduct an investigation and take additional action (notification, correction, or both) as may be required under 24 CFR part 3232, subpart I. Regarding composite wood products, if a home manufacturer acquires knowledge that it has used non-conforming material, the home manufacturer remains responsible and may choose to work with the panel producer and/or supplier to address any required corrections approved by a State Administrative Agency or HUD as part of a Notification and Correction campaign.

Comments: One commenter noted that EPA's rule is discriminatory in its treatment of HUD manufactured housing as a ''finished good'' at 40 CFR 770.3, but not site-built homes. The commenter suggested that HUD reject this distinction because manufactured housing results in increased compliance costs that mostly fall on lower and

27, 2016, *https://portal.hud.gov/hudportal/documents/huddoc?id=mhcc-oct2016-meetminsfinal.pdf.*

[2] The Manufactured Housing Improvement Act of 2000 (Title VI of Pub. L. 106–569) created the Manufactured MHCC to develop proposed revisions to the Federal manufactured home construction and safety standards.

moderate-income American families that reside in manufactured housing.

HUD Response: HUD is absent authority to interpret or otherwise modify EPA's rule. However, HUD is streamlining its formaldehyde emissions standards through this rulemaking to ensure home manufacturers are not subject to different regulatory compliance requirements of both EPA and HUD. HUD believes this will reduce regulatory burdens and as such minimize cost impacts to manufacturers and costs passed on to home purchasers.

Comments: One commenter recommended that HUD repeal its regulations entirely to eliminate duplication of regulations. The commenter cited the fact that EPA standards are lower, the EPA rule addresses composite-wood products, and the EPA regulations include testing and certification prior to fabrication. The commenter also noted that manufactured homes have, for nearly 30 years, already achieved formaldehyde safety for consumers through compliance with existing HUD regulations that are less costly to meet than the TSCA standards, but nevertheless ensure the safety of manufactured home residents.

HUD Response: HUD is completing this rulemaking in accordance with the Toxic Substances Control Act Title VI in order to streamline its formaldehyde emissions standards and eliminate differing standards. Through this rulemaking, HUD will ensure home manufacturers are not subject to different regulatory compliance requirements of multiple federal oversight agencies. HUD believes this will reduce regulatory burdens and as such minimize cost impacts to manufacturers and home purchasers.

Comments: Two commenters recommended that HUD delay final rule implementation until EPA provides any clarifications as a result of its proposed rulemaking issued November 1, 2018, entitled ''Technical Issues in the Formaldehyde Emission Standards for Composite Wood Products Regulation.''

HUD Response: HUD is issuing a final rule that correlates with EPA's final rule provisions, mostly by reference to EPA's regulations. HUD will consider future rulemaking, as needed, pursuant to changes EPA may make in future rulemaking if those changes affect any specific provision promulgated by HUD.

Comments: One commenter agreed that HUD should move the disclosure statement to the data plate, consistent with the other items on the data plate. Another commenter noted that space on the data plate is limited and suggested that HUD shorten the statement to either ''TSCA Title VI compliant'' or ''This home is TSCA Title VI compliant.'' Another commenter suggested that HUD forego such a statement and reserve the space for future disclosures or technical information, given that only compliant homes receive a data plate.

HUD Response: HUD believes that sufficient space is available within the data plate for the minimal compliance statement required by § 3280.5(i). Further, HUD has decided to change the text of the data plate statement by spelling out the Toxic Substance Control Act.

IV. Incorporation by Reference

This rule incorporates the following standard test methods for determining formaldehyde concentrations in air and emission rates from wood products, listed below. The standards are readily available electronically or in print and are relatively inexpensive (less than $60 a copy). Copies of these materials may be obtained from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428, (610) 832–9500, fax number (610) 832–9555, website: *http://www.astm.org.*

- *ASTM D0007–14 Standard Test Method for Determining Formaldehyde Concentrations in Air from Wood Products Using a Small-Scale Chamber* (2014). This test method measures the formaldehyde concentrations in air from wood products under defined test conditions of temperature and relative humidity. Results obtained from this small-scale chamber test method are intended to be comparable to results obtained testing larger product samples by the large chamber test method for wood products, Test Method E1333. The results may be correlated to values obtained from ASTM Test Method E1333.

ASTM D60007–14 is available for purchase in electronic and hard copy formats at *http://www.astm.org/cgi-bin/resolver.cgi?D6007.* General information is available at *http://www.astm.org/Standards/D60007.htm.*

- *ASTM E1333–14 Standard Test Method for Determining Formaldehyde Concentrations in Air and Emission Rates from Wood Products Using a Large Chamber* (2014). This test method measures the formaldehyde concentration in air and emission rate from wood products containing formaldehyde by the use of a large chamber under specific test conditions of temperature and relative humidity, or conditions designed to simulate product use. This method employs a single set of environmental conditions but different product loading ratios to assess formaldehyde concentrations in air and emission rates from certain wood products. The conditions controlled in the procedure are the conditioning of specimens prior to testing, exposed surface area of the specimens in the test chamber, test chamber temperature and relative humidity, number of air changes per hour, and air circulation within the chamber. At the end of a specified time period in the test chamber, the air is sampled, and the concentration of formaldehyde in the air and emission rate are determined.

ASTM E1333–14 is available for purchase in electronic and hard copy formats at *http://www.astm.org/cgi-bin/resolver.cgi?E1333.* General information is available at *http://www.astm.org/Standards/E1333.htm.*

V. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. This final rule was determined not to be a ''significant regulatory action'' as defined in section 3(f) of the Executive order, and not an economically significant regulatory action, as provided under section 3(f)(1) of Executive Order 12866.

Executive Order 13771

Executive Order 13771, entitled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017. Section 2(a) of 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. In furtherance of this requirement, section 2(c) of Executive Order 13771 requires that the new incremental costs associated with new regulations shall, to

the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.

For the reasons discussed in the Regulatory Impact Analysis, this final rule has been determined to be an Executive Order 13771 deregulatory action.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. OMB issued HUD control number 2502–0253 for the information collection requirements under the Manufactured Home Construction and Safety Standards Act Reporting Requirements.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4, approved March 22, 1995), 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 final rule does not impose any Federal mandates on any State, local, or tribal government, or on the private sector, within the meaning of the UMRA.

Environmental Review

A Finding of No Significant Impact 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 Finding of No Significant Impact 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, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–0500.

Regulatory Flexibility Act

The Regulatory Flexibility Act (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. This final rule regulates establishments primarily engaged in making manufactured homes (North American Industry Classification System (NAICS) Code 32991). The Small Business Administration defines a small manufactured homes manufacturing business as one that does not exceed 1,250 employees. Of the 222 firms included under this NAICS definition, approximately 35 produce manufactured homes subject to HUD's Manufactured Housing Construction and Safety Standards. Other entities covered by this NAICS code build non-HUD-code prefabricated buildings. Of the 35 manufacturers subject to HUD's Manufactured Housing Construction and Safety Standards, 31 are considered to be small businesses based on the threshold of 1,250 employees or less.

As required by statute, EPA published a final rule that established new formaldehyde emission standards for composite wood products (81 FR 89674). As also required by statute, HUD's final rule updates HUD's formaldehyde requirements to align with and reflect those issued by EPA. Despite the new requirements, as discussed in HUD's regulatory impact analysis, HUD anticipates there will not be any new or additional cost impacts resulting from implementation of this final rule—other than *de minimis* costs to change the template used to create the data plate. Initially, composite wood products at EPA reduced formaldehyde levels are currently the majority of products available in the marketplace. This circumstance exists because of similar requirements currently in effect in California under the California Air Resources Board (CARB) Airborne Toxic Control Measure (ATCM). CARB ATCM requires composite wood products used in manufactured housing shipped to California to already comply with CARB requirements. As with many industries, rather than procuring special products for different final destinations, manufactured housing producers are likely to procure products that can be used in homes that it can ship anywhere.

This impact analysis includes all segments—manufacturers, retailers, and consumers, including small entities. In EPA's final rule, which affected a much broader number and type of small entities, for example, EPA determined in Table 2 that 99 percent of small business firms with cost impacts of more than 1 percent of revenues will have annualized costs of less than $250 per year.

In addition, this final rule will provide cost savings for HUD's manufactured housing manufacturers covered by this rule by eliminating the burden of placing the health notice (approximately $270,270 a year), testing structural plywood and retesting panels after a finishing is added. Therefore, while the final rule affects a substantial number of small entities, for 31 out of the 35 affected entities (86 percent), HUD believes the *de minimis* cost of implementing this final rule—specifically the change to the data plate—will be offset by the savings that result from the changes in materials subject to testing and the removal of the health notice. HUD has determined the impact of this final rule on all entities, to include small entities, is not significant.

For the reasons stated above, HUD knows of no instance of a manufacturer with fewer than 1,250 employees that will be significantly affected economically by this rule. Therefore, although this final rule affects a substantial number of small entities, HUD has determined that it will not have a significant economic impact on them.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments or is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This final 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.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number for Manufactured Housing Construction and Safety Standards is 14.171.

List of Subjects

24 CFR Part 3280

Housing standards, Incorporation by reference, Manufactured homes.

24 CFR Part 3282

Consumer protection, Manufactured homes.

Accordingly, for the reasons stated above, HUD amends 24 CFR parts 3280 and 3282 as follows:

PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

■ 1. The authority citation for part 3280 is revised to read as follows:

Authority: 15 U.S.C. 2697, 42 U.S.C. 3535(d), 5403, and 5424.

■ 2. Amend § 3280.4 as follows:
■ a. Redesignate paragraphs (p)(25) through (33) as paragraphs (p)(26) through (34);
■ b. Add new paragraph (p)(25); and
■ c. Revise newly redesignated paragraph (p)(31).

The addition and revision read as follows:

§ 3280.4 Incorporation by reference.

* * * * *

(p) * * *

(25) ASTM D6007–14, Standard Test Method for Determining Formaldehyde Concentrations in Air from Wood Products Using a Small Air Chamber, approved October 1, 2014; IBR approved for § 3280.406(b).

* * * * *

(31) ASTM E1333–14, Standard Test Method for Determining Formaldehyde Concentrations in Air and Emission Rates from Wood Products Using a Large Air Chamber, approved October 1, 2014; IBR approved for § 3280.406(b).

* * * * *

■ 3. In § 3280.5, add paragraph (i) to read as follows:

§ 3280.5 Data plate.

* * * * *

(i) The statement: The manufacturer certifies this home is compliant with the Title VI, Toxic Substances Control Act.

■ 4. Revise § 3280.308 to read as follows:

§ 3280.308 Formaldehyde emission controls for composite wood products

(a) *Definitions.* For purposes of this section, the definitions found in 40 CFR 770.3 apply.

(b) *Formaldehyde emission levels.* The following maximum formaldehyde emission standards apply whether the composite wood product is in the form of a panel or is incorporated into a component part or finished good:

(1) For hardwood plywood made with a veneer core or composite core, the maximum level is 0.05 parts per million (ppm) of formaldehyde;

(2) For medium density fiberboard, the maximum level is 0.11 ppm of formaldehyde;

(3) For thin medium density fiberboard, the maximum level is 0.13 ppm of formaldehyde; and

(4) For particleboard, the maximum level is 0.09 ppm of formaldehyde.

(c) *Product certification and continuing qualification.* Only certified composite wood products whether in the form of panels or incorporated into component parts or finished goods, are permitted to be used in manufactured homes sold, supplied, offered for sale, or manufactured in or imported into the United States, consistent with Environmental Protection Agency (EPA) product testing requirements at 40 CFR 770.15. See § 3280.406 for testing requirements for product certification and testing requirements for continuing qualification of formaldehyde emission levels.

(d) *Panel label.* Manufactured homes must use panels or bundles of panels that are labeled by a panel producer consistent with the labeling requirements at 40 CFR 770.45.

(e) *Finished good certification label.* Each manufactured home must be provided with a finished good certification label indicating that the home has been produced with composite wood products, or finished goods that contain composite wood products, that comply with the formaldehyde emission requirements of this part and 40 CFR part 770, consistent with § 3280.5(i).

(f) *Non-complying lots.* Composite wood products from non-complying lots (*i.e.,* lots that exceed the applicable formaldehyde ppm) are not certified composite wood products and may not be used in manufactured homes except in accordance with 40 CFR 770.22.

(g) *Stockpiling.* The use of stockpiled inventory of composite wood products, whether in the form of panels or incorporated into component parts or finished goods, in manufactured homes, is prohibited in accordance with EPA regulations at 40 CFR 770.12(b) through (d).

(h) *Third party certification.* All composite wood products in paragraph (b) of this section must be certified by an agency or organization that has been recognized to participate in the EPA Toxic Substances Control Act (TSCA) Title VI Third Party Certification Program.

§ 3280.309 [Removed]

■ 5. Remove § 3280.309.

■ 6. Revise § 3280.406 to read as follows:

§ 3280.406 Air chamber test methods for certification and continuing qualification of formaldehyde emission levels.

(a) *Definitions.* For purposes of this section, the definitions found in 40 CFR 770.3 apply.

(b) *Testing requirements.* Testing of composite wood products must be performed pursuant to the general requirements of 40 CFR 770.20(a) and (b). Certification testing must be performed pursuant to one of the air chamber test methods specified in 40 CFR 770.15 (ASTM E1333–14, or ASTM D6007–14, both incorporated by reference, see § 3280.4). Quarterly testing must be performed pursuant to one of the air chamber test methods specified in 40 CFR 770.20(c) (ASTM E1333–14 or ASTM D6007–14).

(c) *Samples for testing.* Samples for testing shall comply with 40 CFR 770.24.

■ 7. Add § 3280.407 to read as follows:

§ 3280.407 Quality control testing, manuals, facilities, and personnel.

(a) *Definitions.* For purposes of this section, the definitions found in 40 CFR 770.3 apply.

(b) *Quality control testing.* Quality control testing is required for hardwood plywood made with a veneer core or composite core, medium density fiberboard, thin medium density fiberboard, and particleboard and must be performed in accordance with the general requirements in 40 CFR 770.20(a) and by one of the test methods and at the frequency specified in 40 CFR 770.20(b). Panels being tested with an equivalence and correlation must be determined in accordance with 40 CFR 770.20(d).

(c) *Quality control manuals, facilities, and personnel.* A panel producer must have a written quality control manual, must designate a quality control facility for conducting quality control formaldehyde testing under this section, and must designate a person as quality control manager with adequate experience and/or training to be responsible for formaldehyde emissions quality control consistent with 40 CFR 770.21. A panel producer means a manufacturing plant or other facility that manufactures (excluding facilities that solely import products) composite wood products (hardwood plywood made with a veneer or composite core, medium-density fiberboard, and particleboard) on the premises.

PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

■ 8. The authority citation for part 3282 is revised to read as follows:

Authority: 15 U.S.C. 2697, 42 U.S.C. 3535(d), 5403, and 5424.

■ 9. In § 3282.7, add paragraph (o) to read as follows:

§ 3282.7 Definitions.

* * * * *

(o) *Finished good* has the meaning provided in 40 CFR 770.3.

* * * * *

■ 10. Add § 3282.212 to read as follows:

§ 3282.212 Toxic Substances Control Act (TSCA) Title VI requirements.

Manufacturers must maintain bills of lading, invoices, or comparable documents that include a written statement from the supplier that the component or finished goods are TSCA Title VI compliant for a minimum of 3 years from the date of import, purchase, or shipment, consistent with 40 CFR 770.30(c) and 770.40.

■ 11. Add § 3282.257 to read as follows:

§ 3282.257 TSCA Title VI requirements.

Retailers and distributors must maintain bills of lading, invoices, or comparable documents that include a written statement from the supplier that the component or finished goods are TSCA Title VI compliant for a minimum of 3 years from the date of import, purchase, or shipment, consistent with 40 CFR 770.30(c) and 770.40.

Dated: January 23, 2020.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2020–01474 Filed 1–30–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF LABOR

29 CFR Part 9

RIN 1235–AA02; 1235–AA33

Nondisplacement of Qualified Workers Under Service Contracts; Rescission of Regulations

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Final rule; rescission of regulations.

SUMMARY: On October 31, 2019, President Trump issued an Executive order on improving Federal contractor operations, which revoked an Executive order concerning nondisplacement of qualified workers under Federal service contracts, and directed the Secretary of Labor to promptly rescind the regulations and policies implementing the revoked Executive order. The directive also ordered the termination of all investigations or compliance actions based on the revoked Executive order. In accordance with this directive, the Department of Labor is issuing a final rule to rescind the regulations on nondisplacement of qualified workers under service contracts, which were promulgated pursuant to the authority provided by the revoked Executive order.

DATES: This rule is effective January 31, 2020.

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Director of Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210, telephone: (202) 693–0406 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Executive Summary

On October 31, 2019, President Trump issued Executive Order 13897—Improving Federal Contractor Operations by Revoking Executive Order 13495 (84 FR 59709, November 5, 2019). Executive Order 13897 directs the Secretary of Labor to promptly rescind regulations and other materials implementing or enforcing Executive Order 13495. Accordingly, the Department issues this final rule rescinding 29 CFR part 9, Nondisplacement of Qualified Workers Under Service Contracts, as these regulations implement Executive Order 13495.

II. Background

Executive Order 13495 of January 30, 2009—Nondisplacement of Qualified Workers Under Service Contracts—provided that workers on a service contract be given the right of first refusal for employment with a successor contractor if they would otherwise lose their jobs as a result of expiration of the contract. The implementing regulations, 29 CFR part 9, were promulgated in accordance with the terms of Executive Order 13495 and were published in the **Federal Register** on August 29, 2011 (76 FR 53720). On October 31, 2019, President Trump issued Executive Order 13897—Improving Federal Contractor Operations by Revoking Executive Order 13495 (84 FR 59709, November 5, 2019). Executive Order 13897 directs the Secretary of Labor to terminate any investigations or compliance actions based on Executive Order 13495, and to ''promptly move to rescind any orders, rules, regulations, guidelines, programs, or policies implementing or enforcing Executive Order 13495.'' Since the authority for these regulations no longer exists, the Department for good cause hereby finds that it is unnecessary and impracticable to afford notice and comment procedures on the rescission of the regulations at 29 CFR part 9, and that such rescission should be effective upon publication. As provided in Executive Order 13897, the revocation of Executive Order 13495 and the rescission of these regulations extend to all investigations or compliance actions based on Executive Order 13495.

III. Paperwork Reduction Act

The information collection requirements contained in the regulations at 29 CFR part 9 were previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and assigned OMB Control Number 1235–0025. In light of the rescission of these regulations, the Department has submitted a request to OMB to discontinue the information collection under OMB control number 1235–0025.

List of Subjects in 29 CFR Part 9

Employment, Federal buildings and facilities, Government contracts, Law enforcement.

PART 9—[REMOVED AND RESERVED]

■ Accordingly, and under the authority of Executive Order 13897, 84 FR 59709, part 9 of title 29 of the Code of Federal Regulations is hereby removed and reserved.

Dated: January 15, 2020.

Cheryl M. Stanton,

Administrator, Wage and Hour Division.

[FR Doc. 2020–00948 Filed 1–30–20; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket No. USCG–2018–0532]

RIN 1625–ZA38

Navigation and Navigable Waters, and Shipping; Technical, Organizational, and Conforming Amendments for U.S. Coast Guard Field District 1

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is issuing non-substantive technical, organizational, and conforming amendments to existing regulations for District 1. These changes reflect the current status of the identified regulated navigation areas, special local regulations, safety zones and security zones within the district. This rule removes safety zones and special local regulations where the enforcement period has expired or the event is no longer held. This rule also removes special local regulations where the

event no longer meets the criteria for a permitted event and is not suitable for coverage under a special local regulation in accordance with Coast Guard regulations.

DATES: This rule is effective March 2, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2018–0532 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Craig D. Lapiejko, Coast Guard; telephone (617) 223–8351, email *Craig.D.Lapiejko@uscg.mil.*

SUPPLEMENTARY INFORMATION:

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I. Abbreviations

CATEX Criteria for Categorical Exclusion
CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

This rulemaking project was identified as part of the Coast Guard's Regulatory Reform Task Force Initiative. These First District field regulation changes were identified as part of the deregulation identification process required by Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs); Executive Order 13777 (Enforcing the Regulatory Reform Agenda Deregulatory Process) and associated guidance issued in 2017. This rule makes technical and editorial corrections in Title 33 of the Code of Federal Regulations (CFR). Specifically, the rule removes safety zones and special local regulations where the enforcement period has expired or the event is no longer held. This rule also removes special local regulations where the event no longer meets the criteria for a permitted event and is not suitable for coverage under a special local regulation in accordance with Coast Guard regulations. These changes are necessary to correct errors, change addresses, and make other non-substantive changes that improve the clarity of the CFR. This rule does not create or change any substantive requirements.

The changes to 33 CFR part 100 are specifically authorized under 46 U.S.C. 70041(a), which vests with the Commandant of the Coast Guard the authority to issue regulations to promote the safety of life on navigable waters during regattas or marine parades. The changes to 33 CFR part 165 are authorized under the general authority of 46 U.S.C. 70034, granting the Secretary of the Department of Homeland Security broad authority to issue, amend, or repeal regulations as necessary to implement 46 U.S.C. chapter 700, Ports and Waterways Safety Program. The Secretary has delegated rulemaking authority under 46 U.S.C. 70034 to the Commandant via Department of Homeland Security Delegation No. 0170.1.[1]

The Coast Guard is issuing this 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 exist for not publishing a notice of proposed rulemaking with respect to this rule because it is unnecessary to do so. All of the changes in this final rule involve only minor amendments to existing regulations that will not result in a substantive effect on the public.

IV. Discussion of Rule

The Coast Guard periodically issues technical, organizational, and conforming amendments to existing regulations in titles 33 and 46 of the CFR These ''technical amendments'' provide the public with more accurate and current regulatory information but do not change the effect on the public of any Coast Guard regulations.

This rule amends § 100.114 by deleting an event reference to fireworks displays sponsored by the Bayville Crescent Club and moves it to its correct location in part 165.

Also in § 100.150, this rule removes the reference to the New York Super Boat Race on the Hudson River. This event has not been held since 2013, and there are no future plans for holding the event.

In part 165, we remove § 165.130, which is a security zone in Sandy Hook Bay, NJ, as this area is already regulated by the U.S. Army Corps of Engineers at 33 CFR 334.102. Pursuant to Executive Order 12866, agencies shall avoid duplicative regulations with other agencies.

Also, in § 165.151, which regulates Safety Zones, Fireworks Displays, Air Shows and Swim Events in the Captain of the Port Long Island Sound Zone, this rule makes several modifications to Table 1: In item 5.1, Jones Beach Airshow, the rule removes the time of the event and replaces it with the text ''at a time to be determined annually,'' because this event is not always held at the same time every year. Also, in item 7.24, Village of Ashroken Fireworks, the rule corrects the paragraph to read the correct position of 40°45′39.93″ N, 072°39′49.14″ W (NAD 83), as opposed to the incorrect coordinates currently listed. Additionally, this rule adds new item 7.49 concerning the Bayville Crescent Club Fireworks that was previously located at § 100.114.

Additionally, in § 165.160 which regulates Safety Zones; Fireworks Displays and Swim Events in Coast Guard Captain of the Port New York Zone, this rule removes event 1.1 in Table 1, Macy's 4th of July Fireworks. This event has not been held at this Hudson River location in several years and there are no future plans for holding the event in the Hudson River.

Finally, in § 165.169, the rule removes paragraph (a)(9)(ii), as vessels are not authorized within 100 yards of Rodman Neck. In 2004 the Coast Guard published a final rule establishing permanent safety and security zones in portions of the waters around the New York City Police Department ammunition depot on Rodman Neck in Eastchester Bay, NY (69 FR 2666). The final rule created a 100-yard boundary zone around Rodman Neck.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. A summary of our analyses based on these statutes or Executive Orders follows.

[1] The Coast Guard Authorization Act of 2018, Public Law 115–282, 132 Stat. 4192 (Dec. 4, 2018) redesignated 33 U.S.C. 1231 as 46 U.S.C. 70034.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. Because this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* the OMB Memorandum titled ''Guidance Implementing Executive Order 13771, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5, 2017).

The Coast Guard proposes to revise its regulations to provide updates and clarifications to existing regulatory text in title 33 of the Code of Federal Regulations (CFR) parts 100 and 165. The revisions include the removal of temporary safety zones and special local regulations for past events, special local regulations for events no longer held and special local regulations for events no longer permitted. Normal navigation rules sufficiently cover the safety of participants and spectators at events that are no longer suitable for coverage under a special local regulation. This rule involves non-substantive changes and internal agency practices and procedures; it will not impose any additional costs on the public. The benefit of the non-substantive changes is increased clarity of regulations.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 in the **FOR FURTHER INFORMATION CONTACT** section of this rule. 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.

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).

D. Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

E. Federalism

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on 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 Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

F. Indian Tribal Governments

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

G. 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 million (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

H. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction 5090.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f). Our preliminary determination is that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under the **ADDRESSES** section of this preamble.

This rule meets the criteria for categorical exclusion (CATEX) under paragraphs L54 and L60(b) in Appendix A, Table 1 of DHS Directive 023–01. CATEX L54 pertains to promulgation of regulations that are editorial or procedural; and CATEX L60(b) pertains to regulations for establishing, disestablishing, or changing Regulated Navigation Areas and safety or security zones, notably for actions that disestablish or reduce the size of the area or zone. These regulation changes are consistent with the Coast Guard's maritime safety and stewardship missions.

List of Subjects

33 CFR Part 100

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

33 CFR Part 165

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

For the reasons stated in the preamble, the Coast Guard amends 33 CFR parts 100 and 165 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

§ 100.114 [Removed]

■ 2. Remove § 100.114

§ 100.150 [Removed]

■ 3. Remove § 100.150

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 4. 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.

§ 165.130 [Removed]

■ 5. Remove § 165.130

■ 6. In § 165.151, amend Table 1 to § 165.151 as follows:

■ a. In item 5.1, Jones Beach Airshow, remove the text ''from 9:30 a.m. until 3:30 p.m. each day'', and add in its place the text ''at a time to be determined annually'';

■ b. In item 7.24, Village of Ashroken Fireworks, revise the reference ''41°55′54.04″ N,073°21′27.97″ W (NAD 83)'' to read ''40°45′39.93″ N, 072°39′49.14″ W (NAD 83)''; and

■ c. Add an entry for item 7.48 in numerical order.

The addition reads as follows:

§ 165.151 Safety Zones; Fireworks Displays, Air Shows and Swim Events in the Captain of the Port Long Island Sound Zone.

* * * * *

TABLE 1 TO § 165.151

* * * * *	
7.49 Bayville Crescent Club Fireworks.	• Sponsor: Bayville Crescent Club, Bayville, NY. • Time: 8 p.m. to 10 p.m. • Location: Cooper Bluff, Cove Neck, NY.
* * * * *	

* * * * *

§ 165.160 [Amended]

■ 7. In § 165.160, in Table 1 to § 165.60, remove event 1.1, Macy's 4th of July Fireworks.

§ 165.169 [Amended]

■ 7. In § 165.169, remove paragraph (a)(9)(ii) and redesignate paragraph (a)(9)(iii) as paragraph (a)(9)(ii).

Dated: January 8, 2020.

A.J. Tiongson,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2020–01294 Filed 1–30–20; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2019–0362; FRL–10004–09–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Infrastructure Requirements for the 2015 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the District of Columbia (the District). The SIP revision addresses certain infrastructure requirements to implement, maintain, and enforce the 2015 ozone national ambient air quality standards (NAAQS), including the requirements for interstate transport. EPA is approving the District's infrastructure SIP revision for the 2015 ozone NAAQS, with exception of certain portions, in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on March 2, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2019–0362. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Joseph Schulingkamp, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2021. Mr. Schulingkamp can also be reached via electronic mail at *schulingkamp.joseph@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 2019 (84 FR 41942), EPA published a notice of proposed rulemaking (NPRM) for the District of Columbia. In the NPRM, EPA proposed approval of most portions of the District of Columbia's SIP revision addressing infrastructure requirements for the 2015 ozone NAAQS. The formal SIP revision was submitted by the District through the Department of Environment and Energy (DOEE) on August 24, 2018.

On October 26, 2015, EPA issued a final rule strengthening both the primary and secondary ozone NAAQS for ground-level ozone to 70 parts per billion (ppb), based on the fourth-highest maximum daily 8-hour ozone concentration per year (hereafter the 2015 ozone NAAQS). 80 FR 65292. Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This particular type of SIP revision is commonly referred to as an ''infrastructure SIP revision.'' Infrastructure SIP revisions must meet the various requirements of CAA section 110(a)(2), as applicable. Section 110(a)(2) includes a list of specific elements that each infrastructure SIP revision must address.

II. Summary of SIP Revision and EPA Analysis

The District's August 24, 2018 infrastructure SIP revision addresses the following infrastructure elements, or portions thereof, for the 2015 ozone NAAQS: CAA section 110(a)(2)(A), (B), (C), (D)(i)(I), D(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M). The August 24, 2018 SIP revision addresses the interstate transport requirements of

CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS (also known as good neighbor provisions). The SIP revision provides technical information supporting the conclusion that the emissions from the District do not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

The August 24, 2018 SIP revision did not address the portion of element (C) or element (I) referring to the nonattainment requirements of part D, title I of the CAA. Part D, title I of the CAA addresses SIP requirements and submission deadlines for designated nonattainment areas for each NAAQS. Such nonattainment SIP revisions are required if an area is designated nonattainment and would be due to EPA by the dates statutorily prescribed in subparts 1 through 5 under part D, title I of the CAA. EPA believes that because the CAA directs states to submit these nonattainment SIP requirements on a separate schedule, it is not necessary for states to include neither element (I) nor the portion of element (C) referring to part D as part of the infrastructure SIP revisions due three years after adoption or revision of any NAAQS.[1]

On February 27, 2019, EPA determined that the District's August 24, 2018 SIP revision submittal was technically incomplete, in accordance with 40 CFR part 51, appendix V, with respect to the portions of the infrastructure elements in CAA section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) relating to the Prevention of Significant Deterioration (PSD) permitting program under part C, title I of the CAA, because the District has not adequately addressed its part C requirement of having a SIP-approved PSD program. By contrast, EPA found the remainder of the August 24, 2018 SIP revision submittal to be administratively and technically complete in accordance with 40 CFR part 51, appendix V. As a result of this finding, EPA can only proceed in taking rulemaking action on the complete portions of the District's August 24, 2018 submittal.

Mandatory sanctions would not apply to the District under CAA section 179 as a result of EPA's incompleteness finding, because the failure to submit a PSD SIP revision is neither with respect to a submission that is required under CAA title I part D, nor in response to a SIP call under CAA section 110(k)(5). In addition, EPA is not subject to any further Federal implementation plan (FIP) duties, because there is already a PSD FIP for the District, which addresses the District's SIP deficiency,[2] which EPA issued to correct the District's PSD SIP deficiency, and that DOEE does not have to take further action for the FIP-based permitting program to be implemented.

III. Final Action

EPA is approving the District's August 24, 2018 infrastructure submittal as a revision to the District of Columbia SIP. EPA is approving the District's August 24, 2018 SIP revision as meeting the requirements of section 110(a)(2) of the CAA to implement, maintain, and enforce the 2015 ozone NAAQS, including specifically section 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for this NAAQS, with exception of those portions addressing requirements related to the PSD permitting program of part C, title I of the CAA in section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J), as these were found incomplete pursuant to 40 CFR part 51, appendix V. This final rulemaking action does not include action on section 110(a)(2)(I) or portions of section 110(a)(2)(C) referring to the permit program under part D, title I of the CAA.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and

[1] See ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013, (available at *https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf*).

[2] EPA promulgated the PSD FIP in 1980, and later amended it in 2003. The PSD FIP for the District is incorporated by reference in the District's SIP in 40 CFR 52.499, and it contains the provisions of 40 CFR 52.21, with the exception of paragraph (a)(1). See 45 FR 52676, at 52741 (August 7, 1980), 68 FR 11316, at 11322 (March 10, 2003), and 68 FR 74483, at 74488 (December 24, 2003).

the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 31, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action, pertaining to the District of Columbia's infrastructure requirements for the 2015 ozone NAAQS under CAA section 110(a)(2), may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: December 26, 2019.

Diana Esher,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart J—District of Columbia

■ 2. Amend § 52.470 in the table in paragraph (e) by adding an entry for ''Section 110(a)(2) Infrastructure Requirements for the 2015 Ozone NAAQS'' at the end of the table to read as follows:

§ 52.470 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	* * *
Section 110(a)(2) Infrastructure Requirements for the 2015 Ozone NAAQS.	District of Columbia.	08/24/18	1/31/2020, [Insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). PSD related portions are addressed by the FIP in 40 CFR 52.499.

[FR Doc. 2020–00885 Filed 1–30–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2008–0108; FRL–10004–34–Region 1]

Air Plan Approval; Massachusetts; Transport State Implementation Plan for the 2015 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts that address the interstate transport of air pollution requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act for the 2015 ozone national ambient air quality standard (NAAQS) (*i.e.,* ozone transport SIP). The EPA is approving the submission as meeting the requirement that each SIP contain adequate provisions to prohibit emissions that will significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. This action is being taken in accordance with the Clean Air Act.

DATES: This rule is effective on March 2, 2020.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2008–0108. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* 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 at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05–2), Boston, MA 02109—3912, tel. (617) 918–1684, email *simcox.alison@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background
II. Response to Comment
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

On August 14, 2019 (84 FR 40344), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Massachusetts. The NPRM proposed approval of SIP revisions that address the interstate transport of air pollution requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act for the 1997, 2008, and 2015 ozone national ambient air quality standards (NAAQS) (*i.e.,* transport SIPs). The formal SIP revisions were submitted by Massachusetts on January 31, 2008; February 9, 2018; and September 27, 2018, respectively. In this action, we are approving the transport SIP for the 2015 ozone NAAQS. We previously approved the transport SIPs for the 1997 and 2008 ozone NAAQS. *See* 84 FR 59728 (November 6, 2019).

The rationale for EPA's proposed action is given in the NPRM and will not be restated here. EPA received one public comment on the NPRM.

II. Response to Comment

EPA received a comment during the comment period stating that EPA cannot finalize action on this SIP revision as it relies on ''a rule that a court has now vacated,'' referring to the September 13, 2019, ruling by the United States Court of Appeals for the District of Columbia Circuit in *Wisconsin* v. *EPA,* 938 F.3d 303, on EPA's Cross State Air Pollution Rule Update for the 2008 Ozone NAAQS (''CSAPR Update''), 81 FR 74504 (October 26, 2016). The commenter stated that the EPA must disapprove this revision as a result of the court decision.

As an initial matter, the commenter is incorrect; the court remanded the CSAPR Update to EPA but did not vacate it. *Wisconsin,* 938 F.3d at 336. Furthermore, the commenter does not specify how it believes the *Wisconsin* decision should impact the EPA's evaluation of the Commonwealth's Transport SIP for the 2015 ozone NAAQS.[1] Nonetheless, our proposed approval did not rely on any analysis conducted for, or determinations made in, the CSAPR Update. *See* 84 FR at 40347–48. Rather, our proposed approval relied on an evaluation of air quality in 2023 to determine that emissions from Massachusetts ''will'' not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any downwind state. *See id.* The *Wisconsin* opinion affirmed that EPA's reliance on the evaluation of air quality in a future year is a reasonable interpretation of the Good Neighbor Provision. 938 F.3d at 322. Consequently, the commenter has not identified any basis on which EPA must disapprove Massachusetts' Transport SIP for the 2015 ozone NAAQS in light of the *Wisconsin* decision.

EPA's proposal demonstrates that Massachusetts will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state, and *Wisconsin* v. *EPA* does not affect that finding or otherwise impact approval of the Commonwealth's Transport SIP for the 2015 ozone NAAQS.

III. Final Action

EPA is approving a transport SIP that was submitted to address interstate transport requirements for CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS as a revision to the Massachusetts SIP.

IV. Statutory and Executive Order Reviews

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

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

Dated: January 13, 2020.

Dennis Deziel,

Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1120, the table in paragraph (e) is amended by adding an entry for ''Interstate transport requirements of CAA for 2015 Ozone NAAQS'' after the entry for ''Interstate transport requirements of CAA for 2008 Ozone NAAQS'' to read as follows:

[1] For our response to the comment as it pertains to the Massachusetts' transport SIPs for the 1997 and 2008 ozone NAAQS, see 84 FR 59728 (November 6, 2019).

§ 52.1120 Identification of plan.

* * * * *

(e) * * *

MASSACHUSETTS NON REGULATORY

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date [3]	Explanations
*	*	*	*	*
Interstate transport requirements of CAA for 2015 Ozone NAAQS.	Statewide	September 27, 2018	1/31/2020 [Insert **Federal Register** citation].	Approved with respect to requirements for CAA section 110(a)(2)(D)(i)(I).
*	*	*	*	*

[3] To determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

[FR Doc. 2020–01113 Filed 1–30–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[EPA–R01–OAR–2020–0006; FRL–10004–44–Region 1]

Notice of Memorandum of Agreement for Delegation of Authority; Connecticut; New Source Performance Standards and National Emissions Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: On October 2, 2019, the Environmental Protection Agency (EPA) Region 1 Administrator signed a Memorandum of Agreement (MOA) between EPA Region 1 and the Connecticut Department of Energy and Environmental Protection (CT DEEP) for delegation of New Source Performance Standards (NSPS) and National Emissions Standards for Hazardous Air Pollutants (NESHAPs). The MOA was signed by the Commissioner of CT DEEP on September 10, 2019. To inform the public of the EPA and CT DEEP's October 2, 2019 MOA regarding delegation of NSPS and NESHAPs, the EPA is making a copy of the MOA available through this document.

DATES: On October 2, 2019, the EPA finalized a Memorandum of Agreement between EPA Region 1 and the CT DEEP regarding delegation of NSPS and NESHAPs.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2020–0006. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* 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 at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, Air Permits, Toxics, and Indoor Programs Branch, 5 Post Office Square—Suite 100, Boston, MA. The EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Susan Lancey, Air Permits, Toxics, and Indoor Programs Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05–2), Boston, MA 02109–3912, telephone number (617) 918–1656, email *lancey.susan@epa.gov.*

SUPPLEMENTARY INFORMATION: In a letter dated August 14, 2019, EPA Region 1 suggested that CT DEEP and EPA Region 1 update the protocol for delegation of NSPS and NESHAPs and develop a delegation MOA between EPA Region 1 and CT DEEP. The MOA was signed by the Commissioner of CT DEEP on September 10, 2019 and was signed by the Region 1 Administrator on October 2, 2019. The MOA summarizes the approved delegation mechanisms, the procedures for delegation, and the conditions of delegation. The delegation mechanisms being used for delegation of 40 CFR parts 60, 61, and 63 were previously approved by EPA Region 1 and have not changed, as described in more detail below in the MOA. The August 14, 2019 letter provided a list of previously delegated NSPS and NESHAPs, in order to reconfirm delegation of those standards. In addition, the letter provided a checklist for CT DEEP to complete and return to indicate its acceptance of delegation of subsequent standards in parts 60, 61, and 63 for Title V permitted sources, and to request delegation for parts 60 and 61 for all sources, including non-Title V permitted sources. The text of EPA Region 1 and CT DEEP's October 2, 2019 MOA is reproduced below:

Memorandum of Agreement Between Connecticut Department of Energy and Environmental Protection (CT DEEP) and U.S. EPA Region 1 for Delegation of National Emissions Standards for Hazardous Air Pollutants (NESHAPs) and New Source Performance Standards (NSPS)

I. Delegation Mechanisms

On April 23, 1999, EPA approved CT DEEP's delegation mechanism to accept delegation of the Clean Air Act (CAA) Section 111 and Section 112 federal standards for sources that have obtained a CAA Title V operating permit. *See* 64 FR 19922. This Memorandum of Agreement (MOA) reconfirms the delegation mechanism approved in the April 23, 1999 **Federal Register** notice for delegation of part 60 NSPS, part 61 NESHAPs, and part 63 NESHAPs for Title V permitted sources upon issuance of the Title V permit incorporating the applicable standards for affected sources. EPA's April 23, 1999 approval referenced the delegation procedures in a letter dated October 7, 1996 from CT DEEP to EPA Region 1. This MOA revises the delegation procedures contained in the October 7, 1996 letter and provides revised conditions of delegation.

CT DEEP can accept delegation of part 60 NSPS and part 61 NESHAPs for all stationary sources, including non-Title

V operating permitted sources, under the authority in 22a–174–9 of the Regulations of the Connecticut State Agencies (RCSA). This delegation mechanism was approved in a letter dated September 30, 1982 from EPA Region 1 to CT DEEP, was confirmed in a letter dated December 22, 1994 from EPA Region 1 to CT DEEP, and was again confirmed in a letter dated November 8, 2018 from CT DEEP to EPA. This MOA reconfirms this delegation mechanism for part 60 NSPS and part 61 NESHAPs. In addition, this MOA revises the procedures and conditions of delegation contained in the September 30, 1982 letter.

II. Procedures for Delegation

1. EPA Region 1 will provide an annual letter to CT DEEP with a checklist identifying the newly promulgated part 60 NSPS, part 61 NESHAPs, and part 63 NESHAPs standards and amendments to standards which have been previously delegated.

2. CT DEEP will complete the checklist and return it to EPA Region 1 within 60 days of receipt of the checklist. For each standard, CT DEEP will indicate whether there are any affected sources in the State.

3. CT DEEP will complete the checklist to indicate whether CT DEEP requests delegation of part 60 NSPS, part 61 NESHAPs, and part 63 NESHAPs standards for affected sources subject to the Title V operating permit program. Delegation of a standard for a source subject to a Title V operating permit occurs upon issuance of the Title V operating permit incorporating the applicable standards for affected sources.

4. CT DEEP will complete the checklist to indicate which new part 60 NSPS and part 61 NESHAPs standards, if any, for which the CT DEEP is requesting delegation for all sources.

5. Amendments to standards previously delegated will be automatically delegated, unless CT DEEP declines delegation in writing to EPA Region 1 within 60 days of receipt of the annual checklist.

6. Upon receipt of the completed checklist, EPA Region 1 will issue a letter to the CT DEEP confirming delegation of the federal standards.

7. EPA Region 1 will develop and maintain a list of delegated NSPS and NESHAPs on the EPA Region 1 website.

III. Conditions of Delegation

1. CT DEEP will assume primary responsibility for enforcement of delegated NSPS and NESHAPs.

2. CT DEEP will not grant a variance from compliance with applicable emission standards of NSPS and NESHAPs.

3. CT DEEP will communicate with EPA Region 1 to keep each office fully informed regarding the current compliance status of subject sources in Connecticut and interpretation of applicable regulations.

4. CT DEEP will require all NSPS and NESHAPs sources to adhere to the reporting, monitoring, and recordkeeping requirements specified in the NSPS and NESHAPs, except as may be modified through Title V streamlining or other approvals. CT DEEP will describe any Title V streamlining or alternatives to reporting, monitoring, and recordkeeping in the Title V Technical Support Document or in documentation concerning approvals for modifications of reporting, monitoring and recordkeeping for non-Title V sources.

5. CT DEEP will issue applicability determinations that are routine in nature and will forward to EPA Region 1 any applicability questions that are unique or unusually complex. EPA Region 1 will provide technical assistance as necessary to the CT DEEP.

6. EPA delegates only the authority to approve minor or intermediate alternatives to test methods and monitoring.[1] EPA retains the authority to approve major alternatives to test methods and monitoring. CT DEEP must maintain a record of all approved alternatives to all monitoring, testing, recordkeeping, and reporting requirements and provide this list of alternatives to EPA Region 1 at least semi-annually.

7. CT DEEP will follow the process identified in 40 CFR 63.96(b) for returning delegation of part 61 NESHAPs or part 63 NESHAPs standards. CT DEEP will notify EPA Region 1 in writing if CT DEEP intends to return delegation of any part 60 NSPS and will coordinate with EPA Region 1 on the process required for returning delegation of a part 60 NSPS standard.

8. CT DEEP will coordinate with EPA Region 1 on the process required in the event CT DEEP intends to pursue partial delegation of part 60 NSPS, part 61 NESHAPs, or part 63 NESHAPs standards.

9. If the EPA Regional Administrator determines that CT DEEP is not adequately implementing or enforcing NSPS or NESHAPs, the Regional Administrator may revoke delegation of NSPS or NESHAPs in whole or part.

V. Signatures

For the United States, United States Environmental Protection Agency, Region 1

Dennis Deziel, Regional Administrator, October 2, 2019

For the State of Connecticut, Department of Energy and Environmental Protection

Katherine S. Dykes, Commissioner, September 10, 2019

This document informs the public of EPA Region 1 and CT DEEP's October 2, 2019 Memorandum of Agreement for delegation of NSPS and NESHAPs. In addition, as specified in the October 2, 2019 MOA, EPA Region 1 has developed and will maintain a list of NSPS and NESHAP standards delegated to CT DEEP, available on the *https://www.epa.gov/caa-permitting/epa-region-1-state-delegations-federal-new-source-performance-standard-nsps-and* website. The list of delegated standards, the October 2, 2019 MOA, and accompanying letters exchanged between EPA Region 1 and CT DEEP are also available in the public docket for this action identified in the **ADDRESSES** section above.

List of Subjects in 40 CFR Parts 60, 61, and 63

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

Dated: January 15, 2020.

Dennis Deziel,

Regional Administrator, EPA Region 1.

[FR Doc. 2020–01112 Filed 1–30–20; 8:45 am]

BILLING CODE 6560–50–P

[1] Forty CFR part 63 subpart E, section 63. 91(g) specifies the part 63 subpart A authorities which may be delegated. In addition, the EPA document titled ''How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring'' (EPA 305–B–99–004, February 1999) specifies that EPA may delegate the authority to issue minor or intermediate alternatives to test methods and monitoring for part 60 NSPS and part 61 NESHAPs. This guidance document and 40 CFR 63.90 provide definitions of minor, intermediate, and major alternatives to test methods and monitoring.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0653; FRL–10002–88]

Extension of Time-Limited Tolerances for Emergency Exemptions (Multiple Chemicals, Various Commodities)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for residues of five pesticides on various commodities, as identified in this document. These actions are in response to EPA's granting of emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of these pesticides. In addition, the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA.

DATES: This regulation is effective January 31, 2020. Objections and requests for hearings must be received on or before March 31, 2020 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0653, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0653 in the subject line on the first page of your submission. All requests must be in writing, and must be received by the Hearing Clerk on or before March 31, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2019–0653, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Background and Statutory Findings

EPA previously published final rules establishing time-limited tolerances in the **Federal Register** for each chemical and commodity listed under FFDCA section 408, 21 U.S.C. 346a. EPA established the tolerances because FFDCA section 408(l)(6) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established at EPA's own initiative and without providing notice or time for public comment.

EPA received requests to extend the emergency use of these chemicals for this year's growing season. After having reviewed these submissions, EPA concurs that emergency conditions continue to exist. EPA assessed the potential risks presented by residues for each chemical in the listed commodities. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2) and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18.

The data and other relevant material have been evaluated and were discussed in the final rules originally establishing the time-limited tolerances. Based on those data and information considered, the Agency affirms that extension of these time-limited tolerances will continue to meet the requirements of FFDCA section 408(l)(6). Therefore, the time-limited tolerances are extended until December 31, 2022. Although these tolerances will expire and are revoked on the date listed, under FFDCA section 408(l)(5), residues of the pesticides not in excess of the amounts specified in the tolerance remaining in or on the commodity after that date will not be unlawful, provided the residue is present as a result of an application or use of a pesticide at a time and in a manner that was lawful under FIFRA, the tolerance was in place at the time of the application, and the residue does not exceed the level that was authorized by the tolerance. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on these pesticides indicate that the residues are not safe. EPA will publish a document in the **Federal Register** to remove the

revoked tolerances from the Code of Federal Regulations (CFR).

Time-limited tolerances for the use of the following pesticide chemicals on specific commodities are being extended:

Bifenthrin. EPA has authorized under FIFRA section 18 the use of bifenthrin on pomegranate for control of leaf-footed plant bugs in California. This regulation extends the time-limited tolerance for residues of the insecticide bifenthrin in or on pomegranate at 0.5 ppm for an additional 3-year period. This tolerance will expire and is revoked on December 31, 2022. The time-limited tolerance was originally published in the **Federal Register** of December 22, 2016 (81 FR 93824) (FRL–9954–47).

Flupyradifurone. EPA has authorized under FIFRA section 18 the use of flupyradifurone on sweet sorghum for control of sugar cane aphids in Arkansas, Georgia, Kentucky, Mississippi, North Carolina, and Tennessee. This regulation extends time-limited tolerances for residues of the insecticide flupyradifurone and its metabolites and degradates in or on sorghum, syrup at 90.0 ppm, and in or on sweet sorghum, forage at 30.0 ppm for an additional 3-year period. These tolerances will expire and are revoked on December 31, 2022. The time-limited tolerances were originally published in the **Federal Register** of March 10, 2017 (82 FR 13251) (FRL–9958–75).

Methoxyfenozide. EPA has authorized under FIFRA section 18 the use of methoxyfenozide on rice for control of armyworms in California. This regulation extends time-limited tolerances for residues of the insecticide methoxyfenozide and its metabolites and degradates in or on rice, bran at 4.0 ppm, and in or on rice, grain at 0.50 ppm, for an additional 3-year period. These tolerances will expire and are revoked on December 31, 2022. The time-limited tolerances were originally published in the **Federal Register** of May 6, 2016 (81 FR 27332) (FRL–9945–28).

Streptomycin. EPA has authorized under FIFRA section 18 the use of streptomycin on citrus for control of citrus greening disease in Florida and California. This regulation extends time-limited tolerances for residues of the pesticide streptomycin in or on fruit, citrus, group 10–10 at 2.0 ppm, and fruit, citrus group 10–10, dried pulp at 6.0 ppm, for an additional 3-year period. These tolerances will expire and are revoked on December 31, 2022. The time-limited tolerances were originally published in the **Federal Register** of March 15, 2017 (82 FR 13759) (FRL–9957–65).

Thiabendazole. EPA has authorized under FIFRA section 18 the use of thiabendazole on sweet potato for control of black rot in North Carolina. This regulation extends the time-limited tolerance for combined residues of the fungicide thiabendazole and its metabolite benzamidazole in or on sweet potato at 10 ppm for an additional 3-year period. This tolerance will expire and is revoked on December 31, 2022. The time-limited tolerance was originally published in the **Federal Register** of September 22, 2016 (81 FR 65289) (FRL–9950–05).

III. International Residue Limits

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

The Codex has not established MRLs for the commodities in this action for bifenthrin, flupyradifurone, methoxyfenozide, streptomycin, or thiabendazole.

IV. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA sections 408(e) and 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established under FFDCA sections 408(e) and 408(l)(6), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

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

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

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: December 13, 2019.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.242(b):

■ a. Remove ''the following table,'' ''below,'' and ''the table'' and add in their places ''table 3 to this paragraph (b),'' ''in table 3 to this paragraph (b),'' and ''table 3 to this paragraph (b),'' respectively, in the introductory text; and

■ b. Revise the table.

The revision reads as follows:

§ 180.242 Thiabendazole; tolerances for residues.

* * * * *

(b) * * *

TABLE 3 TO PARAGRAPH (b)

Commodity	Parts per million	Expiration/ revocation date
Sweet potato	10	12/31/22

* * * * *

■ 3. In § 180.245, revise the entries for ''Fruit, citrus, group 10–10'' and ''Fruit, citrus, group 10–10, dried pulp'' in the table in paragraph (b) to read as follows:

§ 180.245 Streptomycin; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ revocation date
Fruit, citrus, group 10–10 ..	2.0	12/31/22
Fruit, citrus, group 10–10, dried pulp	6.0	12/31/22
* * * * *		

* * * * *

■ 4. In § 180.442, revise the entry for ''Pomegranate'' in the table in paragraph (b) to read as follows:

§ 180.442 Bifenthrin; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ revocation date
* * * * *		
Pomegranate	0.50	12/31/22

* * * * *

■ 5. In § 180.544(b):

■ a. Remove ''the table below'' and ''the following table'' and add in their places ''table 3 to this paragraph (b)'' in the introductory text; and

■ b. Revise the table.

The revision reads as follows:

§ 180.544 Methoxyfenozide; tolerances for residues.

* * * * *

(b) * * *

TABLE 3 TO PARAGRAPH (b)

Commodity	Parts per million	Expiration/ revocation date
Rice, bran	4.0	12/31/22
Rice, grain	0.50	12/31/22

* * * * *

■ 6. In § 180.679(b):

■ a. Remove ''the table below,'' ''the table,'' and ''the following table'' and add in their places ''table 2 to this paragraph (b)'' in the introductory text; and

■ b. Revise the table.

The revision reads as follows:

§ 180.679 Flupyradifurone; tolerances for residues.

* * * * *

(b) * * *

TABLE 2 TO PARAGRAPH (b)

Commodity	Parts per million	Expiration/ revocation date
Sorghum, syrup	90.0	12/31/22
Sweet sorghum, forage	30.0	12/31/22

* * * * *

[FR Doc. 2020–00826 Filed 1–30–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1986–0005; FRL–10004–87–Region 8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Idaho Pole Co. Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 announces the deletion of the surface and unsaturated subsurface soils outside of the 4.5 acre Treated Soils Area of the Idaho Pole Co. Superfund Site (Site) located in Bozeman, Montana from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This partial deletion pertains to the surface and unsaturated subsurface soils remedy component outside of the 4.5 acre Treated Soils Area of the Idaho Pole Company Superfund Site. The groundwater, sediments and saturated subsurface soils are being addressed as part of the groundwater remedy component and are not being considered for deletion as part of this action. The EPA and the State of Montana, through the Department of Environmental Quality (DEQ), have determined that all appropriate response actions under CERCLA, other than operation and maintenance, monitoring-and five-year reviews, have been completed. However, the deletion of the surface and unsaturated surface soils outside of the 4.5 acre Treated Soils Area does not preclude future actions under Superfund.

DATES: This action is effective January 31, 2020.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–HQ–SFUND–1986–0005. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be

publicly available only in hard copy form. Publicly available docket materials are available electronically in *http://www.regulations.gov;* by calling EPA Region 8 at (406) 457–5046 and leaving a message; and at the U.S EPA Montana Office, Federal Building, Suite 3200, 10 West 15th Street, Helena, MT 59626, Hours: Monday to Friday from 8:00 a.m.–5:00 p.m.; and the Bozeman Public Library, 626 East Main Street, Bozeman, MT 59715; (406) 582–2400, Hours: (Library hours vary).

FOR FURTHER INFORMATION CONTACT: Roger Hoogerheide, Remedial Project Manager, U.S. EPA Montana Office, Federal Building, Suite 3200, 10 West 15th Street Helena, MT 59626: (406) 457–5031 or (866) 457–2690 extension 1, email *hoogerheide.roger@epa.gov.*

SUPPLEMENTARY INFORMATION: The portion of the site to be deleted from the NPL is: Surface and unsaturated subsurface soils outside of the Treated Soils Area of the Idaho Pole Co. Superfund Site in Bozeman, Montana. A Notice of Intent for Partial Deletion for this Site was published in the **Federal Register** (84 FR 34839) on July 19, 2019.

The closing date for comments on the Notice of Intent for Partial Deletion was August 19, 2019 and extended to September 6, 2019. Two written and three oral public comments were received and expressed concerns about future redevelopment of the Site, the extent of the Superfund investigation and remedy, as well as the source and fate of the contaminants. The properties that were remediated under the Superfund process have land and groundwater use restrictions placed on them to ensure future redevelopment of the property will remain protective of human health and the environment. A Notice of Institutional Control was filed with the Gallatin County Clerk and Recorder in 2010 on this 4.5 acres that applies restrictions on new construction and excavation. EPA investigations identified all possible sources of surface and unsaturated soils that needed cleanup. Contaminated soils were excavated, treated and placed on-site. The 4.5 acre Treated Soils Area is the location where all treated soils were placed after on-site treatment. Treated soils are located on the 4.5 acres that remain on the NPL. Additional data needs to be collected before the Site's sediments can be deleted.

EPA believes the partial deletion action is appropriate. A responsiveness summary to public comments with supporting materials was prepared and placed in both the docket, EPA–HQ–SFUND–1986–0005, on *www.regulations.gov,* and in the local repositories listed above.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion of a site from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of portions of a site from the NPL does not affect responsible party liability, in the unlikely event that future conditions warrant further actions.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: January 22, 2020.

Gregory E. Sopkin,

Regional Administrator, Region 8.

For reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B to Part 300—[Amended]

■ 2. Table 1 of appendix B to part 300 is amended by revising the listing under Montana for ''Idaho Pole Co'' to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
*	*	*	*
MT	Idaho Pole Co	Bozeman	P
*	*	*	*

[a] = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be greater than or equal to 28.50).

* * * * * * *

P = Sites with partial deletion(s).

* * * * * * *

[FR Doc. 2020–01748 Filed 1–30–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 502 and 515

[Docket No. 19–04]

RIN 3072–AC75

Hearing Procedures Governing the Denial, Revocation, or Suspension of an OTI License

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission (Commission) is modifying the hearing procedures governing the denial, revocation, or suspension of an ocean transportation intermediary (OTI) license. The revised hearing procedures align more with other Commission hearing procedures, ensure a more streamlined process, and fulfill the need for more detailed procedural requirements.

DATES: This final rule is effective March 2, 2020.

FOR FURTHER INFORMATION CONTACT: Rachel E. Dickon, Secretary; Phone: (202) 523–5725; Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Through this final rule, the Commission is modifying its processes for the denial, suspension, and revocation of OTI licenses.[1] The revised hearing procedures are based on the procedure for formal small Shipping Act claims under 46 CFR part 502, subpart T. The new hearing procedure, overseen by an administrative law judge (ALJ), represents an expedient, low-burden process that also fulfills the need for more structure in the proceedings.

A notice of proposed rulemaking (NPRM) was issued by the Commission on September 3, 2019.[2] The Commission received no comments.

II. Background

The Shipping Act requires anyone desiring to operate as an OTI to obtain a license from the Commission.[3] The Act provides that ''[t]he Commission shall issue a license to a person that the Commission determines to be qualified by experience and character to act as an ocean transportation intermediary.''[4] The Commission has delegated the authority to approve or disapprove applications for OTI licenses to the Bureau of Certification and Licensing (BCL).[5]

A. Current Procedure

Hearings on the revocation, denial, or suspension of an OTI license are conducted under the procedures in 46 CFR 515.17. All hearing requests are submitted to the Commission's Secretary. The Secretary then designates a hearing officer. After being advised by the hearing officer that a hearing request had been made, BCL sends the hearing officer and applicant or licensee a copy of the notice of intent (which had already been sent to the applicant or licensee) along with materials supporting the notice under § 515.15 or § 515.16.[6]

The hearing officer then provides the licensee or applicant with a written notice advising the party of its right to submit written arguments, affidavits of fact, and documents. The licensee or applicant then has 30 days to submit information and documents in support of a license or in support of continuation of a license. BCL then submits its response within 20 days of the licensee or applicant's submission. These records and submissions constitute the entire record for the hearing officer's decision. The hearing officer's decision must be issued within 40 days of the record being closed.[7] The applicant or licensee, but not BCL, can seek review of the hearing officer's decision by the Commission by filing exceptions in accordance with 46 CFR 502.227, and the Commission can determine to conduct a formal evidentiary hearing under part 502.[8]

B. Concerns With Current Procedure

Despite the Commission's goal of streamlining OTI proceedings with the § 515.17 procedures, hearings under § 515.17 have taken over 150 days to complete. A contributing factor to the length of time in these cases is the delay in the selection of an appropriate hearing officer, which took between 13 and 50 days. These delays resulted from not having a designated office from which to select the hearing officer.

In addition to the delays in selecting a hearing officer, because § 515.17 provides little detail about the hearing procedure other than deadlines for submission of information, Commission staff have had to resolve several procedural issues arising in hearing proceedings. These experiences demonstrated the need for additional clarification of the procedure and the authority of the hearing officer.

III. Final Rule

For the reasons stated in the NPRM and described above, the Commission is adopting the proposed rule with virtually no changes.[9] The new hearing procedures will be conducted by an ALJ, thereby removing the delay in the appointment of a hearing officer. Using a modified form of the subpart T procedures will ensure a more streamlined procedure than a typical hearing under part 502, which allows for 150 days of discovery,[10] while giving the presiding officer more flexibility in conducting the hearing than the current § 515.17 procedures. The new proceedings will be included in part 502 as subpart X (the existing subpart X will be redesignated) and cross-referenced in § 515.17.

A. New Procedure for License Hearings

As described in the NPRM, the Commission will not change the process for requesting a hearing as stated in §§ 515.15(c) and 515.16(a). If an applicant or licensee requests a hearing after receiving a notice of intent to deny, suspend, or revoke their license, they will continue to have 20 days to do so, and, if no hearing is requested, the decision to deny, revoke, or suspend will become final.

If a hearing request is received, the Secretary will transmit the request to the Office of Administrative Law Judges for assignment. The hearing will then take place under the new subpart X of part 502. Section 515.17 retains its first sentence, indicating that hearing requests under §§ 515.15 and 515.16 must be submitted to the Commission's Secretary, and then cross-references subpart X.

The preliminary portions of the new subpart X mirror the previous procedures in § 515.17, save that an ALJ, rather than a hearing officer, will preside over the proceeding. Once a timely request is received, the Secretary will transmit the request to the Office of Administrative Law Judges who would notify BCL and Bureau of Enforcement (BOE) of the hearing request. BOE will provide the applicant or licensee a copy of the notice previously given as well as the BCL materials supporting the decision. The ALJ will then issue a notice advising the applicant or licensee of the right to respond in support of a license application or continuation of a current OTI license. The licensee or applicant will have 30 days to file a response and supporting documentation. BOE will then have 20 days to submit a reply memorandum and supporting documents. These proposed deadlines are identical to those currently listed in § 515.17.

To provide the ALJ with discretion and flexibility, the new subpart X will permit the ALJ to require additional information from the parties. Additionally, the new subpart X allows for parties to request oral hearing or oral argument in either the applicant/

[1] These hearing procedures also apply to suspensions and terminations of foreign-based non-vessel-operating common carrier (NVOCC) registrations. *See* 46 CFR 515.19(g)(2).

[2] NPRM: Hearing Procedures Governing the Denial, Revocation, or Suspension of an OTI License, 84 FR 45934 (Sept. 3, 2019), as corrected by 84 FR 48578 (Sep. 16, 2019).

[3] 46 U.S.C. 40901.

[4] *Id.* at section 40901(a).

[5] 46 CFR 501.26(a)(1).

[6] 46 CFR 515.17(a).

[7] 46 CFR 515.17(b).

[8] 46 CFR 515.17(c).

[9] The NPRM inadvertently listed the wrong authorities for part 502. This has been corrected in the final rule. The final rule also makes very minor wording changes to the new § 502.706 governing requests for oral hearing and argument.

[10] *See* 46 CFR 502.141–502.150. Given that the record in OTI license application and revocation/suspension is generally more limited, such a substantial discovery process is not necessary.

licensee's response or BOE's reply to the response. A request for oral hearing or argument will be ruled on within 10 days of receipt of the request and will only occur at the discretion of the ALJ. While neither oral proceedings nor additional information were expressly permitted under § 515.17 and could potentially extend the proceeding beyond the current § 515.17 timeline, we expect use of these procedures to be the exception rather than the norm. In addition, expressly permitting the use of these procedures when necessary will help ensure that determinations are based on a complete and accurate record and eliminate confusion regarding the presiding officer's authority.

To ensure a streamlined process, the Commission will still require that the presiding officer issue a decision within 40 days of the record being closed, which will be either when the reply to the response is submitted, or, if additional information is required or oral hearing or argument is conducted, the completion of either event.

The exceptions process remains the same as under the current § 515.17, except that either party (BOE or the applicant/licensee) has the ability to file exceptions within 22 days after the ALJ's decision is issued.

The discretionary review process has also been altered somewhat. Previously, discretionary Commission review of hearing officer decisions was governed by the general provisions in 46 CFR 501.27, which allowed for review if one less than a majority of Commissioners (*i.e.,* two Commissioners if there are four or five Commissioners total) voted to review the matter. The change makes the discretionary review procedures consistent with those for other decisions under part 502 (*i.e.,* ALJ and small claims officer decisions), and a single Commissioner may now request Commission review within 30 days after the ALJ's decision is issued.

Through this rule, the Commission also incorporates via cross-reference nearly all of subparts G, governing time, and H, governing service of documents, of part 502. This brings license hearings in line with other proceedings under part 502 and any future improvements to the Commission rules on service and time will automatically apply to these proceedings. The only section in these subparts that will not apply to license hearings under subpart X is § 502.115, which concerns service in rulemaking and petition proceedings.

To ensure consistency across part 502 proceedings, other sections of part 502 will also apply to license hearings under subpart X, including: §§ 502.1–502.13 (General information); 502.21–502.23 (Appearance, Authority for representation, Notice of appearance; substitution and withdrawal of a representative); 502.42 (Bureau of Enforcement); 502.43 (Substitution of parties); and 502.223–502.230 (Decisions).

IV. Conclusion

Under the hearing procedures in § 515.17, the Commission has encountered issues with regards to expediency and clarity of process. To resolve these issues and improve the license hearing process, the Commission is replacing the current hearing procedures with a modified version of the procedures in subpart T of the Commission's Rules of Practice and Procedure. This new procedure will provide additional structure while ensuring a low-burden and efficient process.

V. Rulemaking Analyses and Notices

Congressional Review Act

This final rule is not a ''rule'' as defined by the Congressional Review Act (CRA), codified at 5 U.S.C. 801 *et seq.,* and is not subject to the provisions of the CRA. The CRA adopts the Administrative Procedure Act's definition of a ''rule'' in 5 U.S.C. 551, subject to certain exclusions. *See* 5 U.S.C. 804(3). In particular, the CRA does not apply to rules of agency organization, procedure, and practice that do not substantially affect the rights or obligations of non-agency parties. *Id.* This final rule relates to agency organization, procedures, and practices. Specifically, the rule will amend the Commission's procedures for OTI license hearings. These changes will not, however, substantially affect the rights or obligations of non-agency parties. Applicants and licensees will still have the opportunity to request a hearing on proposed denials, suspensions, or revocations, and will still have the ability to seek Commission review of initial decisions. The final rule merely designates an ALJ as the presiding officer, brings the OTI license hearing procedures into alignment with other Commission proceedings, and adds additional procedural flexibility by allowing the ALJ to request additional information and documents from the parties, as well as allowing parties to request oral hearing or argument. The final rule also creates additional avenues for Commission review of initial license decisions by: (1) Permitting BOE to file exceptions; and (2) allowing a single Commissioner to request review of the ALJ's decision. While these changes will alter the way OTI license hearings are conducted, they do not substantially affect the rights of applicants or licensees, and therefore the final rule is not a ''rule'' under the CRA and is not subject to the CRA's requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency is required to publish a notice of proposed rulemaking under the Administrative Procedure Act (APA) (5 U.S.C. 553), the agency must prepare and make available a final regulatory flexibility analysis (FRFA) describing the impact of the rule on small entities. 5 U.S.C. 604. An agency is not required to publish an FRFA, however, for the following types of rules, which are excluded from the APA's notice-and-comment requirement: Interpretative rules; general statements of policy; rules of agency organization, procedure, or practice; and rules for which the agency for good cause finds that notice and comment is impracticable, unnecessary, or contrary to public interest. *See* 5 U.S.C. 553(b).

Although the Commission elected to seek public comment, the rule is a rule of agency organization, procedure, or practice. Therefore, the APA did not require publication of a notice of proposed rulemaking in this instance, and the Commission is not required to prepare a FRFA.

National Environmental Policy Act

The Commission's regulations categorically exclude certain rulemakings from any requirement to prepare an environmental assessment or an environmental impact statement because they do not increase or decrease air, water or noise pollution or the use of fossil fuels, recyclables, or energy. 46 CFR 504.4. The proposed rule would amend the Commission procedures for the revocation, suspension, and denial of OTI licenses. This rulemaking thus falls within the categorical exclusion for ''issuance, modification, denial and revocation of ocean transportation intermediary licenses.'' 46 CFR 504.4(a)(1). Therefore, no environmental assessment or environmental impact statement is required.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in proposed

rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11. This rule does not contain any collections of information as defined by 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards in E.O. 12988 titled, ''Civil Justice Reform,'' to minimize litigation, eliminate ambiguity, and reduce burden.

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at *http://www.reginfo.gov/public/do/eAgendaMain.*

List of Subjects

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 515

Freight, Freight forwarders, Maritime carriers, Reporting and recordkeeping requirements.

For the reasons set forth above, the Federal Maritime Commission amends 46 CFR parts 502 and 515 as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596; 18 U.S.C. 207; 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. 305, 40103–40104, 40304, 40306, 40501–40503, 40701–40706, 41101–41109, 41301–41309, 44101–44106; 5 CFR part 2635.

Subpart X [Redesignated as Subpart Y]

■ 2. Redesignate subpart X, consisting of § 502.991, as subpart Y.

■ 3. Add new subpart X, consisting of §§ 502.701 through 502.709, to read as follows:

Subpart X—Hearing Procedure Governing Denial, Suspension, or Revocation of OTI License

Sec.
502.701 Purpose and scope.
502.702 Hearing requests.
502.703 Applicant or licensee response.
502.704 Reply.
502.705 Additional information.
502.706 Request for an oral hearing or argument.
502.707 Intervention.
502.708 Decision.
502.709 Applicability of other rules to this subpart.

Subpart X—Hearing Procedure Governing Denial, Suspension, or Revocation of OTI License

§ 502.701 Purpose and scope.

(a) The purpose of this subpart is to provide the hearing procedures for the denial, suspension, or revocation of an ocean transportation intermediary (OTI) license applied for or issued under part 515 of this chapter when the Bureau of Certification and Licensing has issued a notice of intent to deny under § 515.15 of this chapter or notice of revocation or suspension under § 515.16 of this chapter and the applicant or licensee timely requests a hearing under those sections.

(b) Denial, suspension, and revocation proceedings under this subpart will be adjudicated by the administrative law judges of the Commission under the procedures set forth in this subpart. [Rule 701.]

§ 502.702 Hearing requests.

(a) Upon receipt of a timely hearing request under § 515.17 of this chapter, the Secretary will transmit the request to the Office of Administrative Law Judges.

(b) The assigned administrative law judge will notify the Bureau of Certification and Licensing (BCL) and the Bureau of Enforcement of the hearing request, and the Bureau of Enforcement must file with the administrative law judge and serve on the applicant or licensee a copy of the notice given to the applicant or licensee and a copy of BCL materials supporting the notice. [Rule 702.]

§ 502.703 Applicant or licensee response.

Upon receiving the materials described in § 502.702(b), the administrative law judge will issue a notice advising the applicant or licensee of the right to respond in support of an OTI application or continuation of a current OTI license. The response must be:

(a) Filed with the administrative law judge within 30 days of the administrative law judge's notice; and

(b) Include any supporting information or documents, such as affidavits of fact, memoranda, or written argument. [Rule 703.]

§ 502.704 Reply.

The Bureau of Enforcement may, within twenty (20) days of service of the response filed by the applicant or licensee, file with the administrative law judge and serve upon the applicant or licensee a reply memorandum accompanied by appropriate affidavits and supporting documents.

§ 502.705 Additional information.

The administrative law judge may require the submission of additional affidavits, documents, or memoranda from the Bureau of Enforcement or the licensee or applicant. [Rule 705.]

§ 502.706 Request for an oral hearing or argument.

(a) In the usual course of disposition of matters filed under this subpart, no oral hearing or argument will be held, but the administrative law judge, in their discretion, may order such hearing or argument.

(b) A request for oral hearing or argument may be incorporated in the applicant or licensee's response or in the Bureau of Enforcement's reply to the response. Requests for oral hearing or argument will not be entertained unless they set forth in detail the reasons why the filing of affidavits or other documents will not permit the fair and expeditious disposition of the matter, and the precise nature of the facts sought to be proved or issues to be addressed at an oral hearing or argument.

(c) The administrative law judge will rule upon a request for oral hearing or argument within ten (10) days of its receipt.

(d) In the event oral hearing or argument is ordered, it will be held in accordance with the rules applicable to other formal proceedings, as set forth in subparts A through Q of this part. [Rule 706.]

§ 502.707 Intervention.

Intervention will ordinarily not be permitted. [Rule 707.]

§ 502.708 Decision.

(a) Except as described in paragraph (b) of this section, the administrative law judge will issue a decision within forty (40) days after the submission of the Bureau of Enforcement's reply.

(b) If oral hearing or argument is conducted or additional information is

required, then the decision will be issued within forty (40) days after the oral proceeding or the deadline for submission of additional information, whichever is later.

(c) The decision of the administrative law judge will be final, unless, within twenty-two (22) days from the date of service of the decision, either party files exceptions under § 502.227(a)(1) or the Commission makes a determination to review under § 502.227(a)(3) and (d). [Rule 708.]

§ 502.709 Applicability of other rules to this subpart.

(a) Except as otherwise specifically provided in this subpart or in paragraph (b) of this section, the sections in subparts A through Q, inclusive, of this part do not apply to proceedings covered by this subpart.

(b) The following sections in subparts A through Q apply to proceedings covered by this subpart: §§ 502.1 through 502.11, 502.13 (Filing requirements, Document requirements, and General rules); 502.21 through 502.23 (Appearance, Authority for representation, Notice of appearance, Substitution, and Withdrawal of representative); 502.42 (Bureau of Enforcement); 502.43 (Substitution of parties); 502.101 through 502.105 (Computation of time); 502.114, 502.116 through 502.117 (Service of documents); 502.223 through 502.230 (Decisions). [Rule 709.]

PART 515—LICENSING, REGISTRATION, FINANCIAL RESPONSIBILITY REQUIREMENTS AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES

■ 4. The authority citation for part 515 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. 305, 40102, 40104, 40501–40503, 40901–40904, 41101–41109, 41301–41302, 41305–41307; Pub. L. 105–383, 112 Stat. 3411; 21 U.S.C. 862.

■ 5. Revise § 515.17 to read as follows:

§ 515.17 Hearing procedures governing denial, revocation, or suspension of OTI license.

All hearing requests under §§ 515.15 and 515.16 shall be submitted to the Commission's Secretary. The hearing will be adjudicated under the procedures set forth in subpart X of part 502 of this chapter.

By the Commission.

Rachel Dickon,

Secretary.

[FR Doc. 2020–00907 Filed 1–30–20; 8:45 am]

BILLING CODE 6731–AA–P

Proposed Rules

Federal Register
Vol. 85, No. 21
Friday, January 31, 2020

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0760; Product Identifier 2019–NE–18–AD]

RIN 2120–AA64

Airworthiness Directives; Thales AVS France SAS Global Positioning System/Satellite Based Augmentation System Receivers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Thales AVS France SAS (Thales) Global Positioning System/Satellite Based Augmentation System (GPS/SBAS) receivers installed on airplanes and helicopters. This proposed AD was prompted by reports that Thales GPS/SBAS receivers provided, under certain conditions, erroneous outputs on aircraft positions. This proposed AD would require the installation of a software update to the aircraft navigation database and insertion of a change to the applicable airplane flight manual (AFM). 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 March 16, 2020.

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

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

For service information identified in this NPRM, contact: Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800–Winged–S or 203–416–4299; email: *wcs_cust_service_eng.gr-sik@lmco.com;* Thales AVS France SAS, 75–77 Avenue Marcel Dassault, 33700 Mérignac—France, Tel: +33 (0)5 24 44 77 40, *www.thalesgroup.com;* or ATR–GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email *continued.airworthiness@atr-aircraft.com*. You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA, 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0760; 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 mandatory continuing airworthiness information (MCAI), 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: Kirk Gustafson, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7190; fax: 781–238–7199; email: *kirk.gustafson@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0760; Product Identifier 2019–NE–18–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Kirk Gustafson, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No. 2019–0004, dated January 11, 2019, corrected on January 17, 2019 (referred to after this as ''the MCAI''), to address an unsafe condition for the specified products. The MCAI states, in pertinent part:

> It has been determined that, in SBAS areas, in specific conditions of the GPS satellite constellation in line of sight to the aircraft, the Thales Topstar 200 LPV GPS/SBAS

receiver may provide an erroneous position on its outputs, which may not be detected by the integrity check. Depending on the aircraft installation, this error may not be noticed by the flight crew.

This condition, if not corrected, could possibly compromise the safety margins when the receiver is used for Localizer Performance with Vertical guidance (LPV) and/or RNP–AR (Required Navigation Performance—Authorization Required) operations.

For the reasons described above, this [EASA] AD requires removal from the navigation database of LPV procedures and all RNP–AR procedures in SBAS areas, listed in the SIL. To ensure a reset of all the GPS computations which may contribute to the erroneous GPS position output, this AD also requires, for certain ATR aeroplanes (see Note 1 of this [EASA] AD), amendment of the applicable AFM.

You may obtain further information by examining the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0760.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Task 31–61–00–800–802, ''2. FMS Database Update for Multifunction Display (MFD)'' of the Sikorsky Aircraft Corporation, AMM SA S76D–AMM–000, 31–61–00, dated November 30, 2017. This Task provides instructions for updating the MFD on affected Sikorsky aircraft.

The FAA also reviewed ATR72 Aircraft Maintenance Manual (AMM) Job Instruction Cards, Doc. No. 45–11–00 LDG 10030–004, dated June 1, 2018, and ATR42–400/500 Series AMM Job Instruction Cards, Doc. No. 45–11–00 LDG 10030–004, dated July 1, 2018. These service documents provide instructions on updating the navigation databases installed on affected ATR airplanes.

The FAA also reviewed Thales Service Information Letter (SIL) Doc. No. THAV/SIL–1308, Issue 7, dated September 28, 2018. The SIL describes procedures to upload navigational database using Thales PMAT software on affected ATR airplanes.

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 EASA and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified the FAA 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 provided by EASA and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require installation of a software update to the aircraft navigation database and insertion of a change to the applicable AFM.

Costs of Compliance

The FAA estimates that this proposed AD affects 45 Thales GPS/SBAS receivers installed on, but not limited to, GIE Avions de Transport Régional model ATR42 airplanes and Sikorsky Aircraft Corporation model S–76D helicopters of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Update navigation database for GPS/SBAS receiver.	1 work-hour × $85 per hour = $85	$0	$85	$3,825
Update AFM	3 work-hours × $85 per hour = $255	0	255	11,475

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 AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

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 adding the following new airworthiness directive (AD):

Thales AVS France SAS: Docket No. FAA–2019–0760; Product Identifier 2019–NE–18–AD.

(a) Comments Due Date

The FAA must receive comments by March 16, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Thales AVS France SAS (Thales) Global Positioning System/Satellite Based Augmentation System (GPS/SBAS) receivers, Topstar 200 LPV, part numbers (P/Ns) C17149JA02 and C17149HA01. These GPS/SBAS receivers are installed on, but not limited to, ATR–GIE Avions de Transport Régional (''ATR'') model ATR42 and ATR72 airplanes and Sikorsky Aircraft Corporation model S–76D helicopters, respectively.

(d) Subject

Joint Aircraft System Component (JASC) Code 3457, Global Positioning System.

(e) Unsafe Condition

This AD was prompted by reports that Thales GPS/SBAS receivers provided, under certain conditions, erroneous outputs on aircraft positions. The FAA is issuing this AD to prevent erroneous aircraft position outputs from the Thales GPS/SBAS receivers. The unsafe condition, if not addressed, could result in controlled flight into terrain and loss of the aircraft.

(f) Compliance

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

(g) Required Actions

(1) For operators of affected ATR model ATR42 and ATR72 airplanes:

(i) Update the aircraft's navigation database within 30 days after the effective date of this AD using the software upload instructions, as applicable, in the following:

(A) ATR72 Aircraft Maintenance Manual (AMM) Job Instruction Cards, Doc. No. 45–11–00 LDG 10030–004, dated June 1, 2018.

(B) ATR42–400/500 Series AMM Job Instruction Cards, Doc. No. 45–11–00 LDG 10030–004, dated July 1, 2018.

(C) Thales Service Information Letter (SIL) Doc. No. THAV/SIL–1308, Issue 7, dated September 28, 2018.

(ii) [Reserved]

(2) For operators of affected ATR model ATR42 and ATR72 airplanes:

(i) Within 30 days after the effective date of this AD, amend Section 1.2 ''Each Flight Checks'' of the pre-flight section in the applicable airplane flight manual by inserting the change shown in Figure 1 and Figure 2 to paragraph (g) of this AD.

(ii) Before each flight, power cycle the Thales GPS/SBAS receiver unit.

Figure 1 to Paragraph (g) – Reset Instructions for 1 GPS Receiver Installed

- ▸ DATA/INIT/POS INIT page..... DISPLAY
- ▸ GPS POS key..... SELECT
- ▸ C/B NAV/COM/SURV GPS 1..... PULL
- • **After 10 s**
  - ▸ C/B NAV/COM/SURV GPS 1..... PUSH
  - ▸ SENSOR INIT< key..... SELECT

Figure 2 to Paragraph (g) – Reset Instructions for 2 GPS Receivers Installed

- ▸ DATA/INIT/POS INIT page..... DISPLAY
- ▸ GPS POS key..... SELECT
- ▸ C/B NAV/COM/SURV GPS 1..... PULL
- ▸ C/B NAV/COM/SURV GPS 2..... PULL
- • **After 10 s**
  - ▸ C/B NAV/COM/SURV GPS 1..... PUSH
  - ▸ C/B NAV/COM/SURV GPS 2..... PUSH
  - ▸ SENSOR INIT< key..... SELECT

(3) For operators of Sikorsky S–76D helicopters, within 30 days after the effective date of this AD, update the aircraft's navigation database using the instructions in TASK 31–61–00–800–802, ''2. FMS Database Update for Multifunction Display (MFD)'' of the Sikorsky Aircraft Corporation, AMM SA S76D–AMM–000, 31–61–00, dated November 30, 2017.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the Boston ACO Branch, send it to the attention of the person identified in paragraph (i)(1) of this AD.

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

(i) Related Information

(1) For more information about this AD, contact Kirk Gustafson, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7190; fax: 781–238–7199; email: *kirk.gustafson@faa.gov*.

(2) Refer to European Union Aviation Safety Agency (EASA) AD No. 2019–0004, dated January 11, 2019 (corrected on January 17, 2019), for more information. You may examine the EASA AD in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2019–0760.

(3) For service information identified in this AD, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800-Winged-S or 203–416–4299; email: *wcs_cust_service_eng.gr-sik@lmco.com;* Thales AVS France SAS, 75–77 Avenue Marcel Dassault, 33700 Mérignac—France, Tel: +33 (0)5 24 44 77 40, *www.thalesgroup.com;* or ATR–GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email *continued.airworthiness@atr-aircraft.com*. You may view this referenced service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA, 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Issued in Burlington, Massachusetts, on January 27, 2020.

Robert J. Ganley,

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

[FR Doc. 2020–01706 Filed 1–30–20; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1219, 1220

[Docket No. CPSC–2010–0075]

Review of the Safety Standards for Full-Size Baby Cribs and Non-Full-Size Baby Cribs

AGENCY: Consumer Product Safety Commission.

ACTION: Section 610 review and request for comments.

SUMMARY: The Consumer Product Safety Commission (Commission or CPSC) is conducting a review of the safety standards for full-size baby cribs and non-full-size baby cribs under section 610 of the Regulatory Flexibility Act (RFA). That section requires the CPSC to review, within 10 years after their issuance, mandatory standards that have a significant economic impact on a substantial number of small entities. The CPSC seeks comment to determine whether, consistent with the CPSC's statutory obligations, these standards should be maintained without change or modified to minimize significant impact of the rule on a substantial number of small entities.

DATES: Written comments should be submitted by March 31, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0075, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov*. Follow the instructions for submitting comments. CPSC does not accept comments submitted by electronic mail (email), except through *www.regulations.gov*. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/hand delivery/courier Submissions: Submit comments by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov*. Do not submit electronically confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the docket number CPSC–2010–0075, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Susan Proper, Directorate for Economic Analysis, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7628; email: *sproper@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Section 104 of the Consumer Product Safety Improvement Act

On December 28, 2010, the CPSC issued the Safety Standards for Full-Size Baby Cribs (16 CFR part 1219) and Non-Full-Size Baby Cribs (16 CFR part 1220) under section 104(c) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110–314) (75 FR 81766). Section 104(c) of the CPSIA stated that the crib standards would apply to certain persons (such as those owning or operating child care facilities and places of public accommodation), in addition to persons usually subject to consumer product safety rules.[1] In the initial rule, the Commission determined that both crib standards would have a significant impact on a substantial number of small entities, including manufacturers, importers, small retailers, and child care centers (75 FR 81782–86).

On August 12, 2011, in Public Law 112–28, Congress amended section 104 and specifically addressed potential revisions of the crib standards, stating that any revision after their initial promulgation ''shall apply only to a person that manufactures or imports cribs,'' unless the Commission determines that application to any others covered by the initial crib standards is ''necessary to protect against an unreasonable risk to health or safety.'' If the Commission applies a revised crib standard to additional persons, the statute requires the Commission to provide at least 12 months for those persons to come into compliance. The Commission has not expanded the applicability of the crib standards to any additional persons in subsequent revisions to the standards.[2]

B. The Crib Standards

The full-size baby crib standard currently incorporates ASTM F1169–19, *Standard Consumer Safety Specification for Full-Size Baby Cribs,* approved on March 15, 2019, as the mandatory CPSC standard. ASTM F1169–19 specifies performance requirements and test procedures to determine the structural integrity of full-size cribs. It also contains design requirements addressing entanglement on crib corner post extensions, and

[1] Under section 104(c) of the CPSIA, the initial crib standards applied to any person that

(A) Manufactures, distributes in commerce, or contracts to sell cribs;

(B) Based on the person's occupation, holds itself out as having knowledge of skill peculiar to cribs, including child care facilities and family child care homes;

(C) Is in the business of contracting to sell or resell, lease, sublet, or otherwise place cribs in the stream of commerce; or

(D) Owns or operates a place of accommodation affecting commerce.

[2] The full-size crib standard was revised on July 31, 2012 (77 FR 45242), December 9, 2013 (78 FR 73692), and July 23, 2019 (84 FR 35293); the non-full-size crib standard was revised on June 6, 2018 (83 FR 26206) and October 23, 2019 (84 FR 56684).

requirements for warning labels and instructional material.

The non-full-size baby crib standard currently incorporates ASTM F406–17, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards,* approved on December 1, 2017, as the mandatory CPSC standard. ASTM 406–17 specifies the testing requirements for structural integrity and performance requirements for non-full-size cribs/play yards. It also provides requirements for labeling and instructional material.

C. Review Under Section 610 of the Regulatory Flexibility Act

Section 610(a) of the RFA requires agencies to review regulations that have a significant impact on a substantial number of small entities within 10 years of the date of their publication. 5 U.S.C. 610(a). Because the crib standards were promulgated in 2010, the Commission is now commencing its section 610 review. The purpose of the review is to determine whether such rule should be continued without change, or should be amended, consistent with the stated objectives of applicable statutes to minimize any significant impact of the rules on a substantial number of small entities. The RFA lists several factors that the agency shall consider when reviewing rules under section 610. These factors are:

- The continued need for the rule;
- The nature of complaints or comments received concerning the rule from the public;
- The complexity of the rule;
- The extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and
- The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

5 U.S.C. 610(b)

The need for the safety standards for full-size baby cribs and non-full-size baby cribs has been established by statutory mandate under section 104 of the CPSIA. However, the Commission seeks comment to evaluate the other factors and to determine whether the ongoing impact of the rules is significant for a substantial number of small entities. An important step in the review process involves gathering and analyzing information from affected persons about their experience with the rules and any material changes in circumstances since issuance of the rules. The Commission requests written comments on the adequacy or inadequacy of the rules, their small business impacts, and other relevant issues. In addition to the specific questions below, the Commission welcomes comments on any other issues raised by section 610 of the RFA.

Safety and Effectiveness

1. Are there any recent technological developments that would improve the effectiveness of the full-size or non-full-size crib standards? Would any of these potential improvements have an impact on suppliers, and if so, would the impact be different for small suppliers and large suppliers?

2. Are there any sections of the full-size and/or non-full-size crib standards that could be improved without reducing the stringency of the standards or reducing the safety of the resulting cribs? How would these changes affect suppliers, particularly small suppliers? Explain your response, and provide supporting data, if possible.

Costs and Impacts—Suppliers

1. Are there any requirements of the full-size or non-full size crib standards that are especially or unnecessarily costly and/or burdensome, particularly to small suppliers? Which ones? Are any of the requirements disproportionately burdensome for small entities? How might the requirements of either standard be modified to reduce the costs or burdens on small suppliers without reducing the safety provided by the standards or making the standards less stringent? Please explain your response, and provide supporting data.

2. What percent of the time and cost of crib construction does complying with the full-size and/or non-full-size crib standards represent? Do these percentages vary significantly depending on the geographical location, size of firm, or other factors? Which requirements in the full-size or non-full-size crib standards have the greatest impact on cost of production? The lowest impact on cost of production? We are primarily interested in small firms, but understanding how impact varies based on firm size would be helpful. Please explain your response, and provide supporting data, if possible.

3. What modifications did manufacturers or others have to make to full-size and/or non-full-size crib models to comply with the requirements of CPSC's crib standards? What was the cost of these modifications in terms of labor, materials, and research and development? Are these costs ongoing, or were they one-time expenditures? Please explain, and provide supporting data, if possible. Are the costs comparable for large and small firms?

4. Have any manufacturers or importers entered the market for full-size and/or non-full-size cribs since the standards went into effect? Did the standards present any specific challenges for new entrants, particularly small suppliers?

5. Have any manufacturers or importers reduced the number of models in their full-size and/or non-full-size crib product lines or dropped the product lines entirely because of the requirements of the crib rules? If so, which requirements were the most burdensome, and were they more, less, or equally burdensome for small firms? Why?

6. Did the longer effective date for childcare facilities significantly reduce the impact? Please explain why or why not.

7. Do the full-size and non-full-size crib standards affect any small entities not mentioned in the questions above? If so, what entities are affected and how? Please explain your response, and provide supporting data, if possible.

Recordkeeping and Third Party Testing

1. What percent of the time and cost of complying with the full-size and non-full-size crib standards does testing represent? How much of that testing is conducted by third parties, and how much is additional, internal testing? Do these percentages vary significantly depending on the type of crib, geographical location, size of firm, or other factors? Which requirements in the full-size and non-full-size crib standards have the greatest impact on testing costs? Which requirements have the lowest impact on testing costs? We are especially interested in any differential impact of the testing requirements on small businesses. Explain your response, and provide supporting data, if possible.

2. Are the recordkeeping requirements associated with third party testing for conforming to the crib standards adequate, inadequate, or overly burdensome? If they are overly burdensome, are they more or less burdensome for small firms? Are there recordkeeping requirements that could be applied to cribs as a product class that would reduce the recordkeeping cost on suppliers, in particular small suppliers, without reducing safety? Please explain your response.

3. How frequently do suppliers submit samples of their full-size and non-full-size cribs to third party conformity assessment bodies for testing to compliance with the full-size or non-full-size crib standards or other crib

standards? Do small suppliers submit them more, less, or with equal frequency as large suppliers? How many samples of each model are submitted for testing to maintain certification? Do the number of samples submitted vary depending on the size of the submitting supplier? What is the cost of the testing, and to what extent, if any, does cost vary, based on the size of the submitting firm? Did the cost of testing for conformance with standards (whether third party, internal, or both) increase after the rules became mandatory? If so, by how much, and did that increase vary, based on firm size?

4. To what extent have the third party testing requirements replaced other testing that suppliers, particularly small suppliers, conducted, thereby not imposing any additional burden? Please explain your response.

5. Have suppliers, particularly small suppliers, been able to make use of the flexibilities provided in the component part rule (16 CFR part 1109) to reduce their third party testing costs (*e.g.,* relying upon third party testing provided by a supplier to certify products or relying on third party testing of a component used in more than one model for certification purposes)? If so, in what way? Can you provide estimates of the cost savings provided by the component part testing rule?

6. Could changes be made in the third party testing procedures or the third party testing rules that would reduce the burden on crib suppliers, particularly small crib suppliers, and still be consistent with assuring compliance with the crib standards? If so, how?

Clarity and Duplication

1. Is there any aspect of the full-size and/or non-full-size crib standards that is unclear, needlessly complex, or duplicative?

2. Do any portions of the standards overlap, duplicate, or conflict with other federal, state, or local government rules?

Outreach and Advocacy

1. Are the requirements in CPSC's full-size and non-full-size crib standards known to firms that manufacture or import cribs for the United States, particularly small firms and firms that build or import cribs infrequently or in small lots? How could the requirements of the standard be communicated more effectively to such firms?

2. Are there any cribs at small child care facilities or places of public accommodation that do not meet the full-size or non-full-size crib standard? What can CPSC do to improve awareness of the standards' requirements among owners of these businesses? Please explain.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2020–01832 Filed 1–30–20; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 3280, 3282, and 3285

[Docket No. FR–6149–P–01]

RIN 2502–AJ49

Manufactured Home Construction and Safety Standards

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Federal Manufactured Home Construction and Safety Standards (the Construction and Safety Standards) by adopting recommendations made to HUD by the Manufactured Housing Consensus Committee (MHCC). The National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act) requires HUD to publish in the **Federal Register** any proposed revised Construction and Safety Standard submitted by the MHCC. The MHCC has prepared and submitted to HUD its third group of recommendations to improve various aspects of the Construction and Safety Standards. HUD has reviewed those proposals and has made editorial revisions to several and HUD proposes correlating additions for several of the proposals. HUD has decided not to go forward in this proposed rule with certain revisions recommended by the MHCC due to pending regulations for improving energy efficiency in manufactured homes currently being prepared by the Department of Energy. In addition, HUD has decided not to move forward with a new proposal to add requirements for draftstopping to the Manufactured Home Construction and Safety Standards.

As agreed, these recommendations are being published to provide notice of the proposed revisions and an opportunity for public comment.

DATES: *Comment Due Date:* March 31, 2020.

ADDRESSES: Interested persons are invited to submit comments responsive to this proposed rule to the Office of General Counsel, Regulations Division, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0001. All submissions should refer to the above docket number and title. Submission of public comments may be carried out by hard copy or electronic submission.

1. Submission of Hard Copy Comments. Comments may be submitted by mail or hand delivery. Each commenter submitting hard copy comments, by mail or hand delivery, should submit comments to the above address to the attention of the Regulations Division. Due to security measures at all Federal agencies, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that any comments submitted by mail be submitted at least 2 weeks in advance of the public comment deadline. All hard copy comments received by mail or hand delivery are a part of the public record and will be posted to *http://www.regulations.gov* without change.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://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 comments immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Comments. All comments submitted to HUD regarding this rule will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays, at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Teresa B. Payne, Administrator, Office of Manufactured Housing Programs, Office of Housing, U.S. Department of Housing and Urban Development, 451 7th Street SW, Washington DC 20410; telephone 202–402–5365 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8389.

SUPPLEMENTARY INFORMATION:

I. Background

The National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426) (the Act) authorizes HUD to establish the Federal Manufactured Home Construction and Safety Standards (the Construction and Safety Standards) codified in 24 CFR part 3280. The Act was amended in 2000 by the Manufactured Housing Improvement Act of 2000 (Pub. L. 106–569, approved December 27, 2000) which, among other things establishes the Manufactured Housing Consensus Committee (MHCC), a consensus committee responsible for providing HUD recommendations to adopt, revise and interpret the Construction and Safety Standards. HUD's Construction and Safety Standards only apply to the design, construction and installation of new homes. Changes to the collective standards are not retroactively enforced by HUD as applicable to previously designed, built and installed homes.

This rulemaking is based primarily on the third set of recommendations adopted by the MHCC to revise the Construction and Safety Standards. It also includes a recent MHCC proposal to revise the Construction and Safety Standards to reduce the regulatory burden by eliminating the need for manufacturers to obtain special approvals from HUD for certain construction features and options. HUD has reviewed those proposals and has made editorial revisions. HUD is also adding related proposals that complement the MHCC's recommendations.

HUD has decided not to include in this proposed rule certain MHCC recommendations due to pending regulations for improving energy efficiency in manufactured homes being prepared by the U.S. Department of Energy (DOE) under the Energy Independence and Security Act (Pub. L. 110–140, approved December 19, 2007) (EISA). DOE published a Notice of Proposed Rulemaking on June 17, 2016 (81 FR 39756) and more recently, a Notice of Data Availability, Request for Information on August 3, 2018 (83 FR 38073) regarding energy conservation standards for manufactured housing. Given this DOE rulemaking, HUD has decided to postpone action on MHCC-proposed revision to §§ 3280.502 and 3280.506(b), except for a provision that would be applicable at § 3280.506(b) for the mating wall of attached manufactured homes—an option that is needed to avoid a more burdensome alternative approval process (24 CFR 3282.14—Alternative construction of manufactured homes). HUD has also decided not to include a recommendation on hallway width, as this issue was re-opened by the MHCC and more recent MHCC recommendations have been received by HUD and will be addressed through future rulemaking. Finally, HUD decided not to move forward with a new proposal to add requirements for draftstopping to the Manufactured Home Construction and Safety Standards. The MHCC's proposed draftstopping provision and HUD's reasons for returning it to the MHCC for additional consideration are provided later in this preamble.

II. General Update of the Standards

A. General

HUD proposes to add a definition in § 3282.2 for ''attached accessory building or structure,'' a term and definition recommended by the MHCC to address features including, but not limited to, attached garages and attached carports. HUD also proposes to amend § 3280.3 by clarifying the requirement that consumer manuals be in accordance with § 3282.207, in addition to general references to 24 CFR parts 3280 and 3282. Through this proposed rulemaking, HUD would also amend § 3280.11(d) by clarifying the location requirement of the certification label to each transportable section of a manufactured home. Specifically, the label must be installed on a permanent part of the exterior of the manufactured home section in a visible location as specified in the approved design. This provides for locating the certification label on transportable sections of multi-story homes that require that the label be located in an area that would cause it to remain visible after all work is completed in finishing the home at the home site.

Finally, HUD proposes to revise § 3280.5 by adding a new paragraph (d) requiring that a statement be added to the Data Plate of a manufactured home identifying whether or not the home has been designed to accommodate an add-on or attached accessory building or structure (see proposed standards §§ 3280.212 and 3280.213). The MHCC considered and recommended that a statement be added to the Data Plate but did not provide the specific language to be included. Therefore, HUD has developed proposed language for the Data Plate in order to move forward with the MHCC's correlating recommendations for addressing attached accessory buildings and structures.

B. Planning Considerations

HUD proposes amending § 3280.103 by removing the upper limit of 90 cubic feet per meter (cfm) in paragraph (b). This change would eliminate the need for manufacturers to obtain an alternative construction (AC) approval in order to manufacture homes that exceed 2,571 square feet, the maximum square footage that would otherwise be permitted with a 90 cfm fan. The proposed rule would also add new paragraph (d) to allow for design and construction flexibility. Specifically, HUD proposes to revise § 3280.103(d) by providing that, as an option to complying with § 3280.103(b) and (c), the manufactured home meet the requirement for whole house ventilation and additional ventilation by complying with the ASHRAE 62.2 Standard, Ventilation and Acceptable Indoor Air quality in Low-Rise Residential Buildings—2010 edition. Without this change, manufacturers would be required to request and obtain AC letters in order to design and build homes that would comply with the provisions of the ASHRAE 62.2 standard.

HUD proposes amending § 3280.108 by adding a minimum clear opening requirement to all interior swinging doors. Specifically, this proposed rule would require that all interior swinging doors must have a minimum clear opening of 27 inches, except doors to toilet compartments in single-section homes. The proposed rule would also amend the requirements for toilet compartments in § 3280.111 by adding a requirement that the minimum clear opening width for single and multi-section bathroom passage doors be 23 inches and 27 inches, respectively. These reflect current construction practices for manufactured homes as well as other housing products and accommodates the characteristics of narrower, single-section homes.

HUD proposes amending § 3280.113 by adding a provision for glazed (window) openings that face into a roofed porch. Specifically, HUD is proposing that required glazed openings be permitted to satisfy light and ventilation requirements for habitable rooms if the glazed areas (windows) face into a roofed porch where the porch

abuts a street, yard, or court, and the longer side of the porch is at least 65 percent open and unobstructed, and the ceiling height is not less than 7 feet. Adding this provision would make the Construction and Safety Standards consistent with existing state and local building codes, and industry practice for other housing products.

HUD is proposing a new § 3280.114 to define requirements for stairways, landings, handrails, guards and stairway illumination. Without this provision in the federally preemptive Construction and Safety Standards, the inclusion of such features in a manufactured home are subject to the requirements of state or local jurisdictions having authority over the home site, including state and local inspections. By including these requirements in the Construction and Safety Standards, which are consistent with state and local building codes for other housing products and generally used in the design and construction of multi-story manufactured housing, HUD can ensure uniformity in designs and construction and provide cost savings through one uniform standard. Specifically, § 3280.114(a) would define requirements for stairway width, stairway treads and risers, including riser height and tread depth. This paragraph would also define requirements for stairway headroom, winders, spiral stairways, and circular stairways. Paragraph (b) of § 3280.114 would define requirements for stairway landing dimensions and locations of stairway landings. Section 3280.114(c) would define requirements for stairway handrails including requirements for handrail height, continuity graspability and loading. Paragraph (d) of § 3280.114 would define requirements for guards including height and guard separation width for porches, balconies, or raised floor surfaces. Finally, § 3280.114(e) would define requirements for stairway illumination for both interior and exterior stairways.

C. Carbon Monoxide Detectors

HUD proposes to add a new § 3280.211 that would require the installation and designate the location of carbon monoxide detectors. The provision would require Carbon Monoxide alarms in all homes with fuel burning appliances and in all homes designed by the home manufacturer for an attached garage, as well as all homes designed by the home manufacturer to be installed over a basement. These conditions for carbon monoxide alarm installation are each mutually exclusive since the potential for field-installed fuel burning appliances will exist and may impact health and safety of occupants.

Implementing effective carbon monoxide detection and alarms is a HUD priority and promotes important health and safety concerns. While HUD's current Construction and Safety Standards do not require the installation of carbon monoxide detection and alarms, 38 states and numerous local jurisdictions require these detectors in all housing, including manufactured housing. Without a Federal Construction and Safety Standard, manufactured home manufacturers are subject to design and inspection requirements of potentially disparate state and local jurisdictions. The proposed standards for the installation of carbon monoxide detectors in manufactured housing are generally consistent with the majority of existing state and local building codes. By including this requirement in the Construction and Safety Standards, HUD expects to ensure uniformity and provide cost savings through design and construction to one standard implemented across the country for homes having gas burning appliances or designed for an attached garage.

Specifically, § 3280.211(a) would require that carbon monoxide alarms or detectors be installed in accordance with the Standard for the Installation of Carbon Monoxide Detection Equipment, NFPA 720–2015, and be listed and conform to the requirements of Single and Multiple Station Carbon Monoxide Alarms, ANSI/UL 2034–2008 edition. A listed carbon monoxide alarm means that in order to use any given carbon monoxide alarm model, the alarm model must be tested/evaluated and listed by a nationally recognized organization as conforming to the requirements of the ANSI/UL standard—see definition for ''listed or certified'' at § 3280.2. Section 3280.211(b) would require the home manufacturer to provide a carbon monoxide detector or alarm for any home designed by the home manufacturer to be installed over a basement, regardless of whether the factory-built home contains a fuel burning appliance. The manufacturer would also be required to install an electrical junction box for interconnection to other required alarms or detectors. Finally, § 3280.211(c) would require each carbon monoxide alarm or detector installed at the factory to be operationally tested and to be repaired or replaced if it does not function properly during the test.

D. Attached Garages

HUD is proposing a new § 3280.212 to define fire separation requirements for manufactured homes with factory constructed attached garages or homes that are constructed for the attachment of a site-built garage to be constructed with and conform state and local building code requirements and based primarily on section R302 of the 2012 International Residential Code. Section 3280.212(a) would define the configuration requirements for placing fire separation materials between a garage and a manufactured home, including the required material type and thickness. Section 3280.212(b) would place restrictions on the location of openings between a manufactured home and a garage and the requirements for doors between garage openings and the manufactured home. Section 3280.212(c) would define material requirements for ducts that penetrate the walls or ceilings separating a manufactured home from the garage. This new standard will eliminate the need for manufacturers to follow the costly and burdensome AC process.

E. Attached Carports

HUD is proposing a new § 3280.213 to define requirements for manufactured homes with factory constructed carports or homes that are constructed for the attachment of a site-built carport. Paragraph (a) of § 3280.213 would require that the home be designed to accommodate the appropriate design loads from the carport that would be transferred to and through the home's structure and foundation and support systems. Section 3280.213(b) would require the manufacturer's designs to include identification of the specific characteristics of the home and carport design that impose limitations and restrictions resulting from the structural analysis of the attached feature. Such limitations and restriction identifications may include, but are not limited to, characteristics such as home widths, maximum carport length and width, and Wind Zone and Roof Load Zone. Paragraph (c) of § 3280.213 would provide requirements for the design of the structural support system and attachment points of the carport. Section 3280.213(d) would provide requirements for the design of the uplift resistance and anchoring methods used to transfer the design loads throughout the structure to the ground. Section 3280.213(e) would require that the design for the attachment at the home site be completed in a manner that does not prevent or impact the ability of the home to conform to roof and attic

ventilation provisions established in § 3280.504(d). Finally, § 3280.213(f) would require that the manufacturer develop and provide installation instructions for the home to guide installers and other parties on the attachment of the carport to the home to ensure the home is not taken out of compliance with the Construction and Safety Standards.

The issue concerning attached carports, in general, was discussed at length by the MHCC at its September 2018 meeting. In accordance with the Act, HUD is proposing related standards in § 3280.213 for attached carports to complement the MHCC's recommendations and provide complete standards-based requirements for design and construction. The MHCC envisioned appropriate design and construction of the home and considered the installation instructions for affected homes. HUD developed and proposes § 3280.213 to move forward with the MHCC's correlating recommendations for bringing certain attached accessory buildings and structures (garages and carports) within the Construction and Safety Standards. Should HUD find that other accessory buildings and structures are being designed by home manufacturers for structural attachment, HUD will work with the MHCC to develop and promulgate appropriate proposed standards to address those accessory buildings and structures. These proposed revisions will, in most circumstances, eliminate the need for manufacturers to follow the costly and burdensome AC process, which is described later in this preamble, and will clarify how carports designed to be attached by the manufacturer should be viewed within the context of the Construction and Safety Standards.

F. Body and Frame Requirements

HUD proposes to revise § 3280.305 to establish standards for multi-story construction. Multi-story design and construction are a more recent feature of manufactured home construction that provides consumers expanded choice. HUD is proposing these requirements to eliminate the need for manufacturers to follow the costly and burdensome AC process. Specifically, HUD is proposing that manufacturers producing multi-story manufactured homes ensure that each story is securely fastened to the story above and below it by ensuring its approved designs and construction provide continuity and resist design loads set forth in the Construction and Safety Standards. In § 3280.305(a), HUD proposes that uncompressed finished flooring greater than ⅛ inch in thickness does not extend beneath load bearing walls that are fastened to the floor structure. HUD proposes amending § 3280.305(g) to require bottom board material to be tightfitted against all penetrations. HUD would revise § 3280.305(h) by adding a provision that would allow portions of roof assemblies to be assembled at the home site in accordance with 24 CFR part 3282, subpart M. Similarly, HUD is proposing to amend § 3280.307 to add paragraph (e), which would provide that multi-story and attached manufactured home construction would not be required to comply with factory installation of weather-resistant exterior construction under certain conditions.

G. Thermal Protection

HUD is proposing to revise § 3280.504(a)(3) to allow the vapor retarder of the first story ceiling to be omitted for multi-story homes when the story directly above is part of the same manufactured home. HUD is also proposing to add § 3280.504(b) that would provide requirements for design of the walls providing separation (mating or marriage wall) of attached manufactured homes to be treated as exterior walls. HUD is also amending § 3280.506(b) to address thermal requirements for the mating wall of attached manufactured homes.

H. Plumbing Systems

In § 3280.602, HUD is proposing to add a definition of ''indirect waste receptor,'' consistent with state and local standards. HUD is also proposing to revise § 3280.608(b) to add provisions for support of vertical drainage and water piping at each story height, an aspect required for multi-story manufactured homes. HUD is also proposing to revise the current provision in § 3280.609(c) for water heater relief valves by requiring the discharge from the relief valves to be piped to the outside of the home and would no longer allow them to be directly connected to the drainage system of the home. HUD is proposing this change to ensure against water build-up under the home. Section 3280.610(c) would be revised to also allow the site assembly of portions of drain lines between stories for multi-story construction. These new and revised standards support multi-story construction and will eliminate the need for manufacturers to follow the costly and burdensome AC process. HUD is also proposing amending § 3280.611(c) to allow sections of a wet-vented drain that are 3 inches in diameter to carry the waste of an unlimited number of fixtures. Finally, HUD proposed to revise § 3280.612(a) by lowering the test pressure for the water distribution test from 100 psi to 80 psi +/5 psi. HUD is proposing this change to avoid injury and align with typical state and local code requirements.

I. Heating, Cooling and Fuel Burning Systems

HUD is proposing to amend § 3280.705(c) by providing that interconnections between stories in multi-story manufactured homes be accessible through a panel on the exterior or interior of the manufactured home. HUD proposes revising § 3280.705(k) to amend the label that identifies the gas supply connection. This is a minor revision, changing ''mobile'' home to ''manufactured'' home. Finally, HUD is proposing to clarify and revise § 3280.705(l) by requiring that vertical gas piping in multi-story units be supported at intervals not to exceed 6 feet and by providing a tolerance of +/- 0.2 psi gauge for the gas piping test before appliances are connected. These proposed revisions will eliminate the need for manufacturers to follow the costly and burdensome AC process as discussed below.

HUD proposes to amend § 3280.708(a)(1) to clarify that complete factory installation of the exhaust duct system between transportable sections is not required if the exhaust duct system otherwise meets paragraphs (a)(1)(i) and (ii) of the section.

HUD proposes to revise § 3280.709(a) by allowing a direct-vent space heating appliance to be shipped loose for future installation in a basement provided it and its connections are field installed and inspected in accordance with approved installation instructions. This change would allow for design flexibility and optimal space planning and provide parity with site-built housing. Section 3280.710(d) would be revised by requiring venting systems to terminate at least 3 feet above any motor driven air intake discharging into habitable areas when located within 10 feet of the air intake. This would assure that proper separation is maintained between the air intake and exhaust system to prevent any products of combustion from the exhaust vent from entering the living space area.

J. Electrical Systems

HUD proposes to revise § 3280.807 by adding paragraph (g), which would require that ceiling and wall mounted light fixtures not be controlled by the same switch to improve energy efficiency. HUD is also proposing to

revise § 3280.810(b) by requiring that each manufactured home be subject to electrical polarity checks to determine that connections have been made in accordance with applicable provisions of the Construction and Safety standards and Article 550.17 of the National Electric Code, NFPA No. 70–2005. HUD also proposes to maintain the provision that visual verification is an acceptable electrical polarity check.

I. Transportation Systems

HUD is proposing to revise § 3280.903(a) to describe the general provisions that need to be considered in the design of a structure to withstand transportation loads. Specifically, § 3280.903(b) would be revised to clarify provisions for conducting road tests to determine the adequacy of the structure to resist in-transit loads and would also be revised by incorporating certain provisions and engineering principles contained in the HUD-published Interpretative Bulletin J–1–76 for preparing an engineering analysis for designing the structure to resist transportation loads. HUD intends to retire Interpretive Bulletin J–1–76 once this rule is published as a final rule and the rule takes legal effect. The alternative currently provided by § 3280.903(c) of allowing the use of documented evidence to satisfy the transportation design requirements would be removed since there is no consistent data collection methodology that has historically been maintained by manufacturers to satisfy this requirement.

HUD is revising § 3280.904(b) by adding new requirements for recycled axles and used tires and by reference to 49 CFR 571.19 (Federal Motor Vehicle Safety Standard No.119) for both determining the load capacity and selection criteria requirements for both new and used tires. The stopping distance for conducting highway brake tests from an initial speed of 20 miles per hour would be reduced from 40 to 35 feet to be consistent with U.S. Department of Transportation regulations (refer to 49 CFR 393.52).

L. Attached Manufactured Homes and Special Construction

HUD is proposing to add a new subpart K for attached manufactured homes with a zero lot line and other related construction that is not covered elsewhere in the Construction and Safety Standards. Subpart K would enable manufacturers to design and construct homes similar to townhomes, which may be useful to address affordable housing needs in Opportunity Zones and urban or other areas. These new standards would eliminate the need for manufacturers to follow the costly and burdensome AC process and would establish Federal preemption for aspects that would otherwise be under the jurisdiction of state and local authorities. To meet the requirements of the new subpart, § 3280.1002 would require that each manufactured home be structurally independent from the other and be protected by a fire separation wall when closer than three feet to another attached manufactured home. Section 3280.1003 would require attached manufactured homes be separated from each other by a fire separation wall of at least one-hour fire-resistive construction, including requirements that the fire separation wall not contain through-penetrations or openings. The provisions also require that the fire separation wall be continuous from the foundation to the underside of the roof sheathing, decking, or slab, and that a parapet be provided for attached construction unless roofs are of a Class C roof covering and the roof decking or sheathing is of noncombustible materials or approved fire retardant treated wood or a layer of ⅝ inch Type X gypsum board is installed directly below the sheathing for a distance of at least 4 feet on each side of the fire separation wall. Parapets would also be required to have the same fire resistance rating as that required for the supporting walls. Section 3280.104 would require that the fire separation wall on each attached manufactured home be provided with condensation control protection and a vapor retarder and be insulated to meet the thermal protection requirements of the Standards. Section 3280.105 would require that each attached manufactured home be provided with its own electrical service and that service conductors not pass between each home. Lastly, § 3280.106 would require that each attached home have its own individual water supply and water heater.

M. Changes to the Manufactured Home Procedural and Enforcement Regulations (24 CFR Part 3282)

In addition to recommending changes to the Construction and Safety Standards, the MHCC, at its September 2018 meeting, included recommended revisions to the Manufactured Home Procedural and Regulations at 24 CFR part 3282. These recommendations relate to the recommendations made by the MHCC in its third set of standards addressing attached garages. These MHCC recommendations also respond to public comments HUD received on reducing regulatory burdens associated with regulating the design and construction of homes with attached garages and attached carports (see 83 FR 3635, January 26, 2018).

Consistent with these recommendations, HUD is proposing to amend various provisions of part 3282 to address attached garages and carports. Significantly, HUD proposes that attached garages and carports would not be subject to HUD review and approval through the AC process if designed and constructed without affecting the home's performance and the home's compliance with the Construction and Safety Standards. Specifically, HUD proposes to add a definition for an ''attached accessory building or structure'' at § 3282.7 as recommended by the MHCC and modified by HUD to ensure the clarity of intent. HUD proposes that the definition of an ''attached accessory building or structure'' mean ''any awning, cabana, deck, ramada, storage cabinet, carport, fence, windbreak, garage or porch for which the attachment of such is designed by the home manufacturer to be structurally supported by the basic manufactured home.'' In accordance with the MHCC's recommendation, HUD also proposes to revise the definition of ''add-on'' at § 3282.8(j) to address attached accessory buildings and structures that may constitute add-ons and to provide specific provisions for more common structurally dependent attached accessory buildings or structures, such as attached garages and attached carports. HUD is also proposing to amend the policy provision of § 3282.14 to exclude add-ons or attached buildings or structures that do not affect the performance and ability of the home to comply with the Construction and Safety Standards. Finally, HUD proposes to amend § 3282.601, consistent with §§ 3282.7 and 3282.14, to provide that an add-on or attached accessory building or structure that does not affect the performance of the home and the home's compliance with the Construction and Safety Standards is not subject to subpart M, the On-Site Completion of Construction of Manufactured Homes requirements.

N. Changes to the Model Manufactured Home Installation Standards (24 CFR Part 3285)

In addition to recommending changes to the Construction and Safety Standards, the MHCC at its September 2018 meeting included recommended revisions to the Manufactured Home Model Installation Standards, at 24 CFR part 3285. These recommendations also relate to the recommendations made by

the MHCC in its third set of standards addressing attached garages. More recent MHCC recommendations also respond to public comments received on reducing regulatory burdens associated with installing manufactured homes designed for site attached garages and site attached carports (see 83 FR 3635, January 26, 2018). These proposed changes are necessary to ensure that homes designed for the attachment of garages and carports have appropriate installation instructions and would not require special inspections generally required through the AC letter process. Accordingly, HUD proposes to add the MHCC recommended definition for an ''attached accessory building or structure'' at § 3285.5. HUD is also proposing to amend the provisions for the add-on or installation of attached accessory buildings or structures set forth at § 3285.903, in accordance with a MHCC recommendation to incorporate the new terminology for attached accessory buildings or structures.

III. Recommendation Returned to MHCC

HUD is returning to the MHCC for further consideration, the proposal to add requirements for draftstopping as identified in the MHCC's recommendation for Report on Comments (ROC) number 20, also referred to by the MHCC as 20 ROC. The proposed amendment recommended by the MHCC include provisions addressing draftstopping requirements for:

- Concealed spaces of a floor/ceiling assemblies;
- dividing large concealed areas;
- locations where an assembly is below a floor membrane and above a ceiling membrane;
- acceptable draftstopping materials;
- installation along framing members; and
- maintaining the integrity of all draftstops.

HUD is returning this proposal to the MHCC because potential significant costs have been identified in HUD's review of the recommendations, and some manufacturers, responding to requests for cost impact information, have identified ambiguity in the application of the MHCC-recommended standards. Manufacturers contacted regarding potential costs associated with the proposed requirements provided material cost estimates ranging from over $30 to about $400 per home to comply with these proposed draftstopping provisions. One manufacturer assumed that draftstopping would only be provided between two dwelling units of a multi-family home and provided costs and construction estimates associated with separating two dwelling units. Another manufacturer expressed concerns with obtaining complete separation in the floor cavity space while maintaining about equal concealed space for each area as required by the proposal. Still another manufacturer expressed concerns over unintended consequences that would result from the proposed draftstopping provisions due to potential additional costs for ventilation of attic spaces and higher labor costs associated with penetrations and gaps needed for ductwork, electrical wiring, etc. Further, allowances for penetrations and gaps is inconsistent with the above MHCC-recommended standard which would require the integrity of all draftstops to be maintained. In view of these concerns, HUD believes that this proposal should be reconsidered by the MHCC, addressed, and processed with future recommendations being evaluated by the MHCC for multi-family manufactured homes, rather than to be required in the construction of any manufactured home where the area of concealed spaces exceeds 1000 square feet in area.

IV. Incorporation by Reference

Before HUD issues a final rule, the reference standards proposed for incorporation will be approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these standards may be obtained from the organization that developed the standard. As described in § 3280.4, these standards are also available for inspection at HUD's Office of Manufactured Housing Programs and the National Archives and Records Administration.

This proposed rule would incorporate by reference the following five new consensus standards for Manufactured Housing:

1. *ANSI/ASHRAE 62.2–2010, Ventilation and Acceptable Indoor Air Quality in Low-Rise Residential Buildings.* This standard defines the roles of and minimum requirements for mechanical and natural ventilation systems and the building envelope intended to provide acceptable indoor air quality in low-rise residential buildings. It is ASHRAE's Indoor Air Quality standard for residential buildings. It applies to spaces intended for human occupancy within single-family houses and multi-family structures of three stories or fewer above grade, including manufactured and modular houses. This standard is available online for review and comment during this rule's comment period via read-only, electronic access at *http://ibr.ansi.org/Standards/*.

2. *ANSI/UL 2034–2008. Standard for Single and Multiple Station Carbon Monoxide Alarms.* These requirements cover electrically operated single and multiple station carbon monoxide (CO) alarms intended for protection in ordinary indoor locations of dwelling units, including recreational vehicles, mobile homes, and recreational boats with enclosed accommodation spaces and cockpit areas. The carbon monoxide alarms covered by these requirements are intended to respond to the presence of carbon monoxide from sources such as, but not limited to, exhaust from internal-combustion engines, abnormal operation of fuel-fired appliances, and fireplaces. Carbon monoxide alarms are intended to alarm at carbon monoxide levels below those that cause a loss of ability to react to the dangers of carbon monoxide exposure. Carbon monoxide alarms covered by this standard are not intended to alarm when exposed to long-term, low-level carbon monoxide exposures or slightly higher short-term transient carbon monoxide exposures, possibly caused by air pollution or properly installed and maintained fuel-fired appliances and fireplaces. This standard is available online for review and comment during this rule's comment period via read-only, electronic access at *http://ibr.ansi.org/Standard*.

3. *ASTM E 119, 2005. Standard Test Methods for Fire Tests of Building Construction and Materials.* This standard is used to measure and describe the response of materials, products, or assemblies to heat and flame under controlled conditions, but does not by itself incorporate all factors required for fire hazard or fire risk assessment of the materials, products, or assemblies under actual fire conditions. This standard is available online for review and comment during this rule's comment period via read-only, electronic access at *http://www.ASTM.org/READINGLIBRARY*.

4. *NFPA No. 70–2005, Article 550.17. National Electronic Code.* The provisions of this article cover the electrical conductors and equipment installed within or on mobile and manufactured homes, the conductors that connect mobile and manufactured homes to a supply of electricity, and the installation of electrical wiring, luminaires (fixtures), equipment, and appurtenances related to electrical installations within a mobile home park up to the mobile home service-entrance conductors or, if none, the mobile home service equipment. More specifically,

Article 550.17 provides that the wiring of each mobile home be subjected to a 1-minute, 900-volt, dielectric strength test (with all switches closed) between live parts (including neutral) and the mobile home ground. Alternatively, the standard allows a test to be performed at 1080 volts for 1 second. This test shall be performed after branch circuits are complete and after luminaires (fixtures) or appliances are installed. This standard is available online for review and comment during this rule's comment period via read-only, electronic access at *http://ibr.ansi.org/Standards*.

5. NFPA 720. Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment. This document does not attempt to cover all equipment, methods, and requirements that might be necessary or advantageous for the protection of lives from carbon monoxide exposure. The effects of exposure to carbon monoxide vary significantly among different people. Infants, pregnant women, and people with physical conditions that limit their bodies' ability to use oxygen can be affected by low concentrations of carbon monoxide. These conditions include, but are not limited to, emphysema, asthma, and heart disease, all of which are usually indicated by a shortness of breath upon mild exercise. People in need of warning about low levels of carbon monoxide should explore the use of specially calibrated units or other alternatives. This standard is primarily concerned with life safety, not with protection of property. It covers the selection, design, application, installation, location, performance, inspection, testing, and maintenance of carbon monoxide detection and warning equipment in buildings and structures. This standard is available online for review and comment during this rule's comment period via read-only, electronic access at *http://ibr.ansi.org/Standards*.

The sections of the Construction and Safety Standards that would be amended by each reference modification and the impact of each reference is shown in the chart below.

Standard	Edition	Title	Section	Comment
ANSI/UL 2034	2008	Single and Multiple Station Carbon Monoxide Alarms.	§ 3280.211(a)	Only required for homes that incorporate a gas burning appliance and then preempts state and local requirements already established in 38 states.
ANSI/ASHRAE 62.2.	2010	Ventilation and Acceptable Indoor Air Quality in Low-Rise Residential Buildings.	§ 3280.103(d)	Provides an option to ventilation requirements established at § 3280.103(b) and (c).
NFPA No.70 Article 550.17.	2005	National Electrical Code	§ 3280.810(b)	Provides for a referenced standard to conduct polarity checks as an option to visual polarity checks.
NFPA 720	2015	Standard for the Installation Carbon Monoxide Detection Equipment.	§ 3280.211(a)	Only required for homes that incorporate a gas burning appliance or an attached garage and then preempts state and local requirements already established in 38 states.
ASTM E 119 ...	2005	Standard Test Method for Fire Tests of Building Construction and Materials.	§ 3280.1003(a)	Allows for a manufacturer to design and construct attached housing that is otherwise only permitted through an AC review and approval.

In addition to reviewing these standards on-line, copies of the standards may be obtained from the organization that developed the standard as follows:

ANSI—American National Standards Institute, 11 West 42nd Street, New York, NY 10036, 212–642–4900, fax 212 398–0023, *www.ansi.org*.

ASHRAE—American Society of Heating, Refrigeration, and Air Conditioning Engineers, 1791 Tullie Circle, NE, Atlanta GA 30329, 404–636–8400, fax 404–321–5478.

ASTM—American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428, 610 832–9500, fax 610–832–9555, *www.astm.org*.

NFPA—National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269, 617–770–3000, fax 617–770–0700, *www.nfpa.org*.

UL—Underwriters Laboratories, 333 Pfingsten Road, Northbrook, Illinois 60062, 847–272–8800, fax 847–509–6257, *www.ul.com*.

This proposed rule also references ASTM D781–1968 (Reapproved 1973), which has already been approved for incorporation by reference. No changes are being proposed to this IBR.

V. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) 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 was determined to be a ''significant regulatory action'' as defined in section 3(f) of the Executive order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive order).

Executive Order 13771

Executive Order 13771, entitled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017. This rule is expected to be an Executive Order 13771 regulatory action. Details on the estimated cost savings of this proposed rule can be found below in the Summary of Benefits and Costs, and in the rule's Regulatory Impact Analysis.

Summary of Benefits and Costs of Rule

As discussed, this proposed rule would amend the Federal Manufactured Home Construction and Safety Standards by adopting recommendations made to HUD by the MHCC. In this regard, this proposed rule would revise various standards that reflect current construction practices used by the manufacturing housing industry and the home construction

industry in general. For example, when a manufacturer chooses to install a carbon monoxide detector, the manufacturer will use a detector that has been listed in accordance with requirements of ANSI/UL 2034 and the manufacturer will install the detector in accordance with the product's installation instructions that meet the requirements of NFPA 720. Similarly, standards proposed that are applicable to interior door widths as well as those provisions for multi-story and attached manufactured homes are based on current construction practices that have largely been established due to pre-existing requirements of state and local jurisdictions for other housing products (*i.e.,* site-built or modular). Other standards recommended by the MHCC and proposed by HUD, such as those that would define requirements for stairways, landings, handrails, guards and stairway illumination, would free manufacturers from having to follow various state and local requirements that vary from jurisdiction to jurisdiction and bring uniformity to manufactured home construction nation-wide. The rule would also incorporate five new reference standards that are already standards used in the design, listing, and evaluation of the respective materials or components.

In addition, HUD has concluded that this rule, if finalized, would provide manufacturers more flexibility in the ability to pursue design options and, more importantly, cost savings as the result of eliminating the need to obtain HUD approval through the Alternative Construction (AC) process (see § 3282.14). More specifically, manufacturers need to engage the AC process to design and construct manufactured homes that incorporate innovations that have not yet been codified in HUD's Construction and Safety Standards. For example, HUD's proposals addressing the design and construct of multi-story homes, attached homes, or homes that are designed to accommodate an attached garage or carport that is not factory constructed but added to the home during the home installation process, may create regulatory confusion between state, local, and Federal authorities and may sometimes require HUD approval through the AC process prior to the manufacturer being able to incorporate these design features. After review of an AC request, HUD establishes specific terms and conditions for use of the design through an AC letter. While the AC process serves a useful purpose, including encouraging the use of new technology in the construction of manufactured homes, HUD believes that codification of certain design features that have been reviewed can provide cost savings for manufacturers and reduce regulatory confusion when directly addressed within the code. In fact, HUD's proposed rule is based primarily on the MHCC's recommendations and integrates some aspects of specific AC letters that have been issued in the past. Specifically, regulatory costs that are currently borne by the manufactured home manufacturer associated with preparing an AC request and maintaining the AC approvals include:

1. Manufacturers' engineers' preparation of designs, calculations, or tests for aspects that do not conform with outdated building standards for past innovations that have become more commonplace but have not yet been incorporated into the Construction and Safety Standards;

2. DAPIA review and approval of the designs, calculations, and or tests to be submitted on behalf of the manufacturers requesting HUD's approval;

3. Preparation of a submission package for the AC request, including all designs, calculations, and tests to be sent to HUD for approval;

4. Lost opportunity costs and actual manufacturer and DAPIA staff time to respond to HUD throughout the review and approval process, which, depending on the specific AC request, may take as few as 30 days or as long as 6 months;

5. Time and travel associated with third-party inspections at each affected home's site for manufactured homes built under an AC that requires a site inspection be conducted in order to verify conformance with specific terms and conditions of the AC approval; and

6. Maintaining and providing copies of AC-specific production reports, inspection reports, and other administrative burdens required to maintain the AC approval.

This rule would also require that carbon monoxide detectors be installed in homes with fuel burning appliances or designed by the home manufacturer for an attached garage. These provisions are intended to be consistent with other single-family dwelling construction requirements and are intended to provide early warning alerts to occupants of the presence of carbon monoxide within the living space of the manufactured home. Specifically, this rule would require that carbon monoxide alarms or detectors be installed in accordance with the Standard for the Installation of Carbon Monoxide Detection Equipment, NFPA 720–2015, and be listed and conform to the requirements of Single and Multiple Station Carbon Monoxide Alarms, ANSI/UL 2034–2008 edition.

In sum, the one-time annual costs of this proposed rule range from $2.19 million to $4.122 million. Total valued benefits range from $8.515 million to $12.517 million. Unvalued benefits include reduced home damage and injuries from piping water heater relief valves to outside of the home and from the avoided delay during the AC review. The total estimated annual costs and benefits are described in the chart below.

	3 percent		7 percent	
	Low estimate	High estimate	Low estimate	High estimate
Total Annual Costs (See Figure 3):				
Carbon Monoxide Detector Requirement	$258,000	$1,352,400	$258,000	$1,352,400
Water heater relief valves	1,352,400	483,000	1,352,400	483,000
Wet-vented drains	483,000	96,600	483,000	96,600
Separate Bathroom Light Switches	96,600	2,190,000	96,600	2,190,000
Total	$2,190,000	$4,122,000	$2,190,000	$4,122,000
Present Value of Benefits				
Carbon Monoxide Detector Requirement (See Figure 4):				
Value of Injuries Prevented	$166,818	$166,818	$142,688	$142,688
Value of Deaths Prevented	8,908,186	8,908,186	7,619,651	7,619,651
Wet-vented drains (See Figure 7)	483,000	772,800	483,000	772,800
Separate Bathroom Light Switches (See Figure 5)	326,796	2,614,366	214,929	1,719,434
Deregulatory (See Figure 6):				

	3 percent		7 percent	
	Low estimate	High estimate	Low estimate	High estimate
Whole-House Ventilation	3,540	3,540	3,540	3,540
2-Story Homes	12,640	12,640	12,640	12,640
Attached Garages	38,836	38,836	38,836	38,836
Total	9,939,816	12,517,187	8,515,285	10,309,589

A fuller discussion of the costs and benefits of this rule is available in the rule's Regulatory Impact Analysis, which is part of this docket.

Finally, any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410–0500.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been approved by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0253. HUD expects to make changes to the existing recordkeeping items consistent with changes in this proposed rule and believes that the changes will result in a decrease of burden. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

The burden of information collection addressed in this proposed rule is estimated as follows for those aspects that would continue to require AC requests and does not include burdens for past AC requests related to carport-ready homes, garage-ready homes, homes that exceed 2,571 square feet (whole house ventilation), and two-story homes:

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hours per response	Annual burden hours	Hourly cost per response	Annual cost
Manufacturers Records:							
§ 3282.14 Alternative Construction Submissions	135	0.75	101	2.5	253	$33.57	$8,493.21
IPIA Records:							
§ 3282.14 Alternative Construction Submission Concurrence Records and Reporting	12	14	168	2.0	336	33.57	11,279.52
DAPIA Records:							
§ 3282.203/361/364 Design Review Records and Reporting	6	28	168	1.0	168	33.57	5,639.76
Total	153		569		757		25,412.49

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the information collection requirements in the proposed rule regarding:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Whether the proposed collection of information enhances the quality, utility, and clarity of the information to be collected; and

(4) Whether the proposed information collection minimizes the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Under the provisions of 5 CFR part 1320, OMB is required to decide concerning this collection of information between 30 and 60 days after the publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of the publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposed rule by name and docket number (FR–6149–P–01) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: 202–395–6947

and

Colette Pollard, HUD Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW, Room 2204, Washington, DC 20410

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at *http://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 *http://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.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (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 the private sector. This rule will not impose any Federal mandates on any state, local, or tribal government or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review

A Finding of No Significant Impact 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 Finding of No Significant Impact 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, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–0500. The Finding of No Significant Impact will also be available for review in the docket for this rule on *Regulations.gov*.

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. It is HUD's position that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would regulate establishments primarily engaged in making manufactured homes (NAICS 32991). The U.S. Small Business Administration's size standards define an establishment primarily engaged in making manufactured homes as small if it does not exceed 1,250 employees. Of the 222 firms included under this NAICS definition, approximately 35 produce manufactured homes subject to HUD's Manufactured Housing Construction and Safety Standards. Other entities covered by this NAICS code build non-HUD code prefabricated buildings. Of the 35 manufacturers subject to HUD's Manufactured Housing Construction and Safety Standards, 31 are considered to be small businesses based on the threshold of 1,250 employees or less. The proposed rule will apply to all the manufacturers and thus would affect a substantial number of small entities.

Small entities have the ability and capability to offer the same type of housing products with the same or similar options, features and appliances as larger manufacturers. However, smaller manufacturers have more difficulty spreading regulatory costs over the higher production of homes like that of a large, higher producing manufacturer. Small manufacturers would need to bear the costs, reducing profit margins accordingly or passing-through the costs over lower production amounts. This may disproportionally increase the cost of housing products for small manufacturers considering the same or similar options, features and appliances. This rule, however, would provide small manufacturers greater flexibility to pursue design options and, more importantly, obtain cost savings resulting from the elimination of the need to obtain HUD approval through the AC process (see § 3282.14). More specifically, small manufacturers are more likely to engage engineering consultants and other non-staff resources in order to provide data and information needed for the AC process. Consequently, small manufacturers would benefit most from the provisions of this rule that eliminate the AC process for design and construction of manufactured homes that incorporate innovations that have not yet been codified in HUD's Construction and Safety Standards. Additionally, the elimination of these current regulatory costs may provide small manufacturers the opportunity to pursue design and construction innovations that absent the rule would have been too costly to pursue.

For the reasons stated, a substantial number of small manufacturers with fewer than 1,250 employees will be affected by this rule. Nevertheless, HUD anticipates that the rule, if adopted, would not have a significant economic impact on them. Accordingly, the undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule would not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments on its Regulatory Impact Analysis, this certification, and on any less burdensome alternatives to this rule that will meet HUDs objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and 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.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Manufactured Housing Construction and Safety Standards is 14.171.

List of Subjects

24 CFR Part 3280

Fire prevention, Housing standards, Incorporation by reference.

24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Reporting and recordkeeping requirements, Warranties.

24 CFR Part 3285

Housing standards, Manufactured homes.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR parts 3280, 3282, and 3285 to read as follows:

PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

■ 1. The authority citation for part 3280 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 5403, and 5424.

■ 2. In § 3280.2, add in alphabetical order a definition for ''Attached accessory building or structure'' to read as follows:

§ 3280.2 Definitions.

* * * * *

Attached accessory building or structure means any awning, cabana, deck, ramada, storage cabinet, carport, fence, windbreak, garage or porch for which the attachment of such is designed by the home manufacturer to be structurally supported by the basic manufactured home.

* * * * *

■ 3. Revise § 3280.3 to read as follows:

§ 3280.3 Manufactured home procedural and enforcement regulations, and consumer manual requirements.

(a) A manufacturer must comply with the requirements of this part, part 3282 of this chapter, and 42 U.S.C. 5416.

(b) Consumer manuals must be in accordance with § 3282.207 of this chapter.

■ 4. Amend § 3280.4 as follows:

■ a. Add paragraph (m)(2);

■ b. Redesignate paragraphs (p)(27) through (33) as paragraphs (p)(28) through (34), respectively, and add new paragraph (p)(27);

■ c. Redesignate paragraphs (aa)(4)(xvi) through (xix) as paragraphs (aa)(4)(xvii) through (xx), respectively, and add new paragraph (aa)(4)(xvi); and

■ d. Add paragraphs (aa)(9) and (hh)(23).

The additions read as follows:

§ 3280.4 Incorporation by reference.

* * * * *

(m) * * *

(2) ANSI/ASHRAE 62.2—2010 edition, Ventilation and Acceptable Indoor Air Quality in Low-Rise Residential Buildings, IBR approved for § 3280.103(d).

* * * * *

(p) * * *

(27) ASTM E 119—2005, Standard Test Method for Fire Tests of Building Construction and Materials, IBR approved for § 3280.1003(a).

* * * * *

(aa) * * *

(4) * * *

(xvi) Article 550.17, IBR approved for § 3280.810(b).

* * * * *

(9) NFPA 720, Standard for Installation of Carbon Monoxide Detection Equipment, 2015, IBR approved for § 3280.211(a).

* * * * *

(hh) * * *

(23) ANSI/UL 2034—2008 edition, Single and Multiple Station Carbon Monoxide Alarms, IBR approved for § 3280.211(a).

* * * * *

■ 5. In § 3280.5, redesignate paragraphs (d) through (h) as paragraphs (e) through (i), respectively, and add new paragraph (d) to read as follows:

§ 3280.5 Data plate.

* * * * *

(d) The applicable statement:

This manufactured home IS NOT designed to accommodate the additional loads imposed by the attachment of an attached accessory building or structure.

Or

This manufactured home IS designed to accommodate the additional loads imposed by the attachment of an attached accessory building or structure in accordance with the manufacturer installation instructions. The additional loads are in accordance with the design load(s) identified on this Data Plate.

* * * * *

■ 6. In § 3280.11, revise paragraph (d) to read as follows:

§ 3280.11 Certification label.

* * * * *

(d) The label must be located at the taillight end of each transportable section of the manufactured home approximately 1 foot up from the floor and 1 foot in from the road side, or as near that location on a permanent part of the exterior of the manufactured home section as practicable. The road side is the right side of the manufactured home when one views the manufactured home from the tow bar end of the manufactured home. If locating the label on the taillight end of a transportable section will prevent the label from being visible after the manufactured home section is installed at the installation site, the label must be installed on a permanent part of the exterior of the manufactured home section, in a visible location as specified in the approved design.

■ 7. In § 3280.103, revise paragraph (b) introductory text and add paragraph (d) to read as follows:

§ 3280.103 Light and ventilation.

* * * * *

(b) *Whole-house ventilation.* Each manufactured home must be provided with whole-house ventilation having a minimum capacity of 0.035 $ft^3/min/ft^2$ of interior floor space or its hourly average equivalent. This ventilation capacity must be in addition to any openable window area. In no case shall the installed ventilation capacity of the system be less than 50 cfm. The following criteria must be adhered to:

* * * * *

(d) *Optional ventilation provisions.* As an option to complying with the provisions of paragraphs (b) and (c) of this section, ventilation systems complying with ANSI/ASHRAE Standard 62.2 —2010 edition, Ventilation and Acceptable Indoor Air Quality in Low-Rise Residential Buildings (incorporated by reference, see § 3280.4) may be used.

■ 8. In § 3280.108, add paragraph (c) to read as follows:

§ 3280.108 Interior passage.

* * * * *

(c) All interior swinging doors must have a minimum clear opening of 27 inches except doors to toilet compartments in single-section homes (see § 3280.111(b)).

■ 9. Revise § 3280.111 to read as follows:

§ 3280.111 Toilet compartments.

(a) Each toilet compartment must be a minimum of 30 inches wide, except, when the toilet is located adjacent to the short dimension of the tub, the distance from the tub, to the center line of the toilet must not be less than 12 inches. At least 21 inches of clear space must be provided in front of each toilet.

(b) All single-section bathroom passage doors must have a minimum clear opening width of 23 inches, and multi-section bathroom passage doors must have a minimum clear opening width of 27 inches.

■ 10. In § 3280.113, redesignate paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively, and add new paragraph (b) to read as follows:

§ 3280.113 Glass and glazed openings.

* * * * *

(b) *Glazed openings facing porch areas.* Required glazed openings shall be permitted to face into a roofed porch where the porch abuts a street, yard, or court and the longer side of the porch is at least 65 percent open and unobstructed and the ceiling height is not less than 7 feet.

* * * * *

■ 11. Add § 3280.114 to read as follows:

§ 3280.114 Stairways.

(a) *Stairways*—(1) *Width.* Stairways must not be less than 36 inches in clear width at all points above permitted handrail height and below the required headroom height. Handrails must not project more than 4½ inches on either side of the stairway and the minimum clear width of the stairway at and below the handrail height, including treads and landings, must not be less than 31 ½ inches where a handrail is installed on one side and 27 inches where handrails are provided on both sides. The width of spiral stairways shall be in accordance with paragraph (a)(5) of this section.

(2) *Stair treads and risers*—(i) *Riser height and tread depth.* The maximum riser height must not exceed 7¾ inches

and the minimum tread depth must not be less than 10 inches. The riser height must be measured vertically between leading edges of the adjacent treads. The tread depth must be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread's leading edge. The walking surface of treads and landings of a stairway must be sloped no steeper than one unit vertical in 48 units horizontal (2-percent slope). The greatest riser height within any flight of stairs must not exceed the smallest by more than % inch. The greatest tread depth within any flight of stairs must not exceed the smallest by more than % inch.

(ii) *Profile.* The radius of curvature at the leading edge of the tread must not be greater than 9/16-inch. A nosing not less than ¾-inch but not more than 1¼ inches shall be provided on stairways with solid risers. The greatest nosing projection must not exceed the smallest nosing projection by more than % inch between two stories, including the nosing at the level of floors and landings. Beveling of nosing must not exceed ½-inch. Risers must be vertical or sloped from the underside of the leading edge of the tread above at not more than 30 degrees from the vertical. Open risers are permitted, provided that the opening between treads does not permit the passage of a 4-inch diameter sphere. A nosing is not required where the tread depth is a minimum of 11 inches. The opening between adjacent treads is not limited on stairs with a total rise of 30 inches or less.

(3) *Headroom.* The minimum headroom in all parts of the stairway must not be less than 6 feet 8 inches, measured vertically from the sloped plane adjoining the tread nosing or from the floor surface of the landing or platform.

(4) *Winders (winding stairways).* Winders are permitted, provided that the width of the tread at a point not more than 12 inches from the side where the treads are narrower is not less than 10 inches and the minimum width of any tread is not less than 6 inches. Within any flight of stairs, the greatest winder tread depth at the 12-inch walk line must not exceed the smallest by more than ⅜ inch. The continuous handrail required by paragraph (c)(3) of this section must be located on the side where the tread is narrower.

(5) *Spiral stairways.* Spiral stairways are permitted provided the minimum width is a minimum 26 inches with each tread having 7 Y2 inch minimum tread width at 12 inches from the narrow edge. All treads must be identical, and the rise must be no more than 9–Y2 inches. Minimum headroom of 6 feet, 6 inches must be provided.

(6) *Circular stairways.* Circular stairways must have a tread depth at a point not more than 12 inches from the side where the treads are narrower of not less than 11 inches and the minimum depth of any tread must not be less than 6 inches. Tread depth at any walking line, measured a consistent distance from a side of the stairway, must be uniform as specified in paragraph (a)(2)(i) of this section.

(b) *Landings.* Every landing must have a minimum dimension of 36 inches measured in the direction of travel. Landings must be located as follows:

(1) There must be a floor or landing at the top and bottom of each stairway, except at the top of an interior flight of basement stairs, provided a door does not swing over the stairs. The width of each landing must not be less than the stairway served.

(2) A landing or floor must be located on each side of an interior doorway and the width of each landing must not be less than the door it serves. The maximum threshold height above the floor or landing must be ½-inch provided that thresholds more than ¼-inch above the adjacent floor must be beveled with a slope not steeper than 1 in 2.

(c) *Handrails*—(1) *General.* A minimum of one handrail meeting the requirements of this section must be installed on all stairways consisting of four or more risers. Handrails must be securely attached to structural framing members. A minimum space of 1½-inch must be provided between the adjoining wall surface and the handrail.

(2) *Handrail height.* Handrails must be installed between 34 inches and 38 inches measured vertically from the leading edge of the stairway treads except that handrails installed up to 42 inches high must be permitted if serving as the upper rails of guards required by paragraph (d) of this section.

(3) *Continuity.* Required handrails must be continuous from a point directly above the leading edge of the lowest stair tread to a point directly above the leading edge of the landing or floor surface at the top of the stairway. If the handrail is extended at the top of the stairway flight, the extension must parallel the floor or landing surface and must be at the same height as the handrail is above the leading edges of the treads. If the handrail is extended at the base of the stair, it must continue to slope parallel to the stair flight for a distance of one tread depth, measured horizontally, before being terminated or returned or extended horizontally. The ends of handrails must return into a wall or terminate in a safety terminal or newel post.

(4) *Graspability.* Required handrails must, if circular in cross section, have a minimum 1¼-inch and a maximum 2-inch diameter dimension. Handrails with a noncircular cross section must have a perimeter dimension of at least 4 inches and not more than 6¼ inches (with a maximum cross-section dimension of not more than 2¼ inches). The handgrip portion of the handrail must have a smooth surface. Edges must have a minimum ⅛-inch radius. Handrails must be continuously graspable along their entire length except that brackets or balusters are not considered obstructions to graspability if they do not project horizontally beyond the sides of the handrail within 1½ inches of the bottom of the handrail.

(5) *Required resistance of handrails.* Handrails must be designed to resist a load of 20 lb./ft applied in any direction at the top and to transfer this load through the supports to the structure. All handrails must be able to resist a single concentrated load of 200 lbs., applied in any direction at any point along the top, and have attachment devices and supporting structures to transfer this loading to appropriate structural elements of the building. This load is not required to be assumed to act concurrently with the loads specified in this section.

(d) *Guards.* (1) Porches, balconies, or raised floor surfaces located more than 30 inches above the floor or grade below must have guards not less than 36 inches in height. Open sides of stairs with a total rise of more than 30 inches above the floor or grade below must have guards not less than 34 inches in height measured vertically from the nosing of the treads. Balconies and porches on the second floor or higher must have guards a minimum of 42 inches in height.

(2) Required guards on open sides of stairways, raised floor areas, balconies, and porches must have intermediate rails or ornamental closures that do not allow passage of a sphere 4 inches in diameter. Required guards must not be constructed with horizontal rails or other ornamental pattern that result in a ladder effect.

(i) The triangular openings formed by the riser, tread and bottom rail of a guard at the open side of the stairway must be permitted to be of such a size that a sphere of 6 inches cannot pass through.

(ii) Guard systems must be designed to resist a load of 20 lb./ft applied in any direction at the top and to transfer this load through the supports to the structure. All guard systems must be

able to resist a single concentrated load of 200 lb., applied in any direction at any point along the top and have attachment devices and supporting structures to transfer this loading to appropriate structural elements of the building. This load is required to be assumed to act concurrently with the loads specified in this section.

(e) *Stairway illumination.* All interior and exterior stairways must be provided with a means to illuminate the stairways, including the landings and treads.

(1) Interior stairways must be provided with an artificial light source located in the immediate vicinity of each landing of the stairway. For interior stairs, the artificial light sources must be capable of illuminating treads and landings to levels not less than one (1) foot-candle measured at the center of treads and landings. The control and activation of the required interior stairway lighting must be accessible at the top and bottom of each stairway without traversing any steps.

(2) Exterior stairways must be provided with an artificial light source located in the immediate vicinity of the top landing of the stairway. An artificial light source is not required at the top and bottom landing, provided an artificial light source is located directly over each stairway section. The illumination of exterior stairways must be controlled from inside the unit.

■ 12. Add § 3280.211 to read as follows:

§ 3280.211 Carbon monoxide detector requirements.

(a) Carbon monoxide alarm(s) or detector(s) must be installed in each home containing either a fuel burning appliance or designed by the home manufacturer to include an attached garage. Carbon monoxide alarm(s) or detector(s) must be installed accordance with the NFPA 720, Standard for the Installation of Carbon Monoxide Detection Equipment, 2015 edition (incorporated by reference, see § 3280.4) and in accordance with the installation instructions that accompany the unit. Each carbon monoxide alarm(s) or detector(s) must be listed and conform to the requirements of Single and Multiple Station Carbon Monoxide Alarms, ANSI/UL 2034–2008 edition (incorporated by reference, see § 3280.4).

(b) For each home designed to be placed over a basement, the manufacturer must provide a carbon monoxide alarm or detector for the basement and must install the electrical junction box for the installation of this carbon monoxide alarm or detector for its interconnection to other alarm(s) or detector(s) required by this section.

(c) Each required carbon monoxide alarm or detector installed at the factory must be operationally tested, after conducting the dielectric test specified in § 3280.810(a), in accordance with the alarm manufacturer's instructions. A carbon monoxide alarm or detector that does not function as designed during the test and is not satisfactorily repaired so that it functions properly in the next retest must be replaced. Any replacement carbon monoxide alarm or detector must be successfully tested in accordance with this section.

■ 13. Add § 3280.212 to read as follows:

§ 3280.212 Factory constructed or site-built attached garages.

(a) When a manufactured home is designed for factory construction with an attached garage or is designed for construction of an attached site-built garage, the manufacturer must design the manufactured home to accommodate all appropriate live and dead loads from the attached garage structure that will be transferred through the manufactured home structure to the home's support and anchoring systems.

(b) The design must specify the following home and garage characteristics including maximum width, maximum sidewall height, maximum roof slope, live and dead loads, and other design limitations or restrictions.

(c) When a manufactured home is factory constructed with an attached garage or is constructed for the attachment of a site-built garage, provisions must be made to provide fire separation between the garage and the manufactured home.

(1) The garage must be separated from the manufactured home and its attic by not less than Y2 inch gypsum board applied to the garage side of the manufactured home and the separation must be continuous from the bottom of the floor to the underside of the roof deck. Garages beneath habitable rooms must be separated from all habitable rooms by ⅝-inch, Type X gypsum board. Where the separation is a floor ceiling assembly, the structure supporting the separation must also be protected by not less than Y2 inch gypsum board or equivalent. The design approval and the manufacturer's installation instructions must include provision for equivalent vertical separation between the garage and the space below the manufactured home floor system.

(2) [Reserved]

(d) Openings from a garage directly into a room designated for sleeping purposes are not permitted.

(e) Other openings between the garage and the manufactured home must:

(1) Equipped with solid wood doors not less than 1⅜ inch in thickness, or solid or honeycomb steel doors not less than 1⅜ inch in thickness, or 20-minute fire-rated doors, and all doors shall be of the self-closing type; and

(2) Be in addition to the two exterior doors required by § 3280.105.

(f) Ducts penetrating the walls or ceilings separating the manufactured home from the garage must be constructed of a minimum No. 26 gauge steel or other approved material and must have no openings in the garage.

(g) Installation instructions shall be provided by the home manufacturer which identifies acceptable attachment locations, indicates design limitations for the attachment of the garage including acceptable live and dead loads for which the home has been designed to accommodate, and provide support and anchorage designs as necessary to transfer all imposed loads to the ground in accordance with §§ 3285.201 and 3285.401 of this chapter.

■ 14. Add § 3280.213 to read as follows:

§ 3280.213 Factory constructed or site-built attached carports.

(a) When a manufactured home is designed for factory construction with an attached carport or is designed for construction of an attached site-built carport, the manufacturer must design the manufactured home to accommodate all appropriate live and dead loads from the attached carport structure that will be transferred through the manufactured home structure to the home's support and anchoring systems.

(b) The design must specify the following home and carport characteristics including maximum width, maximum sidewall height, maximum roof slope, live and dead loads, and other design limitations or restrictions.

(c) Homes may be designed with a factory-installed host beam (*i.e.,* ledger board) or specific roof truss rail for the attachment of the carport to the exterior wall of the home. The host beam (*i.e.,* ledger board) must be designed to transmit the appropriate live and dead loads at the interface between the carport and the manufactured home. In cases where the carport is designed to be supported by the roof truss rails, the roof trusses must be designed to support the additional live and dead loads from the carport.

(1) All splices in the host beam (*i.e.,* ledger board) shall occur over a stud or framing member designed for the splice. Each end of the host beam splice (*i.e.,* ledger board) shall be securely fastened to the stud or framing (cripple) member or to blocking secured to the stud to allow for adequate fastening of each end of the splice.

(2) Any portion of the host beam (*i.e.,* ledger board) and all fasteners exposed to the weather shall be protected in accordance with § 3280.307.

(d) For homes designed for Wind Zones II or III, when a shear wall occurs within the length of the carport on the carport side of the home, shear wall and uplift strapping shall be designed to transfer all imposed loads from the shear wall and carport.

(e) To ensure that the attachment of the carport does not interfere with roof or attic ventilation, the manufacturer must provide specific instructions to ensure continued compliance with the manufactured home roof or attic ventilation requirements in accordance with § 3280.504(d).

(f) Installation instructions shall be provided by the home manufacturer which identifies acceptable attachment locations, indicates design limitations for the attachment of the carport including acceptable live and dead loads for which the home has been designed to accommodate, and provide support and anchorage designs as necessary to transfer all imposed loads to the ground in accordance with §§ 3285.201 and 3285.401 of this chapter.

(1) The manufacturer must ensure that any anchoring system designs incorporating anchorage to resist combined shear wall and carport uplift loads are evaluated for adequacy to resist the combined loads, taking into consideration the limitations of the ground anchor test and certification and/or cone of influence.

(2) [Reserved]

■ 15. Amend § 3280.305 as follows:

■ a. Revise paragraph (a);

■ b. Add a sentence at the end of paragraph (e)(1);

■ c. Revise paragraph (g)(6); and

■ d. Add paragraph (h)(5).

The revisions and additions read as follows:

§ 3280.305 Structural design requirements.

(a) *General.* Each manufactured home must be designed and constructed as a completely integrated structure capable of sustaining the design load requirements of this part and must be capable of transmitting these loads to stabilizing devices without exceeding the allowable stresses or deflections. Roof framing must be securely fastened to wall framing, walls to floor structure, and floor structure to chassis to secure and maintain continuity between the floor and chassis, so as to resist wind overturning, uplift, and sliding as imposed by design loads in this part. In multistory construction, each story must be securely fastened to the story above and/or below to provide continuity and resist design loads in this part. Uncompressed finished flooring greater than ⅛ inch in thickness must not extend beneath load-bearing walls that are fastened to the floor structure.

* * * * *

(e) * * *

(1) * * * In multistory construction, each story must be securely fastened to the story above and/or below to provide continuity and resist design loads in this section.

* * * * *

(g) * * *

(6) Bottom board material (with or without patches) must meet or exceed the level of 48 inch-pounds of puncture resistance as tested by the Beach Puncture Test in accordance with Standard Test Methods for Puncture and Stiffness of Paperboard, and Corrugated and Solid Fiberboard, ASTM D781–1968 (Reapproved 1973) (incorporated by reference, see § 3280.4). The material must be suitable for patches and the patch life must be equivalent to the material life. Patch installation instruction must be included in the manufactured home manufacturer's instructions. The bottom board material must be tight fitted against all penetrations.

(h) * * *

(5) Portions of roof assemblies, including, but not limited to, dormers, gables, crickets, hinged roof sections, connections between sections, sheathing, roof coverings, underlayments, flashings, and eaves and overhangs are permitted to be assembled and installed on site in accordance with 24 CFR part 3282, subpart M, provided that the requirements in paragraphs (h)(5)(i) through (v) of this section are met.

(i) Approved installation instructions must be provided that include requirements for the following items:

(A) Materials, installation, and structural connections complying with this section;

(B) Installation and fastening of sheathing and roof coverings;

(C) Installation of appliance vent systems in accordance with § 3280.710;

(D) Installation of plumbing vents as required by § 3280.611; and

(E) Installation of attic ventilation in accordance with § 3280.504(c).

(ii) The installation instructions specified in paragraph (h)(5)(i) of this section must include drawings, details, and instructions as necessary to assure that the on-site work complies with the approved design.

(iii) The installation instructions specified in paragraph (h)(5)(i) of this section must provide for inspection of the work at the installation site in stages that assure the inspection is performed before any work is concealed.

(iv) Listed trusses must be provided as required by the approved design and installation instructions.

(v) Temporary weather protection must be provided per § 3280.307(e).

* * * * *

■ 16. In § 3280.307, add paragraph (e) to read as follows:

§ 3280.307 Resistance to elements and use.

* * * * *

(e) Multi-section and attached manufactured homes (see subpart K of this part) are not required to comply with the factory installation of weather-resistant exterior finishes for those areas left open for field connection of the sections provided the following conditions are satisfied:

(1) Temporary weather protection for exposed, unprotected construction is provided in accordance with methods to be included in the approved design.

(2) Methods for on-site completion and finishing of these elements are included in the approved design.

(3) Complete installation instructions for finishing these elements are provided.

■ 17. In § 3280.504, add paragraph (a)(3) and paragraph (b) introductory text to read as follows:

§ 3280.504 Condensation control and installation of vapor retarders.

(a) * * *

(3) In multi-story manufactured homes, the ceiling vapor retarder is permitted to be omitted when the story directly above is part of the same manufactured home.

(b) *Exterior walls.* Exterior walls must be provided with a system or method to manage moisture and vapor accumulation with one of the elements in paragraphs (b)(1) through (4) of this section. For purposes the requirement in this paragraph (b), the mating wall of each attached manufactured home must be considered to be an exterior wall.

* * * * *

■ 18. Amend § 3280.506 as follows:

■ a. Redesignate paragraphs (a), (b), and (c) as paragraphs (b), (c), and (d), respectively;

■ b. Designate the introductory text as paragraph (a);

■ c. In newly designated paragraph (a):
■ i. Remove ''of this subpart;''
■ ii. Remove ''figure 506'' and add ''figure 1 to this paragraph (a)'' in its place; and
■ iii. Add a heading for the figure.
■ d. In newly redesignated paragraph (b):
■ i. Remove the heading;
■ ii. Add a comma between ''ventilation'' and ''and;''
■ iii. Remove ''below'' and add ''in the table to this paragraph (b)'' in its place; and
■ iv. Add a heading for the table; and
■ e. Revise newly redesignated paragraph (c).

The additions read as follows:

§ 3280.506 Heat loss/heat gain.

* * * * *

(a) * * *

Figure 1 to Paragraph (a)

(b) * * *

Table 1 to Paragraph (b)

* * * * *

(c) To assure uniform heat transmission in manufactured homes, cavities in exterior walls, floors, and ceilings must be provided with thermal insulation. For insulation purposes, the mating wall of each single family attached manufactured home shall be considered an exterior wall (see subpart K of this part).

* * * * *

■ 19. In § 3280.602, add alphabetically the definition for ''Indirect waste receptor'' to read as follows:

§ 3280.602 Definitions.

* * * * *

Indirect waste receptor means a receptor that receives a discharge pipe that is not directly connected to a receptor but maintains a suitable air gap from end of pipe to top of drain.

* * * * *

■ 20. In § 3280.608, revise paragraph (b) to read as follows:

§ 3280.608 Hangars and supports.

* * * * *

(b) *Piping supports.* Piping must be secured at sufficiently close intervals to keep the pipe in alignment and carry the weight of the pipe and contents. Unless otherwise stated in the standards incorporated by reference for specific materials at § 3280.604(a), or unless specified by the pipe manufacturer, horizontal plastic drainage piping must be supported at intervals not to exceed 4 feet and horizontal plastic water piping must be supported at intervals not to exceed 3 feet. Vertical drainage and water piping must be supported at each story height.

* * * * *

■ 21. In § 3280.609, revise paragraph (c)(1)(iii) and add paragraph (c)(1)(iv) to read as follows:

§ 3280.609 Water distribution systems.

* * * * *

(c) * * *

(1) * * *

(iii) Relief valves must be provided with full-sized drains, with cross sectional areas equivalent to that of the relief valve outlet. The outlet of a pressure relief valve, temperature relief valve, or combination thereof, must not be directly connected to the drainage system. The discharge from the relief valve must be piped full size separately to the outside of the manufactured home, other than underneath the home, or to an indirect waste receptor located inside the manufactured home. Drain lines must be of a material listed for hot water distribution and must drain fully by gravity, must not be trapped, and must not have their outlets threaded, and the end of the drain must be visible for inspection.

(iv) Relief valve piping designed to be located underneath the manufactured home is not required to be installed at the factory provided the manufacturer designs the system for site assembly and also provides all materials and components including piping, fittings, cement, supports, and instructions for proper site installation.

* * * * *

■ 22. In § 3280.610, revise paragraph (c)(5) to read as follows:

§ 3280.610 Drainage systems.

* * * * *

(c) * * *

(5) *Preassembly of drain lines.* Section(s) of the drain system, designed to be located underneath the manufactured home or between stories of the manufactured home, are not required to be factory installed when the manufacturer designs the system for site assembly and also provides all materials and components, including piping, fittings, cement, supports, and instructions necessary for proper site installation.

* * * * *

■ 23. Amend § 3280.611 as follows:
■ a. Remove the comma at the end of paragraph (c)(1)(i) and add a semicolon in its place; and
■ b. Revise paragraph (c)(1)(ii).

The revision reads as follows:

§ 3280.611 Vents and venting.

* * * * *

(c) * * *

(1) * * *

(ii) A 1½-inch diameter (min.) continuous vent or equivalent, indirectly connected to the toilet drain piping within the distance allowed in paragraph (c)(5) of this section for 3 inch trap arms through a 2-inch wet vented drain that carries the waste of not more than one fixture. Sections of the wet vented drain that are 3 inches in diameter are permitted to carry the waste of an unlimited number of fixtures; or

* * * * *

■ 24. In § 3280.612, revise paragraph (a) to read as follows:

§ 3280.612 Tests and inspection.

(a) *Water system.* All water piping in the water distribution system must be subjected to a pressure test. The test must be made by subjecting the system to air or water at 80 psi + or − 5 psi for 15 minutes without loss of pressure. The water used for the test must be obtained from a potable source of supply.

* * * * *

■ 25. Amend § 3280.705 as follows:
■ a. Revise paragraph (c)(1);
■ b. In paragraph (j), remove ''shall'' and add in its place ''must'' wherever it appears;
■ c. Revise paragraphs (k), (l)(7), and (l)(8)(i); and
■ d. Add paragraph (l)(8)(iii).

The revisions and addition to read as follows:

§ 3280.705 Gas piping systems.

* * * * *

(c) * * *

(1) All points of crossover beneath the transportable sections must be readily accessible from the exterior of the home. In multi-story manufactured homes, the interconnections between stories must be accessible through a panel on the exterior or interior of the manufactured home.

* * * * *

(k) *Identification of gas supply connections.* Each manufactured home must have permanently affixed to the exterior skin at or near each gas supply connection or the end of the pipe, a tag of 3 inches by 1¾ inches minimum size, made of etched, metal-stamped or embossed brass, stainless steel, anodized or alcalde aluminum not less than 0.020 inch thick, or other approved material [*e.g.,* 0.005 inch plastic laminates], with the information shown in Figure 1 to this paragraph (k). The connector capacity indicated on this tag must be equal to or greater than the total Btuh rating of all intended gas appliances.

FIGURE 1 to §3280.705(k) -- Gas Supply Connection Identification Tag Information

COMBINATION LP-GAS AND NATURAL GAS SYSTEM

This gas piping system is designed for use of either liquefied petroleum gas or natural gas.

NOTICE: BEFORE TURNING ON GAS BE CERTAIN APPLIANCES ARE DESIGNED FOR THE GAS CONNECTED AND ARE EQUIPPED WITH CORRECT ORIFICES. SECURELY CAP THIS INLET WHEN NOT CONNECTED FOR USE.

When connecting to lot outlet, use a listed gas supply connector for manufactured homes rated at
 100,000 Btu/hr or more;
 250,000 Btu/hr or more.

Before turning on gas, make certain that all gas connections have been made tight, all appliance valves are turned off, and any unconnected outlets are capped.

After turning on gas, test gas piping and connections to appliances for leakage with soapy water or bubble solution, and light all pilots.

(l) * * *

(7) *Hangers and supports.* All horizontal gas piping must be adequately supported by galvanized or equivalently protected metal straps or hangers at intervals of not more than 4 feet, except where adequate support and protection is provided by structural members. Vertical gas piping in multi-story dwelling units must be supported at intervals of not more than 6 feet. Solid iron-pipe connection(s) must be rigidly anchored to a structural member within 6 inches of the supply connection(s).

(8) * * *

(i) Before appliances are connected, piping systems must stand a pressure of three ±0.2 psi gauge for a period of not less than ten minutes without showing any drop in pressure. Pressure must be measured with a mercury manometer or slope gauge calibrated so as to be read in increments of not greater than one-tenth pound, or an equivalent device. The source of normal operating pressure must be isolated before the pressure tests are made. Before a test is begun, the temperature of the ambient air and of the piping must be approximately the same, and constant air temperature must be maintained throughout the test.

* * * * *

(iii) Where gas piping between transportable sections must be made by means of hard pipe installed on site, the installation instructions must contain provisions for onsite testing for leakage consistent with the provisions in paragraph (l)(8)(i) of this section.

■ 26. In § 3280.708, revise paragraph (a)(1) introductory text to read as follows:

§ 3280.708 Exhaust duct system and provisions for the future installation of a clothes dryer.

(a) * * *

(1) All gas and electric clothes dryers must be exhausted to the outside by a moisture/lint exhaust duct and termination fitting. When the manufacturer supplies the clothes dryer, the exhaust duct and termination fittings must be completely installed by the manufacturer. If the exhaust duct system is subject to damage during transportation, or a field connection between transportable sections is required, complete factory installation of the exhaust duct system is not required when the following apply:

* * * * *

■ 27. In § 3280.709, revise paragraph (a) to read as follows:

§ 3280.709 Installation of appliances.

(a) The installation of each appliance must conform to the terms of its listing and the manufacturer's instructions. The manufactured home manufacturer must leave the appliance manufacturer's instructions attached to the appliance. Every appliance must be secured in place to avoid displacement. For the purpose of servicing and replacement, each appliance must be both accessible and removable.

(1) A direct vent space heating appliance is permitted to be shipped loose for on-site installation in a basement provided the following:

(i) The heating appliance is listed for the installation.

(ii) Approved installation instructions are provided that include requirements for completion of all gas and electrical connections and provide for inspection and/or testing of all connections.

(iii) Approved instructions are provided to assure connection of the vent and combustion air systems in accordance with § 3280.710(b), and to provide for inspection of the systems for compliance.

(iv) Approved installation and inspection procedures are provided for the connection of the site-installed heating appliance to the factory-installed circulation air system and return air systems.

(2) The procedures must include revisions to assure compliance of the installed systems with § 3280.715.

* * * * *

■ 28. In § 3280.710, revise paragraph (d) to read as follows:

§ 3280.710 Venting, ventilation and combustion air.

* * * * *

(d) Venting systems must terminate at least three feet above any motor-driven air intake discharging into habitable

areas when located within ten feet of the air intake.

* * * * *

■ 29. In § 3280.802, redesignate paragraphs (a)(4) through (41) as paragraphs (a)(5) through (42) and add new paragraph (a)(4) and reserved paragraph (b) to read as follows:

§ 3280.802 Definitions.

* * * * *

(a) * * *

(4) *Attached accessory building or structure* means any awning, cabana, deck, ramada, storage cabinet, carport, fence, windbreak, garage, or porch for which the attachment of such is designed by the home manufacturer to be structurally supported by the basic manufactured home.

* * * * *

■ 30. In § 3280.807, add paragraph (g) to read as follows:

§ 3280.807 Fixtures and appliances.

* * * * *

(g) In bathrooms, ceiling-mounted lighting fixtures and wall-mounted lighting fixtures must not be controlled by the same switch.

■ 31. In § 3280.810, revise paragraph (b) to read as follows:

§ 3280.810 Electrical testing.

* * * * *

(b) *Additional testing.* Each manufactured home must be subjected to the following tests:

(1) An electrical continuity test to assure that metallic parts are effectively bonded;

(2) An operational test of all devices and utilization equipment, except water heaters, electric ranges, electric furnaces, dishwashers, clothes washers/dryers, and portable appliances, to demonstrate they are connected and in working order; and

(3) Electrical polarity checks to determine that connections have been made in accordance with applicable provisions of these standards and Article 550.17 of the National Electric Code, NFPA No. 70–2005 (incorporated by reference, see § 3280.4). Visual verification is an acceptable electrical polarity check.

§ 3280.902 [Amended]

■ 32. In § 3280.902(b), remove ''*A* frame'' and add in its place ''rigid substructure''.

■ 33. Revise § 3280.903 to read as follows:

§ 3280.903 General requirements for designing the structure to withstand transportation shock and vibration.

(a) *General.* The manufactured home and its transportation system (as defined in § 3280.902(f)) must withstand the effects of highway movement such that the home is capable of being transported safely and installed as a habitable structure. Structural, plumbing, mechanical, and electrical systems must be designed to function after set-up. The home must remain weather protected during the transportation sequence to prevent internal damage.

(b) *Testing or analysis requirements.* Suitability of the transportation system and home structure to withstand the effects of transportation must be permitted to be determined by testing, or engineering analysis, or a combination of the two as required by paragraphs (b)(1) and (2) of this section.

(1) *Road tests.* Tests must be witnessed by an independent registered professional engineer or architect, or by a recognized testing organization. Such testing procedures must be part of the manufacturer's approved design.

(2) *Engineering analysis.* Engineering analysis methods based on the principles of mechanics and/or structural engineering may be used to substantiate the adequacy of the transportation system to withstand in-transit loading conditions. As transportation loadings are typically critical in the longitudinal direction, analysis should, in particular, provide emphasis on design of longitudinal structural components of the manufactured home (*e.g.* main chassis girder beams, sidewalls, and rim joists, etc.). Notwithstanding, all structural elements necessary to the structural integrity of the manufactured home during in-transit loading are also to be evaluated (*e.g.* transverse chassis members and floor framing members, etc.).

(i)(A) The summation of the design loads in paragraphs (b)(2)(i)(A)(*1*) through (*3*) of this section may be used to determine the adequacy of the chassis in conjunction with the manufactured home structure to resist in-transit loading:

(*1*) Dead load, the vertical load due to the weight of all structural and non-structural components of the manufactured home at the time of shipment.

(*2*) Floor load, a minimum of 3 pounds per square foot.

(*3*) Dynamic loading factor, (0.25)[(A) + (B)].

(B) However, the in-transit design loading need not exceed twice the dead load of the manufactured home.

(ii) To determine the adequacy of individual longitudinal structural components to resist the in-transit design loading, a load distribution based on the relative flexural rigidity and shear stiffness of each component may be utilized. For the purpose of loading distribution, the sidewall may be considered to be acting as a ''deep beam'' in conjunction with other load carrying elements in determining the relative stiffness of the integrated structure. Further, by proper pre-cambering of the chassis assembly, additional loading may be distributed to the chassis, and the remaining loading may be distributed to each of the load carrying members by the relative stiffness principle.

(iii) The analysis is also to include consideration for:

(A) Location of openings in the sidewall during transport and, when appropriate, provisions for reinforcement of the structure and/or chassis at the opening.

(B) Sidewall component member sizing and joint-splice analysis (*i.e.* top and bottom plates, etc.), and connections between load carrying elements.

■ 34. In § 3280.904, revise paragraphs (a), (b)(1) through (6) and (8) through (10) to read as follows:

§ 3280.904 Specific requirements for designing the transportations system.

(a) *General.* The transportation system must be designed and constructed as an integrated unit which is safe and suitable for its specified use. In operation, the transportation system must effectively respond to the control of the towing vehicle tracking and braking, while traveling at applicable highway speeds and in normal highway traffic conditions.

(b) *Specific requirements*—(1) *Drawbar.* The drawbar must be constructed of sufficient strength, rigidity, and durability to safely withstand those dynamic forces experienced during highway transportation. It must be securely fastened to the manufactured home substructure.

(2) *Coupling mechanism.* The coupling mechanism (which is usually of the socket type) must be securely fastened to the drawbar in such a manner as to assure safe and effective transfer of the maximum loads, including dynamic loads, between the manufactured home structure and the hitch-assembly of the towing vehicle. The coupling must be equipped with a manually operated mechanism so adapted as to prevent disengagement of the unit while in operation. The coupling must be so designed that it can be disconnected regardless of the angle of the manufactured home to the towing vehicle.

(3) *Chassis.* The chassis, in conjunction with the manufactured home structure, must be constructed to effectively sustain the design loads. The integrated structure must be capable of ensuring the integrity of the complete manufactured home and to insure against excessive deformation of structural or finish members.

(4) *Running gear assembly*—(i) *Design criteria.* The design load used to size running gear components must be the gross dead weight minus the static tongue weight supported by the drawbar. Running gear must be designed to accept shock and vibration, both from the highway and the towing vehicle and effectively dampen these forces so as to protect the manufactured home structure from damage and fatigue. Its components must be designed to facilitate routine maintenance, inspection, and replacement.

(ii) *Location.* Location of the running gear assembly must be determined by documented engineering analysis, taking into account the gross weight (including all contents), total length of the manufactured home, the necessary coupling hitch weight, span distance, and turning radius. The coupling weight must be not less than 12 percent nor more than 25 percent of the gross weight.

(5) *Spring assemblies.* Spring assemblies (springs, hangers, shackles, bushings, and mounting bolts) must be capable of supporting the running gear design loads, without exceeding maximum allowable stresses for design spring assembly life as recommended by the spring assembly manufacturer. The capacity of the spring system must assure, that under maximum operating load conditions, sufficient clearance is maintained between the tire and manufactured home's frame or structure to permit unimpeded wheel movement and for changing tires.

(6) *Axles.* Axles, and their connecting hardware, must be capable of supporting the running gear design loads, without exceeding maximum allowable design axle loads as recommended by the axle manufacturer. The number and load capacity necessary to provide a safe tow must not be less than those required to support the design load.

(i) *Recycled axles.* Before reuse, all axles, including all component parts, must be reconditioned as required pursuant to a program accepted by a nationally recognized testing agency. The recycling program must be approved and the axles must be labeled by a nationally recognized testing agency. Recycled axles and their components must utilize compatible components and be of the same size and rating as the original equipment.

(ii) [Reserved]

* * * * *

(8) *Tires, wheels, and rims.* Tires, wheels, and rims must be selected, sized, and fitted to axles so that static dead load supported by the running gear does not exceed the load capacity of the tires. Tires must not be loaded beyond the load rating marked on the sidewall of the tire or, in the absence of such a marking, the load rating specified in any of the publications of any of the organizations listed in Federal Motor Vehicle Safety Standard (FMVSS) No. 119 in 49 CFR 571.119, S5.1(b). Wheels and rims must be sized in accordance with the tire manufacturer's recommendations as suitable for use with the tires selected.

(i) *Inflation pressure.* The load and cold inflation pressure imposed on the rim or wheel must not exceed the rim and wheel manufacturer's instructions even if the tire has been approved for a higher load or inflation. Tire cold inflation pressure limitations and the inflation pressure measurement correction for heat must be as specified in 49 CFR 393.75(h).

(ii) *Used tires.* Whenever the tread depth is at least 1/16 inch as determined by a tread wear indicator, used tires are permitted to be sized in accordance with 49 CFR 571.119. The determination as to whether a used tire is acceptable must also include a visual inspection for thermal and structural defects (*e.g.,* dry rotting, excessive tire sidewall splitting, etc.). Used tires with such structural defects must not be installed on manufactured homes.

(9) *Brake assemblies*—(i) *Braking axles.* The number, type, size, and design of brake assemblies required to assist the towing vehicle in providing effective control and stopping of the manufactured home must be determined and documented by engineering analysis. Those alternatives listed in § 3280.903(c) may be accepted in place of such an analysis. Unless substantiated in the design to the satisfaction of the approval agency by either engineering analysis in accordance with § 3280.903(a)(1) or tests in accordance with paragraph (b)(9)(ii) of this section, there must be a minimum of two axles equipped with brake assemblies on each manufactured home transportable section.

(ii) *Stopping distance.* Brakes on the towing vehicle and the manufactured home (a drive-away/tow-away) must be capable of assuring that the maximum stopping distance from an initial speed of 20 miles per hour does not exceed 35 feet in accordance with U.S. Department of Transportation regulations.

(iii) *Electrical brake wiring.* Brake wiring must be installed to provide sufficient operating voltage for each brake. The voltage available at the brakes must not be less than the value specified in the brake manufacturer's instructions. Aluminum wire, when used, must be provided with suitable termination that is protected against corrosion.

(10) *Lamps and associated wiring.* Stop lamps, turn signal/lamps, and associated wiring must meet the appropriate sections of FMVSS No. 108 in 49 CFR 571.108, which specify the performance and location of these lamps and their wiring. The manufacturer may meet these requirements by utilizing a temporary light/wiring harness, which has components that meet the FMVSS No. 108. The temporary harness is permitted to be provided by the manufactured home transportation carrier.

■ 35. Add subpart K to read as follows:

Subpart K—Attached Manufactured Homes and Special Construction Considerations

Sec.

3280.1001 Scope.
3280.1002 Definitions.
3280.1003 Attached manufactured home unit separation.
3280.1004 Exterior walls.
3280.1005 Electrical service.
3280.1006 Water service.

§ 3280.1001 Scope.

This subpart covers the requirements for attached manufactured homes and other related construction associated with manufactured homes not addressed elsewhere within this part.

§ 3280.1002 Definitions.

The following definitions are applicable to this subpart only

Attached manufactured home. Two or more adjacent manufactured homes that are structurally independent from foundation to roof and with open space on at least two sides, but which have the appearance of a physical connection (*i.e.* zero lot line).

Fire separation wall. A wall of an attached manufactured home which is structurally independent of a wall of another attached manufactured home with a fire separation distance of less than three feet.

§ 3280.1003 Attached manufactured home unit separation.

(a) *Separation requirements.* Attached manufactured homes must be separated from each other by a fire separation wall

of not less than 1-hour fire-resistive rating with exposure from both sides on each attached manufactured home unit when rated based on tests in accordance with ASTM E119–2005, Standard Test Method for Fire Tests of Building Construction and Materials (incorporated by reference, see § 3280.4). Fire resistance rated fire separation wall assemblies must extend from the foundation to the underside of the roof sheathing.

(b) *Fire separation penetrations.* (1) Fire rated fire separation walls must not contain through penetrations or openings.

(2) Membrane penetrations for electrical boxes are permitted under the following conditions:

(i) Steel electrical boxes not exceeding 16 square inches may be installed provided that the total area of such boxes does not exceed 100 square inches. Steel electrical boxes in adjacent fire separation walls must be separated by a horizontal distance of not less than 24 inches.

(ii) Listed 2-hour fire-resistant nonmetallic electrical boxes are installed in accordance with the listings.

(iii) No other membrane penetrations are allowed.

(c) *Continuity of walls.* The fire separation walls for single-family attached dwelling units must be continuous from the foundation to the underside of the roof sheathing, deck, or slab and must extend the full length of the fire separation walls.

(d) *Parapets.* (1) Parapets constructed in accordance with paragraph (d)(2) of this section must be provided for attached manufactured homes as an extension of fire separation walls in accordance with the following:

(i) Where roof surfaces adjacent to the fire separation walls are at the same elevation, the parapet must extend not less than 30 inches above the roof surfaces.

(ii) Where roof surfaces adjacent to the wall or walls are at different elevations and the higher roof is not more than 30 inches above the lower roof surface, the parapet must not extend less than 30 inches above the lower roof surface.

(A) Parapets must be provided unless roofs are of a Class C roof covering and the roof decking or sheathing is of noncombustible materials or approved fire-retardant-treated wood for a distance of four feet on each side of the common fire separation walls; or one layer of ⅝ inch Type X gypsum board is installed directly beneath the roof decking or sheathing for a distance of four feet on each side of the fire separation walls.

(B) A parapet must not be required where roof surfaces adjacent to the common walls are at different elevations and the higher roof is more than 30 inches above the lower roof. The fire separation wall construction from the lower roof to the underside of the higher roof deck must not have less than a 1-hour fire-resistive rating. The wall must be rated for exposure from both sides.

(2) Parapets must have the same fire resistance rating as that required for the supporting wall or walls. On any side adjacent to a roof surface, the parapet must have noncombustible faces for the uppermost 18 inches, to include counter flashing and coping materials. Where the roof slopes toward a parapet at slopes greater than 2/12 (16.7 percent slope), the parapet must extend to the same height as any portion of the roof within a distance of three feet, but in no case will the height be less than 30 inches.

§ 3280.1004 Exterior walls.

(a) The requirements of § 3280.504 for condensation control and vapor retarder installation are required to be provided on each fire separation wall of each attached manufactured home.

(b) The requirements of § 3280.506 for heat loss/gain insulation apply to the fire separation wall on each attached manufactured home.

§ 3280.1005 Electrical service.

(a) Each attached manufactured home must be supplied by only one service.

(b) Service conductors supplying one manufactured home must not pass through the interior of another manufactured home.

§ 3280.1006 Water service.

(a) Each manufactured home must have an individual water supply that will service only that unit.

(b) Each manufactured home must have a hot water supply system that will service only that unit.

PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

■ 36. The authority citation for part 3282 is revised to read as follows:

Authority: 28 U.S.C. 2461 note; 42 U.S.C. 3535(d); 42 U.S.C. 5424.

■ 37. In § 3282.7, redesignate paragraphs (d) through (nn) as (e) through (oo) and add new paragraph (d) to read as follows:

§ 3282.7 Definitions.

* * * * *

(d) *Attached accessory building or structure* means any awning, cabana, deck, ramada, storage cabinet, carport, fence, windbreak, garage, or porch for which the attachment of such is designed by the home manufacturer to be structurally supported by the basic manufactured home.

* * * * *

■ 38. In § 3282.8, revise paragraph (j) to read as follows:

§ 3282.8 Applicability.

* * * * *

(j) *Add-on.* An add-on including an attached accessory building or structure added by the retailer or some party other than the manufacturer (except where the manufacturer acts as a retailer) as part of a simultaneous transaction involving the sale of a new manufactured home, is not governed by the standards and is not subject to the regulations in this part except as identified in this section and part 3280 of this chapter. The addition of any add-on or attached accessory building or structure must not affect the ability of the basic manufactured home to comply with the standards. If the addition of an add-on or attached accessory building or structure causes the basic manufactured home to fail to conform to the standards, then sale, lease, and offer for sale or lease of the home are prohibited until the manufactured home is brought into conformance with the standards.

(1) Add-ons including an attached accessory building or structure must be structurally independent. Attachment is for weatherproofing and cosmetic purposes only.

(2) If an attached accessory building or structure is not structurally independent all the following must be met for attachment to the manufactured home:

(i) Manufactured home must be designed and constructed to accommodate all imposed loads, including any loads imposed on the home by the attached accessory building or structure, in accordance with part 3280 of this chapter.

(ii) Data plate must indicate that home has been designed to accommodate the additional loads imposed by the attachment of the attached accessory buildings or structures and must identify the design loads.

(iii) Installation instructions shall be provided by the home manufacturer which identifies acceptable attachment locations, indicates design limitations for the attached accessory building or structure including acceptable live and dead loads for which the home has been designed to accommodate and provide support and anchorage designs as necessary to transfer all imposed loads

to the ground in accordance with part 3285 of this chapter.

* * * * *

■ 39. In § 3282.14, revise paragraph (a) introductory text to read as follows:

§ 3282.14 Alternative construction of manufactured homes.

(a) *Policy.* In order to promote the purposes of the Act, the Department will permit the sale or lease of one or more manufactured homes not in compliance with the standards under circumstances wherein no affirmative action is needed to protect the public interest. An add-on, including an attached accessory building or structure which does not affect the performance and ability of the basic manufactured home to comply with the standards in accordance with § 3282.8(j), is not governed by this section. The Department encourages innovation and the use of new technology in manufactured homes. Accordingly, HUD will permit manufacturers to utilize new designs or techniques not in compliance with the standards in cases:

* * * * *

■ 40. In § 3282.601, add paragraph (c) to read as follows:

§ 3282.601 Purpose and applicability.

* * * * *

(c) *Exception.* An add-on or attached accessory building or structure which does not affect the performance and ability of the basic manufactured home to comply with the standards in accordance with § 3282.8(j) is not governed by this section.

■ 41. In § 3282.602, revise paragraph (a)(2) to read as follows:

§ 3282.602 Construction qualifying for on-site completion.

(a) * * *

(2) Any work required by the home design that cannot be completed in the factory, or when the manufacturer authorizes the retailer to provide an add-on to the home during installation, when that work would take the home out of conformance with the construction and safety standards and then bring it back into conformance;

* * * * *

PART 3285—MODEL MANUFACTURED HOME INSTALLATION STANDARDS

■ 42. The authority citation for part 3285 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 5403, 5404, and 5424.

■ 43. In § 3285.5, add alphabetically the definition for ''Attached accessory building or structure'' to read as follows:

§ 3285.5 Definitions.

* * * * *

Attached accessory building or structure means any awning, cabana, deck, ramada, storage cabinet, carport, fence, windbreak, garage, or porch for which attachment of such is designed by the home manufacturer to be structurally supported by the basic manufactured home.

* * * * *

■ 44. In § 3285.903, revise paragraph (c) to read as follows:

§ 3285.903 Permits, alterations, and on-site structures.

* * * * *

(c) *Installation of an add-on or attached accessory building or structure.* Each attached accessory building or structure or add-on is designed to support all of its own live and dead loads, unless the attached accessory building or structure is otherwise included in the installation instructions or designed by a registered professional engineer or registered architect in accordance with this part.

Dated: January 23, 2020.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2020–01473 Filed 1–30–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2020–0074]

RIN 1625–AA08

Special Local Regulation; Choptank River, Between Trappe and Cambridge, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish temporary special local regulations for certain waters of the Choptank River. This action is necessary to provide for the safety of life on these navigable waters located between Trappe, Talbot County, MD, and Cambridge, Dorchester County, MD, during a swim event on May 30, 2020. This proposed rulemaking would prohibit persons and vessels from entering the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or the Coast Guard Patrol Commander. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before March 2, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0074 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

TCR Event Management of St. Michaels, MD, notified the Coast Guard that it will be conducting the Maryland Freedom Swim from 10 a.m. to noon on May 30, 2020. The open water swim consists of approximately 300 participants competing on a designated 1.75-mile linear course. The course starts at the beach of Bill Burton Fishing Pier State Park at Trappe, MD, proceeds across the Choptank River along and between the fishing piers and the Senator Frederick C. Malkus, Jr. Memorial (US–50) Bridge, and finishes at the beach of the Dorchester County Visitors Center at Cambridge, MD. Hazards from the swim competition include participants swimming within and adjacent to the designated navigation channel and interfering with vessels intending to operate within that channel, as well as swimming within approaches to local public and private marinas and public boat facilities. The Captain of the Port (COTP) Maryland-National Capital Region has determined that potential hazards associated with the swim would be a safety concern for anyone intending to participate in this event and for vessels that operate within specified waters of the Choptank River.

The purpose of this rulemaking is to protect event participants, non-

participants, and transiting vessels on before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP Maryland-National Capital Region is proposing to establish special local regulations from 9 a.m. through 1 p.m. on May 30, 2020. There is no alternate date planned for this event. The regulated area would cover all navigable waters of the Choptank River, from shoreline to shoreline, within an area bounded on the east by a line drawn from latitude 38°35′14.2″ N, longitude 076°02′33.0″ W, thence south to latitude 38°34′08.3″ N, longitude 076°03′36.2″ W, and bounded on the west by a line drawn from latitude 38°35′32.7″ N, longitude 076°02′58.3″ W, thence south to latitude 38°34′24.7″ N, longitude 076°04′01.3″ W, located at Cambridge, MD. The regulated area is approximately 2,800 yards in length and 900 yards in width. The proposed duration of the rule and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after the open water swim, scheduled to take place from 10 a.m. to noon on May 30, 2020. The COTP and the Coast Guard Patrol Commander (PATCOM) would have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area.

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

If permission is granted by the COTP or PATCOM, a person or vessel would be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels would be required to operate at a safe speed that minimizes wake while within the regulated area. Official patrol vessels would direct non-participants while within the regulated area.

The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on size, time of day and duration of the regulated area, which would impact a small designated area of the Choptank River for 4 hours. The Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the status of the regulated area. Moreover, the rule would allow vessels to seek permission to enter the regulated area, and vessel traffic would be able to safely transit the regulated area once the PATCOM deems it safe to do so.

B. Impact on Small Entities

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

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area lasting for 4 hours. Normally such actions are categorically excluded from further review under paragraph L[61] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

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

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

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this docket, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

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

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.T05–0074 to read as follows:

§ 100.T05–0074 Maryland Freedom Swim, Choptank River, Between Trappe and Cambridge, MD.

(a) *Regulated area.* The regulations in this section apply to the following area: All navigable waters of the Choptank River, from shoreline to shoreline, within an area bounded on the east by a line drawn from latitude 38°35′14.2″ N, longitude 076°02′33.0″ W, thence south to latitude 38°34′08.3″ N, longitude 076°03′36.2″ W, and bounded on the west by a line drawn from latitude 38°35′32.7″ N, longitude 076°02′58.3″ W, thence south to latitude 38°34′24.7″ N, longitude 076°04′01.3″ W, located at Cambridge, MD. These coordinates are based on datum NAD 1983.

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

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

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

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

Participant means all persons and vessels registered with the event sponsor as participating in the Maryland Freedom Swim or otherwise designated by the event sponsor as having a function tied to the event.

(c) *Regulations.* (1) Except for vessels already at berth, all non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the COTP Maryland-National Capital Region or PATCOM.

(2) To seek permission to enter, contact the COTP Maryland-National Capital Region at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) or the PATCOM on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). Those in the regulated area must comply with all lawful orders or directions given to them by the COTP Maryland-National Capital Region or PATCOM.

(3) The COTP Maryland-National Capital Region will provide notice of the regulated area through advanced notice via Fifth Coast Guard District Local Notice to Mariners, broadcast notice to mariners, and on-scene official patrols.

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

(e) *Enforcement period.* This section will be enforced from 9 a.m. to 1 p.m. on May 30, 2020.

Dated: January 27, 2020.

Joseph B. Loring,

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

[FR Doc. 2020–01772 Filed 1–30–20; 8:45 am]

BILLING CODE 9110–04–P

Notices

Federal Register
Vol. 85, No. 21
Friday, January 31, 2020

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–2016–0045]

Environmental Impact Statement; Rangeland Grasshopper and Mormon Cricket Suppression Program: 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 Record of Decision for the Programmatic Environmental Impact Statement for the Rangeland Grasshopper and Mormon Cricket Suppression Program.

DATES: An official of the Animal and Plant Health Inspection Service-Plant Protection and Quarantine signed the record of decision on December 2, 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-2016-0045.* To obtain copies of the documents, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: For questions related to the Grasshopper and Mormon Cricket Suppression Program, contact Mr. William D. Wesela, APHIS National Grasshopper and Mormon Cricket Program Manager, PPQ, APHIS, USDA, 4700 River Road Unit 26, Riverdale, MD 20737; *William.D.Wesela@usda.gov,* (301) 851–2229. For questions related to the environmental impact statement, contact Dr. Jim Warren, Environmental Protection Specialist, Environmental and Risk Analysis Services, PPD, APHIS, 4700 River Road Unit 149, Riverdale, MD 20737; *Jim.E.Warren@usda.gov;* (202) 316–3216.

SUPPLEMENTARY INFORMATION: On September 1, 2016, we published in the **Federal Register** (81 FR 60338–60339) a notice of intent to prepare an environmental impact statement (EIS) [1] to analyze the effects of a program to suppress populations of grasshoppers and Mormon cricket from 17 States in the western United States. That notice identified three alternatives for examination in the EIS and requested public comments to help delineate the scope of the issues and alternatives to be analyzed. The public comment period for scoping ended on October 17, 2016. We received 12 comments during the 45-day scoping period and considered these comments in the drafting of the EIS.

On January 30, 2019, the Animal and Plant Health Inspection Service (APHIS) made the draft EIS available and invited public comment on it through March 18, 2019. We received 19 comments. Our responses to the comments are contained in an appendix to the final EIS. On November 1, 2019, the Environmental Protection Agency published a notice of availability of the final EIS in the **Federal Register** (84 FR 58713). The review period for the final EIS ended on December 2, 2019.

The National Environmental Policy Act (NEPA, as amended (42 U.S.C. 4321 *et seq.*)) 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; (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 24th day of January 2020.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–01835 Filed 1–30–20; 8:45 am]

BILLING CODE 3410–34–P

[1] The notices, comments, draft and final EIS, record of decision, and supporting documents can be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0045.*

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2019–0067]

Addition of the Philippines to the List of Regions Affected With African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have added the Philippines to the list of regions that the Animal and Plant Health Inspection Service considers to be affected with African swine fever (ASF). We have taken this action because of confirmation of ASF in the Philippines.

DATES: The Philippines was added to the APHIS list of regions considered affected with ASF on September 17, 2019.

FOR FURTHER INFORMATION CONTACT: Dr. Ingrid Kotowski, Regionalization Evaluation Services, Veterinary Services, APHIS, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606; Phone: (919) 855–7732; email: *Ingrid.kotowski@usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and

animal products to prevent the introduction into the United States of various animal diseases, including African swine fever (ASF). ASF is a highly contagious disease of wild and domestic swine that can spread rapidly in swine populations with extremely high rates of morbidity and mortality. A list of regions where ASF exists or is reasonably believed to exist is maintained on the Animal and Plant Health Inspection Service (APHIS) website at *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions/*. This list is referenced in § 94.8(a)(2) of the regulations.

Section 94.8(a)(3) of the regulations states that APHIS will add a region to the list referenced in § 94.8(a)(2) upon determining ASF exists in the region, based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable, or upon determining that there is reason to believe the disease exists in the region. Section 94.8(a)(1) of the regulations specifies the criteria on which the Administrator bases the reason to believe ASF exists in a region. Section 94.8(b) prohibits the importation of pork and pork products from regions listed in accordance with § 94.8 except if processed and treated in accordance with the provisions specified in that section or consigned to an APHIS-approved establishment for further processing. Section 96.2 restricts the importation of swine casings that originated in or were processed in a region where ASF exists, as listed under § 94.8(a).

On September 9, 2019, the veterinary authorities of the Philippines reported to the OIE the occurrence of ASF in that country. Therefore, in response to this outbreak, on September 17, 2019, APHIS added the Philippines to the list of regions where ASF exists or is reasonably believed to exist. This notice serves as an official record and public notification of that action.

As a result, pork and pork products from the Philippines, including casings, are subject to APHIS import restrictions designed to mitigate the risk of ASF introduction into the United States.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this action as not a major rule, as defined by 5 U.S.C. 804(2).

Authority: 7 U.S.C. 1633, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 24th day of January 2020.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–01836 Filed 1–30–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2019–0054]

Import Requirements for the Importation of Unshu Oranges From Japan Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to revise the import requirements for the importation of fresh Unshu oranges from Japan into the United States and to allow Unshu oranges from the island of Kyushu to be imported into any port of entry in the United States, excluding territories. We are also removing the fumigation requirement for Unshu oranges from the islands of Honshu and Shikoku. Based on the findings of our commodity import evaluations, which we made available to the public to review and comment through a previous notice, we have concluded that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh Unshu oranges into the United States from Japan, including the island of Kyushu.

DATES: The articles covered by this notice may be authorized for importation after January 31, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Tony Roman, Senior Regulatory Policy Specialist, RCC, IRM, PHP, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1236; (301) 851–2242.

SUPPLEMENTARY INFORMATION: Under the regulations in ''Subpart L—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–12, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 of the regulations contains a notice-based process based on established performance standards for authorizing the importation of fruits and vegetables. Paragraph (c) of that section provides that the name and origin of all fruits and vegetables authorized importation into the United States, as well as the requirements for their importation, are listed on the internet in APHIS' Fruits and Vegetables Import Requirements database, or FAVIR (*https://epermits.aphis.usda.gov/manual*). It also provides that, if the Administrator of APHIS determines that any of the phytosanitary measures required for the importation of a particular fruit or vegetable are no longer necessary to reasonably mitigate the plant pest risk posed by the fruit or vegetable, APHIS will publish a notice in the **Federal Register** making its pest risk analysis and determination available for public comment.

In accordance with that process, we published a notice [1] in the **Federal Register** on September 23, 2019 (84 FR 49707–49708, Docket No. APHIS–2019–0054) announcing the availability, for review and comment, of commodity import evaluation documents (CIEDs) prepared relative to revising the conditions for the importation of fresh Unshu oranges from Japan into the United States and allowing Unshu oranges from Kyushu to be imported into any port of entry in the United States (excluding territories). The notice proposed to remove the fumigation requirement for the importation of Unshu oranges to the United States from areas of production on the islands of Honshu and Shikoku in Japan and to expand the number of ports of entry authorized for importation of Unshu oranges from the island of Kyushu.

We solicited comments on the CIEDs for 60 days ending on November 22, 2019. We received six comments by that date. Two of these comments were sent by representatives of State government agricultural agencies, with the remainder submitted by the public. The comments are discussed below.

General Comments

A commenter stated that the United States should focus more on addressing domestic citrus challenges, particularly with respect to Asian citrus psyllid.

Under its obligations as a cosignatory to the International Plant Protection Convention, APHIS is required to base its import requirements on an

[1] To view the notice, supporting documents, and the comments that we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0054*.

assessment of plant pest risk; for the reasons stated in the CIEDs, the initial notice, and this notice, we have determined that revisions to the import requirements for Unshu oranges from Japan are warranted to have these requirements be commensurate with respect to risk.

That being said, as a means to address domestic citrus challenges, APHIS has developed the Citrus Health Response Program (CHRP). The CHRP provides phytosanitary guidelines for nursery stock, fruit inspection, treatment, and certification. The CHRP also works closely with regulatory officials from citrus-producing States to identify and implement appropriate survey, diagnostic, and mitigation measures to reduce the spread of citrus canker, citrus greening, and other citrus diseases.

A commenter asked for assurances that citrus greening will not be transported with Unshu oranges from Japan into Hawaii under the proposed change to the import requirements.

Commercially grown and packaged fruit is an epidemiologically insignificant pathway for the transmission of citrus greening. Moreover, as part of the packinghouse procedures that will be detailed in an operational workplan entered into by APHIS and the national plant protection organization of Japan, Unshu oranges will be washed with sodium hypochlorite solution to mitigate the risk of Asian citrus psyllid, the primary vector of citrus greening.

The commenter added that if APHIS approves these new import requirements, then Hawaiian citrus growers should be allowed to import scion and propagative material to compete with imported fruit on a level playing field.

We are making no changes in response to the commenter. Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), we have the authority to prohibit or restrict the importation of plants and plant products only when necessary to prevent the introduction into or dissemination of plant pests or noxious weeds within the United States. Accordingly, any decisions made by APHIS regarding the movement of propagative materials into Hawaii would be based on phytosanitary safety considerations and not on economic effects.

Another commenter asked if APHIS had conducted research on new pests of concern, noting that the Unshu orange regulations are over 17 years old and that new actionable pests not known to occur in the United States or Hawaii may have emerged since the initial assessment.

No new actionable pests have been found in Japan since APHIS' initial assessment for Unshu orange from Japan. APHIS has maintained pest interception data on Unshu orange from Japan from 1984 to the present. The national plant protection organization (NPPO) of Japan also maintains a working relationship with APHIS to keep us informed of any actionable pest activity.

A commenter asked us to confirm that the regulation suggests that the same applications and risks used to prevent spread of citrus canker in the United States also apply to Japan.

We can confirm that, with respect to importation of citrus from Japan and other countries, APHIS applies pest mitigation measures that are equivalent to those mitigations used for movement of citrus within the United States.

Citing pest risks to domestic citrus production, one commenter opposed ending the use of methyl bromide fumigation on Unshu oranges from Japan but provided no details. Another commenter asked what types of pesticides Japan plans to use to replace methyl bromide.

We have determined that methyl bromide fumigation is no longer necessary as a pest mitigation measure for importation of Unshu oranges from Japan into the United States. No pesticides are intended to be used as a replacement for methyl bromide. The only phytosanitary treatment that the Unshu oranges will receive is washing at the packinghouse with a solution of sodium hypochlorite. If pests are found in the future during phytosanitary inspections in Japan or at ports of entry into the United States, the shipments will be treated in accordance with 7 CFR part 305.

A commenter asked that APHIS clarify in § 319.28(b) all areas of Japan that are allowed to ship Unshu oranges and suggested listing the prefectures for Kyushu included among these areas. The commenter also asked APHIS to clarify in § 319.28(b) that any territorial destinations are not included for import, noting that the notice is confusing and Guam was not included. The commenter also noted that the docket background clearly states ''ports of entry in the United States (excluding territories)''.

The commenter is referring to a subpart that was removed from the regulations by a final rule published in the **Federal Register** on September 14, 2018 (83 FR 46627–46639, Docket No. APHIS–2010–0084). As a result of that rule, import requirements for Unshu oranges from Japan are now solely found in FAVIR. The restriction regarding importing Unshu oranges from Japan to U.S. territories in FAVIR is unambiguous.

A commenter stated that the current rule says ''Unshu oranges from Kyushu Island, Japan (Prefectures of Fukuoka, Kumanmoto, Nagasaki, and Saga only) that have not been fumigated in accordance with part 305 of this chapter may not be imported into American Samoa, Arizona, California, Florida, Hawaii, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, or the U.S. Virgin Islands.'' The commenter stated that it was only logical to mention ''not been fumigated'' if it was also true that Unshu would be enterable to citrus growing States if they were fumigated. Otherwise, the rule would have simply stated ''Unshu oranges are prohibited from the Kyushu Prefectures of Fukuoka, Kumanmoto, Nagasaki, and Saga into citrus growing States Arizona, California, Florida, Hawaii, Louisiana, or Texas.''

We are making no changes in response to the commenter. We are unclear as to the commenter's reference to the ''current rule.'' The prohibitions mentioned by the commenter are actually derived from an earlier version of 7 CFR part 319. The commenter seems to be stating that the import restriction in this outdated version could be reworded to communicate the same point in fewer words. As noted above, FAVIR contains current import requirements. It indicates that oranges originating in Kyushu are only admissible into States other than Arizona, California, Florida, Hawaii, and Texas, and fumigation is not required. It also indicates that Unshu oranges are prohibited entry into the territories of American Samoa, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

Comments Related to the CIEDs

Bactrocera Tsuneonis

A commenter suggested that APHIS confirm continuance of the *Bactrocera tsuneonis* trapping protocol suspension of shipping from Kyushu Island until negative trapping shows the problem has been resolved. The commenter added that longstanding trapping data does not in itself justify removal of the trapping safeguards and suggested that the current trapping standards could be optional if *B. tsuneonis* was no longer known to occur based on standard APHIS criteria for generational eradication for the species, or if other efficacious practices replace past ones

and are required for all exported Unshu oranges.

We can confirm that trapping will continue for *B. tsuneonis* in Japan even after removal of the mandatory fumigation requirement.

A commenter expressed concern about the risk that *B. tsuneonis* poses to California's citrus industry because a male trapping lure does not exist, making it necessary to use protein-based lures, which are less efficacious. The commenter added that standard culling and packing procedures are not likely to remove all infested fruit because fruit fly larvae are internal feeders. Another commenter agreed, stating that allowing shipments of Unshu oranges to enter the United States without undertaking mitigation measures for *B. tsuneonis* could devastate the Florida citrus industry.

Since 2016, Japan has been conducting trapping on Kyushu Island in accordance with these trapping protocols with no interceptions of *B. tsuneonis* to date. We acknowledge that Japan has been trapping for *B. tsuneonis* with a protein-based trap, and also agree that a male trapping lure for *B. tsuneonis* would be more efficient than a protein-based trap, but disagree that protein-based traps are ineffective at detecting populations of *B. tsuneonis.* In the absence of a species-specific male lure, protein baits may be used reliably to trap for fruit flies; the absence of the lure is accounted for by adjusting the trapping protocol itself, such as by increasing trap density and servicing. This approach is evidenced in the trapping protocols used extensively throughout Central and South America for *Anastrepha* spp.

The same commenter added that while fruit fly detection trapping is done in Japan with APHIS-approved methods, we provided no trapping details with the proposal, nor did we provide information on the planned response if fruit flies are detected.

Under an operational workplan entered into by the NPPO of Japan and APHIS, trapping protocols and other pest mitigation are agreed upon and documented in detail. In the event of an infestation, shipment of consignments would be halted from the infested areas until the infestation is eradicated and APHIS determines that risk mitigations for resumption of shipments will be adequate.

External Feeders

A commenter noted that the small number of pest interceptions does not seem like a solid argument against the risk posed by external pests on Unshu oranges. As the economic assessment indicates, the commenter opined, small amounts of this fruit were exported to the United States, so it would be expected that the number of interceptions would also be small.

We disagree with the commenter's premise that the amount of Unshu orange imported into the United States from Japan is proportional to the number of pest interceptions. While the volume of Unshu oranges imported from Japan into the United States has decreased in recent years, import volume has not always been as low. Additionally, APHIS has only detected plant pests on Unshu oranges from Japan 45 times since 1984, regardless of volume of imports in a particular year. This indicates the efficacy of mitigations agreed to between APHIS and the NPPO of Japan, and we do not expect this to change substantially if shipments of fruit are increased. Nonetheless, APHIS does not expect shipments of Unshu orange from Japan to increase significantly as a result of this change to the import requirements.

A commenter agreed that external pests targeted by fumigation could be detected during inspection but stated that inspection should not be the sole mitigation measure. On this point, the commenter noted that post-harvest washing and waxing can reduce the risk of external pests but that APHIS failed to provide information regarding post-harvest handling procedures of Unshu oranges.

As part of the packinghouse procedures, Unshu oranges will be dipped and washed with approved disinfectants to mitigate for surface feeders. Fruit will also be subject to a phytosanitary inspection before entering the United States.

A commenter stated that it is not possible to assess the risk posed by unidentified mealybugs and suggested that further identification is needed to assess species-specific risk.

If mealybugs are detected on Unshu oranges destined for importation into the United States during a phytosanitary inspection, they are subject to fumigation, regardless of species. Identification of species is not required for this mitigation.

A commenter disagreed with discontinuing use of methyl bromide for Unshu oranges from the islands of Honshu or Shikoku because of concerns over two species of mites, *Eotetranychus asiaticus* and *Eotetranychus kankitus,* and a fruit fly, *Bactrocera tsuneonis.* The commenter noted that, despite our statement that these pests are surface feeders and could be detected during phytosanitary inspections, the small mites could easily be missed in a visual inspection.

We have determined that a visual inspection, combined with other requirements detailed in the operational workplan, including packinghouse washing with a solution of sodium hypochlorite, sufficiently mitigates mites and other surface feeders. Additionally, as we discussed earlier in this document, Japan has not detected *B. tsuneonis* since 2016. Any detections of mites or fruit flies on Unshu oranges from Japan are treated in accordance with 7 CFR part 305.

A commenter questioned whether mitigations were necessary for mites, as they are already addressed by a fruit scrubbing and washing requirement in a 2013 risk analysis. The analysis includes packinghouse washing and scrubbing procedures, disinfection, chemical treatment, and fruit waxing. The commenter asked if these protocols were required or suggested by APHIS.

Post-harvest/packinghouse protocols, which include washing and disinfection of fruit to mitigate mites and other surface feeders, will be included in the operational workplan.

Therefore, in accordance with § 319.56–4(c)(4)(ii) of the regulations, we are announcing our decision to revise the requirements for the importation of Unshu oranges from Japan by removing the methyl bromide requirement for Unshu oranges from the islands of Honshu and Shikoku and allowing Unshu oranges from the island of Kyushu to be imported into any port of entry in the United States, excluding territories. The revised conditions are as follows:

- The oranges must be commercial consignments. In order to be considered commercially produced, the oranges must be washed and disinfected in accordance with an operational workplan agreed to by APHIS and the NPPO of Japan.
- Each consignment must be accompanied by a phytosanitary certificate with an additional declaration that the oranges were packed and produced in accordance with the requirements authorized under 7 CFR 319.56–4.
- Each consignment must be free of leaves, twigs, and other plant parts, except for stems that are less than 1 inch long and attached to the fruit.
- Shipments are prohibited entry into any U.S. territory.
- Each shipment is subject to inspection at the port of entry into the United States.
- Each shipment must be imported under an import permit issued by APHIS.

These revised conditions will be listed in the Fruits and Vegetables Import Requirements database (available at *http://www.aphis.usda.gov/favir*). In addition to these specific measures, fresh Unshu oranges from Japan will be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

Paperwork Reduction Act

In accordance with Section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection activities included in this notice are approved by the Office of Management and Budget under control number 0579–0049.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance 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. For information pertinent to E-Government Act compliance related to this notice, please contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this action as not a major rule, as defined by 5 U.S.C. 804(2).

Authority: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 29th day of January 2020.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–01981 Filed 1–30–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Land Between the Lakes Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent To Renew the Land Between the Lakes Advisory Board.

SUMMARY: The Department of Agriculture intends to renew the Land Between the Lakes (LBL) Advisory Board (Board). In accordance with provisions of Section 460 of the Land Between the Lakes Act of 1998 (Act) (16 U.S.C. 460 iii *et seq.,*) and the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), except 14(a)(2) of FACA, the Board is being renewed to provide advice to the Secretary of Agriculture (Secretary) on the following: (1) Means of promoting public participation for the Land and Resource Management Plan, and (2) environmental education. Additional information concerning the Board can be found by visiting the website at: *http://www.landbetweenthelakes.us/about/working-together/.*

FOR FURTHER INFORMATION CONTACT: Christine Bombard, Advisory Board Liaison, Land Between the Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211, or by telephone at (270) 924–2002, or by email at *christine.bombard@usda.gov.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. This service is available 7 days a week, 24 hours a day.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of FACA, the Secretary intends to renew the Board. The Board will be a statutory advisory Board and will operate under the provisions of FACA. The Board will report to the Secretary through the Chief of the Forest Service.

The Board provides a critical role in advising the Secretary best methods to promote public participation during the planning process for the Land Resource Management Plan and continues to provide advice to the Forest Service on environmental education issues.

The Board consists of 17 non-Federal members who provide balanced and broad representation and who shall be considered representatives of LBL user groups or State or local government within the following categories of interests:

(1) Four persons appointed by the Secretary of Agriculture, including:
  a. Two residents of the State of Kentucky
  b. Two residents of the State of Tennessee
(2) Two persons appointed by the Governor of Tennessee;
(3) Two persons appointed by the Governor of Kentucky;
(4) Two persons appointed by the Commissioner (or designee) of the Kentucky Department of Fish and Wildlife Resources;
(5) One person appointed by the Commissioner (or designee) of the Tennessee Wildlife Resource Agency;
(6) Two persons appointed by the Judge Executive of Lyon County, Kentucky;
(7) Two persons appointed by the Judge Executive of Trigg County, Kentucky; and
(8) Two persons appointed by the County Executive of Stewart County, Tennessee.

A designated Federal employee will serve as the Designated Federal Officer (DFO) under sections 10(e) and (f) of the Federal Advisory Committee Act (5 U.S.C. App. 2). A meeting notice will be published in the **Federal Register** 15 to 45 days before a scheduled meeting date. All meetings are generally open to the public and may include a ''public forum'' that may offer 5–10 minutes for participants to present comments to the advisory committee. The Chair of the Board ultimately makes the decision whether to offer time on the agenda for the public to speak to the general body.

Equal opportunity practices were followed in accordance with US Department of Agriculture (USDA) policies. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership includes to the extent possible, individuals with demonstrated ability to represent the needs of all racial and ethnic groups, women and men, and persons with disabilities.

Dated: January 24, 2020.

Cikena Reid,

Committee Management Officer, USDA.

[FR Doc. 2020–01795 Filed 1–30–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–60–2019]

Foreign-Trade Zone (FTZ) 23—Buffalo, New York; Authorization of Production Activity; Panasonic Solar North America (Crystalline Silicon Photovoltaic Solar Panels/Modules and Cells); Buffalo, New York

On September 26, 2019, Panasonic Solar North America (formerly Panasonic Eco Solutions New York America) submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 23, in Buffalo, New York.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (84 FR 53103–5310, October 4, 2019). On January 24, 2020,

the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: January 24, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–01840 Filed 1–30–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2091]

Expansion of Foreign-Trade Zone 116; Port Arthur, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for '' . . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, Foreign-Trade Zone of Southeast Texas, Inc., grantee of Foreign-Trade Zone 116, submitted an application to the Board for authority to expand FTZ 116—Site 1 to include the entire 149-acre Port of Port Arthur facilities (encompassing the existing 6.12 acres) in Port Arthur, Texas, adjacent to the Port Arthur-Beaumont Customs and Border Protection port of entry (B–24–2019, docketed April 11, 2019);

Whereas, notice inviting public comment has been given in the **Federal Register** (84 FR 16002, April 17, 2019) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to expand FTZ 116 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Dated: January 27, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2020–01838 Filed 1–30–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–62–2019]

Foreign-Trade Zone (FTZ) 141—Rochester, New York; Authorization of Production Activity; Eastman Kodak Company (One-Time Use Cameras); Rochester, New York

On September 26, 2019, Eastman Kodak Company submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 141, in Rochester, New York.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (84 FR 54837, October 19, 2019). On January 24, 2020, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: January 24, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–01839 Filed 1–30–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–992]

Monosodium Glutamate From the People's Republic of China: Final Results of the First Expedited Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this expedited sunset review, Commerce finds that the revocation of the antidumping duty order on monosodium glutamate (MSG) from the People's Republic of China (China) would be likely to lead to the continuation or recurrence of dumping at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: Applicable January 31, 2020.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5255.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2019, Commerce published the notice of initiation of the first sunset review of the antidumping duty order on MSG from China [1] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On October 15, 2019, Commerce received a notice of intent to participate from Ajinomoto Health & Nutrition North America, Inc. (the domestic interested party), a U.S. producer and wholesaler of a domestic like product, within the 15-day deadline specified in 19 CFR 351.218(d)(1)(i).[3]

On October 31, 2019, Commerce received an adequate substantive response to the *Notice of Initiation* from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[4] We received no substantive responses from respondent interested parties with respect to the *Order* covered by this sunset review.

On November 22, 2019, Commerce notified the International Trade Commission (ITC) that it did not receive adequate substantive responses from respondent interested parties.[5] As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce is conducting an expedited (120-day) sunset review of the antidumping duty order on MSG from China.

Scope of the Order

The product covered by the *Order* is MSG, whether or not blended or in solution with other products. Specifically, MSG that has been blended or is in solution with other product(s) is

[1] *Monosodium Glutamate from the People's Republic of China, and the Republic of Indonesia: Antidumping Duty Orders; and Monosodium Glutamate from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value,* 79 FR 70505 (November 26, 2014) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 84 FR 52067 (October 1, 2019) (*Notice of Initiation*).

[3] *See* Domestic Interested Party's Letter, ''Monosodium Glutamate from China: Notice of Intent to Participate,'' dated October 15, 2019.

[4] *See* Domestic Interested Party's Letter, ''Monosodium Glutamate from China: First Review: Substantive Response to Notice of Initiation,'' dated October 31, 2019.

[5] *See* Commerce's Letter to the ITC, ''Sunset Review Initiated on October 1, 2019,'' dated November 22, 2019.

included in this scope when the resulting mix contains 15 percent or more of MSG by dry weight. Products with which MSG may be blended include, but are not limited to, salts, sugars, starches, maltodextrins, and various seasonings. For the full description of the scope of the *Order, see* the Issues and Decision Memorandum.[6]

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum.[7] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Commerce building. A list of topics discussed in the Issues and Decision Memorandum is included as the appendix to this notice. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results of Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the antidumping duty order on MSG from China would be likely to lead to the continuation or recurrence of dumping at rates up to 40.41 percent.

Notification Regarding Administrative Protective Orders (APO)

This notice also serves as the only reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

[6] *See* Memorandum, ''Issues and Decision Memorandum for the First Expedited Sunset Review of the Antidumping Duty Order on Monosodium Glutamate from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[7] *Id.*

Notification to Interested Parties

We are issuing and publishing these final results and this notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218.

Dated: January 24, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. History of the *Order*
V. Legal Framework
VI. Discussion of the Issues
  1. Likelihood of the Continuation or Recurrence of Dumping
  2. Magnitude of the Margins of Dumping Likely to Prevail
VII. Final Results of Sunset Review
VIII. Recommendation

[FR Doc. 2020–01834 Filed 1–30–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Meeting of the Civil Nuclear Trade Advisory Committee

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of a Federal Advisory Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Civil Nuclear Trade Advisory Committee (CINTAC).

DATES: The meeting is scheduled for Thursday, February 20, 2020, from 9 a.m. to 4 p.m. Eastern Standard Time (EST). The deadline for members of the public to register to participate, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5 p.m. Eastern Standard Time (EST) on Friday, February 14, 2020.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, Herbert C. Hoover Building, 1401 Constitution Ave. NW, Washington, DC 20230. Requests to register to participate (including to speak or for auxiliary aids) and any written comments should be submitted to: Mr. Jonathan Chesebro, Office of Energy & Environmental Industries, International Trade Administration, Room 28018, 1401 Constitution Ave. NW, Washington, DC 20230. (Fax: 202–482–5665; email: *jonathan.chesebro@trade.gov*). Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Chesebro, Office of Energy & Environmental Industries, International Trade Administration, Room 28018, 1401 Constitution Ave. NW, Washington, DC 20230. (Phone: 202–482–1297; Fax: 202–482–5665; email: *jonathan.chesebro@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background: The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

The Department of Commerce renewed the CINTAC charter on August 10, 2018. This meeting is being convened under the sixth charter of the CINTAC.

Topics to be considered: The agenda for the CINTAC meeting on Thursday, February 20, 2020, is as follows:

(9 a.m.–4 p.m.)—Subcommittee work, review of deliberative recommendations, and opportunity to hear from members of the public.

Members of the public wishing to attend the meeting must notify Mr. Jonathan Chesebro at the contact information above by 5 p.m. EST on Friday, February 14, 2020 in order to pre-register to participate. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted but may not be possible to fill. A limited amount of time will be available for brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mr. Chesebro

and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5 p.m. EST on Friday, February 14, 2020. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, ITA may conduct a lottery to determine the speakers.

Any member of the public may submit written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to the Civil Nuclear Trade Advisory Committee, Office of Energy & Environmental Industries, Room 28018, 1401 Constitution Ave. NW, Washington, DC 20230. For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5 p.m. EST on Friday, February 14, 2020. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Dated: January 27, 2020.

Devin Horne,

Designated Federal Officer, Office of Energy and Environmental Industries.

[FR Doc. 2020–01805 Filed 1–30–20; 8:45 am]

BILLING CODE 3510–Dr–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA025]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting (webinar).

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a webinar meeting of its Groundfish Management Team (GMT) to discuss items on the Pacific Council's March 2020 meeting agenda. The meeting is open to the public.

DATES: The webinar meeting will be held Tuesday, February 25, 2020, from 1 p.m. to 4 p.m. Pacific Standard Time. The scheduled ending time for the GMT webinar is an estimate, the meeting will adjourn when business for the day is completed.

ADDRESSES: This meeting will be held via webinar. A public listening station is available at the Pacific Council office (address below). To attend the webinar (1) join the meeting by using this link: *https://meetings.ringcentral.com/join,* (2) enter the Meeting ID provided in the meeting announcement (see *http://www.pcouncil.org*) and click JOIN, (3) you will be prompted to either download the RingCentral meetings application or join the meeting without a download via your web browser, and (4) enter your name and click JOIN. *Note:* We require all participants to use a telephone or cell phone to participate. (1) You must use your telephone for the audio portion of the meeting by dialing the TOLL number provided on your screen followed by the meeting ID and participant ID, also provided on the screen. (2) Once connected, you will be in the meeting, seeing other participants and a shared screen, if applicable. Technical Information and System Requirements: PC-based attendees are required to use Windows® 10, 8; Mac®-based attendees are required to use Mac OS® X 10.5 or newer; Mobile attendees are required to use iPhone®, iPad®, Android™ phone or Android tablet (See the RingCentral mobile apps in your app store). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at 503–820–2280, extension 412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Todd Phillips, Staff Officer; telephone: (503) 820–2426; email: *todd.phillips@noaa.gov*

SUPPLEMENTARY INFORMATION: The primary purpose of the GMT webinar is to prepare for the Pacific Council's March 2020 agenda items. The GMT will discuss items related to groundfish management and administrative Pacific Council agenda items. A detailed agenda for the webinar will be available on the Pacific Council's website prior to the meeting. The GMT may also address other assignments relating to groundfish management. No management actions will be decided by the GMT.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GMT's intent to take final action to address the emergency.

Special Accommodations

The public listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (503) 820–2412, *kris.kleinschmidt@noaa.gov*) at least 10 days prior to the meeting date.

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

Dated: January 28, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–01875 Filed 1–30–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA024]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Tilefish Advisory Panel will hold a meeting.

DATES: The meeting will be held on Thursday, February 20, 2020, beginning at 9 a.m. and conclude by 1 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar with a telephone-only connection option: *http://mafmc.adobeconnect.com/tf2020ap/;* Conference Number: 800–832–0736; Room Number: 5068609.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their website at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to create fishery performance reports for blueline and golden tilefish by the Council's

Tilefish Advisory Panel. The intent of these reports is to facilitate a venue for structured input from the Advisory Panel members for the Tilefish specifications processes, including recommendations to the Council and its Scientific and Statistical Committee.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: January 28, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–01873 Filed 1–30–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR069]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to THwaites Offshore Research (THOR) Project in the Amundsen Sea, Antarctica

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the National Science Foundation (NSF) Office of Polar Programs on behalf of the University of Houston to incidentally harass, by Level B harassment only, marine mammals during a low-energy marine geophysical survey in the Amundsen Sea, Antarctica.

DATES: This Authorization is effective for one year from the January 24, 2020.

FOR FURTHER INFORMATION CONTACT: Bonnie DeJoseph, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On July 24, 2019, NMFS received a request from NSF for an IHA to take marine mammals incidental to conducting a low-energy marine geophysical survey and icebreaking as necessary in the Amundsen Sea. The application was deemed adequate and complete on November 22, 2019. NSF's request is for take of small numbers of 18 species of marine mammals, by harassment. Neither NSF nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. The planned activity is not expected to exceed one year.

Description of Planned Activity

NSF plans to conduct a low-energy marine seismic survey in the Amundsen Sea during February 2020. The survey will complement Thwaites Glacier and other Amundsen Sea oceanographic and geological/geophysical studies and provide reference data that can be used to initiate and evaluate the reliability of ocean models. Data obtained by the project would assist in establishing boundary conditions seaward of the Thwaites Glacier grounding line, obtaining records of external drivers of change, improving knowledge of processes leading to the collapse of Thwaites Glacier, and determining the history of past change in grounding line migration and conditions at the glacier base.

Seismic surveys will be conducted over approximately 8400 square kilometers (km^2) between 75.25°–73.5° S and 101.0°–108.5°W of the Amundsen Sea for approximately eight days beginning on or about February 6, 2020. Sixty-five percent of data acquisition will occur in intermediate depths (100–1000 meters (m)) and 35 percent in deep waters (1000–< 2000 m). The surveys will involve one source vessel, the Research Vessel/Icebreaker (RVIB) *Nathaniel B. Palmer* (*Palmer*). NSF has stated the possibility of deploying multiple configurations of generator injector (GI) airgun(s) with one 100–300 m, solid-state, hydrophone streamer towed behind the *Palmer.* If the preferred airgun configuration (two 45/105 cubic inch (in^3) gun array in true GI mode does not provide data to meet scientific objectives, alternate configurations would be utilized (Table 1). All possible configurations will be towed at a depth of 3 m with a total maximum discharge volume for the largest, two-airgun array of 420 in^3 along predetermined track lines, approximately 1600 km. Because of the extent of sea ice in the Amundsen Sea that typically occurs between January and February annually, icebreaking activities are expected to be required during the cruise.

TABLE 1—PROPOSED SEISMIC SURVEY ACTIVITIES IN THE AMUNDSEN SEA [1]

Configuration	Airgun array total volume (GI configuration)	Frequency between seismic shots	Streamer length
Preferred	2 × 45/105 in³ (300 in³ total) (true GI mode)	5 seconds	100–300 m (328–984 ft)
Alternate 1	1 × 45/105 in³ (150 in³ total) (true GI mode)	5 seconds.	
Alternate 2 (used for take request)	2 × 105/105 in³ (420 in³ total) (harmonic mode)	5 seconds.	
Alternate 3	1 × 105/105 in³ (210 in³ total) (harmonic mode)	5 seconds.	

[1] Seismic surveying operations are planned for 1600 km (994 mi) in length.

In addition to the operations of the airgun array, a hull-mounted Single Beam Echo Sounder (Knudsen 3260 CHIRP), Multibeam Sonar (Kongsberg EM122), Acoustic Doppler Current Profiler (ADCP) (Teledyne RDI VM–150 or Ocean Surveyor OS–38), as well as EK biological echo sounder (Simrad ES200–7C, ES38B, ES–120–7C) will also be operated from the *Palmer* during the cruise.

A detailed description of the planned THOR project was provided in the **Federal Register** notice for the proposed IHA published on December 19, 2019 (*84 FR 69950*). Since that time, no changes have been made to the planned survey activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting).

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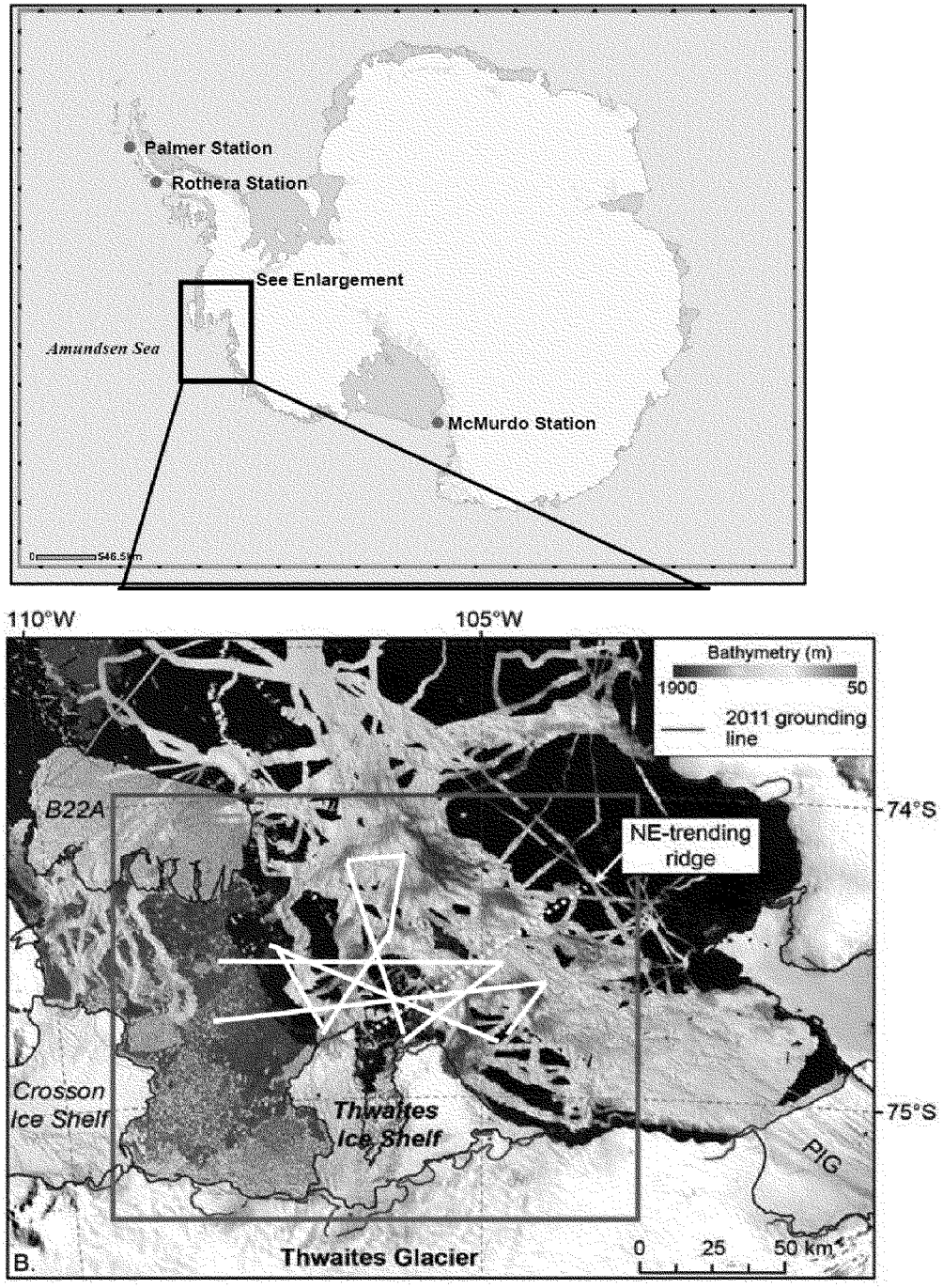
Figure 1 – Amundsen Sea Study Area



Note: Thwaites Glacier study area (red box) and approximate seismic survey lines (white line within box).
Source: Scambos *et al*. 2017 in Global and Planetary Change.

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Comments and Responses

A notice of NMFS's proposal to issue an IHA to NSF was published in the **Federal Register** on December 19, 2019 (*84 FR 69950*). That notice described, in detail, NSF's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received a comment letter from the Marine Mammal Commission (Commission). For full detail of the Commission's recommendations and supporting rationale, please see the letter (available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-thwaites-offshore-research-thor-project-amundsen-sea-antartica*).

Comment: The Commission recommends that NMFS: (1) Specify whether NSF's activities would occur in international waters, the deepest water

depth in which the geophysical survey would occur, and the parameters and methods used to estimate the Level B harassment zone for ice-breaking activities; (2) use the humpback whale density of 0.001365 whales/km² based on Gohl (2010) to re-estimate the numbers of takes for the geophysical survey and ice-breaking activities; (3)(a) revise the (i) Level A and B harassment zones for the geophysical survey based on a tow depth of 4 m rather than 3 m or restrict the airguns from being towed at a depth of more than 3 m and (ii) ensonified areas for Level B harassment based on transiting 200 km rather than 160 km per day during the geophysical survey and (b) use the total ensonified area for Level B harassment to re-estimate the numbers of takes for the geophysical survey; and (4) increase the numbers of Level B harassment takes to at least 3 blue whales, 40 humpback whales, 40 killer whales, 2,000 crabeater seals, 100 Weddell seals, 50 leopard seals, and 10 Ross seals based on group size and documented occurrence in the Amundsen Sea.

Response: NSF has confirmed that the survey will occur entirely within international waters, and that the maximum survey depth is 1,900 m. The parameters and methods used to estimate the Level B harassment zone for ice-breaking activities are described in the ''Estimated Take'' section later in this document. Regarding humpback whale density, NMFS concurs with the Commission and has produced revised exposure estimates using the recommended density value (see ''Estimated Take,'' later in this document). NSF intends to tow the acoustic source at a depth of 3 m; therefore, this value was used in modeling of the acoustic harassment isopleths. NMFS also concurs with the Commission regarding the daily transit distance of 200 km and has revised the exposure estimates accordingly. Similarly, exposure estimate calculations have been performed using the total ensonified area, as recommended by the Commission.

Regarding the recommendation to increase certain authorized take numbers on the basis of expected group size encounters, NMFS concurs with the Commission and has made the recommended adjustments, with two exceptions. NMFS disagrees with the Commission regarding the likelihood of encountering a group of three blue whales, and has retained the initial estimate of two. Blue whales, a rarely encountered species, are typically encountered as single animals or as small groups of up to 2 or 3 animals. Therefore, the estimate of two blue whale takes is sufficient to account for likely group size. For killer whales, we revisited the available information and derived a more appropriate density value on the basis of available observational data (as described below under ''Changes from the Proposed IHA to Final IHA''). The revised exposure estimate exceeds the Commission's recommended group size estimate.

Comment: Regarding ice-breaking, the Commission recommends that NMFS use the total ensonified area of 8,491 km² to estimate the numbers of Level B harassment takes if ice-breaking activities could occur on any of the survey days, or use the reduced ensonified area of 7,409 km² to estimate the numbers of Level B harassment takes if ice-breaking activities are expected to occur for two straight days.

Response: The maximum estimated amount of icebreaking expected by NSF, *i.e.,* 445 km for the maximum of 48 hours, was used in our calculations to avoid the significant overestimation that would result from assuming icebreaking will occur every day (10 survey days, including 2 contingency days). It is unlikely that any given animal would experience the stressor continuously for 10 days, and the potential effects of ice-breaking have been appropriately accounted for in NMFS' authorized take levels.

Comment: The Commission recommends that NMFS (1) include a requirement to extrapolate Level B harassment takes to the unobserved portions of the Level B harassment zone and (2) ensure that NSF keeps a running tally of total Level B harassment takes based on both observed and extrapolated takes.

Response: NMFS agrees that NSF must ensure they do not exceed authorized takes. As is typical in such authorizations, we have included a requirement that NSF report ''estimates of the number and nature of exposures that occurred above the harassment threshold based on PSO observations, including an estimate of those that were not detected.''

Comment: The Commission recommends that NMFS require NSF to either (1) re-estimate the proposed Level A and B harassment zones and associated takes of marine mammals using (a) both operational and site-specific environmental parameters, (b) a comprehensive source model and (c) an appropriate sound propagation model for the proposed incidental harassment authorization; or (2) collect or provide the relevant acoustic data to substantiate that its modeling approach is conservative for both deep and intermediate waters beyond the Gulf of Mexico. The Commission further recommends that NMFS (1) explain why it believes that sound channels with downward refraction, as well as seafloor reflections, are not likely to occur during the geophysical survey; (2) specify the degree to which both of those parameters would affect the estimation (or underestimation) of Level B harassment zones in deep and intermediate water; (3) explain why it believes that NSF's model and other 'modeling' approaches provide more accurate, realistic, and appropriate Level A and B harassment zones than approaches favored by the Commission, particularly for deep and intermediate water; and (4) explain, if NSF's model and other 'modeling' approaches are considered best available science, why other action proponents that conduct seismic surveys are not implementing similar methods particularly given their simplicity.

Response: As noted by the Commission, these comments reflect a longstanding disagreement between NMFS and the Commission regarding NSF's approach to modeling the output of their acoustic sources and its propagation through the water column. NMFS has previously responded to the Commission's comments on NSF's modeling approach. We refer the reader to previous **Federal Register** notices providing responses rather than repeat them here (*e.g.,* 84 FR 60059, November 07, 2019; 84 FR 54849, October 11, 2019; 84 FR 35073, July 22, 2019). However, given the Commission's continuing concerns with NSF's modeling approach for its broader survey program (and not solely for the subject survey), NMFS also will engage separately with the Commission about these issues.

Comment: The Commission recommends that NMFS post on its website the same day a notice of proposed authorization publishes in the **Federal Register** the application, the draft incidental harassment authorization, any hydroacoustic or marine mammal monitoring plans, its list of references, previous monitoring reports, and any other related documents.

Response: NMFS concurs with the recommendation.

Comment: The Commission reiterates programmatic recommendations regarding NMFS' potential use of the renewal mechanism for one-year IHAs.

Response: NMFS disagrees with the Commission's recommendations, as stated in our previous comment responses relating to other actions, which we incorporate here by reference (*e.g.,* 84 FR 52464; October 02, 2019).

Changes From the Proposed IHA to Final IHA

Corrections have been made to the estimated take table (see Table 9), as well as population (see Table 2) values updated and density (see Table 7) values corrected for two and three species, respectively. More recent sources were found for the population abundance of crabeater and Weddell seals. Bengston *et al.* (2011) reported 2,100,000 crabeater seals in the Ross and Amundsen Sea, which is more relevant to NSF's survey in the Amundsen Sea than Boyd's (2002) report of 5,000,000 seals in the entire Antarctic. For Weddell seals, Hückstädt updated their population estimate from 750,000 (2015) to 1,000,000 (2018) seals.

We re-evaluated the density values and found that the Protected Species Observer Report from a previous NSF Antarctic cruise (Mehle *et al.* 2015) had higher monitoring/observation counts for minke and killer whales. Thus, the higher Mehle *et al.* (2015) counts were used for a more conservative take estimate than those used in the proposed IHA; *i.e.,* Ainley *et al.* (2007) for minke whales and NMSDD (2012) for killer whales. Since both the Ainley *et al.* (2007) and Mehle *et al.* (2015) monitoring efforts were conducted from the same vessel, the *Palmer,* in Antarctica, NMFS used the same calculation method as NSF with the Ainley *et al.* (2007) data. Therefore, the 1.6 km visual transect width and 556 km survey distance were used to produce the area surveyed, 889.6 km^2, which allowed the calculation of the density area.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

The populations of marine mammals considered in this document do not occur within the U.S. Exclusive Economic Zone (EEZ) and are therefore not assigned to stocks and are not assessed in NMFS' Stock Assessment Reports (SAR). As such, information on potential biological removal (PBR; defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population) and on annual levels of serious injury and mortality from anthropogenic sources are not available for these marine mammal populations. Abundance estimates for marine mammals in the survey location are based on a variety of sources including International Whaling Commission population estimates (IWC 2019), The International Union for Conservation of Nature's (IUCN) Red List of Threatened Species, and various literature estimates (see IHA application for further detail), as this is considered the best available information on potential abundance of marine mammals in the area.

Table 2 lists all species with expected potential for occurrence in the Amundsen Sea, Antarctica, and summarizes information related to the population, including regulatory status under the MMPA and ESA. For taxonomy, we follow the Committee on Taxonomy (2019).

TABLE 2—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN THE PROJECT AREA EXPECTED TO BE AFFECTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock [1]	ESA/MMPA status; Strategic (Y/N) [2]	Stock abundance	PBR
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)					
Family Balaenopteridae (rorquals)					
Blue whale	*Balaenoptera musculus*	N/A	E/D;Y	[3] 5,000	N/A
Fin whale	*Balaenoptera physalus*	N/A	E/D;Y	[4] 38,200	N/A
Humpback whale	*Megaptera novaeangliae*	N/A	-	[5] 42,000	N/A
Common (dwarf) minke whale	*Balaenoptera acutorostrata*	N/A	-	[6] 257,500	N/A
Antarctic minke whale	*Balaenoptera bonaerensis*	N/A	-	[6] 257,500	N/A
Sei whale	*Balaenoptera borealis*	N/A	E	[7] 10,000	N/A
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)					
Family Physeteridae					
Sperm whale	*Physeter macrocephalus*	N/A	E	[8] 12,069	N/A
Family Ziphiidae (beaked whales)					
Arnoux's beaked whale	*Berardius arnuxii*	N/A	-	[9] 599,300	N/A
Gray's beaked whale	*Mesoplodon grayi*	N/A	-	[9] 599,300	N/A
Layard's beaked whales	*Mesoplodon layardii*	N/A		[9] 599,300	N/A
Southern bottlenose	*Hyperoodon planifrons*	N/A	-	[10] 500,000	N/A
Family Delphinidae					
Killer whale	*Orcinus orca*	N/A	-	[11] 25,000	N/A
Long-finned whale	*Globicephala macrorhynchus*	N/A	-	[12] 200,000	N/A
Family Phocidae (earless seals)					
Crabeater seal	*Lobodon carcinophaga*	N/A	-	[13] 2,100,000	N/A
Leopard seal	*Hydrurga leptonyx*	N/A	-	[14] 222,000	N/A

TABLE 2—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN THE PROJECT AREA EXPECTED TO BE AFFECTED BY THE SPECIFIED ACTIVITIES—Continued

Common name	Scientific name	Stock [1]	ESA/MMPA status; Strategic (Y/N) [2]	Stock abundance	PBR
Southern elephant seal	*Mirounga leonina*	N/A	-	[15] 750,000	N/A
Ross seal	*Ommatophoca rossii*	N/A	-	[16] 250,000	N/A'
Weddell seal	*Leptonychotes weddellii*	N/A	-	[17] 1,000,000	N/A

N.A. = data not available.
[1] The populations of marine mammals considered in this document do not occur within the U.S. EEZ and are therefore not assigned to stocks.
[2] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.
[3] Antarctic Range 5–8,000 (Cooke 2018).
[4] Aguilar & García-Vernet 2018.
[5] Partial coverage of Antarctic feeding grounds (IWC 2019).
[6] Split of undifferentiated minke whale population abundance, total of 515,000 in the Southern Hemisphere (IWC 2019).
[7] Cooke 2018.
[8] Estimate for the Antarctic, south of 60° S (Whitehead 2002).
[9] All beaked whales south of the Antarctic Convergence; mostly southern bottlenose whales (Kasamatsu & Joyce 1995).
[10] Jefferson *et al.* 2008.
[11] Branch & Butterworth 2001.
[12] Antarctic (Boyd 2002).
[13] Ross and Amundsen Sea (Bengston *et al.,* 2011).
[14] Global population is 222,000–440,000 (Rogers 2018).
[15] Total world population (Hindell *et al.,* 2016)
[16] Hückstädt 2015.
[17] Hückstädt 2018.

All species that could potentially occur in the planned survey areas are included in Table 2. As described below, all 18 species temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have authorized it.

A detailed description of the of the species likely to be affected by the THOR geophysical survey, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, information regarding local occurrence, and marine mammal hearing were provided in the **Federal Register** notice for the proposed IHA (84 FR 69950; December 19, 2019). Since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from NSF's planned geophysical survey have the potential to result in harassment of marine mammals in the vicinity of the survey area. The **Federal Register** notice for the proposed IHA (84 FR 69950; December 19, 2019) included a discussion of the effects of anthropogenic noise on marine mammals and their habitat. That information and analysis is incorporated by reference into this final IHA determination and is not repeated here; please refer to that **Federal Register** notice (84 FR 69950; December 19, 2019) for that information. No instances of Level A harassment, serious injury or mortality are expected as a result of the planned activities.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes will be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to the acoustic stressors. Based on the nature of the acoustic sources planned for this activity (*i.e.,* small Level A harassment zones), Level A harassment is neither anticipated, nor authorized. In addition, the anticipated effectiveness of the mitigation measures (*i.e.,* visual mitigation monitoring; establishment of an exclusion zone; shutdown procedures; ramp-up procedures; and vessel strike avoidance measures), discussed in detail below in the Mitigation section, further reduce the likelihood that Level A harassment may occur.

As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be harassed or incur some degree of hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the authorized take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

NSF's planned activity includes the use of impulsive seismic sources and continuous icebreaking, and therefore both 160 dB re 1 μPa (rms) and 120 dB re 1 μPa (rms) are applicable for the related activity, respectively.

Level A harassment for non-explosive sources—NMFS' *Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing* (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). NSF's planned activity includes impulsive and non-impulsive acoustic sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB.	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB.	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB.	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB.	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of potential take by Level A harassment. However, these tools offer the best way to predict appropriate isopleths when more sophisticated modeling methods are not available. NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For mobile sources such as seismic surveys and icebreaking, the User Spreadsheet predicts the closest distance at which a stationary animal would not incur PTS if the sound source traveled by the animal in a straight line at a constant speed. Inputs used in the User Spreadsheet, and the resulting isopleths, are reported below in Tables 4, 5, and 6. As noted in Table 1, the two 45/105 in^3 GI guns is the preferred configuration for NSF's survey. However, values from the GI configuration Alternate 2, two 105/105 in^3 (420 in^3 total), have been used as the basis for modeling and all related take calculations due to its larger volume (and greater acoustic output) to present the most conservative modeling effort.

TABLE 4—SEL_{cum} METHODOLOGY

Source Velocity (meters/second)	* 2.315
1/Repetition rate ∧ (seconds)	** 5

Note: Methodology assumes propagation of 20 log R; Activity duration (time) independent.
∧ Time between onset of successive pulses.
* 4.5 kts.
** shot interval assumed to be 5 seconds.

Table 5 presents the estimated Level A harassment zones for each marine mammal hearing group, which are based on L–DEO modeling incorporated into the companion User Spreadsheet (NMFS 2018).

TABLE 5—PREDICTED DISTANCES TO THE LEVEL A THRESHOLD FOR MARINE MAMMALS

Hearing group	SEL cumulative PTS threshold (dB) [1]	SEL cumulative PTS distance (m) [1]	Peak PTS threshold (dB) [1]	Peak PTS [2] distance (m) [1]
Low-frequency cetaceans	183	31.1	219	7.55
Mid-frequency cetaceans	185	0.0	230	1.58
Phocid pinnipeds	185	0.3	218	8.47

[1] Cumulative sound exposure level for PTS (SEL_{cum}PTS) or Peak (SPLflat) resulting in Level A harassment (*i.e.,* injury). Based on 2018 NMFS Acoustic Technical Guidance (NMFS 2018).
[2] Per NMFS Acoustic Technical Guidance (NMFS 2018), the larger of the dual criteria results are used for the EZ; GI configuration Alternate 2, 2 × 105/105 in^3 (420 in^3 total).

Predicted distances to Level A harassment isopleths, which vary based on marine mammal hearing groups, were calculated based on modeling performed by L–DEO using the NUCLEUS software program and the NMFS User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to facilitate the estimation of take numbers.

The predicted distances for Level A harassment are sufficiently small (*see* Table 5), that the likelihood of Level A harassment for any marine mammal is considered discountable. Given these small zones and the likelihood that any animal would demonstrate aversive behavior to the presence of the vessel at such close ranges, it is unrealistic that a mammal would stay within such a small area long enough to incur onset of PTS. Hence, Level A harassment is not expected or authorized for this survey.

L–DEO's modeling methodology is explained in greater detail in the proposed IHA notice (84 FR 69950; December 19, 2019). Please refer to NSF's IHA application, Attachment A for the Model Report Estimating the Mitigation Zones for Airgun Arrays that could be used in the Amundsen Sea, NSF survey. The estimated distances to the Level B harassment isopleths for all proposed airgun configurations in each water depth category are shown in Table 6.

TABLE 6—LEVEL B—PREDICTED DISTANCES TO THE LEVEL B THRESHOLD

(160 re 1μPa_{rms} isopleths)

Source and volume (cm^3)[in^3]	Tow depth (m)	Water depth (m) [1]	Predicted 160 re 1μPa_{rms} (m) isopleth [2]
2 × 45/105 in^3 (300 in^3) GI guns *	3	100–1000	979
	.....	>1000	653
1 × 45/105 in^3 (150 in^3) GI guns ***	3	100–1000	503
	.....	>1000	335
2 × 105/105 in^3 (420 in^3) GI guns **	3	100–1000	1044
	.....	>1000	696
1 × 105/105 in^3 (210 in^3) GI guns ***	3	100–1000	531
	.....	>1000	354

[1] No seismic operations would be conducted in shallow depths (0–100 m).
[2] RMS radii is based on LDEO modeling and empirical measurements. Radii for 100–1000 m depth values = deep water values * 1.5 correction factor.
* Preferred configuration.
** Configuration used in all related take calculations to present the maximum possible effect of the survey.
*** Alternates.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that informed the take calculations.

For the planned survey area in west Antarctica, NSF and NMFS determined that the preferred sources of density data for marine mammal species that might be encountered in the project area were Ainley *et al.* (2007), Gohl (2010), and Navy Marine Species Density Database (2012). Densities were estimated using sightings and effort during aerial and vessel-based surveys conducted in and adjacent to the proposed project area, as well as from cetacean density models (NMSDD 2012; see NSF IHA application). NMFS finds the available monitoring information from the previous NSF cruise in the Ross Sea (Mehle *et al.* 2015), based on their observations of 14 sightings of 254 killer whales and 2 blue whales, to support group size and be the most conservative. In addition, NMFS included the southern elephant seal to the marine mammals potentially present in the project area (Hofmeyr 2015), and divided the available minke whale data, which is undifferentiated, into the two species that may be affected; Antarctic and Common (dwarf) minke whales.

Since Mehle *et al.* (2015) reported monitoring information rather than specific densities, and both the Ainley *et al.* (2007) and Mehle *et al.* (2015) monitoring efforts were conducted from the same vessel, the *Palmer,* in Antarctica, NMFS derived density values from Mehle *et al.* (2015) using the same calculation method as was used by NSF to calculate density from the Ainley *et al.* (2007) data. Specifically, we used the 1.6 km visual transect width and 556 km survey distance to produce 889.6 km^2 area surveyed, allowing the number of individuals sighted to be divided by the area to obtain a density value for each relevant species.

All data sources used for animal abundance are listed in Table 2 above. Estimated densities used to inform take estimates are presented in Table 7.

TABLE 7—MARINE MAMMAL DENSITIES IN THE PROPOSED SURVEY AREA

Species	Areal density (#/km2)	Data source
Low-frequency cetaceans		
Blue whale	0.00005	NMSDD 2012
Fin whale	0.00722	NMSDD 2012.
Humpback whale	0.00014	Gohl 2010.
Minke whale	1.14996	Mehle *et al.* 2015.
Antarctic minke whale	0.57498	
Common (dwarf) minke whale	0.57498	
Sei whale	0.00026	NMSDD 2012.
Mid-frequency cetaceans		
Arnoux's beaked whale	0.00624	NMSDD 2012.
Killer whale	0.28552	NMSDD 2012.
Layard's beaked whale	0.00064	Mehle *et al.* 2015.
Long-finned pilot whale	0.00786	NMSDD 2012.
Southern bottlenose whale	0.00676	NMSDD 2012.
Sperm whale	0.01699	NMSDD 2012.
Gray's beaked whale	0.00028	Ainley *et al.,* 2007.
Phocids		
Crabeater seal	0.00762	Gohl 2010.
Leopard seal	0.00005	Gohl 2010.
Ross seal	0.00001	Gohl 2010.
Southern Elephant Seal	1.03175	Hindell *et al.,* 2016.
Weddell seal	0.00013	Gohl 2010.

Notes:
- Where the area surveyed was not indicated in the reference document, a value of 315,000 km² was used, estimate of the area of the Amundsen Sea Continental shelf (Jacobs 2012).
- NMSDD-Maximum density values during the austral summer for the Amundsen Sea (between 100°W–105°W and south of 70°S).

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

Seismic Surveys

In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in Level B harassment, radial distances from the airgun array to predicted isopleths corresponding to the Level B harassment thresholds are calculated, as described in the notice of proposed IHA. Those radial distances are then used to calculate the area(s) around the airgun array predicted to be ensonified to sound levels that exceed the Level B harassment thresholds. The area estimated to be ensonified in a single day of the survey is then calculated (Table 8), based on the areas predicted to be ensonified around the array and the estimated trackline distance traveled per day. This number is then multiplied by the number of survey days. The product is then multiplied by 1.25 to account for the additional 25 percent contingency. This results in an estimate of the total area (km²) expected to be ensonified to the Level B harassment thresholds for each acoustic source (Table 8).

TABLE 8—AREAS (KM²) TO BE ENSONIFIED TO LEVEL B HARASSMENT THRESHOLDS

Criteria	Distance/day (km)	Daily ensonified area w/endcaps (km2)	Number days of survey	Plus 25% buffer (days)	Total ensonified area
LEVEL B Area (160 dB)					
65% = 100–1000 m	130	274.86	8.00	10.00	2,748.62
35% = >1000 m	70	98.96	8.00	10.00	989.61
ALL DEPTHS					3,738.23
Icebreaking (120 dB)					
	223	3003.8	2.00	2.50	7509.49

The marine mammals predicted to occur within these respective areas, based on estimated densities (Table 7), are assumed to be incidentally taken. As discussed previously, based on the small anticipated Level A harassment isopleths and in consideration of the mitigation measures (see Mitigation section below), take by Level A

harassment is not expected to occur and is not authorized. Estimated exposures for the planned survey are shown in Table 9.

Icebreaking

The USCGC *Healy* served as a proxy for the source levels expected to result from icebreaking by the *Palmer* to calculate the ensonified area (Table 8) and Level B take (Table 9): 196.2 db at 1 m source level (Roth 2013), transmission loss 20logR, assuming spherical spreading, and resulting 6.456 km radius to the 120 dB harassment threshold. The maximum estimated amount of icebreaking expected by NSF; *i.e.* 445 km for the maximum of 48 hours, was used in these calculations to avoid the significant overestimation of assuming icebreaking will occur every day (8 survey days, plus 2 contingency days). We calculate the ensonified area associated with icebreaking using the maximum duration of 48 hours icebreaking rather than the 10 days of the potential survey, as it is unlikely that any given animal would experience the stressor continuously for 10 days.

It should be noted that the authorized take numbers shown in Table 9 are expected to be conservative because in the calculations of estimated take, 25 percent has been added in the form of operational survey days. This is to account for the possibility of additional seismic operations associated with airgun testing and repeat coverage of any areas where initial data quality is sub-standard.

Following our development of the aforementioned take estimates, and based on our review of recommendations from the Marine Mammal Commission (described previously in ''Comments and Responses'') we increased Level B harassment take estimates for the following species as stated here: 40 humpback whales, 2,000 crabeater seals, 100 Weddell seals, 50 leopard seals, and 10 Ross seals based on group size and documented occurrence in the Amundsen Sea (Gohl 2010).

TABLE 9—CALCULATED AND AUTHORIZED LEVEL B EXPOSURES, AND PERCENTAGE OF STOCK EXPOSED

Species	Calculated level B take seismic	Calculated level B take icebreaking	Authorized total take	Percent of population
Low-frequency cetaceans				
Blue whale	1	1	2	0
Fin whale	27	54	81	0.2
Humpback whale	1	1	40 [b]	0.1
Antarctic minke whale	2,149	4,318	6,467	2.5
Common (dwarf) minke whale	2,149	4,318	6,467	2.5
Sei whale	1	2	6 [a]	0
Mid-frequency cetaceans				
Arnoux's beaked whale	23	47	70	0
Killer whale	1,067	2,144	3,211	12.8
Layard's beaked whale	2	5	7	0
Long-finned pilot whale	29	59	88	0
Southern bottlenose whale	25	51	76	0
Sperm whale	63	128	191	1.6
Gray's beaked whale	1	2	3	0
Phocids				
Crabeater seal	28	57	2,000 [c]	0.1
Leopard seal	0	0	50 [c]	0
Ross seal	0	0	10 [c]	0
Southern elephant Seal	8,897	7,748	16,645	6.7
Weddell seal	0	1	100 [c]	0

a. Authorized take increased to group size from Würsig *et al.* (2018).
b. Changed based on recommendation from the MMC based on a group of four whales being taken on each of the 10 days. Gohl (2010) did not specify the group size of humpback whales observed in the Amundsen Sea, but Thiele *et al.* (2004) documented group size of up to four humpback whales in a given group off the western Antarctic Peninsula.
c. Changed based on recommendation from the MMC, the numbers of pinniped takes were based on the relative occurrence of the various species based on Gohl (2010). 200 crabeater seals, 10 Weddell seals, 5 leopard seals, and 1 Ross seal could be taken on each of the 10 days of activities.

Mitigation Measures

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers

the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation for Marine Mammals and Their Habitat

NSF has reviewed mitigation measures employed during seismic research surveys authorized by NMFS under previous incidental harassment authorizations, as well as recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), Weir and Dolman (2007), Nowacek *et al.* (2013), Wright (2014), and Wright and Cosentino (2015), and has incorporated a suite of required mitigation measures into their project description based on the above sources.

To reduce the potential for disturbance from acoustic stimuli associated with the activities, NSF is required to implement mitigation measures for marine mammals. Mitigation measures that must be adopted during the planned surveys include (1) Vessel-based visual mitigation monitoring; (2) Establishment of a marine mammal Exclusion Zone (EZ) and buffer zone; (3) shutdown procedures; (4) ramp-up procedures; and (4) vessel strike avoidance measures.

Vessel-Based Visual Mitigation Monitoring

Visual monitoring requires the use of trained observers (herein referred to as visual Protected Species Observers (PSOs)) to scan the ocean surface visually for the presence of marine mammals. PSO(s) must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Following a shutdown for any reason, observations must occur for at least 30 minutes prior to the planned start of airgun operations. Observations must also occur for 60 minutes after airgun operations cease for any reason (or until 30 minutes following sunset). Observations must also be made during daytime periods when the *Palmer* is underway without seismic operations, such as during transits, to allow for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Airgun operations must be suspended when marine mammals are observed within, or about to enter, the designated EZ (as described below).

During seismic operations, three visual PSOs must be based aboard the *Palmer.* PSOs must be appointed by NSF with NMFS approval. One dedicated PSO must monitor the EZ during all daytime seismic operations. PSO(s) must be on duty in shifts of duration no longer than four hours. Other vessel crew must also be instructed to assist in detecting marine mammals and in implementing mitigation requirements (if practical). Before the start of the seismic survey, the crew must be given additional instruction in detecting marine mammals and implementing mitigation requirements.

The *Palmer* is a suitable platform from which PSOs will watch for marine mammals. Standard equipment for marine mammal observers must be 7 × 50 reticule binoculars and optical range finders. At night, night-vision equipment must be available. The observers must be in communication with ship's officers on the bridge and scientists in the vessel's operations laboratory, so they can advise promptly of the need for avoidance maneuvers or seismic source shutdown.

The PSOs must have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements. PSO resumes must be provided to NMFS for approval. At least one PSO must have a minimum of 90 days at-sea experience working as a PSO during a seismic survey. One ''experienced'' visual PSO must be designated as the lead for the entire protected species observation team. The lead will serve as primary point of contact for the vessel operator.

Exclusion Zone and Buffer Zone

An EZ is a defined area within which occurrence of a marine mammal triggers mitigation action intended to reduce the potential for certain outcomes, *e.g.,* auditory injury, severe behavioral reaction. The PSOs must establish a minimum EZ with a 100 m radius for the airgun array. The EZs must be based on radial distance from any element of the airgun array (rather than being based on the center of the array or around the vessel itself). With certain exceptions (described below), if a marine mammal appears within or enters this zone, the acoustic source must be shut down (see Shutdown Procedures below).

The 100-m radial distance of the standard EZ is precautionary in the sense that it is expected to contain sound exceeding injury criteria for all marine mammal hearing groups (Table 3) while also providing a consistent, reasonably observable zone within which PSOs will typically be able to conduct effective observational effort. In this case, the 100-m radial distance is also expected to contain sound that will exceed the Level A harassment threshold based on sound exposure level (SEL_{cum}) criteria for all marine mammal hearing groups (Table 3).

Our intent in prescribing a standard EZ distance is to (1) encompass zones within which auditory injury could occur on the basis of instantaneous exposure; (2) provide additional protection from the potential for more severe behavioral reactions (*e.g.,* panic, antipredator response) for marine mammals at relatively close range to the acoustic source; (3) provide consistency for PSOs, who need to monitor and implement the EZ; and (4) define a distance within which detection probabilities are reasonably high for most species under typical conditions.

PSOs will also establish and monitor an additional buffer to the exclusion zone, *i.e.,* must monitor the 100-m exclusion zone plus an additional 100-m buffer for a total of 200 m. During use of the acoustic source, occurrence of marine mammals within the buffer zone (but outside the EZ) will be communicated to the operator to prepare for potential shutdown of the acoustic source. In context of the larger extended EZ (discussed in the following paragraph), the buffer zone is largely applicable to the pre-clearance period prior to beginning the ramp-up procedure (as discussed further under *Ramp-up Procedures,* later in this section).

An extended EZ of 500 m must be enforced for all beaked whales and for Southern right whales. The latter is a precautionary measure as right whales are not expected in the survey area. NSF will also implement a 500-m EZ for aggregations of six or more large whales (*i.e.,* sperm whale or any baleen whale) or a large whale with a calf (calf defined as an animal less than two-thirds the body size of an adult observed to be in close association with an adult).

Shutdown Procedures

If a marine mammal appears within or enters the relevant EZ, the airguns must

be shut down. Following a shutdown, airgun activity must not resume until the marine mammal has cleared the relevant EZ. The animal is considered to have cleared the EZ if the following conditions have been met:

- it is visually observed to have departed the EZ;
- it has not been seen within the EZ for 15 minutes in the case of small odontocetes and pinnipeds; or
- it has not been seen within the EZ for 30 minutes in the case of mysticetes and large odontocetes, including sperm and beaked whales.

Shutdown of the acoustic source is required upon observation of a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized number of takes are met, observed entering or within the Level B harassment zone.

Ramp-Up Procedures

Ramp-up of an acoustic source is intended to provide a gradual increase in sound levels following a shutdown, enabling animals to move away from the source if the signal is sufficiently aversive prior to its reaching full intensity. Ramp-up is required after the array is shut down for any reason for longer than 15 minutes. Ramp-up must begin with the activation of the smallest airgun in the array, with subsequent airgun(s) activated after 5 minute intervals.

Two PSOs are required to monitor during ramp-up. During ramp up, the PSOs must monitor the EZ, and if marine mammals were observed within the EZ, a shutdown will be implemented as though the full array were operational. If airguns have been shut down due to PSO detection of a marine mammal within or approaching the EZ, ramp-up must not be initiated until all marine mammals have cleared the EZ, during the day or night. Criteria for clearing the EZ is described above.

Thirty minutes of pre-clearance observation are required prior to ramp-up for any shutdown of longer than 30 minutes (*e.g.,* when the array is shut down during transit from one line to another). This 30-minute pre-clearance period may occur during any vessel activity (*i.e.,* transit). If a marine mammal were observed within or approaching the relevant EZ during this pre-clearance period, ramp-up must not be initiated until all marine mammals cleared the EZ. Criteria for clearing the EZ must be as described above. If the airgun array has been shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for a period of less than 30 minutes, it may be activated again without ramp-up if PSOs have maintained constant visual observation and no detections of any marine mammal have occurred within the EZ or buffer zone. Ramp-up must be planned to occur during periods of good visibility when possible. However, ramp-up will be allowed at night and during poor visibility if the 100 m EZ and buffer zone have been monitored by visual PSOs for 30 minutes prior to ramp-up.

The operator is required to notify a designated PSO of the planned start of ramp-up as agreed-upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up. A designated PSO must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed. The operator must provide information to PSOs documenting that appropriate procedures were followed. Following deactivation of the array for reasons other than mitigation, the operator is required to communicate the near-term operational plan to the lead PSO with justification for any planned nighttime ramp-up.

Vessel Strike Avoidance Measures

Vessel strike avoidance measures are intended to minimize the potential for collisions with marine mammals. These requirements do not apply in any case where compliance will create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

The required measures include the following: Vessel operator and crew must maintain a vigilant watch for all marine mammals and slow down or stop the vessel or alter course to avoid striking any marine mammal. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel according to the parameters stated below. Visual observers monitoring the vessel strike avoidance zone must be either third-party observers or crew members, but crew members responsible for these duties must be provided sufficient training to distinguish marine mammals from other phenomena. Vessel strike avoidance measures must be followed during surveys and while in transit.

The vessel must maintain a minimum separation distance of 100 m from large whales (*i.e.,* baleen whales and sperm whales). If a large whale is within 100 m of the vessel, the vessel must reduce speed and shift the engine to neutral, and must not engage the engines until the whale has moved outside of the vessel's path and the minimum separation distance has been established. If the vessel is stationary, the vessel must not engage engines until the whale(s) has moved out of the vessel's path and beyond 100 m. The vessel must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals. If an animal is encountered during transit, the vessel must attempt to remain parallel to the animal's course, avoiding excessive speed or abrupt changes in course. Vessel speeds must be reduced to 10 kts or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near the vessel.

Based on our evaluation of the applicant's required measures, as well as other measures considered by NMFS, NMFS has determined that the required mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that 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 the planned action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the

action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

NSF described a marine mammal monitoring and reporting plan within their IHA application. Monitoring that is designed specifically to facilitate mitigation measures, such as monitoring of the EZ to inform potential shutdowns of the airgun array, are described above and are not repeated here. NSF's monitoring and reporting plan includes the following measures:

Vessel-Based Visual Monitoring

As described above, PSO observations must take place during daytime airgun operations and nighttime start-ups (if applicable) of the airguns. During seismic operations, three visual PSOs must be based aboard the *Palmer.* PSOs must be appointed by NSF with NMFS approval. The PSOs must have successfully completed relevant training, including completion of all required coursework and passing a written and/or oral examination developed for the training program, and must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences and a minimum of 30 semester hours or equivalent in the biological sciences and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate training, including (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties.

During seismic operations, one PSO is required to monitor for marine mammals around the vessel. PSOs must be on duty in shifts of duration no longer than four hours. Other crew must also be instructed to assist in detecting marine mammals and in implementing mitigation requirements (if practical). During daytime, PSOs must scan the area around the vessel systematically with reticle binoculars (*e.g.,* 7×50 Fujinon) and with the naked eye. At night, PSOs must be equipped with night-vision equipment.

PSOs must record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data must be used to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They must also provide information needed to order a shutdown of the airguns when a marine mammal is within or near the EZ. When a sighting is made, the following information about the sighting must be recorded:

(1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (*e.g.,* none, avoidance, approach, paralleling, etc.), and behavioral pace; and

(2) Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

All observations and shutdowns must be recorded in a standardized format. Data must be entered into an electronic database. The accuracy of the data entry must be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database. These procedures allow initial summaries of data to be prepared during and shortly after the field program and facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving. The time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare must also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

Results from the vessel-based observations must provide:

(1) The basis for real-time mitigation (*e.g.,* airgun shutdown);

(2) Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS;

(3) Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted;

(4) Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and

(5) Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Reporting

A draft report must be submitted to NMFS within 90 days after the end of the survey. The report must describe the operations that were conducted and sightings of marine mammals near the operations. The report must provide full documentation of methods, results, and interpretation pertaining to all monitoring and will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report must also include estimates of the number and nature of exposures that occurred above the harassment threshold based on PSO observations, including an estimate of those that were not detected in consideration of both the characteristics and behaviors of the species of marine mammals that affect detectability, as well as the environmental factors that affect detectability.

The draft report must also include geo-referenced time-stamped vessel tracklines for all time periods during which airguns were operating. Tracklines must include points recording any change in airgun status (*e.g.,* when the airguns began operating, when they were turned off, or when they changed from full array to single gun or vice versa). GIS files must be provided in ESRI shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates must be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data must be made available to NMFS. A final report must be submitted within 30 days following the resolution of any comments on the draft report.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of

recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all the species listed in Table 1, given that NMFS expects the anticipated effects of the proposed seismic survey to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis.

NMFS does not anticipate that Level A harassment, serious injury or mortality will occur as a result of NSF's proposed seismic survey, even in the absence of proposed mitigation. Thus, the proposed authorization does not authorize any such takes. As discussed in the *Potential Effects of Specified Activities on Marine Mammals and their Habitat* section in our notice of proposed IHA (84 FR 69950), non-auditory physical effects, stranding, and vessel strike are not expected to occur.

No takes by Level A harassment are expected or authorized. As described above, we expect that marine mammals will be likely to move away from a sound source that represents an aversive stimulus, especially at levels that will be expected to result in PTS, given sufficient notice of the *Palmer's* approach due to the vessel's relatively low speed when conducting seismic surveys. The 100-m exclusion zone encompasses the Level A harassment isopleths for all marine mammal hearing groups, and is expected to prevent animals from being exposed to sound levels that will cause PTS. We expect that any instances of take will be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity were occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007).

Marine mammal habitat may be impacted by elevated sound levels, but these impacts will be temporary. Feeding behavior is not likely to be significantly impacted, as marine mammals appear to be less likely to exhibit behavioral reactions or avoidance responses while engaged in feeding activities (Richardson *et al.,* 1995). Prey species are mobile and are broadly distributed throughout the project area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance, the availability of similar habitat and resources in the surrounding area, and the lack of important or unique marine mammal habitat, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. In addition, there are no feeding, mating or calving areas known to be biologically important to marine mammals within the proposed project area.

The activity is expected to impact a very small percentage of all marine mammal populations that will be affected by NSF's planned survey (less than 13 percent each for all marine mammal populations combined). Additionally, the acoustic ''footprint'' of the planned survey will be very small relative to the ranges of all marine mammal species that will potentially be affected. Sound levels will increase in the marine environment in a relatively small area surrounding the vessel compared to the range of the marine mammals within the planned survey area. This includes the small amount of icebreaking, hours at most, expected. The effects of icebreaking are transitory, localized, and constrained to a relatively narrow swath to each side of the vessel. The seismic array will be active 24 hours per day throughout the duration of the proposed survey. However, the very brief overall duration of the planned survey (eight days) will further limit potential impacts that may occur as a result of the proposed activity.

The planned mitigation measures are expected to reduce the number and/or severity of takes by allowing for detection of marine mammals in the vicinity of the vessel by visual observers, and by minimizing the severity of any potential exposures via shutdowns of the airgun array. Based on previous monitoring reports for substantially similar activities that have been previously authorized by NMFS, we expect that the required mitigation will be effective in minimizing impacts.

Of the marine mammal species under our jurisdiction that are likely to occur in the project area, the following species are listed as endangered under the ESA: blue, fin, sei, and sperm whales. Given the very low numbers of takes for these species (Table 9), relative to their population sizes, as well as the type of take (Level B harassment) we do not expect population-level impacts to any of these species. The other marine mammal species that may be taken by harassment during NSF's seismic survey and icebreaking activities are not listed as threatened or endangered under the ESA. There is no designated critical habitat for any ESA-listed marine mammals within the project area; of the non-listed marine mammals for which we authorize take, none are considered ''depleted'' by NMFS under the MMPA.

NMFS concludes that exposures to marine mammal species due to NSF's planned seismic survey will result in only short-term (temporary and short in duration) effects to individuals exposed, or some small degree of PTS to a very small number of individuals. Marine mammals may temporarily avoid the immediate area, but are not expected to permanently abandon the area. Major shifts in habitat use, distribution, or foraging success are not expected. NMFS does not anticipate the authorized take estimates to impact annual rates of recruitment or survival.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or authorized;
- No take by Level A harassment is anticipated or authorized;
- The anticipated impacts of the proposed activity on marine mammals will primarily be temporary behavioral changes of small percentages of the affected species due to avoidance of the area around the survey vessel. The

relatively short duration of the proposed survey (10 days; eight days of survey plus two contingency days) will further limit the potential impacts of any temporary behavioral changes that will occur;

• The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the proposed survey to avoid exposure to sounds from the activity;

• The proposed project area does not contain areas of significance for feeding, mating or calving;

• The potential adverse effects on fish or invertebrate species that serve as prey species for marine mammals from the proposed survey will be temporary and spatially limited; and

• The planned mitigation measures, including visual and acoustic monitoring and shutdowns, are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, NMFS finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Marine mammals in the survey area are not assigned to NMFS stocks. For purposes of the small numbers analysis, we rely on the best available information on the abundance estimates for the species of marine mammals that could be taken. The numbers of marine mammals that we authorize to be taken will be considered small relative to the relevant populations (less than 13 percent for all species).

Based on the analysis contained herein of the planned activity (including the required mitigation and monitoring measures) and the authorized take of marine mammals, NMFS concludes that small numbers of marine mammals will be taken relative to the population sizes of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that will preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the ESA Interagency Cooperation Division, whenever we propose to authorize take for endangered or threatened species.

The NMFS Office of Protected Resources Interagency Cooperation Division issued a Biological Opinion on January 23, 2020, under section 7 of the ESA, on the issuance of an IHA to NSF under section 101(a)(5)(D) of the MMPA by the NMFS Office of Protected Resources Permits and Conservation Division. The Biological Opinion concluded that the proposed action is not likely to jeopardize the continued existence of blue, fin, sei, and sperm whales, and is not likely to destroy or modify critical habitat of listed species because no critical habitat exists for these species in the action area.

Authorization

As a result of these determinations, NMFS has issued an IHA to NSF for conducting the specified activity in the Amundsen Sea, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: January 27, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–01811 Filed 1–30–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XP007]

Pacific Island Fisheries; Western Pacific Stock Assessment Review; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: NMFS and the Western Pacific Fishery Management Council (Council) will convene a Western Pacific Stock Assessment Review (WPSAR) of a 2020 benchmark stock assessment for Hawaii gray jobfish (uku).

DATES: See **SUPPLEMENTARY INFORMATION** for meeting dates and times and daily agenda.

ADDRESSES: The meeting will be held at the Council office, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Michael Seki, Director, NMFS Pacific Islands Fisheries Science Center, tel (808) 725–5360, fax (808) 725–5360, email *michael.seki@noaa.gov.*

SUPPLEMENTARY INFORMATION: The NMFS Pacific Islands Fisheries Science Center (PIFSC) conducted a single-species benchmark stock assessment of the gray jobfish (uku, *Aprion virescens*) in the main Hawaiian Islands. PIFSC

previously conducted a stock assessment for uku in 2017 using a data-limited length-based approach. The 2020 benchmark assessment diverges significantly from the 2017 assessment in that it implements the first integrated assessment of a domestic stock in the U.S. Pacific Islands Region. The integrated assessment uses the Stock Synthesis (v. 3.30) framework to integrate catch per unit effort indices, size frequency, diver survey, and catch data into a single age-structured model. PIFSC used this integrated model to estimate biomass and stock status through time, and evaluated stock status against the maximum sustainable yield based reference points described in the Council's Fishery Ecosystem Plan for the Hawaii Archipelago. The 2020 assessment provides projections to inform management setting of acceptable biological catch and annual catch limits for 2020–2026.

Meeting Agenda

The WPSAR panel will meet from 9 a.m. to 5 p.m. each day. The agenda order may change, and the meeting will run as late as necessary to complete scheduled business.

Day 1, Monday February 24

1. Welcome and Introductions.
2. Background information—Objectives and Terms of Reference.
   a. Fishery Operation.
   b. Fishery Management.
3. History of stock assessments and reviews.
4. Data.
   a. Hawaii Division of Aquatic Resources Fishing Report System and Hawaii Marine Recreational Fishery Survey.
   b. Life history information.
   c. Other.
5. Presentation and review of stock assessment.

Day 2, Tuesday February 25

6. Continue presentation and review of stock assessment.

Day 3, Wednesday February 26

7. Continue review of stock assessment.

Day 4, Thursday February 27

8. Continue review of stock assessment.
9. Public comment period.
10. Panel discussions (closed to the public).

Day 5, Friday February 28

11. Continue panel discussions (closed, morning).
12. Panel presents recommendations (afternoon).
13. Adjourn.

Special Accommodations

This meeting is physically accessible to people with disabilities. Please direct requests for sign language interpretation or other auxiliary aids to Michael Seki (see **FOR FURTHER INFORMATION CONTACT** section above) at least five days prior to the meeting date.

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

Dated: January 27, 2020.

Karyl K. Brewster-Geisz,

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

[FR Doc. 2020–01777 Filed 1–30–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA026]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a Stock Assessment Review (STAR) Panel meeting to review the 2020 Pacific sardine stock assessment.

DATES: The meeting will be held Monday, February 24, 2020 through Thursday, February 27, 2020. The meeting will start at 1 p.m. Pacific Standard Time on February 24, and 8:30 a.m. on each subsequent day. The meeting will continue until 5 p.m. each day or when business for the day has been completed.

ADDRESSES:

Meeting address: The meeting will be held in the Pacific Room at the NOAA Southwest Fisheries Science Center, 8901 La Jolla Shores Drive, La Jolla, CA 92037–1508.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Pacific Council; telephone: (503) 820–2409.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to review the 2020 benchmark stock assessment for Pacific sardine, which will be used to set annual harvest specifications and management measures for the fishing year beginning July 1, 2020 through June 30, 2021. The review panel will consist of three members of the Pacific Council's Scientific and Statistical Committee's Subcommittee on Coastal Pelagic Species (CPS), and two independent experts. Representatives of the Pacific Council's CPS Management Team and the CPS Advisory Subpanel will also participate in the review as advisers.

As a courtesy, the meeting will be broadcast via Webex in listen-only mode. Login information will be available in advance of the meeting on the Pacific Council website or by contacting Kerry Griffin (*kerry.griffin@noaa.gov;* (503) 820–2409).

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The public listening station is physically accessible to people with disabilities.

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Dale Sweetnam (*dale.sweetnam@noaa.gov*) at least 10 days prior to the meeting date.

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

Dated: January 28, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–01874 Filed 1–30–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request; Patent Law Treaty

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995.

Agency: United States Patent and Trademark Office, Department of Commerce.

Title: Patent Law Treaty.

OMB Control Number: 0651–0073.

Form Number(s): There are no forms in this information collection.

Type of Request: Revision of a currently approved information collection.

Number of Respondents: 650 respondents per year.

Average Hours per Response: The USPTO estimates that it will take the public 1 hour to gather the necessary information, prepare the appropriate document, and submit the information to the USPTO. Approximately 99% of the total responses for this information collection will be submitted electronically.

Burden Hours: 650 hours.

Hourly Cost Burden: $284,700.

Annual (non-hourly) Cost: $1,130,054.

Needs and Uses: The public uses this information collection to seek restoration of the right of priority to a prior-filed foreign application or of the right to the benefit of a prior-filed provisional application.

The information in this information collection can be submitted electronically through EFS-Web (Electronic Filing System), the USPTO's Web-based electronic filing system, as well as on paper. The USPTO is therefore accounting for both electronic and paper submissions in this information collection.

The information collected, maintained, and used in this information collection is based on OMB and USPTO guidelines. This includes the basic information quality standards established in the Paperwork Reduction Act of 1995, in OMB Circular A–130, and in the OMB information quality guidelines.

Affected Public: Individuals or households; businesses or other for profits; and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, email: *Nicholas_A._Fraser@omb.eop.gov.* Once submitted, the request will be publicly available in electronic format through *reginfo.gov.* Follow the instructions to view Department of Commerce information collections currently under review by OMB.

Further information can be obtained by:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0073 information request'' in the subject line of the message.
- *Mail:* Kimberly Hardy, Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before March 2, 2020 to Nicholas A. Fraser, OMB Desk Officer, via email to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Marcie Lovett,

Chief, Records and Information Governance Branch, Office of the Chief Administrative Officer, Office of Administrative Services, Strategic and Data Transport Division.

[FR Doc. 2020–01850 Filed 1–30–20; 8:45 am]

BILLING CODE 1410–30–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request; Post Allowance and Refiling

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for a collection of information under the provisions of the Paperwork Reduction Act of 1995.

Agency: United States Patent and Trademark Office, Department of Commerce.

Title: Post Allowance and Refiling.

OMB Control Number: 0651–0033.

Form Numbers: (AIA= American Invents Act, SB = Specimen Book).

- *PTO/AIA/05:* (Reissue Application Declaration by the Inventor)
- *PTO/AIA/06:* (Reissue Application Declaration by the Assignee)
- *PTO/AIA/07:* (Substitute Statement in Lieu of an Oath or Declaration for Reissue Patent Application (35 U.S.C. 115(d) and 37 CFR 1.64))
- *PTO/SB/44:* (Certificate of Correction)
- *PTO/AIA/50:* (Reissue Patent Application Transmittal)
- *PTO/SB/50:* (Reissue Patent Application Transmittal)
- *PTO/SB/51:* (Reissue Application Declaration by the Inventor)
- *PTO/SB/52:* (Reissue Application Declaration by the Assignee)
- *PTO/SB/51S:* (Supplemental Declaration for Reissue Patent Application to Correct ''Errors'' Statement)
- *PTO/AIA/53:* (Reissue Application: Consent of Assignee; Statement of Non-Assignment)
- *PTO/SB/53:* (Reissue Application: Consent of Assignee; Statement of Non-Assignment)
- *PTO/SB/56:* (Reissue Application Fee Transmittal Form)
- *PTOL–85B:* (Issue Fee Transmittal)
- *PTO/SB/141:* (Petition to Correct Assignee After Payment of Issue Fee)

Type of Request: Revision of a currently approved information collection.

Number of Respondents: 388,249 respondents and 392,149 responses per year. The USPTO estimates that approximately 25% of these respondents will be small entities.

Average Hours per Response: The USPTO estimates that it will take the public from 30 minutes (0.50 hours) to 5.3 hours to gather the necessary information, prepare the appropriate form or document, and submit the information to the USPTO.

Burden Hours: 331,434 hours.

Hourly Cost Burden: $145,168,092.

Annual (non-hour) Cost: $306,268,779.

Needs and Uses: The public uses this information collection to request corrections of errors in issued patents, to submit applications for reissue patents, and to submit issue fee payments. The information in this information collection can be submitted using the USPTO's electronic filing system (EFS-Web) for patent applications and related documents. The information collected, maintained, and used in this information collection is based on OMB and USPTO guidelines. This includes the basic information quality standards established in the Paperwork Reduction Act of 1995, in OMB Circular A–130, and in the USPTO OMB quality guidelines.

Affected Public: Individuals or households; businesses or other for profits; and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, email: *Nicholas_A._Fraser@omb.eop.gov.* Once submitted, the request will be publicly available in electronic format through *reginfo.gov.* Follow the instructions to view Department of Commerce information collections currently under review by OMB.

Further information can be obtained by:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0033 information request'' in the subject line of the message.
- *Mail:* Kimberly Hardy, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed

information collection should be sent on or before March 2, 2020 to Nicholas A. Fraser, OMB Desk Officer, via email to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Marcie Lovett,

Chief, Records and Information Governance Branch, Office of the Chief Administrative Officer, Office of Administrative Services, Strategic and Data Transport Division, United States Patent and Trademark Office.

[FR Doc. 2020–01851 Filed 1–30–20; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request; Patent Term Extension

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for an information collection under the provisions of the Paperwork Reduction Act of 1995.

Agency: United States Patent and Trademark Office, Department of Commerce.

Title: Patent Term Extension.

OMB Control Number: 0651–0020.

Form Number(s): There are no forms in this information collection.

Type of Request: Revision of a currently approved information collection.

Number of Respondents: 620 respondents.

Average Hours per Response: The USPTO estimates that it will take the public from 1 hour to 25 hours to gather the necessary information, prepare the appropriate form or document, and submit the information to the USPTO.

Burden Hours: 4,102 hours.

Hourly Cost Burden: $1,796,676.

Non Hourly Cost Burden: $209,889.

Needs and Uses: The patent term restoration portion of the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417), which is codified at 35 U.S.C. 156, permits the United States Patent and Trademark Office (USPTO) to extend the term of protection under a patent to compensate for delay during regulatory review and approval by the Food and Drug Administration (FDA) or United States Department of Agriculture (USDA). Only patents for drug products, medical devices, food additives, or color additives are potentially eligible for extension. The maximum length that a patent may be extended under 35 U.S.C. 156 is 5 years. The USPTO administers 35 U.S.C. 156 through 37 CFR 1.710–1.791. Separate from the extension provisions of 35 U.S.C. 156, the USPTO may in some cases extend the term of an original patent due to certain delays in the prosecution of the patent application, including delays caused by interference proceedings, secrecy orders, or appellate review by the Patent Trial and Appeal Board or a Federal court in which the patent is issued pursuant to a decision reversing an adverse determination of patentability. The patent term provisions of 35 U.S.C. 154(b), as amended by Title IV, Subtitle D of the Intellectual Property and Communications Omnibus Reform Act of 1999, require the USPTO to notify the applicant of the patent term adjustment in the notice of allowance and give the applicant an opportunity to request reconsideration of the USPTO's patent term adjustment determination.

The public uses this information collection to file requests related to patent term extensions and reconsideration or reinstatement of patent term adjustments. The information in this information collection is used by the USPTO to consider whether an applicant is eligible for a patent term extension or reconsideration of a patent term adjustment and, if so, to determine the length of the patent term extension or adjustment.

Affected Public: Businesses or other for-profits; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, email: *Nicholas_A._Fraser@omb.eop.gov.* Once submitted, the request will be publicly available in electronic format through *reginfo.gov.* Follow the instructions to view Department of Commerce information collections currently under review by OMB.

Further information can be obtained by:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0020 information request'' in the subject line of the message.
- *Mail:* Kimberly Hardy, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before March 2, 2020 to Nicholas A. Fraser, OMB Desk Officer, via email to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Marcie Lovett,

Chief, Records and Information Governance Branch, Office of the Chief Administrative Officer, Office of Administrative Services, Strategic and Data Transport Division.

[FR Doc. 2020–01849 Filed 1–30–20; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request; Deposit of Biological Materials

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995.

Agency: United States Patent and Trademark Office, Department of Commerce.

Title: Deposit of Biological Materials.

OMB Control Number: 0651–0022.

Form Number(s): There are no forms in this information collection.

Type of Request: Revision of a currently approved information collection.

Number of Respondents: 951 respondents.

Average Hours per Response: The USPTO estimates that it will take the public 1 hour to gather the necessary information, prepare the appropriate documents, and submit the information to the USPTO for a deposit of biological materials. The USPTO estimates that it will take 5 hours to collect and submit the information required to become a depository.

Burden Hours: 955 hours.

Hourly Cost Burden: $42,914.

Annual (non-hourly) Cost: $2,823,237.

Needs and Uses: Information on the deposit of biological materials in depositories is required for (a) the USPTO determination of compliance with 35 U.S.C. 2(b)(2) and 112, and 37 CFR 1.801–1.809 and 1.14, where inventions sought to be patented rely on biological material subject to the deposit requirement, including notification to the interested public about where to obtain samples of deposits; and (b) in compliance with 37 CFR 1.803 to demonstrate that the depositories are qualified to store and test the biological material submitted to them. This information collection is used by the USPTO to determine whether or not the applicant has met the requirements of

the patent regulations. In addition, the USPTO uses this information to determine the suitability of a respondent depository based upon administrative and technical competence and the depository's agreement to comply with the requirements set forth by the USPTO.

Affected Public: Businesses or other for-profits; and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain and retain benefits.

OMB Desk Officer: Nicholas A. Fraser, email: *Nicholas_A._Fraser@omb.eop.gov*. Once submitted, the request will be publicly available in electronic format through reginfo.gov. Follow the instructions to view Department of Commerce information collections currently under review by OMB.

Further information can be obtained by:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0022 information request'' in the subject line of the message.
- *Mail:* Kimberly Hardy, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before March 2, 2020 to Nicholas A. Fraser, OMB Desk Officer, via email to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Marcie Lovett,

Chief, Records and Information Governance Branch, Office of the Chief Administrative Officer, Office of Administrative Services, Strategic and Data Transport Division.

[FR Doc. 2020–01852 Filed 1–30–20; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes services previously furnished by such agencies.

DATES: *Comments must be received on or before:* March 1, 2020.

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.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

NSNs—Product Names:
MR 11091—Bag, Laminated, Large, Easter Design 1
MR 11092—Bag, Laminated, Large, Easter Design 2
MR 11093—Bag, Tote, Reusable, Collapsible, Easter
MR 11094—Bag, Reusable, Laminated Gift Size, Easter Design 1
MR 11095—Bag, Reusable, Laminated Gift Size, Easter Design 2
Mandatory Source of Supply: West Texas Lighthouse for the Blind, San Angelo, TX
Contracting Activity: Military Resale-Defense Commissary Agency

Deletions

The following services are proposed for deletion from the Procurement List:

Services

Service Type: Janitorial/Custodial
Mandatory for: Veterans Affairs Medical Center: Hunter Holmes McGuire, Richmond, VA
Mandatory Source of Supply: Goodwill Services, Inc, Richmond, VA
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, NAC

Service Type: Mailroom Operation
Mandatory for: Directorate of Human Resources, Fort Knox, KY
Mandatory Source of Supply: Employment Source, Inc., Fayetteville, NC
Contracting Activity: DEPT OF THE ARMY, W6QM MICC–FT KNOX

Service Type: Janitorial/Grounds Maintenance
Mandatory for: Department of Agriculture: U.S. Horticultural Research Laboratory, Fort Pierce, FL
Mandatory Source of Supply: Brevard Achievement Center, Inc., Rockledge, FL
Contracting Activity: AGRICULTURAL RESEARCH SERVICE, USDA ARS SAA 4384

Service Type: Janitorial/Elevator Operator
Mandatory for: Southeast Federal Center: Building 205, Washington, DC
Mandatory Source of Supply: Davis Memorial Goodwill Industries, Washington, DC
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: Janitorial/Custodial
Mandatory for: U.S. Federal Building and Post Office: 425 Juliana Street, Parkersburg, WV
Mandatory Source of Supply: SW Resources, Inc., Parkersburg, WV
Contracting Activity: PUBLIC BUILDINGS SERVICE, GSA/PBS/R03 NORTH SERVICE CENTER

Service Type: Administrative Services
Mandatory for: GSA, New York: Federal Supply Service, 26 Federal Plaza, New York, NY
Mandatory Source of Supply: The Corporate Source, Inc., Garden City, NY
Contracting Activity: PUBLIC BUILDINGS SERVICE, GSA PBS R2 ACQUISITION MANAGEMENT DIVISION

Service Type: Library Services
Mandatory for: Building 405, Shaw AFB, SC
Contracting Activity: DEPT OF THE AIR FORCE, FA4803 20 CONS LGCA

Service Type: Janitorial/Custodial
Mandatory for: Peace Bridge Complex, Buffalo, NY
Mandatory Source of Supply: Suburban Adult Services, Inc., Elma, NY
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: Virtual Warehouse Operation
Mandatory for: Department of Transportation: Ardmore East Business Center, Landover, MD
Mandatory Source of Supply: ServiceSource, Inc., Oakton, VA

Contracting Activity: DEPARTMENT OF TRANSPORTATION
Service Type: Moving Services
Mandatory for: Department of the Interior, Washington, DC
Mandatory Source of Supply: Anchor Mental Health Association, Washington, DC
Contracting Activity: OFFICE OF POLICY, MANAGEMENT, AND BUDGET, NBC ACQUISITION SERVICES DIVISION
Service Type: Laundry Service
Mandatory for: Naval Air Station, Patuxent River, MD
Mandatory Source of Supply: Rappahannock Goodwill Industries, Inc., Fredericksburg, VA
Contracting Activity: DEPT OF THE NAVY, U S FLEET FORCES COMMAND
Service Type: Grounds Maintenance
Mandatory for: San Juan Customhouse, San Juan, PR
Mandatory Source of Supply: The Corporate Source, Inc., Garden City, NY
Contracting Activity: BUREAU OF CUSTOMS AND BORDER PROTECTION, NATIONAL ACQUISITION CENTER
Service Type: Janitorial/Custodial
Mandatory for: VA Central Iowa Health Care System: Day Care Center, Des Moines, IA
Mandatory Source of Supply: Goodwill Solutions, Inc., Johnston, IA
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, NAC

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management),

[FR Doc. 2020–01800 Filed 1–30–20; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes products and services from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date deleted from the Procurement List:* March 1, 2020.

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: 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

On 12/27/2019, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

NSN(s)—Product Name(s):
MR 332—Peeler, Corn.
Mandatory Source of Supply: Cincinnati Association for the Blind, Cincinnati, OH
Contracting Activity: Military Resale-Defense Commissary Agency
NSN(s)—Product Name(s):
7530–00–926–2122—Folder, File
7530–00–926–2123—Folder, File
Mandatory Source of Supply: Clovernook Center for the Blind and Visually Impaired, Cincinnati, OH
Contracting Activity: Strategic Acquisition Center, Fredericksburg, VA
NSN(s)—Product Name(s):
6530–01–004–8969—Urinal, Incontinent
Mandatory Source of Supply: The Lighthouse for the Blind, St. Louis, MO.
Contracting Activity: Strategic Acquisition Center, Fredericksburg, VA
NSN(s)—Product Name(s):
MR 10694—Berry Box, Includes Shipper 20694
Mandatory Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: Military Resale-Defense Commissary Agency
NSN(s)—Product Name(s):
7930–00–NIB–0579—Disinfectant PD–128 Cleaner, Intermediate, Broad Spectrum, Concentrated
8125–00–NIB–0032—Spray Bottle, PD–128 Disinfectant Cleaner, 32 oz. Bottle.
Mandatory Source of Supply: VisionCorps, Lancaster, PA
Contracting Activity: Strategic Acquisition Center, Fredericksburg, VA

Services

Service Type: Janitorial/Custodial
Mandatory for: VA Medical Center: Salem Primary Care Clinic, Salem, OR
Mandatory Source of Supply: Garten Services, Inc., Salem, OR
Contracting Activity: Veterans Affairs, Department of, 260–Network Contract Office 20
Service Type: Janitorial/Custodial
Mandatory for: Social Security Administration Complex: 5536 Caswell Road, Roth Building, Baltimore, MD
Mandatory Source of Supply: Sinai Hospital of Baltimore (Vocational Services Program), Baltimore, MD
Contracting Activity: Social Security Administration, Social Security Administration
Service Type: Duplicating/Copying of Court Documents
Mandatory for: Government Printing Office: 710 North Capitol & H Street NW, Washington, DC
Mandatory Source of Supply: Alliance, Inc., Baltimore, MD
Contracting Activity: Government Printing Office
Service Type: Cutting and Assembly
Mandatory for: Robins Air Force Base, Robins AFB, GA
Mandatory Source of Supply: Middle Georgia Diversified Industries, Inc., Dublin, GA
Contracting Activity: Defense Logistics Agency, DLA Aviation

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2020–01808 Filed 1–30–20; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Science and Technology Reinvention Laboratory (STRL) Personnel Demonstration Project

AGENCY: Under Secretary of Defense for Research and Engineering (USD(R&E)), Department of Defense (DoD).

ACTION: Notice of STRL Personnel Demonstration Project Authority.

SUMMARY: This notice provides a new authority to all STRL Personnel Demonstration Projects. STRLs with published demonstration project plans may implement a program which offers voluntary assignments in the STRLs to private and public sector United States (U.S.) citizens.

DATES: This demonstration project authority may be implemented beginning on January 31, 2020. The Voluntary Expert Program (VEP) will be implemented through STRL issuances and notices to appropriate stakeholders.

FOR FURTHER INFORMATION CONTACT:

Department of the Air Force

- *Air Force Research Laboratory:* Ms. Rosalyn Jones-Byrd, Directorate of Personnel, 1864 4th Street, Wright-Patterson Air Force Base, OH 45433–5209;
- *Joint Warfare Analysis Center:* Ms. Amy Balmaz, 4048 Higley Road, Dahlgren, VA 22448.

Department of the Army

- *Army Research Institute for the Behavioral and Social Sciences:* Dr. Scott Shadrick, 6000 6th Street, Bldg. 1464, Fort Belvoir, VA 22060–5586;
- *Combat Capabilities Development Command Armaments Center:* Mr. Mike Nicotra, Human Capital Management Office, Building 1, 3rd Floor, RDAR–EIH, Picatinny Arsenal, NJ 07806–5000;
- *Combat Capabilities Development Command Army Research Laboratory:* Mr. Christopher Tahaney, AMSRD–ARL–O–HR, 2800 Powder Mill Road, Adelphi, MD 20783–1197;
- *Combat Capabilities Development Command Aviation and Missile Center:* Ms. Nancy Salmon, 5400 Fowler Road, Redstone Arsenal, AL 35898–5000;
- *Combat Capabilities Development Command Chemical Biological Center:* Ms. Patricia Milwicz, Office of the Technical Director, G–1 Human Resource Office, Department of the Army, ATTN: FCDD–CBD–CH, 8198 Blackhawk Road, Building E3330, Aberdeen Proving Ground, MD 21010–5424;
- *Combat Capabilities Development Command Command, Control, Communications, Computers, Cyber, Intelligence, Surveillance, and Reconnaissance Center:* Ms. Angela Clybourn, C4ISR Campus Building 6002, Room D3126D, ATTN: RDER–DOS–ER, Aberdeen Proving Ground, MD 21005;
- *Combat Capabilities Development Command Ground Vehicle Systems Center:* Ms. Jennifer Davis, ATTN: RDTA–CS/MS 204, Warren, MI 48397–5000;
- *Combat Capabilities Development Command Soldier Center:* Ms. Joelle Montecalvo, 15 General Greene Ave. (FCDD–SCG–HR), Natick, MA 01760;
- *Engineer Research and Development Center:* Ms. Patricia Sullivan, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199;
- *Medical Research and Materiel Command:* Ms. Linda Krout, 505 Scott St., Fort Detrick, MD 21702–5000;
- *Technical Center, Space and Missile Defense Command/Army Forces Strategic Command (SMDC/ARSTRAT):* Mr. Chad Marshall, 5220 Martin Road, Redstone Arsenal, AL 35898–5000.

Department of the Navy

- *Naval Air Warfare Center, Weapons Division and Aircraft Division:* Mr. Richard Cracraft, Weapons Division, Code 730000D, 1 Administration Circle, Building 00464, China Lake, CA 93555–6100;
- *Naval Facilities Engineering Command Engineering and Expeditionary Warfare Center:* Ms. Lori Leigh, Code BD13, 1000 23rd Avenue, Port Hueneme, CA 93043;
- *Naval Information Warfare Centers:*
  - *Naval Information Warfare Centers Atlantic:* Ms. Veronica Truesdale, P.O. Box 190022, North Charleston, SC 29419–9022; and
  - *Naval Information Warfare Centers Pacific:* Ms. Angela Hanson, 53560 Hull Street, San Diego, CA 92152–5001;
- *Naval Medical Research Center:* Capt. Franca Jones, 503 Robert Grant Ave., Silver Spring, MD 20910–7500;
- *Naval Research Laboratory:* Ms. Ginger Kisamore, 4555 Overlook Avenue SW, Washington, DC 20375–5320;
- *Naval Sea Systems Command Warfare Centers:* Ms. Diane Brown, Philadelphia Division, 5001 South Broad Street, Philadelphia, PA 19112–5083;
- *Office of Naval Research:* Ms. Margaret J. Mitchell, 875 North Randolph Street, Code BD, Arlington, VA 22203.

DoD

- Dr. Jagadeesh Pamulapati, Director, Laboratories and Personnel Office, 4800 Mark Center Drive, Alexandria, VA 22350.

SUPPLEMENTARY INFORMATION:

1. Background

Section 342(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1995, as amended by section 1109 of the NDAA for FY 2000, and section 1114 of the NDAA for FY 2001, authorizes the Secretary of Defense (SECDEF) to conduct personnel demonstration projects at DoD laboratories designated as STRLs. Most STRLs have a Voluntary Emeritus Program or Voluntary Emeritus Corps flexibility that permits STRLs to offer voluntary assignments to individuals who have retired or separated from Federal service. This new authority will expand this flexibility to permit STRLs to offer the same type of voluntary assignments to U.S. citizens who have not retired or separated from Federal service. Volunteer service will not be used to replace any employee, or interfere with career opportunities of employees. The VEP may not be used to replace or substitute for work performed by government personnel occupying positions required to perform the mission of the STRL.

The 20 current STRLs are:

- Air Force Research Laboratory
- Joint Warfare Analysis Center
- Army Research Institute for the Behavioral and Social Sciences
- Combat Capabilities Development Command Armaments Center
- Combat Capabilities Development Command Army Research Laboratory
- Combat Capabilities Development Command Aviation and Missile Center
- Combat Capabilities Development Command Chemical Biological Center
- Combat Capabilities Development Command Command, Control, Communications, Computers, Cyber, Intelligence, Surveillance, and Reconnaissance Center
- Combat Capabilities Development Command Ground Vehicle Systems Center
- Combat Capabilities Development Command Soldier Center
- Engineer Research and Development Center
- Medical Research and Materiel Command
- Technical Center, U.S. Army Space and Missile Defense Command/Army Forces Strategic Command
- Naval Air Systems Command Warfare Centers

- Naval Facilities Engineering Command Engineering and Expeditionary Warfare Center
- Naval Information Warfare Centers, Atlantic and Pacific
- Naval Medical Research Center
- Naval Research Laboratory
- Naval Sea Systems Command Warfare Centers
- Office of Naval Research

2. Overview

I. Introduction

A. Purpose

The VEP will allow U.S. citizens to provide commercial and public sector knowledge, experience and advice, and valuable mentoring to STRL employees.

B. Required Waivers to Law and Regulation

None.

C. Participating Organizations and Employees

All DoD laboratories designated as STRLs under section 1105 of the NDAA for FY 2010, section 1103 of the NDAA for FY 2015, and section 1104 of the NDAA for FY 2018 (including any newly designated STRLs authorized by SECDEF or by future legislation) with published demonstration project plans may use the provisions described in this FRN. STRLs implementing this flexibility must fulfill any collective bargaining obligations. Each STRL will establish internal operating procedures as appropriate. Authorized STRLs and correlated FRNs are listed in Appendix A.

D. Summary of Comments

Two comments were received regarding the VEP proposed for implementation in the STRL demonstration projects as described in 84 FR 31849, July 2, 2019. The first comment suggested adding a statement concerning intellectual property. An additional statement concerning intellectual property was determined to be unnecessary because it is addressed as part of the agreement between the VEP participant and the STRL. See 2.II.A.(13). The second comment did not pertain to the flexibility described in 84 FR 31849. The comment was forwarded to the specific STRL referenced in the comment for consideration.

II. Personnel System Changes

All current and future STRL personnel demonstration project plans are hereby amended to add the following:

A. Voluntary Expert Program

Under the demonstration project, STRLs have the authority to offer voluntary assignments to U.S. citizens who are retired, separated, or on sabbatical from private or public sector organizations. The VEP will provide opportunities for these individuals to bring commercial sector or public sector knowledge and experience into the STRLs. The VEP will not be used to replace any government personnel or interfere with their career opportunities. The VEP may not be used to replace or substitute for work performed by government personnel occupying positions required to perform the STRL's mission. VEP assignments are not considered ''employment'' by the Federal government (except as indicated below).

To be accepted into the VEP, an individual must be a U.S. citizen and must be recommended by an STRL manager. No one is entitled to participate in the VEP, and application to the VEP does not guarantee acceptance into the Program or assignment at an STRL. The STRL must clearly document the decision process and decision rationale for each VEP applicant (regardless of whether the applicant is accepted or rejected for the program) and must retain this documentation throughout the assignment (for accepted applicants), or for two years (for rejected applicants). VEP participants will not be permitted to perform any inherently governmental function, or to participate in any contracts or solicitations for which the participant has a conflict of interest. VEP participants are not permitted to participate in contract source selections, nor are they permitted to have access to contractor bid or proposal information or source selection information, or to data or information that is protected by the Trade Secrets Act (18 U.S.C. 1905) without a written agreement between the VEP participant and the owner of the data or information.

The VEP participant shall be required to enter a written agreement with the STRL as a condition of participation in the Program. The agreement will be reviewed by the local Legal Office for legal sufficiency prior to signature. The agreement must be finalized before the VEP participant assumes any duties and shall include, at a minimum:

(1) A statement that the voluntary assignment does not constitute an appointment in the civil service and is without compensation, and any and all claims against the Government (because of the voluntary assignment) are waived by the VEP participant;

(2) a statement that the VEP participant will be considered a federal employee solely for the purpose of:

(a) 18 U.S.C. 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913;

(b) 31 U.S.C. 1343, 1344, and 1349(b);

(c) 5 U.S.C. chapters 73 and 81;

(d) The Ethics in Government Act of 1978;

(e) 41 U.S.C. chapter 21;

(f) 28 U.S.C. chapter 171 (tort claims procedure), and any other Federal tort liability statute; and

(g) 5 U.S.C. 552a (records maintained on individuals).

(3) the VEP participant's work schedule;

(4) the length of the agreement (defined by length of project or time defined by weeks, months, or years);

(5) the support to be provided by the STRL (travel, administrative, office space, supplies);

(6) the VEP participant's duties;

(7) a provision allowing either party to void the agreement with at least two working days' written notice;

(8) the level of security access required (any security clearance required by the assignment will be managed by the STRL while the participant is a member of the VEP);

(9) a provision that any written products prepared for publication that are related to VEP participation will be submitted to the STRL director for review and must be approved prior to publication;

(10) a statement that the VEP participant accepts accountability for loss or damage to Government property occasioned by the VEP participant's negligence or willful action;

(11) a statement that the activities of the VEP participant on the premises will conform to the regulations and requirements of the organization;

(12) a statement that the VEP participant will not improperly use or disclose any non-public information, to include any pre-decisional or draft deliberative information related to DoD programming, budgeting, resourcing, acquisition, procurement or other matter, for the benefit or advantage of the Volunteer Expert or any non-Federal entities. VEP participants will handle all non-public information in a manner that reduces the possibility of improper disclosure;

(13) a statement that the VEP participant agrees to disclose any inventions made in the course of work performed at the STRL. The STRL will have the option to obtain title to any such invention on behalf of the U.S. Government. Should the STRL Director elect not to take title, the STRL will

retain a non-exclusive, irrevocable, paid up, royalty-free license to practice or have practiced the invention worldwide on behalf of the U.S. Government;

(14) a statement that the VEP participant must complete either a Confidential or Public Financial Disclosure Report, whichever applies; a disqualification statement prohibiting the VEP participant from working on matters related to his or her former employer; and ethics training in accordance with Office of Government Ethics regulations prior to implementation of the written agreement; and

(15) a statement that the VEP participant must receive post-government employment advice from a DoD ethics counselor at the conclusion of program participation. VEP participants are deemed Federal employees for purposes of post-government employment restrictions.

A written Memorandum of Agreement (MOA) between the STRL and the VEP participant is required and must include all items above, regardless of format used. The use and wording of the MOA will be provided in the internal operating procedures of the STRL.

B. Evaluation

As part of an annual program evaluation, STRLs will provide specific information concerning the use of this authority to the Director, Laboratories and Personnel Office.

Appendix A

AUTHORIZED STRLS AND FEDERAL REGISTER NOTICES

STRL	**Federal Register** notice
Air Force Research Laboratory	61 FR 60400 amended by 75 FR 53076.
Joint Warfare Analysis Center	Not yet published.
Army Research Institute for Behavioral and Social Sciences	Not yet published.
Combat Capabilities Development Command Armaments Center	76 FR 3744.
Combat Capabilities Development Command Army Research Laboratory.	63 FR 10680.
Combat Capabilities Development Command Aviation and Missile Center.	62 FR 34906 and 62 FR 34876 amended by 65 FR 53142 (AVRDEC and AMRDEC merged together).
Combat Capabilities Development Command Chemical Biological Center.	74 FR 68936.
Command, Control, Communications, Cyber, Intelligence, Surveillance, and Reconnaissance Center.	66 FR 54872.
Combat Capabilities Development Command Ground Vehicle Systems Center.	76 FR 12508.
Combat Capabilities Development Command Soldier Center	74 FR 68448.
Engineer Research and Development Center	63 FR 14580 amended by 65 FR 32135.
Medical Research and Materiel Command	63 FR 10440.
Technical Center, U.S. Army Space and Missile Defense Command/ Army Forces Strategic Command.	Not yet published.
Naval Air Systems Command Warfare Centers	76 FR 8530.
Naval Facilities Engineering Command Engineering and Expeditionary Warfare Center.	Not yet published.
Naval Information Warfare Centers, Atlantic and Pacific	76 FR 1924.
Naval Medical Research Center	Not yet published.
Naval Research Laboratory	64 FR 33970.
Naval Sea Systems Command Warfare Centers	62 FR 64050.
Office of Naval Research	75 FR 77380.

Dated: January 28, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–01854 Filed 1–30–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Regents, Uniformed Services University of the Health Sciences; Notice of Federal Advisory Committee Meeting

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

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Board of Regents (Board), Uniformed Services University of the Health Sciences (USU), will take place.

DATES: Tuesday, February 4, 2020, open to the public from 8:00 a.m. to 11:05 a.m. The closed session will follow from approximately 11:15 a.m. to 12:00 p.m.

ADDRESSES: Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah Marshall, Designated Federal Officer (DFO), at (301) 295–3955 or *sarah.marshall@usuhs.edu.* Mailing address is 4301 Jones Bridge Road, Bethesda, MD 20814. Website: *https://www.usuhs.edu/vpe/bor.*

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense, the Board of Regents, Uniformed Services University of the Health Sciences was unable to provide public notification required by 41 CFR 102–3.150(a) concerning the meeting on February 4, 2020 of the Board of Regents, Uniformed Services University of the Health Sciences. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to provide advice and recommendations to the Secretary of Defense, through the USD(P&R), on academic and administrative matters critical to the full accreditation and

successful operation of USU. These actions are necessary for USU to pursue its mission, which is to educate, train and comprehensively prepare uniformed services health professionals, officers, scientists, and leaders to support the Military and Public Health Systems, the National Security and National Defense Strategies of the United States, and the readiness of our Uniformed Services.

Agenda: The schedule includes recommendations for degree conferrals, faculty appointments and promotions, and faculty awards presented by the deans of USU's schools and colleges; a report by the USU President on recent actions affecting academic and operational aspects of USU; a report from the Assistant Secretary of Defense for Health Affairs about the Military Health System; a member report covering an academics summary (consisting of submissions from the School of Medicine, Graduate School of Nursing, Postgraduate Dental College, and College of Allied Health Sciences); a member report covering a finance and administration summary (consisting of submissions from the Senior Vice President Campus South, Senior Vice President Campus West, Armed Forces Radiobiology Research Institute, and Office of the Vice President for Research); and additional reports to the Board from the Office of Accreditation and Organizational Assessment, Office of the Registrar, and the Office of the Vice President for Finance and Administration. Reviews of administrative matters of general consent (*e.g.,* minute's approval, degree conferrals, faculty appointments and promotions, award recommendations, etc.) electronically voted on since the previous Board meeting on November 5, 2019 due to suspense requirements will presented. A closed session will be held following the open session to discuss active investigations and personnel actions.

Meeting Accessibility: Pursuant to Federal statutes and regulations (5 U.S.C. Appendix, 5 U.S.C. 552b, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, the meeting is open to the public from 8:00 a.m. to 11:05 a.m. Seating is on a first-come basis. Members of the public wishing to attend the meeting should contact Sarah Marshall no later than five business days prior to the meeting at the address and phone number noted in the **FOR FURTHER INFORMATION CONTACT** section. Pursuant to 5 U.S.C. 552b(c)(2, 5–7), the DoD has determined that the portion of the meeting from 11:15 a.m. to 12:00 p.m. shall be closed to the public. The USD(P&R), in consultation with the DoD Office of General Counsel, has determined in writing that this portion of the Board's meeting will be closed as the discussion will disclose sensitive personnel information, will include matters that relate solely to the internal personnel rules and practices of the agency, will involve allegations of a person having committed a crime or censuring an individual, and may disclose investigatory records compiled for law enforcement purposes.

Written Statements: Pursuant to section 10(a)(3) of the FACA and 41 CFR 102–3.140, the public or interested organizations may submit written comments to the Board about its approved agenda pertaining to this meeting or at any time regarding the Board's mission. Individuals submitting a written statement must submit their statement to the DFO at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Written statements that do not pertain to a scheduled meeting of the Board may be submitted at any time. If individual comments pertain to a specific topic being discussed at the planned meeting, then these statements must be received at least five calendar days prior to the meeting. Otherwise, the comments may not be provided to or considered by the Board until a later date. The DFO will compile all timely submissions with the Board's Chair and ensure such submissions are provided to Board Members before the meeting.

Dated: January 28, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–01830 Filed 1–30–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2019–ICCD–0146]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Student Assistance General Provision—Subpart E—Verification Student Aid Application Information

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before March 2, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0146. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave SW, LBJ, Room 6W–208D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note

that written comments received in response to this notice will be considered public records.

Title of Collection: Student Assistance General Provision—Subpart E—Verification Student Aid Application Information.

OMB Control Number: 1845–0041.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Private Sector; Individuals or Households; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 25,180,342.

Total Estimated Number of Annual Burden Hours: 4,048,184.

Abstract: This request is for a revision of the information collection supporting the policies and reporting requirements contained in Subpart E of Part 668—Verification and Updating of Student Aid Application Information. Sections 668.53, 668.54, 668.55, 668.56, 668.57, 668.59 and 668.61 contain information collection requirements (OMB control number 1845–0041). This subpart governs the verification and updating of the Free Application for Federal Student Aid used to calculate an applicant's Expected Family Contribution for purposes of determining an applicant's need for student financial assistance under Title IV of Higher Education Act of 1965, as amended. The collection of this documentation helps ensure that students (and parents in the case of PLUS loans) receive the correct amount of Title IV program assistance by providing accurate information to calculate an applicant's expected family contribution. There has been no change to the regulatory language.

Dated: January 27, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–01773 Filed 1–30–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2019–ICCD–0150]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Student Assistance General Provisions—Subpart J—Approval of Independently Administered Tests

AGENCY: Department of Education (ED), Federal Student Aid (FSA).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before March 2, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0150. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave SW, LBJ, Room 6W–208D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Student Assistance General Provisions—Subpart J—Approval of Independently Administered Tests.

OMB Control Number: 1845–0049.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector; Individuals or Households; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 48,779.

Total Estimated Number of Annual Burden Hours: 6,340.

Abstract: This request is for an extension without change of the approval for the reporting and recordkeeping requirements that are contained in the information collection 1845–0049 for Student Assistance General Provision in the regulations in Subpart J—Approval of Independently Administered Tests; Specification of Passing Score; Approval of State Process. There are no forms or formats established by the Department for the reporting or recordkeeping requirements. These regulations govern the application for and approval by the Secretary of assessments by a private test publisher or State that are used to measure a student's skills and abilities. The administration of approved ability to benefit (ATB) tests may be used to determine a student's eligibility for assistance for the Title IV student financial assistance programs authorized under the Higher Education Act of 1965, as amended (HEA) when, among other conditions, the student does not have a high school diploma or its recognized equivalent. The language of the current statute and regulations have not changed.

Dated: January 27, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–01775 Filed 1–30–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2019–ICCD–0149]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Cash Management Contract URL Collection

AGENCY: Department of Education (ED), Federal Student Aid (FSA).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before March 2, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0149. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Cash Management Contract URL Collection.

OMB Control Number: 1845–0147.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 552.

Total Estimated Number of Annual Burden Hours: 45.

Abstract: The Department of Education (the Department) is seeking to renew OMB control number 1845–0147 for the collection of URLs hosting institutional contracts and contract data relating to campus banking agreements. The Department has created a Cash Management Contract electronic form to allow institutions to report their contract and contract URL to the Department. The Department has also created a central repository for the information provided by the institution that includes the contract data and the web addresses that is publicly available for research and comparison purposes. Both of these are located on *studentaid.gov.* The database allows interested parties, such as students, families, press, institutions, and researchers to easily access and compare banking agreements available at different institutions.

Dated: January 27, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–01774 Filed 1–30–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Training Program for Federal TRIO Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for new awards for fiscal year (FY) 2020 for the Training Program for Federal TRIO Programs (Training Program), Catalog of Federal Domestic Assistance (CFDA) number 84.103A. This notice relates to the approved information collection under OMB control number 1840–0814.

DATES:

Applications Available: January 31, 2020.

Deadline for Transmittal of Applications: March 2, 2020.

Deadline for Intergovernmental Review: April 30, 2020.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Suzanne Ulmer or, if unavailable, Dr. ReShone Moore, U.S. Department of Education, 400 Maryland Avenue SW, Room 278–44, Washington, DC 20202. Telephone: (202) 453–7691 or (202) 453–7624. Email: *Suzanne.Ulmer@ed.gov* or *ReShone.Moore@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Training Program provides grants to train the staff and leadership personnel employed in, participating in, or preparing for employment in, projects funded under the Federal TRIO Programs, so as to improve the operation of these projects.

Priorities: This notice contains six absolute priorities and three invitational priorities. In accordance with 34 CFR 75.105(b)(2)(iv) and 34 CFR 75.105(b)(2)(ii), the absolute priorities are from section 402G(b) of the Higher Education Act of 1965, as amended

(HEA), the regulations for this program at 34 CFR 642.24, and the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on March 2, 2018 (83 FR 9096) (Supplemental Priorities).

Absolute Priorities: For FY 2020 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet one of these absolute priorities.

In accordance with 34 CFR 642.7, each application must clearly identify the specific absolute priority for which a grant is requested. An applicant must submit a separate application for each absolute priority it proposes to address. If an applicant submits more than one application for the same absolute priority, we will accept only the application with the latest ''date/time received'' validation.

These priorities are:

Absolute Priority 1. Training to improve reporting of student and project performance and the evaluation of project performance in order to design and operate a model project funded under the Federal TRIO Programs.

Estimated number of awards: 2.

Maximum award amount: $287,537.

Absolute Priority 2. Training on budget management and the statutory and regulatory requirements for operation of projects funded under the Federal TRIO Programs.

Estimated number of awards: 2.

Maximum award amount: $287,537.

Absolute Priority 3. Training on assessment of student needs; retention and graduation strategies; and the use of appropriate educational technology in the operation of projects funded under the Federal TRIO programs.

Estimated number of awards: 1.

Maximum award amount: $373,799.

Absolute Priority 4. Training on assisting students in receiving adequate financial aid from programs assisted under title IV of the HEA and from other programs, on college and university admissions policies and procedures, and on supporting instruction in personal financial literacy, knowledge of markets and economics, knowledge of higher education financing and repayment (*e.g.,* college savings and student loans), or other skills aimed at building personal financial understanding and responsibility.

Estimated number of awards: 2.

Maximum award amount: $287,537.

Absolute Priority 5. Training on strategies for recruiting and serving hard to reach populations, including students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students with disabilities, students who are homeless children and youths (as this term is defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a)), students who are in foster care or are aging out of the foster care system, or other disconnected students.

Estimated number of awards: 1.

Maximum award amount: $373,799.

Absolute Priority 6. Training on general project management for new project directors who have been in their positions less than two years, including training on the content of absolute priorities 1 through 5. The training should provide new directors with the basic tools required to be a successful TRIO project director.

Estimated number of awards: 2.

Maximum award amount: $318,803.

Under this competition we are particularly interested in applications that address the following priorities.

Invitational Priorities: For FY 2020 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1), we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1:

Applications that propose projects designed to address one or more of the following priority areas:

(a) Implementing strategies that ensure education funds are spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes.

(b) Supporting training aligned with innovative strategies or research that have the potential to lead to significant and wide-reaching improvements in the delivery of educational services.

(c) Reducing compliance burden within the grantee's operations (including the burden on partners working to achieve grant objectives or being served by the grant) in a manner that decreases paperwork or staff time spent on administrative functions, or other operational changes that help education providers to save money, benefit more students, or improve results.

Invitational Priority 2:

Applications that propose projects designed to assist TRIO grantees with the ongoing implementation of the evidence-based strategies they proposed in their approved applications for the Talent Search Program notice inviting applications published in the **Federal Register** on December 12, 2015 (80 FR 79574); the Educational Opportunity Centers notice inviting applications published in the **Federal Register** on February 2, 2016 (81 FR 5425); the Upward Bound Program notice inviting applications published in the **Federal Register** on December 17, 2016 (81 FR 71492); the Upward Bound Math and Science Program notice inviting applications published in the **Federal Register** on February 10, 2017 (82 FR 10348); the Ronald E. McNair Postbaccalaureate Achievement Program notice inviting applications published in the **Federal Register** on February 21, 2017 (82 FR 11196); the Veterans Upward Bound Program notice inviting applications published in the **Federal Register** on May 22, 2017 (82 FR 23215); and the Student Support Services notice inviting applications published on December 17, 2019 (84 FR 68915).

Invitational Priority 3:

Applications that propose projects designed to support programs that lead to recognized postsecondary credentials (as defined in section 3(52) of the Workforce Innovation and Opportunity Act) or skills that align with the skill needs of industries in the State or regional economy involved for careers in science, technology, engineering, and math fields, including computer science.

Program Authority: 20 U.S.C. 1070a-11 and 1070a-17.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75 (except for 75.215 through 75.221), 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 642.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: We intend to use an estimated $3,110,426 for new TRIO Training awards under this competition. The President's Budget for FY 2020 requested $950,000,000 for the Administration's proposal to reform the Federal TRIO Programs. The actual level of funding and changes to the program, if any, depend on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for the Federal TRIO Programs.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2021 from the list of unfunded applications from this competition.

Estimated Range of Awards: $287,537–$373,799.

Estimated Average Size of Awards: $311,043.

Maximum Award and Minimum Participants: We will not make an award exceeding the maximum award amount listed here for a single budget period of 12 months. Projects proposed under each absolute priority also must propose to serve the minimum number of applicable participants listed here.

Under Absolute Priorities 1, 2, and 4, the maximum award amount is $287,537 and the minimum number of participants is 231. Under Absolute Priorities 3 and 5, the maximum award amount is $373,799 and the minimum number of participants is 300. Under Absolute Priority 6, the maximum award amount is $318,803 and the minimum number of participants is 256.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs and other public and private nonprofit institutions and organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

3. *Funding Restrictions:* We specify unallowable costs in 34 CFR 642.31. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* and *Application Review Information* sections of this notice.

4. *Recommended Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative, which includes the budget narrative and invitational priorities, to no more than 55 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins.
- Double space all text in the application narrative, and single space titles, headings, footnotes, quotations, references, and captions.
- Use a 12-point font.
- Use an easily readable font such as Times New Roman, Courier, Courier New, or Arial.

Note: Applications that do not follow the page limit and formatting recommendations will not be penalized.

The recommended page limit does not apply to Part I, the Application for Federal Assistance face sheet (SF 424); Part II, the Budget Information Summary form (ED Form 524); Part III–A, the Program Profile form; Part III–B, the one-page Project Abstract form; or Part IV, the Assurances and Certifications. The recommended page limit also does not apply to a table of contents, which we recommend that you include in the application narrative.

5. *Content and Form of Application Submission:* You should indicate the absolute priority addressed in your application both on the one-page abstract and on the Training Program Profile Sheet. You must include your complete response to the selection criteria and absolute priority in the application narrative. Other requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 642.21 and are as follows:

(a) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities; and

(D) The elderly.

(b) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (15 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary also may consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

For this competition, a panel of non-Federal reviewers will review each application in accordance with the selection criteria in 34 CFR 642.21. The individual scores of the reviewers will be added and the sum divided by the number of reviewers to determine the peer review score received in the review process. Additionally, in accordance with 34 CFR 642.22, the Secretary will award prior experience points to eligible applicants by evaluating the applicant's current performance under its expiring Training Program grant. Pursuant to 34 CFR 642.22(b)(1), if there are insufficient funds to fund all applications with the same peer review score within a particular absolute priority, prior experience points, if any, will be added to the averaged peer review score to determine the total score for each application.

Under section 402A(c)(3) of the HEA, the Secretary is not required to make awards under the Training Program in the order of the scores received.

In the event a tie score still exists after applying prior experience points, the Secretary will select for funding the applicant that has the greatest capacity to provide training to eligible participants in all regions of the Nation in order to assure accessibility to the greatest number of prospective training participants, consistent with 34 CFR 642.20(e).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance

report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* The success of the Training Program is measured by its cost-effectiveness based on the number of TRIO project personnel receiving training each year; the percentage of Training Program participants that, each year, indicate the training as benefiting them in increasing their qualifications and skills in meeting the needs of disadvantaged students; and the percentage of Training Program participants that, each year, indicate the training as benefiting them in increasing their knowledge and understanding of the Federal TRIO Programs. All grantees will be required to submit an annual performance report documenting their success in training personnel working on TRIO-funded projects, including the average cost per trainee and the trainees' evaluations of the effectiveness of the training provided. The success of the Training Program also is assessed on the quantitative and qualitative outcomes of the training projects based on project evaluation results.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to one of the program contact persons 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.

Robert L. King,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2020–01813 Filed 1–30–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Case Number 2019–006; EERE–2019–BT–WAV–0020]

Energy Conservation Program: Decision and Order Granting a Waiver to Bradford White Corporation From the Department of Energy Consumer Water Heaters Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of a Decision and Order (Case Number 2019–006) that grants to Bradford White Corporation (BWC) a waiver from specified portions of the DOE test procedure for determining the energy efficiency of the specified basic model of consumer water heaters. Under the Decision and Order, BWC is required to test and rate the specified basic model of its consumer water heaters in accordance with the alternate test procedure specified in this Decision and Order.

DATES: The Decision and Order is effective on January 31, 2020. The Decision and Order will terminate upon the compliance date of any future amendment to the test procedure for consumer water heaters located at 10 CFR part 430, subpart B, appendix E that addresses the issues presented in this waiver. At such time, BWC must use the relevant test procedure for this product for any testing to demonstrate compliance with the applicable standards, and any other representations of energy use.

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1604. Email: *AS_Waiver_Requests@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–5827. Email: *Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(f)(2)), DOE gives notice of the issuance of its Decision and Order as set forth below. The Decision and Order grants BWC a waiver from the applicable test procedure at 10 CFR part 430, subpart B, appendix E for a specified basic model of consumer water heaters, and provides that BWC must test and rate such products using the alternate test procedure specified in the Decision and Order. BWC's representations concerning the energy efficiency of the specified basic model must be based on testing according to the provisions and restrictions in the alternate test procedure set forth in the Decision and Order, and the representations must fairly disclose the test results. Distributors, retailers, and private labelers are held to the same requirements when making representations regarding the energy efficiency of these products. (42 U.S.C. 6293(c)).

Consistent with 10 CFR 430.27(j), not later than March 31, 2020, any manufacturer currently distributing in commerce in the United States products employing a technology or characteristic that results in the same need for a waiver from the applicable test procedure must submit a petition for waiver. Manufacturers not currently distributing such products in commerce in the United States must petition for

and be granted a waiver prior to the distribution in commerce of such products in the United States. 10 CFR 430.27(j). Manufacturers may also submit a request for interim waiver pursuant to the requirements of 10 CFR 430.27.

Signed in Washington, DC, on January 16, 2020.

Alexander N. Fitzsimmons,

Acting Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

Case # 2019–006

Decision and Order

I. Background and Authority

The Energy Policy and Conservation Act, as amended (EPCA),[1] authorizes the U.S. Department of Energy (DOE) to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain types of consumer products. These products include consumer water heaters, the focus of this document. (42 U.S.C. 6292(a)(4))

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of those products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the product complies with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for consumer water heaters is contained in the Code of Federal Regulations (CFR) at 10 CFR part 430, subpart B, appendix E: *Uniform Test Method for Measuring the Energy Consumption of Water Heaters* (appendix E).

Any interested person may submit a petition for waiver from DOE's test procedure requirements. 10 CFR 430.27(a)(1). DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(f)(2). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. *Id.*

II. BWC's Petition for Waiver: Assertions and Determinations

By letter dated July 3, 2019, BWC filed a petition for waiver and a petition for interim waiver from the test procedure for consumer water heaters set forth at appendix E.[3] The test procedure for water heaters includes a 24-hour Simulated Use Test (SUT) which consists of a series of hot water draws and standby periods during which the energy consumption of the water heater is measured. For storage-type water heaters, as the stored hot water loses heat through hot water draws and standby losses, the heat source (*e.g.,* the burner, heat pump, electric heating element) will turn on or ''cut-in'' to heat water within the tank as needed to maintain the setpoint temperature of the thermostat. Once the thermostat is satisfied, the heat source will turn off or ''cut-out.'' The time during which the heat source is on is referred to as a ''recovery period'' because the water heater is recovering the heat lost from the stored water. The first recovery period of the 24-hour SUT is used to determine the ''recovery efficiency'' of the water heater, which impacts the overall measure of efficiency (*i.e.,* the uniform energy factor (UEF)). BWC stated that for gas and heat pump storage-type consumer water heaters for which the first cut-out of the 24-hour SUT occurs in the middle of one of the draws, the use of average water temperatures in the DOE test procedure calculation for recovery efficiency artificially inflates the determined energy delivered from the system. BWC asserted that this yields an artificially higher recovery efficiency and results in a lower overall UEF. In support of its waiver request, BWC submitted test data for an individual model based on the platform of the basic model for which BWC seeks a waiver.

On October 8, 2019, DOE published a notice that announced its receipt of the petition for waiver and granted BWC an interim waiver. 84 FR 53710 (Notice of Petition for Waiver). In the Notice of Petition for Waiver, DOE reviewed BWC's description of the issue and suggested alternative test method, as well as test data submitted by BWC. DOE initially agreed with the petitioner's claim that the test procedure at appendix E would test the model in a manner that is unrepresentative of its energy use. DOE also agreed generally that the suggested alternative test method would result in a more accurate calculation of recovery efficiency in those instances in which the first cut-out occurs during a draw, and avoids artificial inflating of the recovery efficiency (thereby resulting in a lower UEF value) that occurs using the calculation in DOE's current test procedure. Because BWC's petition for waiver stated that the issue may not occur for every individual model within a basic model designation, in the interim waiver that DOE granted, DOE modified the suggested alternate test procedure to specify that the alternate calculation applies only if the first cut-out of the 24-hour SUT occurs during a hot water draw during testing. Specifically, the interim waiver required the basic model to be tested to appendix E, except that in the event of such occurrence, the interim waiver provided alternative provisions for section 6.3.2 of appendix E. 84 FR 53710, 53712–

[1] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (Oct. 23, 2018).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

[3] The specific basic model for which the petition applies is the consumer water heater basic model RG2PV50S*N. Although BWC initially included 50 consumer water heater basic models in its July 3, 2019 petition for waiver, BWC later limited the request to include only the RG2PV50S*N basic model via email correspondence on July 30, 2019. This email correspondence is included in the docket at: *https://www.regulations.gov/docket?D=EERE-2019-BT-WAV-0020.*

53713 (Oct. 8, 2019). The alternative provisions to section 6.3.2 added a new section 6.3.2.2 which included an equation for recovery efficiency to be used if the first cut-out occurs during a draw. The equation in section 6.3.2.2 used a summation of the energy removed from the tank via hot water for each individual draw, rather than average values across the draws. *Id.*

In the Notice of Petition for Waiver, DOE also solicited comments from interested parties on all aspects of the petition and the specified alternate test procedure. *Id.* at 84 FR 53713–53714. DOE received two substantive comments in response to the Notice of Petition for Waiver, one from Rheem Manufacturing Company (Rheem), and the other from Jim Lutz (Lutz).[4]

Rheem acknowledged the issue identified by BWC and supported the use of the equation provided in the alternate test procedure, stating that it provides for a more accurate measurement of efficiency and determination of UEF. (Rheem, No. 3 at p. 1) Rheem also stated that this issue is not unique to the model specified by BWC, and that the problem is related to the measurement conditions in appendix E, rather than the result of specific design attributes. (*Id.*) Rheem stated that a broad range of characteristics contribute to cut-in and cut-out timing and recovery duration, such as input rate, efficiency, heater geometry, and temperature control and response. (Rheem, No. 3, pp. 1–2) Rheem stated that, based on its analysis, a typical gas storage or heat pump storage water heater could terminate recovery after several draws. (*Id.*) Therefore, Rheem recommended that the waiver not be approved but instead that DOE act to amend the test procedure to correct and improve the issues related to the model in the waiver and the other model types identified by Rheem. (Rheem, No. 3, p. 2) Although Rheem acknowledged that other manufacturers experiencing the same issue can also request a waiver, it stated that such process is not expedient nor practical to do so on a model by model basis; accordingly, the commenter reasoned that, unless the test procedure is amended, granting the waiver would create a competitive disadvantage for other manufacturers facing the same issue. (*Id.*)

As discussed in the Notice of Petition for Waiver and in this document, the issue identified by BWC occurs when, due to a design characteristic (or characteristics), a consumer water heater cuts-out during a draw. 84 FR 53710, 53711 (Oct. 8, 2019). As such, the basic model specified by BWC in its petition contains one or more design characteristics which cause the prescribed test procedures to evaluate the basic model in a manner so unrepresentative of its true energy and/or water consumption characteristics as to provide materially inaccurate comparative data. *See* 10 CFR 430.27(a)(1). Where the relevant showing has been made under 10 CFR 430.27, a petitioner, such as BWC, is entitled to waiver relief from the applicable DOE test procedure.

While other consumer water heater basic models may encounter similar issues to those experienced by the model identified by BWC, DOE does not have information indicating that consumer water heaters typically experience a cut-out in the middle of a hot water draw. Rather, because hot water is usually removed from the tank at a rate faster than the heater can recover, the heat source (*e.g.,* burner) typically stays on for the duration of the draw and until after the hot water draw has terminated to achieve the required setpoint.[5]

Regarding Rheem's concern about the impacts of granting the subject waiver on similarly situated manufacturers, DOE notes that its regulations already address such concerns. More specifically, the DOE regulations at 10 CFR 430.27(j) provide that within 60 days after the date of this waiver, any manufacturer currently distributing in commerce in the United States a product employing a technology or characteristic that results in the same need for a waiver is to submit a petition for waiver pursuant to the requirements of 10 CFR 430.27. Manufacturers not currently distributing such products in commerce in the United States must petition for and be granted a waiver prior to distribution in commerce in the United States. 10 CFR 430.27(j). Manufacturers may also submit a request for interim waiver. *Id.* Further, the regulations provide that as soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver, and as soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule. 10 CFR 430.27(l).

Lutz suggested a wording change to the definition of the first recovery period in the definition of the variable ''N_r'' in the alternate test procedure. In the interim waiver, DOE defined ''N_r'' as follows:

> N_r = number of draws occurring during the first recovery period. The first recovery period is defined by the time when the main burner of a storage water heater is lit (''cut-in'') and continues during the temperature rise of the stored water until the main burner cuts-off (''cut-out''); if the cut-out occurs during a subsequent draw, the first recovery period includes the time until the draw of water from the tank stops. If, after the first cut-out occurs but during a subsequent draw, a subsequent cut-in occurs prior to the draw completion, the first recovery period includes the time until the subsequent cut-out occurs, prior to another draw.

Lutz recommended that, rather than define the first recovery period as starting when the main burner is lit (''cut-in''), it should be defined as starting at the beginning of the test. Lutz stated that this change would capture any energy in water removed in draws before the cut-in if it does not occur in the first draw, which should be included in the calculation of recovery efficiency. (Lutz, No. 2 at p. 1)

DOE notes that ''recovery efficiency'' is defined in section 1.10 of appendix E as ''the ratio of energy delivered to the water to the energy content of the fuel consumed by the water heater.'' Since the initial recovery would replace heat removed from the water heater during draws prior to that first recovery (when applicable), DOE agrees it is appropriate to capture the energy delivered during the first draw. Further, section 1.13 of appendix E defines Q_r, which is used in the calculation of recovery efficiency, as the energy consumption of the water heater from the beginning of the test to the end of the first recovery period following the first draw, which may extend beyond subsequent draws. Therefore, the DOE test procedure already accounts for the energy consumed from the start of the test to the end of the first recovery period, so DOE is adopting this slight change, as suggested by Lutz.

Lutz also recommended that the alternate test procedure, including the new wording change, be applicable to all storage type water heaters. (Lutz, No. 2 p. 1) In response, the waiver process is to address a particular basic model(s) that contains one or more design characteristics which either prevent testing according to the prescribed procedures, or cause the prescribed test procedures to evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics

[4] Rheem's and Lutz's comments can be accessed at: *https://www.regulations.gov/docket?D=EERE-2019-BT-WAV-0020.* A third, non-substantive comment was received from an anonymous submitter.

[5] DOE reviewed test data for 32 UEF tests and found that just 1 model experienced cut-out during a hot water draw.

as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Each petition must identify the particular basic model(s) for which a waiver is requested. 10 CFR 430.27(b)(1)(i). DOE only evaluates and grants, as appropriate, a waiver for the basic model for which the waiver was requested. *See* 10 CFR 430.27(f)(2). A petitioner may request that DOE extend the scope of a waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition. 10 CFR 430.27(g). As such, the regulations do not provide for issuing a broad waiver in the manner suggested by Lutz. As stated, DOE will address this issue more broadly in an update to the test procedure.

For the reasons explained here and in the Notice of Petition for Waiver, absent a waiver, the basic model identified by BWC in its petition cannot be tested and rated for energy consumption on a basis representative of its true energy consumption characteristics. DOE has reviewed the recommended alternate procedure suggested by BWC and concludes that it will allow for the accurate measurement of the energy use of the specified basic model, while alleviating the testing problems associated with BWC's implementation of DOE's applicable consumer water heaters test procedure for the specified basic model. As explained in the Notice of Interim Waiver, DOE modified the suggested alternate test procedure to specify that the alternate calculation applies only if the first cut-out of the 24-hour SUT occurs during a hot water draw during testing. In addition, as discussed, DOE is further modifying the alternate test procedure specified in the interim waiver as recommended by Lutz to define the first recovery period as beginning at the start of the test rather than at cut-in.

Thus, DOE is requiring that BWC test and rate the specified consumer water heaters basic model for which it has requested a waiver according to the alternate test procedure specified in this Decision and Order.

This Decision and Order is applicable only to the basic model listed and does not extend to any other basic models. DOE evaluates and grants waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner. BWC may request that DOE extend the scope of this waiver to include additional basic models that employ the same technology as those listed in this waiver. 10 CFR 430.27(g). BWC may also submit another petition for waiver from the test procedure for additional basic models that employ a different technology and meet the criteria for test procedure waivers. 10 CFR 430.27(a)(1).

DOE notes that it may modify or rescind the waiver at any time upon DOE's determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. 10 CFR 430.27(k)(1). Likewise, BWC may request that DOE rescind or modify the waiver if the company discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2).

As explained above, the test procedure specified in this Decision and Order is not exactly the same as the alternate test procedure offered by BWC. If BWC believes that the alternate test method it suggested provides representative results and is less burdensome than the test method required by this Decision and Order, BWC may submit a request for modification under 10 CFR 430.27(k)(2) that addresses the concerns that DOE has identified with that procedure. BWC may also submit another less burdensome alternative test procedure not expressly considered in this notice under that same provision of DOE's regulations.

III. Consultations With Other Agencies

In accordance with 10 CFR 430.27(f)(2), DOE consulted with the Federal Trade Commission (FTC) staff concerning the BWC petition for waiver.

IV. Order

After careful consideration of all the material that was submitted by BWC and comment received in this matter, it is *ordered* that:

(1) BWC must, as of the date of publication of this Order in the **Federal Register**, test and rate the following ''BRADFORD WHITE'' and ''JETGLAS'' branded consumer water heaters basic model with the alternate test procedure as set forth in paragraph (2):

Brand	Basic model
BRADFORD WHITE, JETGLAS	RG2PV50S*N

(2) The alternate test procedure for the BWC basic model referenced in paragraph (1) of this Order is the test procedure for consumer water heaters prescribed by DOE at 10 CFR part 430, subpart B, appendix E, except for Section 6.3.2 (which is modified as detailed below). All other requirements of appendix E and DOE's regulations remain applicable.

The changes to section 6.3.2 of Appendix E read as follows:

6.3.2 *Recovery Efficiency.*

6.3.2.1 Except as provided in section 6.3.2.2 of this Appendix, the recovery efficiency for gas storage-type water heaters, η_r, is computed as:

$$\eta_r = \left(\frac{M_1 * C_{p1} * \left(\bar{T}_{del,1} - \bar{T}_{in,1}\right)}{Q_r} + \frac{V_{st} * \rho_2 * C_{p2}\left(\bar{T}_{max,1} - \bar{T}_0\right)}{Q_r} \right)$$

Where:

M_1 = total mass removed from the start of the 24-hour simulated-use test to the end of the first recovery period, lb (kg), or, if the volume of water is being measured,

$M_1 = V_1\rho_1$

Where:

V_1 = total volume removed from the start of the 24-hour simulated-use test to the end of the first recovery period, gal (L).

ρ_1 = density of the water at the water temperature measured at the point where the flow volume is measured, lb/gal (kg/L).

C_{p1} = specific heat of the withdrawn water evaluated at $(\bar{T}_{del,1} + \bar{T}_{in,1})/2$, Btu/(lb·°F) (kJ/(kg·°C))

$\bar{T}_{del,1}$ = average water outlet temperature measured during the draws from the start of the 24-hour simulated-use test to the end of the first recovery period, °F (°C).

$\bar{T}_{in,1}$ = average water inlet temperature measured during the draws from the start of the 24-hour simulated-use test to the end of the first recovery period, °F (°C).

V_{st} = as defined in section 6.3.1.

ρ_2 = density of stored hot water evaluated at $(\bar{T}_{max,1} + \bar{T}_o)/2$, lb/gal (kg/L).

Cp_2 = specific heat of stored hot water evaluated at $(\bar{T}_{max,1} + \bar{T}_o)/2$, Btu/(lb·°F) (kJ/(kg·°C).

$\bar{T}_{max,1}$ = maximum mean tank temperature recorded after cut-out following the first recovery of the 24-hour simulated use test, °F (°C).

$\bar{T}_o$ = maximum mean tank temperature recorded prior to the first draw of the 24-hour simulated-use test, °F (°C).

Q_r = the total energy used by the water heater between cut-out prior to the first draw and cut-out following the first recovery

period, including auxiliary energy such as pilot lights, pumps, fans, etc., Btu (kJ). (Electrical auxiliary energy shall be converted to thermal energy using the following conversion: 1 kWh = 3412 Btu.)

6.3.2.2 For gas storage-type water heaters, if the first cut-out occurs during a draw, the recovery efficiency, η_r, is computed as:

$$\eta_r = \sum_{i=1}^{N_r} \frac{m_i * C_{pi} * (\bar{T}_{del,i} - \bar{T}_{in,i})}{Q_r} + \frac{V_{st}\rho_2 C_{p2}(\bar{T}_{max,1} - \bar{T}_0)}{Q_r}$$

Where:

N_r = number of draws from the start of the 24-hour simulated-use test to the end of the first recovery period. The first recovery period is defined by the time from the start of the 24-hour simulated-use test and continues during the temperature rise of the stored water until the first cut-out; if the cut-out occurs during a subsequent draw, the first recovery period includes the time until the draw of water from the tank stops. If, after the first cut-out occurs but during a subsequent draw, a subsequent cut-in occurs prior to the draw completion, the first recovery period includes the time until the subsequent cut-out occurs, prior to another draw.

m_i = mass of draw i.

Cp_i = average specific heat of draw i.

$\bar{T}_{del,i}$ = average water outlet temperature measured during *i*th draw of the first recovery period, °F (°C).

$\bar{T}_{in,i}$ = average water inlet temperature measured during the *i*th draw of the first recovery period, °F (°C).

V_{st} = as defined in section 6.3.1.

ρ_2 = density of stored hot water evaluated at $(\bar{T}_{max,1} + \bar{T}_o)/2$, lb/gal (kg/L).

Cp_2 = specific heat of stored hot water evaluated at $(\bar{T}_{max,1} + \bar{T}_o)/2$, Btu/(lb·°F) (kJ/(kg·°C).

$\bar{T}_{max,1}$ = maximum mean tank temperature recorded after cut-out following the first recovery of the 24-hour simulated use test, °F (°C).

$\bar{T}_o$ = maximum mean tank temperature recorded prior to the first draw of the 24-hour simulated-use test, °F (°C).

Q_r = energy consumption of water heater from the beginning of the test to the end of the first recovery period.

(3) *Representations.* BWC must make representations about the efficiency of the basic model listed in paragraph (1) of this Order for compliance, marketing, or other purposes only to the extent that the basic model has been tested in accordance with the provisions in this alternate test procedure and such representations fairly disclose the results of such testing.

(4) This waiver shall remain in effect according to the provisions of 10 CFR 430.27.

(5) This waiver is issued on the condition that the statements, representations, and documents provided by BWC are valid. If BWC makes any modifications to the controls or configurations of this basic model, the waiver will no longer be valid, and BWC will either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may rescind or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of a basic model's true energy consumption characteristics. 10 CFR 430.27(k)(1). Likewise, BWC may request that DOE rescind or modify the waiver if BWC discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2).

(6) BWC remains obligated to fulfill any certification requirements set forth at 10 CFR part 429.

Signed in Washington, DC, on January 16, 2020.

Alexander N. Fitzsimmons,

Acting Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2020–01847 Filed 1–30–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Case Number 2019–003; EERE–2019–BT–WAV–0007]

Energy Conservation Program: Decision and Order Granting a Waiver To Signify North America Corporation From the Department of Energy Illuminated Exit Sign Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of decision and order.

SUMMARY: The U.S. Department of Energy (''DOE'') gives notice of a Decision and Order (Case Number 2019–003) that grants to Signify North America Corporation (''Signify'') a waiver from specified portions of the DOE test procedure for determining the energy consumption of specified basic models of illuminated exit signs. Signify is required to test and rate the specified basic models of its illuminated exit signs in accordance with the alternate test procedure specified in the Decision and Order.

DATES: The Decision and Order is effective on January 31, 2020. The Decision and Order will terminate upon the compliance date of any future amendment to the test procedure for illuminated exit signs located at 10 CFR 431.204 that addresses the issues presented in this waiver. At such time, Signify must use the relevant test procedure for this equipment for any testing to demonstrate compliance with the applicable standards, and any other representations of energy use.

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Email: *AS_Waiver_Requests@ee.doe.gov.*

Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 287–6111. Email: *Jennifer.Tiedeman@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 431.401(f)(2)), DOE gives notice of the issuance of its Decision and Order as set forth below. The Decision and Order grants Signify a waiver from the applicable test procedure at 10 CFR 431.204 for specified basic models of illuminated exit signs, and requires that Signify test and rate such equipment using the alternate test procedure specified in the Decision and Order. Signify's representations concerning the energy consumption of the specified basic models must be based on testing according to the provisions and restrictions in the alternate test procedure set forth in the Decision and Order, and the representations must fairly disclose the test results. Distributors, retailers, and private labelers are held to the same requirements when making representations regarding the energy

consumption of this equipment. (42 U.S.C. 6293(c))

Consistent with 10 CFR 431.401(j), not later than March 31, 2020, any manufacturer currently distributing in commerce in the United States equipment employing a technology or characteristic that results in the same need for a waiver from the applicable test procedure must submit a petition for waiver. Manufacturers not currently distributing such equipment in commerce in the United States must petition for and be granted a waiver prior to the distribution in commerce of that equipment in the United States. Manufacturers may also submit a request for interim waiver pursuant to the requirements of 10 CFR 431.401.

Signed in Washington, DC, on January 17, 2020.

Alexander N. Fitzsimmons,

Acting Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

Case #2019–003

Decision and Order

I. Background and Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes the U.S. Department of Energy (''DOE'') to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain types of consumer products. These products include illuminated exit signs, the focus of this document. (42 U.S.C. 6291(37); 42 U.S.C. 6295(w))

Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6291), energy conservation standards (42 U.S.C. 6295), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that product (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the product complies with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect the energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for illuminated exit signs is contained in the Code of Federal Regulations (''CFR'') at 10 CFR 431.204, ''Uniform test method for the measurement of energy consumption of illuminated exit signs.'' [3]

Under 10 CFR 430.401(a)(1), any interested person may submit a petition for waiver from DOE's test procedure requirements. DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(f)(2). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. *Id.*

As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. 10 CFR 431.401(l) As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule. *Id.*

When DOE amends the test procedure to address the issues presented in a waiver, the waiver will automatically terminate on the date on which use of that test procedure is required to demonstrate compliance. 10 CFR 431.401(h)(2).

II. Signify's Petition for Waiver: Assertions and Determinations

On March 5, 2019, Signify filed a petition for waiver from the illuminated exit sign test procedure set forth at 10 CFR 431.204. On April 4, 2019, Signify submitted an updated petition, identifying additional basic models.[4] In its petition, Signify requested a waiver for certain ''Chloride by Signify'' and ''Chloride'' branded basic models of illuminated exit signs, typically known as combination exit signs (*i.e.,* they include components such as egress/emergency lighting that require a larger battery than do exit signs that do not have these components).[5] Signify contended that the design characteristics of these basic models prevent testing in accordance with the DOE test procedure. Noting that DOE's test method measures the input power required to illuminate the exit signage, Signify stated that the test procedure does not contemplate basic models that include emergency egress lighting, and that the design of its basic models that incorporate emergency lighting does not allow for a separate measurement of power associated with only the exit signage portion of the models.

Signify requested that it be permitted to use of the alternate test method as specified in the DOE Waiver Decision and Order granted to Acuity Brands Lighting, Inc. (''Acuity'') for certain illuminated exit sign basic models (Case Number IES–001; hereafter, ''Acuity Waiver D&O'') 83 FR 11740 (March 16, 2018). Specifically, this alternate method requires the following procedure: Measure the input power of an equivalent non-combination illuminated exit sign, per the DOE test procedure, and assign the measured

[1] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (October 23, 2018).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

[3] Although illuminated exit signs are covered products pursuant to EPCA, as a matter of administrative convenience and to minimize confusion among interested parties, DOE codified illuminated exit sign provisions in subpart L of 10 CFR part 431 (the portion of DOE's regulations dealing with commercial and industrial equipment) because typically businesses, rather than individuals, purchase them. 70 FR 60407, 60409 (Oct. 18, 2005). DOE refers to illuminated exit signs as either ''products'' or ''equipment.''

[4] The petition submitted on April 4, 2019 is identical to the March 5, 2019 petition (including the date) except as to the identification of additional basic models.

[5] The eighteen total basic models identified by Signify are as follows: HZ618RIC, HZ636RIC, HZ672RIC, HZ618R1IC, HZ636R1IC, HZ672R1IC, HZ618R2IC, HZ636R2IC, HZ672R2IC, HZ618GIC, HZ636GIC, HZ672GIC, HZ618G1IC, HZ636G1IC, HZ672G1IC, HZ618G2IC, HZ636G2IC, and HZ672G2IC. However, six of these basic models (HZ618RIC, HZ636RIC, HZ672RIC, HZ618GIC, HZ636GIC, and HZ672GIC) are ''no-lamp head'' basic models, which are not combination illuminated exit signs (*i.e.,* they do not have egress lighting) and therefore are not subject to the waiver.

input power to the basic model at issue. *Id.* 83 FR 11742. An equivalent non-combination illuminated exit sign is one in which the electricity-consuming components are identical to all of those of the unit whose input power demand is being determined, but does not include any auxiliary features, and contains an electrically connected battery. Signify stated that the basic models for which the waiver is requested have equivalent non-combination illuminated exit sign basic models.

On August 26, 2019, DOE published a notice that announced its receipt of the petition for waiver (''Notice of Petition for Waiver''). 84 FR 44607. In the Notice of Petition for Waiver, based on a review of product specification sheets, DOE determined that six of the basic models specified by Signify are not combination illuminated exit signs, and therefore would not be subject to any waiver, if granted. *Id.* at 84 FR 44608. DOE determined that the other basic models specified by Signify are combination illuminated exit signs and provide the dual function of exit signage and lighting for emergency egress. *Id.* Based on DOE's review of combination exit sign circuitry, DOE tentatively determined that measuring only the input power attributable to illumination of the exit signage is either not possible, or that doing so would require destructive disassembly such as cutting of wires and modifying the circuitry of the combination exit sign, thereby altering the product being tested. *Id.*

DOE identified equivalent non-combination illuminated exit sign basic models for the combination illuminated exit sign basic models identified in Signify's waiver. DOE also reviewed Signify's suggested use of the alternate test method set forth in the Acuity Waiver D&O that involves testing equivalent non-combination illuminated exit signs. In the Notice of Petition for Waiver, DOE proposed an alternate test procedure substantively similar to alternate test procedure forth in the Acuity Waiver D&O. *Id.* at 84 FR 44609. Additional language was included to define further ''equivalent non-combination unit'' and to require explicitly the testing of equivalent units as required by the applicable DOE test procedure. *Id.*

In the Notice of Petition for Waiver, DOE solicited comments from interested parties on all aspects of the petition and the specified alternate test procedure. *Id.* DOE received no comments in response to the Notice of Petition for Waiver.

For the reasons explained here and in the Notice of Petition for Waiver, absent a waiver the basic models that are combination illuminated exit signs identified by Signify in its petition cannot be tested and rated for energy consumption on a basis representative of their true energy consumption characteristics. DOE has reviewed the procedure suggested by Signify and concludes that it will allow for the accurate measurement of the energy use of the basic models, while alleviating the testing problems associated with Signify's implementation of DOE's applicable illuminated exit sign test procedure. Thus, DOE is requiring that Signify test and rate specified combination illuminated exit sign basic models according to the alternate test procedure specified in this Decision and Order, which is identical to the procedure proposed by DOE in the Notice of Petition for Waiver.[6]

Using this method, for each combination illuminated exit sign unit selected, Signify must assign the measured input power demand of a separate corresponding equivalent non-combination unit. For example, if DOE regulations require testing of two units, Signify must identify and measure the input power demand of two equivalent non-combination units, and assign the measured input power of each unit to each of the two combination units, respectively. In those instances where only a single, non-combination unit is available, Signify is required to measure the input power demand of that single unit and assign the measured input power to the combination unit. *See generally* 10 CFR 429.48(a) and 10 CFR 429.11(b)(2).

This Decision and Order applies only to the basic models listed and does not extend to any other basic models. DOE evaluates and grants waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner. Signify may request that DOE extend the scope of this waiver to include additional basic models that employ the same technology as those listed in this waiver. 10 CFR 431.401(g). Signify may also submit another petition for waiver from the test procedure for additional basic models that employ a different technology and meet the criteria for test procedure waivers. 10 CFR 431.401(a)(1).

DOE notes that it may modify or rescind the waiver at any time upon DOE's determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. 10 CFR 430.401(k)(1). Likewise, Signify may request that DOE rescind or modify the waiver if the company discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 431.401(k)(2).

III. Consultations With Other Agencies

In accordance with 10 CFR 430.27(f)(2), DOE consulted with Federal Trade Commission (''FTC'') staff concerning Signify's petition for waiver.

IV. Order

After careful consideration of all the material submitted by Signify, the various public-facing materials (*e.g.,* marketing materials and product specification sheets) for the units identified in the petition, in this matter, it is *ordered* that:

(1) Signify must, as of the date of publication of this Order in the **Federal Register**, test and rate the following ''HZ'' series basic models, under either the Chloride by Signify or Chloride brand, with the alternate test procedure as set forth in paragraph (2) of the Order:

Brand name	Basic model No.
Chloride by Signify or Chloride	HZ618R1IC
Chloride by Signify or Chloride	HZ636R1IC
Chloride by Signify or Chloride	HZ672R1IC
Chloride by Signify or Chloride	HZ618R2IC
Chloride by Signify or Chloride	HZ636R2IC
Chloride by Signify or Chloride	HZ672R2IC
Chloride by Signify or Chloride	HZ618G1IC

[6] The alternate test procedure established in this Decision and Order is the same as that in the Decision and Order granted to Beghelli North America (Case No. 2018–007) for comparable equipment. 84 FR 29186 (June 21, 2019).

Brand name	Basic model No.
Chloride by Signify or Chloride	HZ636G1IC
Chloride by Signify or Chloride	HZ672G1IC
Chloride by Signify or Chloride	HZ618G2IC
Chloride by Signify or Chloride	HZ636G2IC
Chloride by Signify or Chloride	HZ672G2IC

(2) The alternate test procedure for the Signify basic models referenced in paragraph (1) of this Order is the test procedure for illuminated exit sign prescribed by DOE at 10 CFR part 431, subpart L, with the exception of the following instructions in place of 10 CFR 431.204(b): Determine the energy efficiency of each combination illuminated exit sign unit under test (''combination unit'') by conducting the test procedure, as follows:

(i) Identify a unit of a non-combination illuminated exit sign (''non-combination unit'') equivalent to the combination unit. A non-combination unit is equivalent only if it consists entirely of electricity-consuming components identical to all of those of the combination unit, but does not include any auxiliary features, and contains an electrically connected battery. The equivalent non-combination unit must also have the same manufacturer and number of faces as the combination unit.

(ii) Test the equivalent non-combination unit using the DOE test procedure at 10 CFR part 431, subpart L.

(iii) Assign the measured input power demand of the non-combination unit as the input power demand of the combination unit.

(3) *Representations.* Signify may not make representations about the energy use of the basic models listed in paragraph (1) of this Order for compliance, marketing, or other purposes unless the basic model has been tested in accordance with the provisions of paragraph (2) of this Order and such representations fairly disclose the results of such testing.

(4) This waiver shall remain in effect according to the provisions of 10 CFR 431.401.

(5) This waiver is issued on the condition that the statements, representations, and documents provided by Signify are valid. If Signify makes any modifications to the controls or configurations of a basic model referenced in paragraph (1) of this Order, the waiver will no longer be valid for that basic model and Signify will either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may rescind or modify this waiver at any time if it determines that the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. 10 CFR 431.401(k)(1). Likewise, Signify may request that DOE rescind or modify the waiver if Signify discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 431.401(k)(2).

(6) Signify remains obligated to fulfill the certification requirements set forth at 10 CFR part 429.

Signed in Washington, DC, on January 17, 2020.

Alexander N. Fitzsimmons,

Acting Deputy Assistant Secretary for Energy Efficiency Energy Efficiency and Renewable Energy.

[FR Doc. 2020–01848 Filed 1–30–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–70–000.
Applicants: Pleasants LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Pleasants LLC.
Filed Date: 1/27/20.
Accession Number: 20200127–5122.
Comments Due: 5 p.m. ET 2/18/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–704–012.
Applicants: Pacific Gas and Electric Company.
Description: Compliance filing: 1 of 3 Add'l filing City and County of San Francisco WDT SA and IA (SA 275) to be effective 7/23/2015.
Filed Date: 1/27/20.
Accession Number: 20200127–5082.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER15–704–013.
Applicants: Pacific Gas and Electric Company.
Description: Compliance filing: 2 of 3 Add'l filing City and County of San Francisco WDT SA and IA (SA 275) to be effective 7/23/2015.
Filed Date: 1/27/20.
Accession Number: 20200127–5087.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER15–704–014.
Applicants: Pacific Gas and Electric Company.
Description: Compliance filing: 3 of 3 Add'l filing City and County of San Francisco WDT SA and IA (SA 275) to be effective 7/23/2015.
Filed Date: 1/27/20.
Accession Number: 20200127–5091.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER18–2118–005; ER10–1846–013; ER10–1849–019; ER10–1852–034; ER10–1887–019; ER10–1951–019; ER10–1952–018; ER10–1961–018; ER10–2551–014; ER10–2720–020; ER11–2642–014; ER11–4428–020; ER11–4462–040; ER12–1228–020; ER12–1880–019; ER12–2227–019; ER12–569–020; ER12–895–018; ER13–2474–014; ER13–712–021; ER14–2707–015; ER14–2708–016; ER14–2709–015; ER14–2710–015; ER15–1925–013; ER15–2676–012; ER15–30–013; ER15–58–013; ER16–1440–009; ER16–1672–010; ER16–2190–009; ER16–2191–009; ER16–2240–009; ER16–2241–008; ER16–2275–008; ER16–2276–008; ER16–2297–008; ER16–2453–010; ER17–2152–006; ER17–838–015; ER18–1981–004; ER18–2003–004; ER18–2032–004; ER18–2066–002; ER18–2067–003; ER18–2182–004; ER18–882–005.
Applicants: Rush Springs Wind Energy, LLC; Armadillo Flats Wind Project, LLC; Baldwin Wind, LLC; Blackwell Wind, LLC; Brady Interconnection, LLC; Brady Wind, LLC; Brady Wind II, LLC; Breckinridge Wind Project, LLC; Cedar Bluff Wind, LLC; Chaves County Solar, LLC; Cimarron Wind Energy, LLC; Cottonwood Wind Project, LLC; Day County Wind, LLC; Elk City Wind, LLC; Elk City Renewables II, LLC; Ensign Wind, LLC; Florida Power & Light Company; FPL Energy Cowboy Wind, LLC; FPL Energy South Dakota Wind, LLC; Gray County Wind Energy, LLC; High Majestic Wind Energy Center, LLC; High Majestic Wind

II, LLC; Kingman Wind Energy I, LLC; Kingman Wind Energy II, LLC; Lorenzo Wind, LLC; Mammoth Plains Wind Project, LLC; Minco Wind, LLC; Minco Wind II, LLC; Minco Wind III, LLC; Minco Wind Interconnection Services, LLC; Minco Wind IV, LLC; Minco IV & V Interconnection, LLC; Minco Wind V, LLC; Ninnescah Wind Energy, LLC; Osborn Wind Energy, LLC; Palo Duro Wind Energy, LLC; Palo Duro Wind Interconnection Services, LLC; Pratt Wind, LLC; Roswell Solar, LLC; Seiling Wind, LLC; Seiling Wind II, LLC; Seiling Wind Interconnection Services, LLC; Steele Flats Wind Project, LLC; Wildcat Ranch Wind Project, LLC; NEPM II, LLC; NextEra Energy Marketing, LLC; NextEra Energy Services Massachusetts, LLC.

Description: Notification of Change in Status of NextEra Resources Entities.

Filed Date: 1/17/20.

Accession Number: 20200117–5242.

Comments Due: 5 p.m. ET 2/7/20.

Docket Numbers: ER20–531–002.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2020–01–27 SA 3381 Duke-Greensboro Solar Center Second Substitute GIA (J903) to be effective 11/21/2019.

Filed Date: 1/27/20.

Accession Number: 20200127–5100.

Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER20–872–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Rate Schedule No. 263 between Tri-State and Mountain View to be effective 1/25/2020.

Filed Date: 1/24/20.

Accession Number: 20200124–5183.

Comments Due: 5 p.m. ET 2/14/20.

Docket Numbers: ER20–873–000.

Applicants: Panda Liberty LLC, Panda Patriot LLC, Hamilton Projects Acquiror, LLC.

Description: Joint Request for Waiver, et al. of Panda Liberty LLC, et al.

Filed Date: 1/24/20.

Accession Number: 20200124–5225.

Comments Due: 5 p.m. ET 2/7/20.

Docket Numbers: ER20–874–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: OATT-GeneratorImbalnce-Sec 3 to be effective 1/28/2020.

Filed Date: 1/27/20.

Accession Number: 20200127–5023.

Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER20–875–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Service Agreement No. 377 to be effective 1/1/2020.

Filed Date: 1/27/20.

Accession Number: 20200127–5062.

Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER20–876–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Third Amendment LGIA Alamitos Energy Center SA Nos. 197 to be effective 1/28/2020.

Filed Date: 1/27/20.

Accession Number: 20200127–5090.

Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER20–877–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2020–01–27_FTR Attachment L Collateral Filing to be effective 3/28/2020.

Filed Date: 1/27/20.

Accession Number: 20200127–5093.

Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER20–878–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2020–01–27_Schedule 31 Annual Update Filing to be effective 4/1/2020.

Filed Date: 1/27/20.

Accession Number: 20200127–5094.

Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER20–879–000.

Applicants: Pleasants LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authority and Request for Waivers, et al. to be effective 1/28/2020.

Filed Date: 1/27/20.

Accession Number: 20200127–5097.

Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER20–880–000.

Applicants: White Cloud Wind Project, LLC.

Description: Baseline eTariff Filing: White Cloud Wind Project MBR Tariff to be effective 3/1/2020.

Filed Date: 1/27/20.

Accession Number: 20200127–5099.

Comments Due: 5 p.m. ET 2/18/20.

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: January 27, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–01866 Filed 1–30–20; 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:

Docket Number: PR20–17–001.

Applicants: Bay Gas Storage Company, LLC.

Description: Tariff filing per 284.123(b),(e)/: Bay Gas Storage Company Supplemental Revised SOC to be effective 11/21/2019.

Filed Date: 1/16/2020.

Accession Number: 202001165088.

Comments/Protests Due: 5 p.m. ET 2/6/2020.

Docket Number: PR20–23–000.

Applicants: Southcross Alabama Pipeline LLC.

Description: Tariff filing per 284.123(e)/.224: Termination of Statement of Operating Conditions to be effective 1/15/2020.

Filed Date: 1/15/2020.

Accession Number: 202001155137.

Comments/Protests Due: 5 p.m. ET 2/5/2020.

Docket Number: PR20–24–000.

Applicants: Southcross Mississippi Pipeline, L.P.

Description: Tariff filing per 284.123(e)/.224: Termination of Statement of Operating Conditions to be effective 1/15/2020.

Filed Date: 1/15/2020.

Accession Number: 202001155138.

Comments/Protests Due: 5 p.m. ET 2/5/2020.

Docket Number: PR20–25–000.

Applicants: Public Service Company of Colorado.

Description: Tariff filing per 284.123(b),(e)+(g): Statement of Rates—1.1.2020 to be effective 1/1/2020.

Filed Date: 1/17/2020.

Accession Number: 202001175130.

Comments Due: 5 p.m. ET 2/7/2020.

284.123(g) Protests Due: 5 p.m. ET 3/17/2020.

Docket Number: PR18–82–000.

Applicants: Banquete Hub LLC.

Description: Informational Report of Banquete Hub LLC regarding affiliate Gulf Coast East Express Pipeline LLC.
Filed Date: 1/8/2020.
Accession Number: 20200109–5051.
Comments Due: 5 p.m. ET 2/7/2020.

Docket Numbers: RP20–447–000.
Applicants: Southern LNG Company, L.L.C.
Description: § 4(d) Rate Filing: Dredging Surcharge Cost Adjustment—2020 to be effective 3/1/2020.
Filed Date: 1/23/20.
Accession Number: 20200123–5019.
Comments Due: 5 p.m. ET 2/4/20.

Docket Numbers: RP20–448–000
Applicants: Nautilus Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Nautilus—FT–2 Modification and nonconforming W&T, Castex to be effective 2/22/2020.
Filed Date: 1/23/20.
Accession Number: 20200123–5074.
Comments Due: 5 p.m. ET 2/4/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 27, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–01867 Filed 1–30–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10003–51–OMS]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of the State of Iowa's request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA approves the authorized program revisions/modifications as of January 31, 2020.

FOR FURTHER INFORMATION CONTACT: Shirley M. Miller, U.S. Environmental Protection Agency, Office of Mission Support, Office of Information Management, Mail Stop 2824T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566–2908, *miller.shirley@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On November 1, 2019, the Iowa Department of Natural Resources (IA DNR) submitted an application titled Iowa EASY Air (Environmental Application SYstem for Air) for revisions/modifications to its EPA-approved programs under title 40 CFR to allow new electronic reporting. EPA reviewed IA DNR's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Iowa's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR parts 60, 61, 62, 63, 64, 65, and 70 is being published in the **Federal Register**:

Part 60: Standards of Performance for New Stationary Sources (NSPS/CAR/Clean Air Act Title III) Reporting under CFR 60 & 65

Part 62: Approval and Promulgation of State Plans for Designated Facilities and Pollutants (NSPS/Clean Air Act Title III—Hospital/Medical) Reporting under CFR 62

Part 63: National Emission Standards for Hazardous Air Pollutants for Source Categories (NESHAP MACT/Clean Air Act Title III) Reporting under CFR 61, 63 & 65

Part 70: State Operating Permit Programs (Clean Air Act Title V) Reporting under CFR 64 & 70

IA DNR was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Dated: December 12, 2019.

Maja Lee,

Acting Director, Office of Information Management.

[FR Doc. 2020–01578 Filed 1–30–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10003–49–OMS]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, Maricopa County, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of Maricopa County, Arizona's request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA approves the authorized program revisions/modifications as of January 31, 2020.

FOR FURTHER INFORMATION CONTACT: Shirley M. Miller, U.S. Environmental Protection Agency, Office of Mission Support, Office of Information Management, Mail Stop 2824T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566–2908, *miller.shirley@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On October 31, 2019, the Maricopa County, Arizona Air Quality Department submitted an application titled IMPACT for revisions/modifications to its EPA-approved programs under title 40 CFR to allow new electronic reporting. EPA reviewed Maricopa County, Arizona Air Quality Department's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Maricopa County's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR parts 50, 51, 52, 60, 61, 62, 63, 64, 65, and 71 is being published in the **Federal Register**:

Part 52—Approval and Promulgation of Implementation Plans (SIP/Clean Air Act Title II) Reporting under CFR 50–52

Part 60—Standards of Performance for New Stationary Sources (NSPS/CAR/Clean Air Act Title III) Reporting under CFR 60 & 65

Part 62—Approval and Promulgation of State Plans for Designated Facilities and Pollutants (NSPS/Clean Air Act Title III—Hospital/Medical) Reporting under CFR 62

Part 63—National Emission Standards for Hazardous Air Pollutants for Source Categories (NESHAP MACT/Clean Air Act Title III) Reporting under CFR 61, 63 & 65

Part 70—Federal Operating Permit Programs (Clean Air Act Title V) Reporting under CFR 64 & 71

The Maricopa County, Arizona Air Quality Department was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Dated: December 12, 2019.

Maja Lee,

Acting Director, Office of Information Management.

[FR Doc. 2020–01579 Filed 1–30–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9049–2]

Environmental Impact Statements; Notice of Availability

Weekly receipt of Environmental Impact Statements
Filed January 20, 2020, 10 a.m. EST
Through January 27, 2020, 10 a.m. EST
Pursuant to 40 CFR 1506.9

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa/*.

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. 20200016, Draft, USFS, OR, Flat Country, Comment Period Ends: 03/16/2020, Contact: Dean Schlichting 541–822 7214

EIS No. 20200017, Draft, USFS, WY, Snow King Mountain Resort On-Mountain Improvements, Comment Period Ends: 03/16/2020, Contact: Sean McGinness 307–739–5415

EIS No. 20200018, Final Supplement, FERC, LA, Final Supplemental EIS for the Magnolia LNG Production Capacity Amendment, Review Period Ends: 03/02/2020, Contact: Office of External Affairs 866–208–3372

EIS No. 20200019, Draft, BLM, WY, Draft RMP Amendment and EIS for Wild Horse Management in the Rock Springs and Rawlins Field Offices, Wyoming, Comment Period Ends: 04/30/2020, Contact: Kimberlee Foster 307–352–0201

EIS No. 20200020, Draft, USACE, FL, Combined Operational Plan, Comment Period Ends: 03/16/2020, Contact: Melissa Nasuti 904–232–1368

EIS No. 20200021, Final, NRC, PA, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 10, Second Renewal, Regarding Subsequent License Renewal for Peach Bottom Atomic Power Station Units 2 and 3, Final Report, Review Period Ends: 03/02/2020, Contact: Lois M. James 301–415–3306

EIS No. 20200022, Final, BIA, CA, Final Environmental Impact Statement for the Campo Wind Project with Boulder Brush Facilities, Review Period Ends: 03/02/2020, Contact: Dan (Harold) Hall 916–978–6041

Amended Notice

EIS No. 20190287, Draft, BR, CO, Paradox Valley Unit of the Colorado River Basin Salinity Control Program Environmental Impact Statement, Comment Period Ends: 02/19/2020, Contact: Lesley McWhirter 970–248–0608

Revision to FR Notice Published 12/06/2019; Extending the Comment Period from 2/4/2020 to 2/19/2020.

Dated: January 28, 2020.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2020–01831 Filed 1–30–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal

Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington DC 20551–0001, not later than February 18, 2020.

A. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Christopher J. Yatooma, Bloomfield Hills, Michigan;* to acquire voting shares of Citizens Bancshares, Inc., and thereby indirectly acquire voting shares of The Citizens State Bank of Ontonagon, both of Ontonagon, Michigan.

Board of Governors of the Federal Reserve System, January 28, 2020.

Ann Misback,

Secretary of the Board.

[FR Doc. 2020–01868 Filed 1–30–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0034; Docket No. 2020–0053; Sequence No. 1]

Information Collection; Examination of Records by Comptroller General and Contract Audit

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on a revision and renewal concerning examination of records by Comptroller General and contract audit. DoD, GSA, and NASA invite comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through April 30, 2020. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by March 31, 2020.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection by either 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), 1800 F Street NW, Washington, DC 20405. ATTN: Lois Mandell/IC 9000–0034, Examination of Records by Comptroller General and Contract Audit.

Instructions: All items submitted must cite Information Collection 9000–0034, Examination of Records by Comptroller General and Contract Audit. 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: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0034, Examination of Records by Comptroller General and Contract Audit.

B. Need and Uses

The objective of this information collection, for the examination of records by Comptroller General and contract audit, is to require contractors to maintain certain records and to ensure the Comptroller General and/or agency have access to, and the right to, examine and audit records, which includes: Books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form, for a period of three years after final payment. This information is necessary for examination and audit of contract surveillance, verification of contract pricing, and to provide reimbursement of contractor costs, where applicable. The records retention period is required by the statutory authorities at 10 U.S.C. 2313, 41 U.S.C. 4706, and 10 U.S.C. 2306, and are implemented through the following Federal Acquisition Regulation clauses: 52.214–26, Audit and Records-Sealed Bidding; 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items; and 52.215–2, Audit and Records-Negotiation. This information collection does not require contractors to create or maintain any records that the contractor does not normally maintain in its usual course of business.

C. Annual Burden

Respondents: 20,678.

Total Annual Responses: 80,068.

Total Burden Hours: 80,068.

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. 9000–0034, Examination of Records by Comptroller General and Contract Audit, in all correspondence.

Dated: January 28, 2020.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2020–01841 Filed 1–30–20; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[Notice–PBS–2020–01; Docket No. 2020–0002; Sequence No. 4]

Notice of Availability for the Draft Environmental Assessment for the Appraisers Building and U.S. Custom House Limited Scope Repair & Alteration Project in San Francisco, California

AGENCY: General Services Administration (GSA)

ACTION: Notice of availability.

SUMMARY: This notice announces the availability, and opportunity for public review and comment, of a Draft Environmental Assessment(EA), which examines the potential impacts of a proposal by GSA to provide limited scope and alterations to the existing Appraisers Building and U.S. Custom House, San Francisco, CA (Project). The Draft EA describes the reasons the project is proposed; the alternatives being considered; the potential impacts of the alternatives on the existing environment; and the proposed avoidance, minimization, and/or mitigation measures related to those alternatives.

DATES: Agencies and the public are encouraged to provide written comments on the Draft EA.

The 30-day public comment period for the Draft EA ends on February 25, 2020.

ADDRESSES: Further information, including an electronic copy of the Draft EA, may be found online on the following website: *https://www.gsa.gov/about-us/regions/welcome-to-the-pacific-rim-region-9/buildings-and-facilities/california/us-appraisers-building* and *https://www.gsa.gov/about-us/regions/welcome-to-the-pacific-rim-region-9/buildings-and-facilities/california/us-custom-house-san-francisco* (the Draft EA is located under the ''Current Projects'' section).

Questions or comments concerning the Draft EA should be directed to: Osmahn Kadri, Regional Environmental Quality Advisor/NEPA Project Manager, 50 United Nations Plaza, Room 3345, Mailbox 9, San Francisco, CA, 94102, or via email to *osmahn.kadri@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Osmahn A. Kadri, Regional Environmental Quality Advisor/NEPA Project Manager, GSA, Pacific Rim Region, at 415–522–3617 or email *osmahn.kadri@gsa.gov.* Please also call this number if special assistance is needed to attend and participate in the public meeting.

SUPPLEMENTARY INFORMATION:

Background

The Project is located at 630 Sansome Street (Appraisers Building) and 555 Battery Street (U.S. Custom House), San Francisco, California. The Project involves two adjacent historical buildings in Downtown San Francisco, California—the Appraisers Building located at 630 Sansome Street, and the U.S. Custom House located at 555 Battery Street. The Project is proposed in order to improve certain systems of the Appraisers Building and U.S. Custom House up to current building code, safety standards and serviceable condition and to prolong their useful life. Both buildings contain certain building elements and building systems that, due to age, advancement in technologies, failure, or need for operational upgrades, must be addressed.

Alternatives Under Consideration

The Draft EA analyzes an Action Alternative and a No Action Alternative. The Action Alternative would repair, modify, or replace certain building improvements and systems to improve certain building systems to current building code and safety standards, as well as to prolong their useful life. The limited scope repairs would address deficiencies in the following categories: Electrical; Fire Protection; Architectural Barriers Act Accessibility Standard (ABAAS) Compliance; Curtain Walls; Windows; Roofing; Overhang Canopy; Elevators; Exterior Cladding; Sub-basement Water Intrusion; Building Systems—Mechanical & Plumbing; and Window Washing System.

Under the No Action Alternative, the limited scope repairs and alterations to the existing Appraisers Building and U.S. Custom House would not occur.

Dated: January 22, 2020.

Moonyeen Alameida,

Acting Director, Portfolio Management Division, Pacific Rim Region, Public Buildings Service.

[FR Doc. 2020–01585 Filed 1–30–20; 8:45 am]

BILLING CODE 6820–YF–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0196; Docket No. 2020–0053; Sequence No. 2]

Information Collection; Payments to Small Business Subcontractors

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on a revision and renewal concerning payments to small business subcontractors. DoD, GSA, and NASA invite comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through April 30, 2020. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by March 31, 2020.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection by either 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), 1800 F Street NW, Washington, DC 20405. ATTN: Lois

Mandell/IC 9000–0196, Payments to Small Business Subcontractors.

Instructions: All items submitted must cite Information Collection 9000–0196, Payments to Small Business Subcontractors. 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: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0196, Payments to Small Business Subcontractors.

B. Need and Uses

This clearance covers the information that contractors must submit to comply with the Federal Acquisition Regulation (FAR) clause at 52.242–5, Payments to Small Business Subcontractors. This clause requires the prime contractor to self-report to the contracting officer when the prime contractor makes late or reduced payments to small business subcontractors. The notice shall include the reason(s) for making the reduced or untimely payment. The contracting officer uses the information to record the identity of contractors with a history of late or reduced payments to small business subcontractors in the Federal Awardee Performance and Integrity Information System (FAPIIS). The contracting officer considers and evaluates the contractor's written explanation for a reduced or an untimely payment to determine whether the reduced or untimely payment is justified.

C. Annual Burden

Respondents: 473.

Total Annual Responses: 473.

Total Burden Hours: 946.

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. 9000–0196, Payments to Small Business Subcontractors, in all correspondence.

Dated: January 28, 2020.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2020–01837 Filed 1–30–20; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–19BNG]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Performance Measurement for STD Prevention to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on August 13, 2019 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Performance Measurement for STD Prevention—New—National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Health departments play a critical role in addressing STD prevention and control and are well-positioned to monitor and understand local trends in STDs through case-based surveillance, and to respond to emerging threats and outbreaks. Health department STD programs also have the authority and skills to conduct disease investigation activities including partner services, an effective intervention to prevent STD transmission in some populations. Given that most STDs are diagnosed outside of public STD clinics, health departments must also work with primary care and other health care providers and organizations to promote the delivery of recommended, evidence-based STD screening, timely treatment, and other prevention services.

Federal support for state, local, and territorial health departments to carry out these functions has been in place for decades and remains a critical source of funding to monitor and fight increasing STDs across the US. CDC's cooperative agreement PS19–1901 STD PCHD (Sexually Transmitted Diseases Prevention and Control for Health Departments) is the latest iteration of this support, covering the five-year period 2019–2024. The cooperative agreement represents a focused scope of work that reflects the core public health functions of assessment, assurance, and policy and aligns with today's STD epidemiology and best practices. In 2019, approximately $92.5 million dollars were awarded by CDC to 59 state, local, and territorial health departments to carry out these functions.

The goal of this data collection is to guide performance measurement efforts among the 59 health departments that receive funding from CDC to conduct STD surveillance, prevention and

control through cooperative agreement PS19–1901. The purpose is to assess recipients' individual and collective progress towards the larger aims of the cooperative agreement, direct technical assistance to recipients, and obtain information needed to help assess the cooperative agreement's public health impact. The resulting data will be used to identify areas for improvement both within individual sites and as it pertains to the funded community as a whole, and to document outcomes associated with STD surveillance, prevention, and control efforts.

Data will be collected in aggregate using a Microsoft Excel-based data collection tool. All health department recipients will be required to submit the data tool annually. The population from which data will be collected is the 59 state, local, and territorial health departments that are funded through the cooperative agreement PS19–1901 STD PCHD. The total annual burden hours are 1,770. There are no other costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State health departments	Data Collection Tool	50	1	30
Local health departments	Data Collection Tool	7	1	30
Territorial health departments	Data Collection Tool	2	1	30

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–01857 Filed 1–30–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–19BLE]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Templates for Extramural Data Management Plans to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on [insert August 8, 2019] to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Templates for Extramural Data Management Plans—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Data management plans (DMPs) are required of entities using CDC funds to collect or generate public health data. DMPs will be submitted to CDC by grant and cooperative agreement awardees for assessment to verify that they are concordant with CDC's data sharing policy. Currently, CDC does not have a standard template for a DMP. DMPs can be a checklist, paragraph, or any other format. Due to this fact, CDC has had to refer extramural applicants and recipients to external websites for examples on how to construct a DMP. This new ICR is being developed by CDC's National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) to create standardized templates for DMPs so that they will be easier to create, easier to review, better ensure compliance with CDC's requirements, and increase the likelihood of first-time approval by project officers. DMPs will be submitted as standalone sections of the NOFO and annual continuation applications; revisions can also be submitted by the awardees whenever needed.

CDC requests approval for 1033 burden hours annually. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Applicants and Awards Recipients	DMP Template	1033	1	60/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–01856 Filed 1–30–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–0215]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Application Form and Related Forms for the Operation of the National Death Index (NDI) to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on October 9, 2019 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Application Form and Related Forms for the Operation of the National Death Index (NDI) (OMB Control No. 0920–0215, Exp. 12/31/2019)—Reinstatement with Change—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C.), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability of the population of the United States.

The National Death Index (NDI) is a database containing identifying death record information submitted annually to NCHS by all the jurisdiction (states and territories) vital statistics offices, beginning with deaths in 1979. Searches against the NDI file provide the jurisdictions and dates of death, and the death certificate numbers of deceased study subjects.

Using the NDI Plus service, researchers have the option of also receiving cause of death information for deceased subjects, thus reducing the need to request copies of death certificates from the jurisdictions. The NDI Plus option currently provides the International Classification of Disease (ICD) codes for the underlying and multiple causes of death for the years 1979–2018. Health researchers must complete administrative forms in order to apply for NDI services, and submit records of study subjects for computer matching against the NDI file.

CDC requests OMB approval to continue the use of the three administrative forms (the application form, repeat request form, and transmittal form) utilized in the operation of the National Death Index (NDI) program, along with worksheets used to calculate related fees. These forms are submitted by NDI users when applying for use of the NDI and when actually using the service. In addition, this request includes the introduction of electronic versions that will ultimately replace the three paper documents, one of which will include a minor reduction in the number of data collection items.

OMB approval is requested for three years. Participation is voluntary and there is no cost to respondents except for their time. Total estimated annualized burden will increase 330 hours, due primarily to the expected increase in use of the NDI application, repeat request and transmittal forms. The revised total estimated annualized burden hours are 787.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Researcher	Application Form—Paper	10	1	3
Researcher	Application Form—electronic	120	1	2.5

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Researcher	Repeat Request Form—Paper/Electronic	140	1	18/60
Researcher	Transmittal Form—Paper/Electronic	300	3	18/60
Researcher	Early Transmittal Form—Paper/Electronic	100	3	18/60
Researcher	Fee Worksheet	216	1	15/60
Researcher	Early Release Fee Worksheet	44	1	2/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–01858 Filed 1–30–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–0765]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Fellowship Management System to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on August 23, 2019 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Fellowship Management System (OMB Control No. 0920–0765, Exp. 01/31/2021)—Revision—Center for Surveillance, Epidemiology and Laboratory Services (CSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC requests OMB approval to revise a currently approved information collection (Fellowship Management System, OMB Control No. 0920–0765, Exp. 1/31/2021). The Fellowship Management System (FMS) is managed by the Division of Scientific Education and Professional Development (DSEPD) in the Center for Surveillance, Epidemiology, and Laboratory Services (CSELS). DSEPD's mission is to improve health outcomes by supporting the development of a competent, sustainable, and empowered public health workforce. Professionals in public health, epidemiology, medicine, economics, information science, veterinary medicine, nursing, public policy, and other related professionals seek opportunities through CDC fellowships to broaden their knowledge and skills. CDC fellows are assigned to state, tribal, local, and territorial public health agencies; federal government agencies, including CDC and Department of Health and Human Services' (HHS) operational divisions, such as Centers for Medicare & Medicaid Services; and to nongovernmental organizations, including academic institutions, tribal organizations, and private, public health organizations.

The FMS is a robust, flexible, web-based data management system that allows CDC to electronically collect and process fellowship applications, host site assignment proposals, and fellowship alumni information from nonfederal persons. FMS also supports and monitors ongoing fellowship activities and compliance with fellowship requirements. Eight CDC programs currently use FMS to manage fellowship opportunities: (1) The Epidemic Intelligence Service (EIS), (2) the Epidemiology Elective Program (EEP), (3) the CDC Steven M. Teutsch Prevention Effectiveness (PE) Fellowship, (4) the Public Health Associate Program (PHAP), (5) the Public Health Informatics Fellowship Program (PHIFP), (6) the Science Ambassador Fellowship (SAF), (7) the Preventive Medicine Residency and Fellowship (PMR/F), and (8) the Population Health Training in Place Program (PH–TIPP).

CDC plans to implement the following changes to the FMS:

I. Information collection will be migrated to a modernized, state-of-the-art electronic platform that will be easier to update, improve data security, reduce respondent burden, and reduce maintenance and operating costs. The updated platform will also facilitate data analysis for program improvement and evaluation.

II. A new FMS module will support the collection of standardized information about applicants' performance, skills, expertise, and work experience. Standardized references have been shown to provide more accurate and useful information for participant selection than non-standardized approaches. References for fellowship applicants may be submitted by former professors, supervisors,

mentors, and others. These individuals represent a new category of respondents for the FMS.

III. A new FMS module will support activity tracking of fellows' work experience, and field supervisors will have the ability to contribute to fellows' learning assessments within FMS. The new features will enhance the ability of program staff to monitor fellows' learning outcomes, ensure that fellows achieve expected competencies, and supplement program evaluation efforts.

IV. CDC will increase the estimated number of applicants using FMS as a result of increased overall demand for fellowship opportunities and the addition of three programs: the CDC E-learning Institute (ELI), the Laboratory Leadership Service (LLS), and Future Leaders in Infectious and Global Health Threats (FLIGHT). However, burden per response and total applicant burden will decrease due to more efficient system navigation.

V. CDC will increase the estimated the number of host sites that submit fellowship assignment proposals. The updated FMS platform will provide nonfederal host sites the ability to select the applicants within FMS, thus enhancing the utility of the system.

VI. The FMS Alumni Directory will be enhanced with new surveys and questions. The enhanced data collection will better describe the career progression and leadership roles that fellows assume post-fellowship, and provide insights into how graduates apply the skills they acquired during their fellowships. CDC is increasing the estimated number of respondents, burden per response, and total burden for the FMS Alumni Directory.

There are no changes to the information collection for the subset of fellowship applicants who are invited to participate in the annual Interview Day. The proposed changes will contribute significant enhancements and provide CDC with an efficient, effective, and secure electronic mechanism for submissions, reviews, selections, and matching processes for fellowship information.

The last approval for this ICR was for 4,656 burden hours and the request for this revision is 4,881 annualized burden hours, a net increase of 225 annualized burden hours. OMB approval is requested for three years. OMB approval is requested no later than April 1, 2020, to enable use of the enhanced FMS for the 2020 cycle of EIS fellowships. Participation in FMS information collection is voluntary and there is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Fellowship Applicants	FMS Application Module	2,216	1	1
Reference Letter Writers	FMS Application Module	4,412	1	15/60
Subset of FMS Fellowship Applicants	FMS Application Module	200	1	30/60
Fellowship Alumni	FMS Alumni Directory	1,732	1	25/60
Public Health Agency or Organization Staff	FMS Activity Tracking Module	350	2	25/60
Public Health Agency or Organization Staff	FMS Host Site Module	448	1	1

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–01859 Filed 1–30–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–1166]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Poison Center Collaborations for Public Health Emergencies to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on August 23, 2019 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Poison Center Collaborations for Public Health Emergencies (OMB Control No. 0920–1166, Exp. 2/29/2020)—Extension—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) is requesting a three-year Paperwork Reduction Act (PRA)

clearance for an extension of the generic clearance information collection request (Generic ICR) titled ''Poison Center Collaborations for Public Health Emergencies'' (OMB Control No. 0920–1166, expiration date 02/29/2020).

CDC's key partner, the American Association of Poison Control Centers (AAPCC), is a national network of 55 poison centers working to prevent and treat poison exposures. The goal for this Generic ICR is to continue to provide a timely mechanism to allow poison centers, in collaboration with CDC, to obtain critical exposure and health information during public health emergencies. This information is not captured during initial poison center calls about triage and treatment of potential poison exposures. Additional data collections are needed quickly to further characterize exposures, risk factors, and illnesses.

When a public health emergency of interest to CDC and AAPCC occurs, the CDC and AAPCC hold a meeting to mutually decide whether the incident needs further investigation. For a public health emergency to be selected for call-back, adverse health effects must have occurred, and a response is needed to prevent further morbidity and mortality. The event must meet the criteria below:

(1) The event is a public health emergency causing adverse health effects.

(2) Timely data are urgently needed to inform rapid public health action to prevent or reduce injury, disease, or death.

(3) The event is characterized by a natural or man-made disaster, contaminated food or water, a new or existing consumer product, or an emerging public health threat.

(4) The event has resulted in calls to a poison center, and the poison center agrees to conduct the call-back data collection.

(5) The event is domestic.

(6) Data collection will be completed in 60 days or less.

Trained poison center staff will conduct the call-back telephone survey, after administering consent. Respondents will include individuals who call poison centers about exposures related to the select public health emergencies. These respondents include adults, 18 years and older; adolescents, 15 to less than 18 years; and parents or guardians on behalf of their children less than 15 years of age.

The total estimate of 300 annual respondents is based on poison center experience which assumes two incidents per year with approximately 150 respondents per event. The average burden per respondent is approximately 40 minutes for the call-back questionnaire. We anticipate a total annualized burden of 200 hours. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Adult Poison Center Callers	Call-back Questionnaire for Self	210	1	40/60
Adolescent Poison Center Callers	Call-back Questionnaire for Self	30	1	40/60
Parent or Guardian Poison Center Callers	Call-back Questionnaire for Proxy	60	1	40/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–01861 Filed 1–30–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–19BHM]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Understanding the Needs of Ovarian Cancer Survivors to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on July 5, 2019 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Understanding the Needs of Ovarian Cancer Survivors—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Ovarian cancer is the ninth most common cancer and the fifth leading cause of cancer death among women in the United States. Over 20,000 women are diagnosed with ovarian cancer each year. Due to the lack of a recommended screening test, ovarian cancer is often

diagnosed at late stages, leading to low five-year survival rates. While previous studies are able to identify some of the needs of ovarian cancer survivors, particularly related to physical complications and side effects, additional research is needed to further understand the experiences and needs of survivors.

The National Academies of Sciences, Engineering, and Medicine released their report, Ovarian Cancers: Evolving Paradigms in Research and Care, which identified key priorities for researchers, including recommending research on the ''supportive care needs of ovarian cancer survivors throughout the disease trajectory''. In order to address these research gaps and supplement current knowledge of the ongoing needs of survivors, including how to implement programs and interventions to improve their health, CDC has supported a survey of ovarian cancer survivors.

The goal of this project is to better understand the needs of ovarian cancer survivors and how to more effectively develop interventions targeted to this population. To achieve this goal, multiple recruitment methods will be utilized to recruit this unique population of women for the study. By using state cancer registries, social media advertisements, and respondent-driven sampling (RDS), the study will ensure recruitment of a diverse population of women.

This study will focus on the following research questions:

1. What physical and mental conditions do ovarian cancer survivors experience?
2. What kinds of pharmacologic and non-pharmacologic interventions do ovarian cancer survivors utilize to manage their conditions?
3. What barriers to ovarian cancer survivors have in accessing and receiving appropriate diagnostic care, treatment, and follow-up care?
4. What unmet needs do ovarian cancer survivors have?

The overall sample design targets 1,500 completed interviews. We assume that approximately 80% of completed surveys will come from more traditional sampling utilizing lists from the state cancer registries (n=1,200). The remainder of the completed interviews will come through social media outreach and respondent-driven sampling (RDS) methods (n=300).

For the social media recruitment, individuals will be recruited to participate in the web survey through advertisements posted on social media sites. These ads are targeted toward the specific population of women we wish to complete the survey. Interested respondents who click on an ad will be routed to the survey landing page which will explain the purpose of the study and include consent language. If the respondent is eligible, she will complete the same survey as those recruited via the state cancer registries.

Each recruitment method (registry-based or social media-based) will have an opportunity to recruit other women into the study through respondent-driven sampling (RDS). We anticipate that the majority of completed interviews will be obtained through traditional sampling practices, RDS provides an efficient way to identify other potentially eligible respondents through a networked-based recruitment approach.

Participation is voluntary. There are no costs to respondents other than their time. The total estimated annual burden hours are 1,253.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Ovarian cancer survivors—state cancer registries.	Mail-in or web-based questionnaire	1,200	1	50/60
Ovarian cancer survivors—social media recruitment.	Web-based Questionnaire	195	1	50/60
Ovarian cancer survivors—Respondent Driven Sampling.	Web-based Questionnaire	105	1	50/60
Ovarian cancer survivors recruited via social medial and RDS (ineligible).	Web-based Screener Only	100	1	2/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–01855 Filed 1–30–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–1163]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled *CDC Fellowship Programs Assessments* for data collections associated with quality improvement of CDC fellowship programs to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on September 25, 2019 to obtain comments from the public and affected agencies. CDC received two non-substantive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Data Collection for CDC Fellowship Programs (OMB Control No. 0920–1163, Exp. 2/29/2020)—Extension—Division of Scientific Education and Professional Development (DSEPD), Center for Surveillance, Epidemiology, and Laboratory Services (CSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC's mission is to protect America from health, safety, and security threats, both foreign and in the U.S. To ensure a competent, sustainable, and empowered public health workforce prepared to meet these challenges, CDC plays a key role in developing, implementing, and managing a number of fellowship programs. A *fellowship* is defined as a training or work experience lasting at least one month and consisting of primarily experiential (*i.e.,* on-the-job) learning, in which the trainee has a designated mentor or supervisor. CDC fellowships are intended to develop public health professionals, enhance the public health workforce, and strengthen collaborations with partners in public health and healthcare organizations, academia, and other stakeholders in governmental and non-governmental organizations. Assessing fellowship activities is essential to ensure that the public health workforce is equipped to promote and protect the public's health.

CDC requests a three-year extension of a generic clearance to collect data about its fellowship programs, as they relate to public health workforce development. Data collections will allow for ongoing, collaborative, and actionable communications between CDC fellowship programs and stakeholders (*e.g.,* fellows, supervisors/mentors, alumni). These collections might include short surveys, interviews, and focus groups. Intended use of the resulting information is to

- inform planning, implementation, and continuous quality improvement of fellowship activities and services;
- improve efficiencies in the delivery of fellowship activities and services; and
- determine to what extent fellowship activities and services are achieving established goals.

Collection and use of information about CDC fellowship activities will help ensure effective, efficient, and satisfying experiences among fellowship program participants and stakeholders.

CDC estimates that annually, a given fellowship program will conduct one query each with one of the three respondent groups: Fellowship applicants or fellows; mentors, supervisors, or employers; and alumni. The total annualized burden hours of 2,957 was determined as depicted in the following table.

OMB approval is requested for three years. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Applicants or fellows	Fellowship Data Collection Instrument	1,848	1	30/60
Mentors, supervisors, or employers	Fellowship Data Collection Instrument	370	1	30/60
Alumni	Fellowship Data Collection Instrument	3,696	1	30/60

Jeffery M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–01860 Filed 1–30–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0307]

Recommendations To Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt Jakob Disease by Blood and Blood Components; Draft Guidance for Industry; 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 draft guidance entitled ''Recommendations to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt Jakob Disease by Blood and Blood Components.'' The draft guidance provides blood establishments that collect blood and blood components with revised recommendations intended to reduce the possible risk of transmission of Creutzfeldt-Jakob disease (CJD) and variant Creutzfeldt-Jakob disease (vCJD) by blood and blood components. The recommendations in the draft guidance apply to the collection of Whole Blood and blood components intended for transfusion or for use in further manufacturing, including Source Plasma. The draft guidance replaces the document entitled ''Amendment to 'Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt-Jakob Disease by Blood and Blood Products,' '' Draft Guidance for Industry, dated December 2017, and when finalized, will supersede the document entitled ''Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt-Jakob Disease by Blood and Blood Products, Guidance for Industry,'' dated May 2010 and updated January 2016.

DATES: Submit either electronic or written comments on the draft guidance by March 31, 2020 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance 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–2012–D–0307 for ''Recommendations to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt Jakob Disease by Blood and Blood Components.'' 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.govinfo.gov/content/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)).

Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), 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 the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Sana F. Hussain, 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

FDA is announcing the availability of a draft guidance entitled ''Recommendations to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt Jakob Disease by Blood and Blood Components.'' The draft guidance provides blood establishments that collect blood and blood components with revised recommendations intended to reduce the possible risk of transmission of CJD and vCJD by blood and blood components. The recommendations in the draft guidance apply to the collection of Whole Blood and blood components intended for transfusion or for use in further manufacturing, including Source Plasma. FDA is revising or removing our current recommendations to screen blood donors for: (1) Geographic risk of possible exposure to bovine spongiform encephalopathy, including time spent on U.S. military bases in Europe; (2) receipt of a blood transfusion in certain vCJD risk countries; (3) risk factors for iatrogenic CJD (*i.e.,* a history of taking human cadaveric pituitary-derived growth hormone; (4) having blood relatives with CJD; and (5) a history of injecting bovine insulin.

In the **Federal Register** of December 22, 2017 (82 FR 60747), FDA announced the availability of the draft document entitled ''Amendment to 'Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt-Jakob Disease by Blood and Blood Products' '' dated December 2017 (December 2017 draft guidance). FDA received several comments on the December 2017 draft guidance. Based on those comments, FDA is announcing a revised draft guidance. The draft guidance announced in this notice replaces the December 2017 draft guidance, and, when finalized, will supersede the document entitled ''Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt-Jakob Disease by Blood and Blood Products, Guidance for Industry,'' dated May 2010 and updated January 2016.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on recommendations to reduce the possible risk of transmission of CJD and vCJD by blood and blood components. 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.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. 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. 3501–3521). The collections of information in 21 CFR 601.12 and Form FDA 356h have been approved under OMB control number 0910–0338; the collections of information in 21 CFR parts 610 and 630 have been approved under OMB control numbers 0910–0116.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances* or *https://www.regulations.gov.*

Dated: January 27, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–01815 Filed 1–30–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces that the Centers for Disease Control and Prevention (CDC)/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment (CHAC) has scheduled a public meeting. Information about CHAC can be found at *https://www.cdc.gov/maso/facm/facmCHACHSPT.html.*

DATES: March 5, 2020, 3:00 p.m.—4:00 p.m. Eastern Time (ET).

ADDRESSES: This meeting will be held by webinar and will accommodate up to 100 attendees. To access the virtual meeting, please use the information below.

- Webinar link: *https://hrsa.connectsolutions.com/chac_business_meeting/*
- Conference call-in number:
  - Call in: 888–790–1964.
  - Passcode: 1251991.

FOR FURTHER INFORMATION CONTACT: Theresa Jumento, Public Health Advisor, HIV/AIDS Bureau, HRSA, 5600 Fishers Lane, Rockville, Maryland 20857; 301–443–5807; or *CHACAdvisoryComm@hrsa.gov.*

SUPPLEMENTARY INFORMATION: CHAC was established under Section 222 of the Public Health Service (PHS) Act, [42 U.S.C. Section 217a], as amended.

The purpose of CHAC is to advise the Secretary of HHS, the Director of CDC, and the HRSA Administrator regarding objectives, strategies, policies, and priorities for HIV, viral hepatitis, and other STDs; prevention and treatment efforts including surveillance of HIV infection, viral hepatitis, other STDs, and related behaviors; epidemiologic, behavioral, health services, and laboratory research on HIV, viral hepatitis, and other STDs; identification of policy issues related to HIV/viral hepatitis/STD professional eduction, patient healthcare delivery, and prevention services; agency policies about prevention of HIV, viral hepatitis and other STDs; treatment, healthcare delivery, and research and training; strategic issues influencing the ability of CDC and HRSA to fulfill their missions of providing prevention and treatment services; programmatic efforts to prevent and treat HIV, viral hepatitis, and other STDs; and support to the agencies in their developoment of responses to emerging health needs related to HIV, viral hepatitis, and other STDs.

During the March 5, 2020, meeting, CHAC will discuss issues related to a CDC pilot on recency assay-based incidence estimation and the President's initiative on ''Ending the HIV Epidemic: A Plan for America.'' Agenda items are subject to change as priorities dictate.

Due to the nature and time limitations of the meeting, members of the public will not have an opportunity to provide oral comments, although written comments may be submitted prior to the meeting, or up to 5 business days after the meeting, to Theresa Jumento at the contact information listed above. Individuals who plan to attend and need special assistance or another reasonable accommodation should notify Theresa Jumento at the address and phone number listed above at least 10 business days prior to the meeting.

Maria G. Button,

Director, Division of the Executive Secretariat.

[FR Doc. 2020–01809 Filed 1–30–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Committee on Rural Health and Human Services

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces that the Secretary's National Advisory Committee on Rural Health and Human Services (NACRHHS) has scheduled a public meeting. Information about NACRHHS and the agenda for this meeting can be found on the NACRHHS website at *https://www.hrsa.gov/advisory-committees/rural-health/index.html.*

DATES: March 2, 2020, 8:30 a.m.–5:15 p.m. Eastern Time (ET); March 3, 2020, 8:30 a.m.–5:15 p.m. ET; and March 4, 2020, 8:30 a.m.–11:15 a.m. ET.

ADDRESSES: The address for the meeting is the Center for Disease Control and Prevention (CDC) Global Communications Center (GCC) Auditorium B3, 1600 Clifton Road, Atlanta, GA 30329.

On the morning of March 3, 2020, NACRHHS will break into subcommittees. One subcommittee will travel to Mercer School of Medicine, 1550 College St., Macon, GA 31207. The other subcommittee will travel to Health Services Center, 608 Martin Luther King Drive, Hobson City, AL 36201. In the afternoon, at approximately 4:00 p.m. ET., NACRHHS will reconvene at the CDC GCC.

FOR FURTHER INFORMATION CONTACT: Steven Hirsch, Administrative Coordinator at the Federal Office of Rural Health Policy, HRSA, 5600 Fishers Lane, 17W59D, Rockville, Maryland 20857; 301–443–7322; or *shirsch@hrsa.gov.*

SUPPLEMENTARY INFORMATION: NACRHHS provides advice and recommendations to the Secretary of HHS (Secretary) on policy, program development, and other matters of significance concerning both rural health and rural human services.

During the March 2–4, 2020, meeting, NACRHHS will examine two topics: Maternal and Obstetric Care Challenges in Rural America and HIV Prevention and Treatment Challenges in Rural America. Refer to the NACRHHS website for any updated information concerning the meeting.

Members of the public will have the opportunity to provide comments. Public participants may submit written statements in advance of the scheduled meeting. Oral comments will be honored in the order they are requested and may be limited as time allows. Requests to submit a written statement or make oral comments to NACRHHS should be sent to Steven Hirsch, using the contact information above, at least 3 business days prior to the meeting.

Individuals who plan to attend and need special assistance or another reasonable accommodation should notify Steven Hirsch at the address and phone number listed above at least 10 business days prior to the meeting. Since the meeting at the CDC occurs in a federal government building, attendees must go through a security check to enter the building. Non-U.S. Citizen attendees must notify Steven Hirsch of their planned attendance at least 20 business days prior to the meeting in order to facilitate their entry into the building. All attendees are required to present government-issued identification prior to entry.

Maria G. Button,

Director, Division of the Executive Secretariat.

[FR Doc. 2020–01810 Filed 1–30–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Clinical Care Commission

AGENCY: Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The National Clinical Care Commission (the Commission) will conduct a virtual meeting on February 19, 2020. The Commission is charged to evaluate and make recommendations to the U.S. Department of Health and Human Services (HHS) Secretary and Congress regarding improvements to the coordination and leveraging of federal programs related to diabetes and its complications.

DATES: The meeting will take place on February 19, 2020, from 1 p.m. to approximately 5 p.m. Eastern Standard Time (EST).

ADDRESSES: The meeting will be held online via webinar. To register to attend the meeting, please visit the registration website at *https://kauffmaninc.adobeconnect.com/nccc_feb2020/event/event_info.html.*

FOR FURTHER INFORMATION CONTACT: Linda Harris, Designated Federal Officer, National Clinical Care Commission, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Health, Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Suite 420, Rockville, MD 20852. Email: *OHQ@hhs.gov.* Telephone: 240–453–8262.

SUPPLEMENTARY INFORMATION: The National Clinical Care Commission Act (Pub. L. 115–80) requires the HHS Secretary to establish the National Clinical Care Commission. The Commission consists of representatives of specific federal agencies and non-federal individuals and entities who represent diverse disciplines and views. The Commission will evaluate and make recommendations to the HHS Secretary and Congress regarding improvements to the coordination and leveraging of federal programs related to diabetes and its complications.

The sixth meeting will be held virtually, and will consist of presentations from the Centers for Medicare and Medicaid Services (CMS). The final meeting agenda will be available prior to the meeting at *https://health.gov/hcq/national-clinical-care-commission.asp.*

Public Participation at Meeting: The Commission invites public comment on issues related to the Commission's charge. There will be an opportunity for oral comments at this virtual meeting. Virtual attendees who plan to provide oral comments at the Commission meeting during a designated time must register prior to the meeting. To virtually attend the Commission meeting, individuals must pre-register at the registration website at *https://kauffmaninc.adobeconnect.com/nccc_feb2020/event/event_info.html.*

Written comments are welcome throughout the entire development process of the Commission's work and may be emailed to *OHQ@hhs.gov,* or by mail to the following address: Public Commentary, National Clinical Care Commission, 1101 Wootton Parkway, Suite 420, Rockville, MD 20852. Written comments should not exceed three pages in length.

Individuals who need special assistance with reasonable accommodations, should indicate the special accommodation when registering online or by notifying Jennifer Gillissen at *jennifer.gillissen@kauffmaninc.com* by February 7, 2020.

Authority: The National Clinical Care Commission is required under the National Clinical Care Commission Act (Pub. L. 115–80). The Commission is governed by provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C., App.) which sets forth standards for the formation and use of federal advisory committees.

Dated: January 23, 2020.

Donald Wright,

Deputy Assistant Secretary for Health.

[FR Doc. 2020–01871 Filed 1–30–20; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that a meeting is scheduled to be held for the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria (PACCARB). The meeting will be open to the public; a public comment session will be held during the meeting. Pre-registration is required for members of the public who wish to attend the meeting and who wish to participate in the public comment session. Individuals who wish to attend the meeting and/or send in their public comment via email should send an email to *CARB@hhs.gov.* Registration information is available on the website *http://www.hhs.gov/paccarb* and must be completed by February 19, 2020; all in-person attendees must pre-register by this date. Additional information about registering for the meeting and providing public comment can be obtained at *http://www.hhs.gov/paccarb* on the Meetings page.

DATES: The meeting is scheduled to be held on February 26, 2020, from 9:00 a.m. to 4:30 p.m. and February 27, 2020, from 9:00 a.m. to 4:00 p.m. ET (times are tentative and subject to change). The confirmed times and agenda items for

the meeting will be posted on the website for the PACCARB at *http://www.hhs.gov/paccarb* when this information becomes available. Pre-registration for attending the meeting in person is required to be completed no later than February 19, 2020; public attendance at the meeting is limited to the available space.

ADDRESSES: Hubert H. Humphrey Building, The Great Hall, 200 Independence Ave. SW, Washington, DC 20201. The meeting can also be accessed through a live webcast and via teleconference on the day of the meeting. For more information, visit *http://www.hhs.gov/paccarb.*

FOR FURTHER INFORMATION CONTACT: Jomana Musmar, M.S., Ph.D., Designated Federal Officer, Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services, Room L616, Switzer Building, 330 C St. SW, Washington, DC 20201. Email: *CARB@hhs.gov.* Telephone: (202) 795–7678.

SUPPLEMENTARY INFORMATION: The Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria (PACCARB), established by Executive Order 13676, is continued by Section 505 of Public Law 116–22, the Pandemic and All-Hazards Preparedness and Advancing Innovation Act of 2019 (PAHPAIA). Activities and duties of the Advisory Council are governed by the provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App.), which sets forth standards for the formation and use of federal advisory committees.

The PACCARB shall advise and provide information and recommendations to the Secretary regarding programs and policies intended to reduce or combat antibiotic-resistant bacteria that may present a public health threat and improve capabilities to prevent, diagnose, mitigate, or treat such resistance. The PACCARB shall function solely for advisory purposes.

Such advice, information, and recommendations may be related to improving: The effectiveness of antibiotics; research and advanced research on, and the development of, improved and innovative methods for combating or reducing antibiotic resistance, including new treatments, rapid point-of-care diagnostics, alternatives to antibiotics, including alternatives to animal antibiotics, and antimicrobial stewardship activities; surveillance of antibiotic-resistant bacterial infections, including publicly available and up-to-date information on resistance to antibiotics; education for health care providers and the public with respect to up-to-date information on antibiotic resistance and ways to reduce or combat such resistance to antibiotics related to humans and animals; methods to prevent or reduce the transmission of antibiotic-resistant bacterial infections; including stewardship programs; and coordination with respect to international efforts in order to inform and advance the United States capabilities to combat antibiotic resistance.

The February 26–27 public meeting will be dedicated to the swearing-in of four new voting members, and acknowledging the dedication of retiring voting members. The remainder of the two-day public meeting will include antimicrobial (AMR)-focused panel presentations and council discussions on topics ranging from: Innovations to disease prevention and management for both human and animal health, the changing AMR landscape, the gut microbiome, and the future demand for food production, with an in depth look at aquaculture production and management practices. The meeting agenda will be posted on the PACCARB website at *http://www.hhs.gov/paccarb* when it has been finalized. All agenda items are tentative and subject to change.

Public attendance at the meeting is limited to the available space. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the PACCARB at the address/telephone number listed above at least one week prior to the meeting. For those unable to attend in person, a live webcast will be available. More information on registration and accessing the webcast can be found at *http://www.hhs.gov/paccarb.*

Members of the public will have the opportunity to provide comments prior to the public meeting by emailing *CARB@hhs.gov.* Public comments should be sent in by midnight February 10, 2020, and should be limited to no more than one page.

Dated: January 10, 2020.

Jomana F. Musmar,

Designated Federal Officer, Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, Committee Manager.

[FR Doc. 2020–01872 Filed 1–30–20; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—A Study Section.

Date: February 27–28, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bayside, 4875 North Harbor Drive, San Diego, CA 92106.

Contact Person: Kenneth M. Izumi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3204, MSC 7808, Bethesda, MD 20892, 301–496–6980, *izumikm@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurotoxicology and Alcohol Study Section.

Date: February 27–28, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crown Plaza River Oaks, 2712 Southwest Fwy., Houston, TX 77098.

Contact Person: Sepandarmaz Aschrafi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040D, Bethesda, MD 20892, (301) 451–4251, *Armaz.aschrafi@nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurogenesis and Cell Fate Study Section.

Date: February 27, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marines Memorial Club and Hotel, 609 Sutter St., San Francisco, CA 94102.

Contact Person: Joanne T. Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience

Integrated Review Group; Neurobiology of Motivated Behavior Study Section.
Date: February 27–28, 2020.
Time: 8:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Washington, DC Downtown, 1199 Vermont Ave. NW, Washington, DC 20005.
Contact Person: Jasenka Borzan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892–7814, 301–435–1260, *borzanj@csr.nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Cancer, Heart, and Sleep Epidemiology A Study Section.
Date: February 27–28, 2020.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Sir Francis Drake Hotel, 450 Powell Street at Sutter, San Francisco, CA 94102.
Contact Person: Denise Wiesch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7770, Bethesda, MD 20892, (301) 437–3478, *wieschd@csr.nih.gov*.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Xenobiotic and Nutrient Disposition and Action Study Section.
Date: February 27, 2020.
Time: 8:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: The Alexandrian, 480 King Street, Alexandria, VA 22314.
Contact Person: Jonathan K. Ivins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2190, MSC 7850, Bethesda, MD 20892, (301) 594–1245, *ivinsj@csr.nih.gov*.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Gastrointestinal Mucosal Pathobiology Study Section.
Date: February 27–28, 2020.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.
Contact Person: Aiping Zhao, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, Bethesda, MD 20892–7818, (301) 435–0682, *zhaoa2@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Drug Discovery for the Nervous System Study Section.
Date: February 27–28, 2020.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bayside, 4875 North Harbor Drive, San Diego, CA 92106.
Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Oral, Dental and Craniofacial Sciences Study Section.
Date: February 27–28, 2020.
Time: 8:00 a.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt House Washington DC/The Wharf, 725 Wharf St. SW, Washington, DC 20024.
Contact Person: Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@csr.nih.gov*.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Cancer Biomarkers Study Section.
Date: February 27–28, 2020.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Solamar, 435 6th Avenue, San Diego, CA 92101.
Contact Person: Lawrence Ka-Yun Ng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–357–9318, *ngkl@csr.nih.gov*.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Cancer Prevention Study Section.
Date: February 27–28, 2020.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Crown Plaza River Oaks, 2712 Southwest Fwy., Houston, TX 77098.
Contact Person: Svetlana Kotliarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, Bethesda, MD 20892, 301–594–7945, *kotliars@mail.nih.gov*.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Emerging Imaging Technologies and Applications Study Section.
Date: February 27–28, 2020.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Sheraton Fisherman's Wharf Hotel, 2500 Mason Street, San Francisco, CA 94133.
Contact Person: Songtao Liu, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, Bethesda, MD 20817, 301–827–6828, *songtao.liu@nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Infectious Diseases, Reproductive Health, Asthma and Pulmonary Conditions Study Section.
Date: February 27–28, 2020.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Seattle Hotel, 515 Madison Street, Seattle, WA 98104.
Contact Person: Lisa Steele, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 257–2638, *steeleln@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Respiratory Integrative Biology and Translational Research Study Section.
Date: February 27–28, 2020.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.
Contact Person: Bradley Nuss, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7814, Bethesda, MD 20892, 301–451–8754, *nussb@csr.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group; Cellular Mechanisms in Aging and Development Study Section.
Date: February 27–28, 2020.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Le Meridien Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.
Contact Person: John Burch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301–408–9519, *burchjb@csr.nih.gov*.

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group; Bioengineering of Neuroscience, Vision and Low Vision Technologies Study Section.
Date: February 27–28, 2020.
Time: 8:00 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Sir Francis Drake Hotel, 450 Powell Street at Sutter, San Francisco, CA 94102.
Contact Person: Robert C. Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov*.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Tumor Microenvironment Study Section.
Date: February 27–28, 2020.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.
Contact Person: Angela Y. Ng, Ph.D., MBA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, Bethesda, MD 20892, 301–435–1715, *ngan@mail.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Pregnancy and Neonatology Study Section.
Date: February 27–28, 2020.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz Carlton Hotel, 1150 22nd Street NW, Washington, DC 20037.
Contact Person: Andrew Maxwell Wolfe, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 6214, Bethesda, MD 20892, 301.402.3019, *andrew.wolfe@nih.gov*.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Molecular Oncogenesis Study Section.
Date: February 27–28, 2020.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.
Contact Person: Nywana Sizemore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, 301–435–1718, *sizemoren@csr.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Acute Neural Injury and Epilepsy Study Section.
Date: February 27–28, 2020.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street NW, Washington, DC 20037.
Contact Person: Paula Elyse Schauwecker, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5201, Bethesda, MD 20892, 301–760–8207, *schauweckerpe@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group; Vaccines Against Microbial Diseases Study Section.
Date: February 27–28, 2020.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.
Contact Person: Jian Wang, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7812, Bethesda, MD 20892, (301) 435–2778, *wangjia@csr.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group; Nuclear and Cytoplasmic Structure/Function and Dynamics Study Section.
Date: February 27–28, 2020.
Time: 11:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Jessica Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–3717, *jessica.smith6@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 27, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–01794 Filed 1–30–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Collection of Grant and Contract Data That May Be of Interest to Historically Black Colleges and Universities (HBCUs) and Small Businesses; (Office of the Director)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH), Office of the Director, Office of Acquisitions and Logistics Management (OALM), Small Business Program Office (SBPO), has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Rachel Kenlaw, Program Analyst, NIH, Office of the Director, Office of Acquisitions and Logistics Management, Small Business Program Office, 6100 Executive Blvd., Suite 6E01G, Rockville, MD 20852, or call non-toll-free number (301) 451–6827 or Email your request, including your address, to: *Rachel.Kenlaw@nih.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on October 30, 2019, page 23681 (84 FR 23681) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

The National Institutes of Health, Office of the Director, Office of Acquisitions and Logistics Management, Small Business Program Office, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995 unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Collection of grant and contract data that may be of interest to Historically Black Colleges and Universities (HBCUs) and small businesses, 0925 NEW, exp., date XX/XX/XXXX, Office of the Director, Office of Acquisitions and Logistics Management, Small Business Program Office, National Institutes of Health.

Need and Use of Information Collection: Presidential Executive Order 13779, *The White House Initiative to Promote Excellence and Innovation at HBCUs* mandates agencies to assist in strengthening HBCU's ability for equitable participation in Federal programs and explore new ways to improve the relationship between the Federal Government and HBCUs. This initiative establishes how each agency intends to increase the capacity of HBCUs to compete effectively for federal grants, contracts, and cooperative agreements.

The Path to Excellence and Innovation (PEI) is a comprehensive program to increase the capacity of HBCUs as they pursue funding opportunities at the NIH. The PEI provides a platform to increase transparency between HBCUs and the NIH by promoting outreach events and training opportunities while providing technical assistance. Through this initiative the SBPO will assist HBCUs in identifying NIH contracts, grants, and other funding programs to increase their

institutional biomedical research capacity. Currently, there are six HBCU participants and each selected a minimum of one small business teaming partner to pursue NIH funding opportunities with.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 43.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
HBCU Pre-Solicitation Portal for Contracts and Grants.	Private Sector	13	10	20/60	43
Total			130		43

Dated: January 25, 2020.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2020–01863 Filed 1–30–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Human Genome Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Human Genome Research.

Date: February 10–11, 2020.

Closed: February 10, 2020, 8:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Suite 1100, 6700–B Rockledge Drive, Bethesda, MD 20892.

Open: February 10, 2020, 10:00 a.m. to 4:00 p.m.

Agenda: Report from Institute Director and Reports from Program Staff.

Place: National Institutes of Health, Suite 1100, 6700–B Rockledge Drive, Bethesda, MD 20817.

Closed: February 10, 2020, 4:00 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Suite 1100, 6700–B Rockledge Drive, Bethesda, MD 20817.

Closed: February 11, 2020, 8:00 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Suite 1100, 6700–B Rockledge Drive, Bethesda, MD 20817.

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *pozzattr@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto off Campus Federal Facilities. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.genome.gov/council,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: January 27, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–01796 Filed 1–30–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Surgical Sciences, Biomedical Imaging, and Bioengineering.

Date: February 26, 2020.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Weihua Luo, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC, 7854 Bethesda, MD 20892, 301–435–1170, *luow@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA 19–021: Maximizing the Scientific Value of

Existing Biospecimen Collections (R21 Clinical Trial Not allowed).

Date: February 26, 2020.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Meenakshisundar Ananthanarayanan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, Bethesda, MD 20892, 301–827–6281, *meena.ananthanarayanan@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Biophysical, Physiological, Pharmacological and Bioengineering Neuroscience.

Date: February 27–28, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Wardman Park Washington DC Hotel, 2660 Woodley Road NW, Washington, DC 20008.

Contact Person: Sussan Paydar, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 5222, Bethesda, MD 20817, (301) 827–4994, *sussan.paydar@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Hypersensitivity, Allergies and Mucosal Immunology.

Date: February 27–28, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hilton Garden Inn Washington DC/Georgetown, 2201 M Street NW, Washington, DC 20037.

Contact Person: Alok Mulky, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4203, Bethesda, MD 20892, (301) 435–3566, *alok.mulky@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Neurodevelopment, Synaptic Plasticity and Neurodegeneration.

Date: February 27–28, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton, 1150 22nd Street NW, Washington, DC 20037.

Contact Person: Tina Tze-Tsang Tang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Suite 3030, Bethesda, MD 20817, (301) 435–4436, *tangt@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Genetic Variation and Evolution.

Date: February 27, 2020.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue Bethesda, MD 20814.

Contact Person: Emily Foley, Ph.D., Scientific Review Officer, Center for Scientific Review, Bethesda, MD 20892, 301–402–3016, *emily.foley@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Chemistry and Biological Chemistry.

Date: February 27–28, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sergei Ruvinov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pregnancy and Neonatology Study Section.

Date: February 27, 2020.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street NW, Washington, DC 20037.

Contact Person: Elaine Sierra-Rivera, Ph.D., Scientific Review, Officer Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892, 301 435–2514, *riverase@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 27, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–01797 Filed 1–30–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; Clinical Research Grant Applications: R34, UG1, R01 genetic/epi, R21 secondary data analysis.

Date: March 16, 2020.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To provide concept review of proposed grant applications.

Place: National Institute of Health, 6700 B Rockledge Dr., Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Jeanette M. Hosseini, Ph.D., Scientific Review Officer, National Eye Institute, National Institutes of Health, 6700 B Rockledge Drive, Suite 3400, Bethesda, MD 20892, 301–451–2020, *jeanetteh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: January 27, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy/

[FR Doc. 2020–01793 Filed 1–30–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Toxicology Program Board of Scientific Counselors; Announcement of Meeting; Request for Comments

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the National Toxicology Program (NTP) Board of Scientific Counselors (BSC). The BSC, a federally chartered, external advisory group composed of scientists from the public and private sectors, will review and provide advice on programmatic activities. This meeting is by webcast only and is open to the public. Written comments will be accepted and registration is required for oral comment and to access the webcast. Information about the meeting and registration are available at *https://ntp.niehs.nih.gov/go/165.*

DATES:

Meeting: February 21, 2020; 12:00 p.m.–5:00 p.m. Eastern Standard Time (EST).

Written Public Comment Submissions: Deadline is February 14, 2020.

Registration for Oral Comments: Deadline is February 14, 2020.

Registration to view the webcast: Deadline is February 21, 2020.

Registration to view the meeting via the webcast is required.

ADDRESSES:

Meeting web page: The preliminary agenda, registration, and other meeting materials are available at *https://ntp.niehs.nih.gov/go/165.*

Webcast: The meeting will be webcast; the URL will be provided to those who register for viewing.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Wolfe, Designated Federal Official for the BSC, Office of Liaison, Policy and Review, Division of NTP, NIEHS, P.O. Box 12233, K2–03, Research Triangle Park, NC 27709. Phone: 984–287–3209, Fax: 301–451–5759, Email: *wolfe@niehs.nih.gov.* Hand Deliver/Courier address: 530 Davis Drive, Room K2130, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION: The BSC will provide input to the NTP on programmatic activities and issues. The preliminary agenda topics include: Evolving the paradigm: In vivo to in vitro extrapolation, nano/microplastics and health effects: Novel agents bring novel challenges, traffic-related air pollution and hypertensive disorders of pregnancy: Disease as a toxicology focus, and NTP studies of per- and poly-fluoroalkyl substances: Understanding human translation. The preliminary agenda, roster of BSC members, background materials, public comments, and any additional information, when available, will be posted on the BSC meeting website (*https://ntp.niehs.nih.gov/go/165*) or may be requested in hardcopy from the Designated Federal Official for the BSC. Following the meeting, summary minutes will be prepared and made available on the BSC meeting website.

Meeting Attendance Registration: The meeting is open to the public with time set aside for oral public comment. Registration to view the webcast is by February 21, 2020, at *https://ntp.niehs.nih.gov/go/165.* Registration is required to view the webcast; the URL for the webcast will be provided in the email confirming registration. TTY users should contact the Federal TTY Relay Service at 800–877–8339. Requests should be made at least five business days in advance of the event.

Written Public Comments: NTP invites written public comments. Guidelines for public comments are available at *https://ntp.niehs.nih.gov/ntp/about_ntp/guidelines_public_comments_508.pdf.*

The deadline for submission of written comments is February 14, 2020. Written public comments should be submitted through the meeting website. Persons submitting written comments should include name, affiliation, mailing address, phone, email, and sponsoring organization (if any). Written comments received in response to this notice will be posted on the NTP website, and the submitter will be identified by name, affiliation, and sponsoring organization (if any).

Oral Public Comment Registration: The agenda allows for four formal public comment periods—one comment period per topic (up to 3 commenters, up to 5 minutes per speaker, per topic). Persons wishing to make an oral comment are required to register online at *https://ntp.niehs.nih.gov/go/165* by February 14, 2020. Oral comments will be received only during the formal comment periods indicated on the preliminary agenda and presented via a teleconference line. The access number for the teleconference line will be provided to registrants by email prior to the meeting. Registration is on a first-come, first-served basis. Each organization is allowed one time slot per topic. After the maximum number of speakers per comment period is exceeded, individuals registered to provide oral comment will be placed on a wait list and notified should an opening become available. Commenters will be notified approximately one week before the meeting about the actual time allotted per speaker.

If possible, oral public commenters should send a copy of their slides and/or statement or talking points to *NTP-Meetings@icf.com* by February 14, 2020.

Meeting Materials: The preliminary meeting agenda is available on the meeting web page (*https://ntp.niehs.nih.gov/go/165*) and will be updated one week before the meeting. Individuals are encouraged to access the meeting web page to stay abreast of the most current information regarding the meeting.

Background Information on the BSC: The BSC is a technical advisory body comprised of scientists from the public and private sectors that provides primary scientific oversight to the NTP. Specifically, the BSC advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purpose of determining and advising on the scientific merit of its activities and their overall scientific quality. Its members are selected from recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, epidemiology, risk assessment, carcinogenesis, mutagenesis, cellular biology, computational toxicology, neurotoxicology, genetic toxicology, reproductive toxicology or teratology, and biostatistics. Members serve overlapping terms of up to four years. The BSC usually meets biannually. The authority for the BSC is provided by 42 U.S.C. 217a, section 222 of the Public Health Service Act (PHS), as amended.

The BSC is governed by the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. app.), which sets forth standards for the formation and use of advisory committees.

Dated: January 21, 2020.

Brian R. Berridge,

Associate Director, National Toxicology Program.

[FR Doc. 2020–01792 Filed 1–30–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-day Comment Request; Early Career Reviewer Program Online Application and Vetting System (Center for Scientific Review)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the Center for Scientific Review (CSR) National Institutes of Health will publish periodic summaries of propose projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Dr. Hope Cummings, Project Clearance Liaison, Center for Scientific Review, NIH, Room 4134, 6701 Rockledge Drive, Bethesda, Maryland, 20892 or call non-toll-free number (301) 402–4706 or Email your request, including your address to: *hope.cummings@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function 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) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimizes the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Early Career Reviewer Program Online Application and Vetting System, 0925–0695, REVISION, exp., date 05/31/2020, Center for Scientific Review (CSR), National Institutes of Health (NIH).

Need and Use of Information Collection: The Center for Scientific Review (CSR) is the portal for NIH grant applications and their review for scientific merit. Our mission is to see that all NIH grant applications receive fair, independent, expert, and timely reviews—free from inappropriate influences—so NIH can fund the most promising research. To accomplish this goal, Scientific Review Officers (SRO) form study sections consisting of scientists who have the technical and scientific expertise to evaluate the merit of grant applications. Study section members are generally scientists who have established independent programs of research as demonstrated by their publications and their grant award experiences.

The CSR Early Career Reviewer program was developed to identify and train qualified scientists who are early in their scientific careers and who have not had prior CSR review experience. The goals of the program are to expose these early career scientists to the peer review experience so that they become more competitive as applicants as well as to enrich the existing pool of NIH reviewers. Currently, the online application software, the Early Career Reviewer Application and Vetting System, is accessed online by applicants to the Early Career Reviewer Program who provide information such as their name, contact information, a description of their areas of expertise, their study section preferences, and their professional Curriculum Vitae. This Information Collection Request (ICR) is to revise the Early Career Reviewer Application and Vetting System to include additional questions and be more user friendly. Additional questions are in line with NIH's renewed Interest in Diversity (NOT–OD–20–031) and include questions such as applicants' race, ethnicity, gender, disability, and disadvantage backgrounds. Applicants can choose if they would like to answer these additional questions (*i.e.* optional). Applicants are also now able to check their eligibility before applying to the program.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 505.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
Research scientists	1212	1	25/60	505
Total		1212		505

Dated: January 22, 2020.

Hope M. Cummings,

Project Clearance Liaison, Center for Scientific Review (CSR), National Institutes of Health.

[FR Doc. 2020–01798 Filed 1–30–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine or Oral Fluid (Mandatory Guidelines).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *https://www.samhsa.gov/workplace/resources/drug-testing/certified-lab-list.*

FOR FURTHER INFORMATION CONTACT: Anastasia Donovan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice); *Anastasia.Donovan@samhsa.hhs.gov* (email).

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the

Federal Register on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020.

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for federal agencies. HHS does not allow IITFs for oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs for oral fluid testing.

HHS-Certified Laboratories Certified To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid dated October 25, 2019 (84 FR 57554), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Certified To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190, (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories Certified To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Cordant Health Solutions, 2617 East L Street, Tacoma, WA 98421, 800–442–0438, (Formerly: STERLING Reference Laboratories)

Desert Tox, LLC, 10221 North 32nd Street Suite J, Phoenix, AZ 85028, 602–457–5411

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare *, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630, (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Legacy Laboratory Services Toxicology, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295, (Formerly: Legacy Laboratory Services—MetroLab)

MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088, Testing for Veterans Affairs (VA) Employees Only

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Redwood Toxicology Laboratory, 3700 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

Anastasia Marie Donovan,

Policy Analyst.

[FR Doc. 2020–01776 Filed 1–30–20; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4427–DR; Docket ID FEMA–2020–0001]

Tennessee; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Tennessee (FEMA–4427–DR), dated April 17, 2019, and related determinations.

DATES: This change occurred on January 7, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Myra M. Shird, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Manny J. Toro as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–01897 Filed 1–30–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4469–DR; Docket ID FEMA–2019–0001]

South Dakota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Dakota (FEMA–4469–DR), dated November 18, 2019, and related determinations.

DATES: This amendment was issued January 8, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of South Dakota is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of November 18, 2019.

Aurora County for Individual Assistance (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–01887 Filed 1–30–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4469–DR; Docket ID FEMA–2020–0001]

South Dakota; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Dakota (FEMA–4469–DR), dated November 18, 2019, and related determinations.

DATES: This amendment was issued January 8, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of South Dakota is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of November 18, 2019.

Clark, Codington, and Day Counties for Public Assistance.

Lincoln County for Public Assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially

Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–01886 Filed 1–30–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4400–DR; Docket ID FEMA–2020–0001]

Georgia; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Georgia (FEMA–4400–DR), dated October 14, 2018, and related determinations.

DATES: This change occurred on January 7, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Myra M. Shird, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Manny J. Toro as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–01899 Filed 1–30–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4446–DR; Docket ID FEMA–2020–0001]

Ponca Tribe of Nebraska; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for Ponca Tribe of Nebraska (FEMA–4446–DR), dated June 17, 2019, and related determinations.

DATES: This change occurred on December 20, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, DuWayne Tewes, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Constance C. Johnson-Cage as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–01889 Filed 1–30–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4420–DR; Docket ID FEMA–2020–0001]

Nebraska; Amendment No. 13 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Nebraska (FEMA–4420–DR), dated March 21, 2019, and related determinations.

DATES: This change occurred on December 20, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, DuWayne Tewes, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Constance C. Johnson-Cage as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–01898 Filed 1–30–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2007–0008]

National Advisory Council

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee management; request for applicants for appointment to the National Advisory Council.

SUMMARY: The Federal Emergency Management Agency (FEMA) requests that qualified individuals interested in serving on the FEMA National Advisory Council (NAC) apply for appointment as identified in this notice. Pursuant to the *Post-Katrina Emergency Management Reform Act of 2006* (PKEMRA), the NAC advises the FEMA Administrator on all aspects of emergency management to incorporate input from and ensure coordination with State, local, Tribal, and territorial governments, and the non-governmental and private sectors on developing and revising national plans and strategies, the administration of and assessment of FEMA's grant programs, and the development and evaluation of risk assessment methodologies. The NAC consists of up to 35 members, all of whom are experts and leaders in their respective fields. FEMA seeks to appoint individuals to nine (9) discipline-specific positions on the NAC and up to four (4) members as Administrator Selections. If other positions open during the application and selection period, FEMA may select qualified candidates from the pool of applications.

DATES: FEMA will accept applications until 11:59 p.m. Eastern Time on March 13, 2020.

ADDRESSES: The preferred method for application package submission is by email. Application packages may also be submitted by U.S. Mail. Please submit by only one of the following methods:

- *Email: FEMA-NAC@fema.dhs.gov.* Save materials in one file using the naming convention, ''Last Name_First Name_NAC Application'' and attach to the email.
- *U.S. Mail:* Office of the National Advisory Council, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472–3184.

The Office of the National Advisory Council will send you an email that confirms receipt of your application and will notify you of the final status of your application once FEMA selects new members.

FOR FURTHER INFORMATION CONTACT: Jasper Cooke, Designated Federal Officer, Office of the National Advisory Council, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472–3184; telephone (202) 646–2700; and email *FEMA-NAC@fema.dhs.gov.* For more information on the NAC, including membership application instructions, visit *https://www.fema.gov/national-advisory-council.*

SUPPLEMENTARY INFORMATION: The NAC is an advisory committee established in accordance with the provisions of the *Federal Advisory Committee Act* (FACA), 5 U.S.C. Appendix. As required by PKEMRA, the Secretary of Homeland Security established the NAC to ensure effective and ongoing coordination of federal preparedness, protection, response, recovery, and mitigation for natural disasters, acts of terrorism, and other man-made disasters. FEMA is requesting that individuals who are interested in and qualified to serve on the NAC apply for appointment to an open position in one of the following discipline areas: Disabilities, Access and Functional Needs (Representative); Elected Tribal Government Official (Representative); Non-Elected Tribal Government Official (Representative); Emergency Management (Representative); Emergency Response Provider (Representative); Health Scientist (Special Government Employee (SGE)); Infrastructure Protection (SGE); and Standards Setting and Accrediting (Two Representatives or Regular Government Employees (RGE)). The Administrator may appoint up to four (4) additional candidates to serve as FEMA Administrator Selections (as SGE appointments). Please visit *https://www.fema.gov/membership-applications* for further information on expertise required to fill these positions. Appointments will be for three-year terms that start in December 2020.

The NAC Charter contains more information and can be found at: *https://www.fema.gov/media-library/assets/documents/35316.*

If you are interested, qualified, and want FEMA to consider appointing you to fill an open position on the NAC, please submit an application package to the Office of the NAC as listed in the **ADDRESSES** section of this notice. There is no application form; however, each application package MUST include the following information:

- Cover letter, addressed to the Office of the NAC, that includes or indicates: current position title and employer or organization you represent, home and work addresses, and preferred telephone number and email address; the discipline area position(s) for which you are qualified; why you are interested in serving on the NAC; and how you heard about the solicitation for NAC members;
- A summary of the most important accomplishments that qualify you to serve on the NAC, in the form of three to five (3–5) bullets in less than 75 words total;
- Resume or Curriculum Vitae (CV); and
- One Letter of Recommendation addressed to the Office of the NAC.

Your application package must be less than eight (8) pages to be considered by FEMA. Information contained in your application package should indicate clearly your qualifications to serve on the NAC and fill one of the current open positions. FEMA will not consider incomplete applications. FEMA will review the information contained in application packages and make selections based on: (1) Leadership attributes; (2) emergency management experience; (3) expert knowledge in discipline area; and (4) ability to meet NAC member expectations. FEMA will also consider overall NAC composition, including geographic diversity and mix of officials, emergency managers, and emergency response providers from state, local, and tribal governments, when selecting members.

Appointees may be designated as an SGE as defined in section 202(a) of title 18, U.S.C., as a Representative member, or as an RGE. SGEs speak in a personal capacity as experts in their field and Representative members speak for the stakeholder group they represent. Candidates selected for appointment as SGEs are required to complete a new entrant Confidential Financial Disclosure Form (Office of Government Ethics (OGE) Form 450) each year. You can find this form at the Office of Government Ethics website (*http://www.oge.gov*). However, please do not submit this form with your application.

The NAC generally meets in person twice per year. FEMA does not pay NAC members for their time, but may reimburse travel expenses such as airfare, per diem to include hotel stays, and other transportation costs within federal travel guidelines when pre-approved by the Designated Federal

Officer. NAC members must serve on one of the three NAC Subcommittees, which meet regularly by teleconference. FEMA estimates the total time commitment for subcommittee participation to be two (2) hours per week (more for NAC leadership).

DHS does not discriminate on the basis of race, color, religion, sex, national origin, sexual orientation, gender identity, marital status, political affiliation, disability and genetic information, age, membership in an employee organization, or other non-merit factor. DHS strives to achieve a widely diverse candidate pool for all of its recruitment actions. Current DHS and FEMA employees, including FEMA Reservists, are not eligible for membership. Federally registered lobbyists may apply for positions designated as Representative appointments but are not eligible for positions that are designated as SGE appointments.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–01904 Filed 1–30–20; 8:45 am]

BILLING CODE 9111–48–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4470–DR; Docket ID FEMA–2020–0001]

Mississippi; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–4470–DR), dated December 6, 2019, and related determinations.

DATES: This amendment was issued January 8, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of December 6, 2019.

Chickasaw, Choctaw, and Oktibbeha Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–01885 Filed 1–30–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4471–DR; Docket ID FEMA–2020–0001]

Tennessee; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Tennessee (FEMA–4471–DR), dated December 6, 2019, and related determinations.

DATES: This change occurred on January 7, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Myra M. Shird, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Manny J. Toro as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–01883 Filed 1–30–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2532–13; DHS Docket No. USCIS–2006–0068]

Introduction of a New Version of Employment Eligibility Verification Form

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: U.S. Citizenship and Immigration Services (USCIS) is announcing a new version of Form I–9, Employment Eligibility Verification. Employers must use Form I–9 to verify the identity and employment authorization of their employees. USCIS made minor changes to the form and its instructions. This Notice contains the dates of both the prior version and the new version of Form I–9 that employers may use, as well as the date when the prior version will become obsolete.

DATES: Form I–9, Employment Eligibility Verification, with a version date of ''(Rev. 10/21/2019)'' is available for use beginning January 31, 2020. The prior version of Form I–9 (Rev. 07/17/2017 N) will be obsolete effective April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Oscar Lujan, Associate Chief, Policy, Programs, and Guidance, Verification Division, Immigration Records and Identity Services, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, 131 M Street NE, Suite 200, Mail Stop 2600, Washington DC 20529. Employers can contact the Form I–9 Contact Center at 888–464–

4218 (TTY: 877–875–6028) and employees can call 888–897–7781 (TTY: 877–875–6028) for more information. The public can also email the Form I–9 Contact Center at *i-9central@dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Employers and certain agricultural recruiters and referrers for a fee (referred to collectively as employers in this notice) must verify the identity and employment authorization of each individual they hire for employment in the United States on Form I–9, Employment Eligibility Verification.

Form I–9 contains three sections. Section 1 of the form collects, at the time of hire, identifying information about the employee (and preparer or translator if used), and requires the employee to attest to whether he or she is a U.S. citizen, noncitizen national, lawful permanent resident, or alien authorized to work in the United States.

Section 2 of the form collects, within 3 days of the employee's hire, identifying information about the employer and information regarding the employee's identity and employment authorization. The employee must present original documentation evidencing his or her identity and employment authorization, which the employer must review.

Section 3 of the form is primarily used to verify the continued employment authorization of the employee. This section, if applicable, is completed at the time that the employee's employment authorization and/or employment authorization documentation recorded in either Section 1 or Section 2 of the form expires. This section may also be used if the employee is rehired within 3 years of the date of the initial completion of the form and to document a name change if Section 3 is otherwise completed.

Employers must maintain Forms I–9 for as long as an individual works for the employer and for the required retention period after the termination of an individual's employment (either 3 years after the date of hire or 1 year after the date employment ended, whichever is later). Also, employers must make their employees' Forms I–9 available for inspection upon request by officers of the Department of Homeland Security (DHS), the Immigrant and Employee Rights Section (IER) in the Department of Justice's Civil Rights Division, and the Department of Labor. An employer's failure to ensure proper completion and retention of Forms I–9 may subject the employer to civil money penalties, and, in some cases, criminal penalties.

On March 1, 2019, USCIS published a 60-day information collection notice in the **Federal Register** at 84 FR 7101 inviting the public to comment on a proposed extension without change of the Form I–9 and renewal request of the information collection to the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act of 1995. USCIS received and responded to 21 comments on the 60-day notice. On June 5, 2019, USCIS published a second notice at 84 FR 26140 inviting the public to comment on the proposed extension without change of the Form I–9 for a 30-day period. USCIS included proposed non-substantive updates in the online docket for the information collection. USCIS determined that these non-substantive updates do not change the affected population nor the time or cost burden imposed on the respondents, and therefore qualified as an extension without change. On October 21, 2019, OMB approved a three-year extension without change of the updated Form I–9. *See* OMB No. 1615–0047 at *www.reginfo.gov.*

II. Changes to Form I–9

In the newly updated Form I–9, USCIS added Eswatini and North Macedonia to the Country of Issuance field in Section 1 and the foreign passport issuing authority field in Section 2 per those countries' recent name changes. These changes are only visible when completing the fillable Form I–9 on a computer.

USCIS updated the following in the form instructions:

- Clarified who can act as an authorized representative on behalf of an employer
- Updated USCIS website addresses
- Provided acceptable document clarifications
- Updated the process for requesting the paper Form I–9
- Updated the DHS Privacy Notice

III. Use of the Updated Form I–9

In this Notice, USCIS is announcing that as of January 31, 2020, employers should begin using Form I–9 with a version date of ''(Rev. 10/21/2019)'' to comply with their employment eligibility verification responsibilities. The version date is located in the bottom corner of the form.

Employers may continue using the prior version of Form I–9 (Rev. 07/17/2017 N) until April 30, 2020. USCIS is allowing employers this additional time to make necessary updates and adjust their business processes. After April 30, 2020, however, the prior version of Form I–9 will no longer be valid for use and will be obsolete. The public can download the new Form I–9 from *www.uscis.gov/i-9.* After April 30, 2020, employers who fail to use Form I–9 (Rev. 10/21/2019) may be subject to all applicable penalties under section 274A of the INA, 8 U.S.C. 1324a, as enforced by U.S. Immigration and Customs Enforcement (ICE).

Employers do not need to complete the new Form I–9 (Rev. 10/21/2019) for current employees who already have a properly completed Form I–9 on file, unless reverification applies. Unnecessary verification may violate the INA's anti-discrimination provision, section 274B of the INA, 8 U.S.C. 1324b, which is enforced by the Immigrant and Employee Rights Section (IER) in the Department of Justice's Civil Rights Division.

IV. Obtaining Forms I–9 (Rev. 10/21/2019)

Employers may download the new Form I–9 (Rev. 10/21/2019) from the USCIS website at *www.uscis.gov/i-9.* Employers can order the paper Form I–9 at *www.uscis.gov/forms/forms-by-mail.* For more information, the public can contact the USCIS Contact Center at 800–375–5283 or visit USCIS' I–9 Central web page at *www.uscis.gov/i-9central.*

A Spanish-language version of the new Form I–9 is also available at *www.uscis.gov/i-9* for use in Puerto Rico only.

Mark R. Koumans,

Deputy Director.

[FR Doc. 2020–01821 Filed 1–30–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7024–N–07]

30-Day Notice of Proposed Information Collection: Alternative Inspections—Housing Choice Voucher Program, OMB Control No. 2577–0287

AGENCY: Office of the Chief Information Office.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* March 2, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 4517th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Dawn Smith, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, Room 3176, Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Smith.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice for the 60 days was published August 14, 2019 at 84 FR 40434.

A. Overview of Information Collection

Title of Information Collection: Alternative Inspections—Housing Choice Voucher Program.

OMB Approval Number: 2577–0287.

Type of Request: Extension of a currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: Under the Section 8 Housing Choice voucher rule, PHAs that elect to rely on an alternative inspection are required to meet the requirements of subpart I of the rule. For any inspection methods and standard selected other than HOME Investment Partnerships (HOME) program, Low-Income Housing Tax Credits (LIHTCs), or that performed by HUD, the PHA must submit a request to HUD. PHAs with approved alternative inspection standards must monitor changes to the standards and their methods. Additionally, they must submit a copy of the revised standards and requirements, along with a revised comparison of these standards vs. HQS, to HUD.

Respondents (i.e., affected public): State, Local or Tribal Governments.

Estimated Number of Respondents: 2,280.

Estimated Number of Responses: 32.83.

Frequency of Response: 0.0144.

Average Hours per Response: 4.54.

Total Estimated Burdens: 149 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: January 22, 2020.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2020–01878 Filed 1–30–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7024–N–06]

30-Day Notice of Proposed Information Collection: Section 202 Supportive Housing for the Elderly Application Submission Requirements, OMB Control No. 2502–0267

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* March 31, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Katonia Jackson, Systems Support Manager, Office of Multifamily Housing, Office of Recapitalization, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Katonia at *katonia.l.jackson@hud.gov* or telephone (202) 402–8380. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. A **Federal Register** notice for the 60 day was published May 22, 2019 at 84 FR 23578.

A. Overview of Information Collection

Title of Information Collection: Section 202 Supportive Housing for the Elderly Application Submission Requirements.

OMB Approval Number: 2502–0267.

Type of Request: Reinstatement with change, of previously approved collection.

Form Number: Form SF–424, Form HUD–92015–CA, Form HUD–2530, Form HUD–2880, Form HUD–2993, Form HUD–92041, Form HUD–92042, Standard Form LLL.

Description of the need for the information and proposed use: This is a reinstatement with changes of a previously approved collection that

expired per the Consolidated Appropriations Act of 2018 which appropriated $105,000,000 for new capital advances and project-rental assistance contracts. Under the new appropriation, the Section 202 program has been redesigned to (1) strategically target funds to the most vulnerable elderly persons with the greatest unmet housing needs, and (2) select the most effective sponsors that could achieve positive outcomes in the most expeditious manner. Therefore, we have updated the total annual cost burden to respondents and the annualized costs to the Federal government to reflect current costs.

Respondents (i.e., affected public): Eligible applicants and any co-sponsors must be private, nonprofit organizations and nonprofit consumer cooperatives with tax exempt status under Internal Revenue Service code.

Estimated Number of Respondents: 150.

Estimated Number of Responses: 13,150.

Frequency of Response: Annual, dependent on new Congressional appropriation.

Average Hours per Response: 40.

Total Estimated Burden: 5,295.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: January 22, 2020.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2020–01879 Filed 1–30–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7027–N–06]

60-Day Notice of Proposed Information Collection: Project Approval for Single-Family Condominiums

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 31, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, US Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone (202) 402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. Stakeholders may view the proposed changes to HUD–9991, FHA Condominium Loan Level/Single-Unit Approval Questionnaire and HUD–9992, FHA Condominium Project Approval Questionnaire at: *https://www.hud.gov/program_offices/housing/sfh/SFH_policy_drafts.*

A. Overview of Information Collection

Title of Information Collection: Project Approval for Single-Family Condominiums.

OMB Approval Number: 2502–0610.

Type of Request: Revision of currently approved collection.

Form Number: HUD–9991, FHA Condominium Loan Level/Single-Unit Approval Questionnaire; HUD–9992, FHA Condominium Project Approval Questionnaire; HUD–92544, Warranty of Completion of Construction; HUD–92541, Builder's Certification of Plans, Specifications, and Site; HUD–96029, Condominium Rider.

Description of the need for the information and proposed use: This collection package seeks to renew and revise two collection forms, HUD–9992, FHA Condominium Project Approval Questionnaire, to process condominium project approval applications and the HUD–9991, FHA Condominium Loan Level/Single-Unit Approval Questionnaire to process single-unit approvals. These forms are needed to determine if a condominium project is eligible for FHA project approval and if a unit in an approved or unapproved condominium project is eligible for FHA-insured financing. The HUD–9992, FHA Condominium Project Approval Questionnaire and the HUD–9991, FHA Condominium Loan Level/Single-Unit Approval Questionnaire have been revised to make the questionnaires adaptable to future policy changes. The HUD–92544, Warranty of Completion of Construction and HUD–96029, Condominium Rider were updated to comply with the burden statement requirements.

Respondents (i.e., affected public): Business or other for-profit (lenders and condominium associations).

Estimated Number of Respondents: 180,000.

Estimated Number of Responses: 180,000.

Frequency of Response: One-time for each condominium project approval or recertification, and one-time for loan level approval and Single-Unit Approval.

Average Hours per Response: .44 hours (varies by form and approval type: Project, loan level approval and Single-Unit Approval).

Total Estimated Burdens: 79,750.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of

information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: January 24, 2020.

John L. Garvin,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2020–01880 Filed 1–30–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2019–N155; FXES11130200000–190–FF02ENEH00]

Endangered and Threatened Wildlife and Plants; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for a permit to conduct activities intended to recover and enhance endangered species survival. With some exceptions, the Endangered Species Act of 1973, as amended (ESA), prohibits certain activities that may impact endangered species unless a Federal permit allows such activity. The ESA also requires that we invite public comment before issuing these permits.

DATES: To ensure consideration, please send your written comments by March 2, 2020.

ADDRESSES:

Document availability: Request documents by phone or email: Susan Jacobsen, 505–248–6641, *susan_jacobsen@fws.gov.*

Comment submission: Submit comments by U.S. mail to Susan Jacobsen, Classification and Recovery Division, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103. Please specify the permit you are interested in by number (*e.g.,* Permit No. TE–123456).

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Classification and Restoration Division, 505–248–6641.

SUPPLEMENTARY INFORMATION:

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes hunting, shooting, harming, wounding, or killing but also such activities as pursuing, harassing, trapping, capturing, or collecting.

The ESA and our implementing regulations in the Code of Federal Regulations (CFR) at title 50, part 17, provide for issuing such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit we issue under the ESA, section 10(a)(1)(A), authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or enhance the species' propagation or survival. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Documents and other information submitted with these applications are available for review by any party who submits a request as specified in **ADDRESSES**. Releasing documents is subject to Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552) requirements.

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. We invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Please refer to the application number when submitting comments.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE–798998 ..	Horizon Environmental Services, Inc.; Austin, Texas.	Golden-cheeked warbler (*Setophaga chrysoparia*); interior least tern (*Sterna antillarum athalassos*); Houston toad (*Bufo houstonensis*); American burying beetle (*Nicrophorus americanus*); ground beetles, no common name (*Rhadine exilis and Rhadine infernalis*); Helotes mold beetle (*Batrisodes venyivi*); Cokendolpher Cave harvestman (*Texella cokendolpheri*); Robber Baron Cave meshweaver (*Cicurina baronia*); Madla Cave meshweaver (*Cicurina madla*); Bracken Bat Cave meshweaver (*Cicurina venii*); Government Canyon Bat Cave meshweaver (*Cicurina vespera*); Government Canyon Bat Cave spider (*Neoleptoneta microps*); Tooth Cave spider (*Neoleptoneta myopica*); Tooth Cave pseudoscorpion (*Tartarocreagris texana*); Bee Creek Cave harvestman (*Texella reddelli*); Kretschman Cave mold beetle (*Texamaurops reddelli*); Tooth Cave ground beetle (*Rhadine persephone*); Bone Cave harvestman (*Texella reyesi*); Coffin Cave mold beetle (*Batrisodes texanus*).	Oklahoma, Texas	Presence/absence surveys, habitat surveys.	Capture, harm, harass, injury, death.	Renewal.
TE–39186D	Malaney, Jason L.; Albuquerque, New Mexico.	New Mexico meadow jumping mouse (*Zapus hudsonius luteus*).	Arizona, New Mexico	Collection	Capture, collect, harm, harass, injury, death.	New.
TE–071287–2.	Christman, Bruce; Albuquerque, New Mexico.	New Mexican ridge-nosed rattlesnake (*Crotalus willardi obscurus*), Narrow-headed gartersnake, Northern Mexican gartersnake (*Thamnophis eques megalops*), Chiricahua leopard frog (*Lithobates chiricahuensis*), Jemez Mountains salamander (*Plethodon neomexicanus*).	Arizona, New Mexico	Presence/absence surveys.	Capture, injury, death	Renewal.
TE–078189–1.	Adkins Consulting Inc.; Durango, Colorado.	Southwestern Willow flycatcher (*Empidonax traillii extimus*), Mexican spotted owl (*Strix occidentalis lucida*).	Arizona, Colorado, New Mexico, Utah.	Presence/absence surveys.	Harm, harass	Renewal.
TE–36648D	Camba, Matthew O.; Mesa, Arizona.	Yellow-billed cuckoo (*Coccyzus americanus*).	Arizona, California, Colorado, Nevada, New Mexico, Texas, Utah, Wyoming.	Presence/absence surveys.	Harass, harm	New.
TE–30425B ..	Hagyari, David; Broken Arrow, Oklahoma.	American burying beetle (*Nicrophorus americanus*).	Arizona, Oklahoma, Texas.	Presence/absence surveys.	Capture, injury, death	Renewal.
TE–076050 ..	McAlester Army Ammunition Plant; McAlester, Oklahoma.	American burying beetle (*Nicrophorus americanus*).	Oklahoma	Presence/absence surveys.	Capture, injury, death	Renewal.
TE–037155 ..	Bio-West (Oborny); Roound Rock, Texas.	Comal Springs riffle beetle (*Heterelmis comalensis*), Comal Springs dryopid beetle (*Stygoparnus comalensis*), Peck's Cave amphipod (*Stygobromus* (=*stygonectes*) *pecki*), southwestern willow flycatcher (*Empidonax traillii extimus*), Georgetown salamander (*Eurycea naufragia*), Salado salamander (*Eurycea chisholmensis*), San Marcos salamander (*Eurycea nana*), Colorado pikeminnow (*Ptychocheilus lucius*), Rio Grande silvery minnow (*Hybognathus amarus*), sharpnose shiner (*Notropis oxyrhynchus*), smalleye shiner (*Notropis buccula*),Texas hornshell (*Popenaias popeii*).	California, Colorado, New Mexico, Nevada, Texas, Utah.	Presence/absence surveys, capture, collection.	Capture, harass, injury, death.	Renewal.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE–17907C	Landhawk Consulting LLC; Pharr, Texas.	Ocelot (*Leopardus* (=*felis*) *pardalis*), Gulf Coast jaguarundi (*Herpailurus* (=*felis*) yagouaroundi cacomitli), piping plover (*Charadrius melodus*), red knot (*Calidris canutus rufa*), Louisiana pine snake (*Pituophis ruthveni*), star cactus (*Astrophytum asterias*), Zapata bladderpod (*Lesquerella thamnophila*), ashy dogweed (*Thymophylla tephroleuca*), Walker's manioc (*Manihot walkerae*), South Texas ambrosia (*Ambrosia cheiranthifolia*), Slender rush-pea (*Hoffmannseggia tenella*), Texas snowbells (*Styrax texanus*), black lace cactus (*Echinocereus reichenbachii* var. *albertii*), Tobusch fishhook cactus (*Sclerocactus brevihamatus* ssp. *tobuschii*), Houston toad (*Bufo houstonensis*).	Alabama, Colorado, Florida, Georgia, Louisiana, Maine, Masachusetts, Michigan, Minnesota, New Mexico, North Carolina, North Dakota, Oklahoma, Ohio, South Carolina, Texas.	Presence/absence surveys, biomonitoring, habitat assessment, nest monitoring.	Harass, harm	Amendment.
TE–232639 ..	DESCO Environmental Consultants; Magnolia, Texas.	American burying beetle (*Nicrophorus americanus*), red-cockaded woodpecker (*Picoides borealis*).	Oklahoma, Texas	Presence/absence surveys.	Capture, harass, harm, injury, death.	Renewal.
TE–13914B ..	Coons, Justin H.; Skiatook, Oklahoma.	American burying beetle (*Nicrophorus americanus*).	Arkansas, Kansas, Missouri, Nebraska, Oklahoma.	Presence/absence surveys.	Capture, harm, injury, death.	Renewal.
TE–078347 ..	U.S. Fish and Wildlife Service, Region 2, Cabeza Prienta National Wildlife Refuge; Ajo, Arizona.	Sonoran pronghorn (*Antilocapra americana sonoriensis*).	Arizona	Captive propagation ..	Capture, harm, harass, injury, death.	Renewal.
TE–103314 ..	Tanner, Jon Matthew; McGregor, Texas.	Interior least tern (*Sterna antillarum athalassos*).	New Mexico, Oklahoma, Texas.	Presence/absence surveys.	Harass	Renewal.
TE–818118 ..	Henson, Jeremy; Georgetown, Texas.	Texas hornshell (*Popenaias popeii*), clubshell (*Pleurobema clava*), fanshell (*Cyprogenia stegaria*), fat pocketbook (*Potamilus capax*), Higgins eye (*Lampsilis higginsii*), northern riffleshell (*Epioblasma torulosa rangiana*), orangefoot pimpleback (*Plethobasus cooperianus*), pink mucket (*Lampsilis abrupta*), purple cat's paw (*Epioblasma obliquata obliquata*), rayed bean (*Villosa fabalis*), scaleshell mussel (*Leptodea leptodon*), sheepnose mussel (*Plethobasus cyphyus*), snuffbox mussel (*Epioblasma triquetra*), spectaclecase (*Cumberlandia monodonta*), white catspaw (*Epioblasma obliquata perobliqua*).	Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Missouri, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Virginia, West Virginia, Wisconsin.	Presence/absence surveys.	Capture, harm, harrass.	Amendment.
TE57462D ...	Souther, Sara; Flagstaff, Arizona.	Kearney's blue-star (*Amsonia kearneyana*).	Arizona	Breeding system assessment, structured seed augmentation, species introduction.	Harm, death	New.
TE57474D ...	Lassiter, Timonthy; Boerne, Texas.	Golden-cheeked warbler (*Setophaga chrysoparia*).	Texas	Presence/absence surveys.	Harm, harass	New.
TE57474D ...	Putnam, Stephanie; Austin, Texas.	Golden-cheeked warbler (*Setophaga chrysoparia*).	Texas	Presence/absence surveys.	Harm, harass	New.
TE236730	Bonner, Timothy; San Marcos, Texas.	Comal Springs riffle beetle (*Heterelmis comalensis*), Devils River minnow (*Dionda diaboli*), fountain darter (*Etheostoma fonticola*), San Marcos salamander (*Eurycea nana*), San Marcos gambusia (*Gambusia georgei*), Texas wild-rice (*Zizania texana*).	Texas	Presence/absence surveys.	Harm, harass	Renewal.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE40886B	Biological Resources, LLC; Durango, Colorado.	Black-footed ferret (*Mustela nigripes*), southwestern willow flycatcher (*Empidonax traillii extimus*), Mexican spotted owl (*Strix occidentalis lucida*), New Mexico meadow jumping mouse (*Zapus hudsonius luteus*).	Arizona, Colorado, New Mexico, Texas, Utah.	Presence/absence surveys.	Harm, harass	Renewal.
TE37416B	Cambrian Environmental; Austin, Texas.	Houston toad (*Bufo houstonensis*), San Marcos salamander (*Eurycea nana*), Texas blind salamander (*Typhlomolge rathbuni*).	Texas	Presence/absence surveys, monitor, capture, handle, measure.	Harm, harass	Renewal.
TE43754A	Turner Endangered Species Fund; Bozeman, Montana.	Chiricahua leopard frog (*Rana chiricahuensis*), Chupadera springsnail (*Pyrgulopsis chupaderae*).	New Mexico	Presence/absence surveys.	Harm, harass	Renewal.
TE57477D ...	WSP|Parsons Brinckerhoff; Albuquerque, New Mexico.	Southwestern willow flycatcher (*Empidonax traillii extimus*), Mexican spotted owl (*Strix occidentalis lucida*), Chiricahua leopard frog (*Rana chiricahuensis*), yellow-billed cuckoo (*Coccyzus americanus*), Jemez Mountains salamander (*Plethodon neomexicanus*).	Arizona, California, Nevada, New Mexico.	Presence/absence surveys.	Harm, harass	New.
TE800900	Lower Colorado River Authority; Austin, Texas.	Golden-cheeked warbler (*Setophaga chrysoparia*), interior least tern (*Sterna antillarum athalassos*), Houston toad (*Bufo houstonensis*), southwestern willow flycatcher (*Empidonax traillii extimus*), piping plover (*Charadrius melodius*).	Texas	Presence/absence surveys.	Harm; harass	Renewal.
TE819491	Ecosphere Environmental; Durango, Colorado.	Southwestern willow flycatcher (*Empidonax traillii extimus*), Mexican spotted owl (*Strix occidentalis lucida*), Chiricahua leopard frog (*Rana chiricahuensis*), yellow-billed cuckoo (*Coccyzus americanus*), black-footed ferret (*Mustela nigripes*).	Arizona, Colorado, New Mexico, Texas, Utah.	Presence/absence surveys.	Harm, harass	Renewal.
TE08394B	USFS, Apache-Sitgreaves National Forest; Springerville, Arizona.	Southwestern willow flycatcher (*Empidonax traillii extimus*), Mexican spotted owl (*Strix occidentalis lucida*), Chiricahua leopard frog (*Rana chiricahuensis*), Gila chub (*Gila intermedia*), spikedace (*Mega fulgida*), loach minnow (*Tiaroga cobitis*), razorback sucker (*Xyrauchen texanus*), Three Forks springsnail (*Pyrgulopsis trivialis*).	Arizona	Presence/absence surveys.	Harm, harass	Renewal.
TE942425B ..	Powers, Jarrod; Stillwater, Oklahoma.	Neosho mucket (*Lampsilis rafinesqueana*), Ouachita rock pocketbook (*Arkansia wheeleri*), scaleshell (*Leptodea leptodon*), winged mapleleaf (*Quadrula fragosa*).	Oklahoma	Presence/absence surveys.	Harm, harass	Amendment.
TE160521	Tetra Tech; Salt Lake City, Utah.	Southwestern willow flycatcher (*Empidonax traillii extimus*).	Arizona, Colorado, Montana, New Mexico, Wyoming, Utah.	Presence/absence surveys.	Harass	Renewal.
TE44542B	Olsson Associates; Oklahoma City, Oklahoma.	Gray bat (*Myotis griscescens*), Neosho mucket (*Lampsilis rafinesqueana*).	Illinois, Indiana, Missouri.	Presence/absence surveys.	Harm/harass	Amendment.
TE59346D ...	Johnson, Matthew; Austin, Texas.	Freshwater mussel spp	Iowa, Maryland, Michigan, Minnesota, Missouri, New York, North Carolina, Pennsylvania, Tennessee, Texas, Wisconsin.	Presence/absence surveys.	Harm/harass	New.
TE103314	Tanner, Matthew; McGregor, Texas.	Least tern (*Sterna antillarum athalassos*).	Oklahoma, New Mexico, and Texas.	Presence/absence surveys.	Harass	Renewal.
TE59554D ...	Stanek, Jenna; Los Alamos, New Mexico.	Southwestern willow flycatcher (*Empidonax traillii extimus*).	New Mexico	Presence/absence surveys.	Harass	New.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE053085	Bureau of Reclamation, Boulder City, Nevada.	Southwestern willow flycatcher (*Empidonax traillii extimus*), bonytail chub (*Gila elegans*), razorback sucker (*Xyrauchen texanus*).	Arizona	Presence/absence surveys.	Harm/harass	Renewal.
TE819451	Travis County Transportation and Natural Resources.	Golden-cheeked warbler (*Setophaga chrysoparia*), Karst spp.	Texas	Presence/absence surveys.	Harm/harass	Renewal.
TE822908	Caesar Kleburg Wildlife Research Institute; Kingsville, Texas.	Ocelot (*Lepardus* (=*Felis*) *pardalis*), jaguarundi (*Herpailurus yogauroundi*).	Texas	Collect blood, semen samples, and fecal materials.	Harm/harass	Renewal.
TE59909D	Bell, Leslie; Austin, Texas.	Karst spp	Texas	Presence/absence surveys.	Harm/harass	New.
TE060125	Salt River Project Agricultural Improvement and Power District; Phoenix, Arizona.	Southwestern willow flycatcher (*Empidonax traillii extimus*).	Arizona	Presence/absence surveys.	Harm/harass	Renewal.
TE63216D	Porter, James Mark; Claremont, California.	Sneed pincushion cactus (*Coryphantha* [*Escobaria*] *sneedii*).	New Mexico, Texas	Seed collection	Harm	New.
TE63430D	Hamilton, Gregor; Albuquerque, New Mexico.	spikedace (*Meda fulgida*), loach minnow (*Tiaroga cobitis*).	New Mexico	Presence/absence surveys, collect scale clips.	Harm, harass	New.

Public Availability of Comments

All comments and materials we receive in response to these requests will be available for public inspection, by appointment, during normal business hours at the address listed in **ADDRESSES**.

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.

Authority

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*).

Dated: January 27, 2020.

Amy L. Lueders,

Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2020–01862 Filed 1–30–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

[201D0102DM, DS6CS00000, DLSN00000.000000, DX6CS25 OMB Control No. 1093–NEW]

Agency Information Collection Activities; Emergency Submission for OMB Review; Comment Request; Youth Conservation Corps Application and Medical History

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of request for Office of Management and Budget (OMB) emergency clearance of a collection of information and comments.

SUMMARY: The Department of the Interior (DOI, we) has submitted the following information collection request (ICR) to the OMB for review and clearance utilizing emergency review procedures in accordance with the Paperwork Reduction Act of 1995. We requested emergency review and approval from OMB of a new information collection request (ICR) titled *Youth Conservation Corps Application and Medical History* under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, to be effective for six months beginning February 1, 2020.

DATES: Interested persons are invited to submit comments on or before April 3, 2020.

ADDRESSES: Send your comments on this ICR by mail to Jeffrey Parrillo, Departmental Information Collection Clearance Officer, 1849 C Street NW, Washington, DC 20240; or by email to *Jeffrey_Parrillo@ios.doi.gov.* Please reference OMB Control Number 1093–YCC in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Jeffrey Parrillo, Departmental Information Collection Clearance Officer, 1849 C Street NW, Washington, DC 20240; by telephone at 202–208–7072 or by email to *Jeffrey_Parrillo@ios.doi.gov.* Please reference OMB Control Number 1090–YCC in the subject line of your comments.

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: We are requesting an emergency review and approval from OMB of a new ICR associated with the Youth Conservation Corps (YCC) application process to comply with the requirements of section 3506(c)(2)(A) of the PRA. We are requesting an emergency review under 5 CFR 1320.13 because public harm is reasonably likely to result if the normal clearance procedures are followed. The approval of the YCC application and medical history forms is essential to ensuring completion of agencies' conservation work on public lands. Without an emergency clearance process, collection of applications would not begin until well into the hiring season, resulting in delays of critical conservation projects, some of which are necessary to ensure the safety of visitors to public lands.

Under the Youth Conservation Corps Act of August 13, 1970, as amended (U.S. 18701–1706), the U.S. Department of Interior provides seasonal employment for eligible youth 15 through 18 years old. The Youth Conservation Corps stresses three important objectives:

1. Accomplish needed conservation work on public lands;

2. Provide gainful employment for 15 to 18 year-old males and females from all social, economic, ethnic, and racial backgrounds; and

3. Foster, on the part of the 15 through 18 year-old youth, an understanding and appreciation of the Nation's natural resources and heritage.

Youths seeking training and employment with the Youth Conservation Corps must complete the following new common forms included in this emergency clearance request: DI–4014, ''Youth Conservation Corps Application'' and DI–4015, ''Youth Conservation Corps Medical History.'' The applicants' parents or guardians must sign both forms. The application and medical history forms are evaluated by participating agencies to determine the eligibility of each youth for employment with the Youth Conservation Corps. Potential and actual agencies that may use the common forms included in this collection include:

- U.S. Fish and Wildlife Service (Interior);
- National Park Service (Interior); and,
- Other Federal Departments and Agencies such as the U.S. Forest Service (U.S. Department of Agriculture).

We collect the following information via common form DI–4014, ''Youth Conservation Corps (YCC) Application'':

- Basic contact information such as name, mailing address, telephone numbers, email address, and parent/guardian contact information;
- Gender;
- Date of birth and age;
- Certification of ability to apply for/provide social security number;
- Citizenship or permanent residency documentation;
- Work permit information;
- Desired work location;
- Where they learned about the program;
- Understanding of the conditions of job/role; and,
- Why they want to enroll in a YCC program.

We collect the following information via common form DI–4015, ''Youth Conservation Corps Medical History'' form to certify the youth's physical fitness to work in the seasonal employment program:

- Contact information;
- Age;
- date of birth;
- gender;
- emergency contact information;
- parent or guardian's contact information and signature;
- Medical insurance information;
- Medical history including vaccination history;
- Previous and current illnesses or conditions that may affect ability to perform certain tasks;
- Primary language;
- Ethnic background (optional);
- Exercise currently undertaken; and,
- Swimming ability.

Title of Collection: Youth Conservation Corps Application and Medical History.

OMB Control Number: 1093–New.

Form Numbers: DI–4014, ''Youth Conservation Corps Application'', and DI–4015, ''Youth Conservation Corps Medical History.''

Type of Review: Emergency review—Pursuant to 5 CFR 1320.13, we are requesting emergency processing for this new ICR because it cannot reasonably comply with normal clearance procedures. To avoid delay that could harm visitors to public lands, the YCC application process must be in place and available to interested applicants on February 1, 2020. Upon OMB approval of this emergency clearance request, we will follow the normal clearance procedures for the ICR.

Respondents/Affected Public: Youth 15 through 18 years old seeking seasonal employment with the above-named agencies through the YCC Program. Please note that if an applicant is under the age of 18; a parent/guardian may respond for the youth.

Total Estimated Number of Annual Respondents: 11,409 (8,599 respondents completing the application forms and 2,810 respondents competing the medical history forms).

Total Estimated Number of Annual Responses: 11,409 (8,599 applications and 2,810 medical history forms).

Estimated Completion Time per Response: 25 minutes for the application form and 14 minutes for the medical history form.

Total Estimated Number of Annual Burden Hours: 4,239 hours (3,583 hours (rounded) for application forms and 656 hours (rounded) for medical history forms).

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Jeffrey Parrillo,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–01818 Filed 1–30–20; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000. L51040000.FI0000. 20XL5017AR]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW183610, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As provided for under the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement of competitive oil and gas lease WYW183610 from EOG Resources, Inc. for land in Converse County, Wyoming. The lessee filed the petition on time, along with all rentals due since the lease terminated under the law. No leases affecting this land were issued before the petition was filed.

FOR FURTHER INFORMATION CONTACT: Chris Hite, Branch Chief for Fluid

Minerals Adjudication, Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009; phone 307–775–6176; email *chite@blm.gov.*

Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Hite 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. A reply will be sent during normal business hours.

SUPPLEMENTARY INFORMATION: Termination of a lease is automatic and statutorily imposed by Congress. Lease reinstatement terms are also set by Congress. Oil and gas lease WYW183610 terminated effective October 1, 2018, for failure to pay rental timely. The lessee petitioned for reinstatement of the lease and met all filing requirements for a Class II reinstatement.

The lessee agreed to the amended lease terms for rentals of $10 per acre, or fraction thereof, per year and royalty rates of 16 ⅔ percent. The lessee has paid the required $500 administrative fee and the $151 cost of publishing this notice. The lessee meets the requirements for reinstatement of the lease per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). Reinstatement of this lease conforms to the terms and conditions of all applicable land use plans and other National Environmental Policy Act documents.

The BLM proposes to reinstate the lease effective October 1, 2018, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The lease will be reinstated 30 days after publication of the notice of proposed reinstatement in the **Federal Register**.

Authority: 30 U.S.C. 188 (e)(4) and 43 CFR 3108.2–3 (b)(2)(v).

Chris Hite,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2020–01842 Filed 1–30–20; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD07000.51010000.ER0000. LVRWB09B1670 18X;C CACA–44014, CACA–56477; MO#4500141327]

Notice of Availability of the Record of Decision for the United States Gypsum Company Mine Expansion/ Modernization Project, Imperial County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Record of Decision (ROD) to approve a Mining Plan of Operations and authorize Rights-of-Way (ROW) for the United States Gypsum Company Mine Expansion/Modernization Project, and by this Notice is announcing its availability.

DATES: The Acting Assistant Secretary for Lands and Minerals Management signed the ROD on January 24, 2020.

ADDRESSES: Copies of the ROD are available for public inspection at the BLM El Centro Field Office at 1661 S 4th St, El Centro, CA 92243, and at the BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553. Interested persons may also review the ROD on the internet at: *https://bit.ly/2QiGK0m.*

FOR FURTHER INFORMATION CONTACT: Miriam Liberatore, BLM Project Manager, by telephone at 541–618–2412; by mail at Bureau of Land Management, Medford District Office, 3040 Biddle Road, Medford, OR 97504; or by email at *mliberat@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 Ms. Liberatore 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.

SUPPLEMENTARY INFORMATION: The Project is located in southwestern Imperial County, California, and involves both the Plaster City Wallboard Plant (processing plant) and Plaster City Quarry (quarry). The processing plant is located on Evan Hewes Highway approximately 18 miles west of the city of El Centro. The quarry is located on Split Mountain Road, approximately 26 miles northwest of Plaster City. Both sites are located within the BLM's California Desert Conservation Area.

The BLM and Imperial County published a joint Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) in 2006, and a Final EIR/EIS in 2008. The BLM did not issue a ROD and the United States Army Corps of Engineers (USACE), which will determine whether to issue a permit for the project under Section 404 of the Clean Water Act, was not a party to the Final EIR/EIS. This Supplemental EIS revises and supplements the 2008 Final EIR/EIS, updating conditions and effects that have changed since 2008, and includes the USACE and the United States Environmental Protection Agency, which has an advisory role regarding the Section 404 permit, as Cooperating Agencies.

Certain aspects of the Project originally analyzed in the 2006 Draft EIR/EIS and 2008 Final EIR/EIS have already been implemented under the conditions and approvals provided by Imperial County and were not subject to the jurisdiction of the BLM or the USACE.

The BLM published a Notice of Intent to prepare the Supplemental EIS on November 27, 2017 (82 FR 56046), initiating a 30-day public scoping period. The BLM held a public scoping meeting on December 13, 2017, in El Centro, California. Twelve individuals attended that meeting. Thirteen comments were received during the scoping period.

The BLM published a Notice of Availability of the Draft Supplemental EIS on July 19, 2019 (84 FR 34924), announcing a 45-day public comment period. The BLM held a public comment meeting on August 5, 2019. Seven individuals attended that meeting. The BLM received 13 comment letters during the comment period. Following the public comment period, comments were used to inform the Final Supplemental EIS. The BLM responded to substantive comments and made appropriate revisions to the document or explained why a comment did not warrant a change. These comments did not result in changes in the design, location, or timing of the Project in a way that would cause significant effects to the human environment outside of the range of effects analyzed in the EIS/EIR. Similarly, none of the letters identified new significant circumstances or information relevant to environmental concerns that bear on the Project and its effects. A response to substantive comments is included in the Final Supplemental EIS, released on December 6, 2019.

The Supplemental EIS considered the Proposed Action, a No-Action Alternative, and six action alternatives. Alternative 1, Proposed Action, would expand the quarry as described in the Mining Plan of Operations, replace the existing waterline, and install a new waterline between the quarry and the new well. Alternative 2, No Action Alternative, would continue operations as they currently are permitted without expanding the quarry or replacing the existing waterline. Alternative 3, Partial Imperial Irrigation District (IID) Water Supply, would provide for a new waterline between the processing plant and the IID Westside Main Canal to partially replace processing water from a groundwater source with a surface water source. Alternative 4, Full IID Water Supply, would fully replace the processing water with surface water. Alternatives 5 through 8 are variations on the mining plan proposed in the Mining Plan of Operations. The BLM identified Alternative 3, Partial IID Water Supply, as the Agency-Preferred Alternative in the Final Supplemental EIS.

With this ROD, the BLM adopts the Agency Preferred Alternative. The Acting Assistant Secretary for Lands and Minerals Management approval of this decision is not subject to administrative appeal under Departmental regulations at 43 CFR part 4 pursuant to 43 CFR 4.410(a)(3). Any challenge to this decision must be brought in Federal District Court and is subject to 42 U.S.C. 4370m–6(a)(1).

Authority: 40 CFR 1506.6; 40 CFR 1506.10; 43 CFR 1610.2, 42 U.S.C. 4370m–6(a)(1)

Joe Stout,

Acting State Director.

[FR Doc. 2020–01669 Filed 1–30–20; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK940000.L14100000.BX0000.20X. LXSS001L0100]

Filing of Plats of Survey; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of lands described in this notice are scheduled to be officially filed in the Bureau of Land Management (BLM), Alaska State Office, Anchorage, Alaska. These surveys were executed at the request of the Bureau of Indian Affairs and the BLM, are necessary for the management of these lands.

DATES: The BLM must receive protests by March 2, 2020.

ADDRESSES: You may buy a copy of the plats from the BLM Alaska Public Information Center, 222 W. 7th Avenue, Mailstop 13, Anchorage, AK 99513. Please use this address when filing written protests. You may also view the plats at the BLM Alaska Public Information Center, Fitzgerald Federal Building, 222 W. 8th Avenue, Anchorage, Alaska, at no cost.

FOR FURTHER INFORMATION CONTACT: Douglas N. Haywood, Chief, Branch of Cadastral Survey, Alaska State Office, Bureau of Land Management, 222 W. 7th Avenue, Anchorage, AK 99513; 907–271–5481; *dhaywood@blm.gov.* People who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the BLM 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 lands surveyed are:

U.S. Survey No. 14485, accepted November 7, 2019, situated within:

Kateel River Meridian, Alaska

T. 12 S., R. 6 E.

U.S. Survey No. 14486, accepted December 12, 2019, situated within:

Copper River Meridian, Alaska

T. 18 N., R. 13 E.

Copper River Meridian, Alaska

T. 4 N., R. 1 W., accepted November 18, 2019
T. 9 S., R. 1 W., accepted August 21, 2019
T. 12 S., R. 5 E., accepted August 21, 2019

Seward Meridian, Alaska

T. 3 S., R. 52 W., accepted January 14, 2020
T. 33 S., R. 22 W., accepted November 6, 2019

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the State Director for the BLM in Alaska. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. You must file the notice of protest before the scheduled date of official filing for the plat(s) of survey being protested. The BLM will not consider any notice of protest filed after the scheduled date of official filing. A notice of protest is considered filed on the date it is received by the State Director for the BLM in Alaska during regular business hours; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of a protest, if not filed with the notice of protest, must be filed with the State Director for the BLM in Alaska within 30 calendar days after the notice of protest is filed.

If a notice of protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the dismissal or resolution of all protests of the plat.

Before including your address, phone number, email address, or other personally identifiable information in a notice of protest or statement of reasons, you should be aware that the documents you submit, including your personally identifiable information, may be made publicly available in their entirety at any time. While you can ask the BLM to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chap. 3.

Douglas N. Haywood,

Chief Cadastral Surveyor, Alaska.

[FR Doc. 2020–01870 Filed 1–30–20; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000. L51040000.FI0000. 16XL5017AR]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW180623, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As provided for under the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement of competitive oil and gas lease WYW180623 from Bondero, LLC and Wave Petroleum, LLC for land in Converse County, Wyoming. The lessees filed the petition on time, along with all rentals due since the lease terminated under the law. No leases affecting this land were issued before the petition was filed.

FOR FURTHER INFORMATION CONTACT: Chris Hite, Branch Chief for Fluid Minerals Adjudication, Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne,

Wyoming 82009; phone 307–775–6176; email *chite@blm.gov.*

Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Hite 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. A reply will be sent during normal business hours.

SUPPLEMENTARY INFORMATION: Termination of a lease is automatic and statutorily imposed by Congress when rental fees are not paid in a timely manner. Reinstatement terms are also set by Congress. Oil and gas lease WYW180623 terminated effective April 1, 2016, for failure to pay rental timely. The lessees petitioned for reinstatement of the lease and met all filing requirements for a Class II reinstatement. The lessees agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessees paid the required $500 administrative fee and the $159 cost of publishing this notice. The lessees met the requirements for reinstatement of the lease per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). Reinstatement of this lease conforms to the terms and conditions of all applicable land use plans, including the 2015 Approved Resource Management Plan Amendments for the Rocky Mountain Region, and other National Environmental Policy Act documents.

The BLM proposes to reinstate the lease effective April 1, 2016, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The lease will be reinstated 30 days after publication of this proposed reinstatement notice in the **Federal Register**.

Authority: 30 U.S.C. 188 (e)(4) and 43 CFR 3108.2–3 (b)(2)(v).

Chris Hite,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2020–01843 Filed 1–30–20; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000. L51040000.FI0000. 16XL5017AR]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW131627, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As provided for under the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement of competitive oil and gas lease WYW131627 from Osborn Heirs Company LTD, Four-Ten Exploration, Gerald Peters, and G H Exploration Inc., for land in Campbell County, Wyoming. The lessees filed the petition on time, along with all rentals due since the lease terminated under the law. No leases affecting this land were issued before the petition was filed.

FOR FURTHER INFORMATION CONTACT: Chris Hite, Branch Chief for Fluid Minerals Adjudication, Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009; phone 307–775–6176; email *chite@blm.gov.*

Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Hite 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. A reply will be sent during normal business hours.

SUPPLEMENTARY INFORMATION: Termination of a lease is automatic and statutorily imposed by Congress. Alternatively, reinstatement terms are also set by Congress. Oil and gas lease WYW131647 terminated effective March 1, 2016, for failure to pay rental timely. The lessee petitioned for reinstatement of the leases and met all filing requirements for a Class II reinstatement. The lessee agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively and additional lease stipulations. The lessee has paid the required $500 administrative fee and the $151 cost of publishing this notice. The lessee met the requirements for reinstatement of the lease per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). Reinstatement of the lease conforms to the terms and conditions of all applicable land use plans and other applicable National Environmental Policy Act documents. The BLM proposes to reinstate the lease effective March 1, 2016, under the amended terms and conditions of the lease and the increased rental and royalty rates cited above.

Authority: 30 U.S.C. 188 (e)(4) and 43 CFR 3108.2–3 (b)(2)(v).

Chris Hite,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2020–01844 Filed 1–30–20; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYD04000.L16100000.DP0000.19X]

Notice of Availability of the Draft Resource Management Plan Amendment and Draft Environmental Impact Statement for Wild Horse Management in the Bureau of Land Management Rock Springs and Rawlins Field Offices, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) Rock Springs Field Office has prepared a Draft Resource Management Plan (RMP) Amendment and Draft Environmental Impact Statement (EIS) for Wild Horse Management within the BLM Wyoming Rock Springs and Rawlins field offices. By this notice, the BLM is announcing the opening of a 90-day public comment period.

DATES: To ensure the BLM is able to consider your feedback, please submit written comments by April 30, 2020. BLM Wyoming will host two public meetings during the public comment period and will announce the specific dates, times, and locations through public notices, media news releases, and mailings at least 15 days prior to the meetings.

ADDRESSES: You may review the Draft EIS and RMP Amendment and submit comments online via the BLM's ePlanning website: *https://go.usa.gov/xPUWj.*

FOR FURTHER INFORMATION CONTACT: Kimberlee Foster, Field Manager, BLM Rock Springs Field Office at 307–352–0256 or *kfoster@blm.gov.* People who use a telecommunications device for the deaf 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, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM manages wild horses under the authority of the Wild Free-Roaming Horses and Burros Act of 1971, as

amended, to ensure healthy wild horse herds thrive on healthy rangelands in balance with other resources. The Act requires the BLM to manage wild horses at appropriate management levels (AMLs) to achieve a thriving natural ecological balance. It also requires the BLM to remove wild horses that have strayed onto private lands if the landowner requests their removal.

In June 2010, the Rock Springs Grazing Association (RSGA) filed a lawsuit (*Rock Springs Grazing Association* v. *Salazar,* No. 11–CV–00263–NDF) in the U.S. District Court for the District of Wyoming contending the BLM violated Section 4 of the Wild Free-Roaming Horses and Burros Act (16 U.S.C. 1334) by failing to remove strayed animals from private lands controlled by the RSGA in southern Wyoming's checkerboard pattern of alternating public and private lands. In April 2013, the court approved a Consent Decree and Joint Stipulation for Dismissal that resolved the lawsuit and required the BLM to evaluate potential changes to its management of wild horses on checkerboard lands by considering an RMP amendment for the Rock Springs and Rawlins field offices. The BLM initiated this planning effort to meet the terms of the Consent Decree, which directs the BLM to analyze the following actions:

- Change the Salt Wells Creek Herd Management Area (HMA) to a herd area, which would be managed for zero wild horses, and re-gather the herd area to zero wild horses if its wild horse population exceeds 200;
- Change the Great Divide Basin HMA to a herd area, which would be managed for zero wild horses, and re-gather the herd area to zero wild horses if its wild horse population exceeds 100;
- Change the Adobe Town HMA's AML to 225–450 wild horses or lower, and do not relocate horses gathered from Adobe Town to Salt Wells Creek; and
- Manage the White Mountain HMA as a non-reproducing herd with a population of 205 wild horses by utilizing fertility control and sterilization methods, and initiate gathers if the HMA's population exceeds 205 wild horses.

The BLM is developing an EIS to analyze the impacts of these wild horse management actions. If approved, management actions analyzed in this Draft EIS would amend the 1997 Green River RMP and the 2008 Rawlins RMP.

The planning area for this Draft EIS/RMP Amendment covers the four HMAs that include checkerboard land and are addressed in the Consent Decree, encompassing approximately 2,811,401 acres in the Rock Springs and Rawlins field offices. The BLM manages approximately 1,920,314 acres of surface estate in the planning area. Private land in the planning area totals approximately 814,086 acres.

Before including your address, phone number, email address, or other personally identifying information in your comment, you should be aware that your entire comment—including your personally identifying information—may be made publicly available at any time. While you can ask the BLM in your comment to withhold your personally identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 1610.2; 40 CFR 1506.6(b).

Lori A. Armstrong,

Acting State Director, Wyoming.

[FR Doc. 2020–01979 Filed 1–30–20; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKR–GLBA–NPS0028320; PX.XGLBARP18.00.1 (200); OMB Control Number 1024–0281]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Glacier Bay National Park and Preserve Bear Sighting and Encounter Reports

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before March 2, 2020.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's (OMB) Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or by facsimile at 202–395–5806. Please provide a copy of your comments to Phadrea Ponds, Acting Information Collection Clearance Officer, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525; or by email at *phadrea_ponds@nps.gov.* Please reference OMB Control Number 1024–0281 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Margaret Hazen, Glacier Bay National Park and Preserve, Supervisory Park Ranger, P.O. Box 140, Gustavus, AK 99826; or by email at *Margaret_Hazen@nps.gov.* Please reference OMB Control Number 1024–0281 in the subject line of your comments. 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 November 21, 2019, we published a **Federal Register** notice soliciting comments on this collection of information for 60 days, ending on January 21, 2020 (84 FR 64337). We received one comment via email, on January 21, 2020 from the State of Alaska ANILCA Implementation Program that represented the consolidated views of state resource agencies.

ANILCA Comment

The State provided comments on this information collection request previously in a letter dated November 23, 2016. Those comments remain relevant; therefore, we adopt them by reference and reiterate our request that completion of the forms remain voluntary. It is likely that most visitors would reach out to park staff in the event of a negative bear encounter or inappropriate activities regardless and both forms contain 24-hour emergency contact information, which should be adequate to address visitor safety and compliance issues. We support the dissemination of visitor information that educates the public on bear safety and ''Leave No Trace'' practices and explains the benefits of reporting observations to encourage participation. Voluntary compliance combined with education outreach would allow the Service to obtain the desired information without inadvertently subjecting visitors to the threat of citation or intrusion on their personal experiences.

NPS Response

The submission of NPS Forms 10–405 and 10–406 is now described as voluntary and submitted upon or after exiting the park backcountry and will continue to collect information regarding bear sightings within GLBA. The change was made because the forms are not ''required or mandatory to obtain or receive a benefit.'' Park visitors are now encouraged to complete and return the forms at the end of their visit.

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 NPS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the NPS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the NPS 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 Park Service Organic Act, 54 U.S.C. 100101(a) *et seq.,* requires that the NPS preserve national parks for the enjoyment, education, and inspiration of this and future generations. In order to monitor resources and wildlife in the Glacier Bay National Park and Preserve (GLBA) and to enhance the safety of future visitors, the park monitors bear sightings and interactions with visitors. NPS regulations codified in 36 CFR 1–7, 12 and 13 implement statutory mandates that provide for resource protection and public enjoyment. The bear sighting and encounter reporting forms are an extension of our statutory authority and responsibility to protect the park areas we administer and to manage the public use thereof.

Bear sighting data provides the park with important information used to determine bear movements, habitat use, and species distribution. This information can be used in backcountry management and planning, field research planning, and educational outreach for visitors. Bear-human interaction data is vital to understanding how bears respond to people, detecting changes in bear behavior, and identifying potential areas of high bear-human conflict. Whenever possible, obtaining immediate information on bear-human conflicts allows managers to respond promptly to mitigate further conflicts. Proactive mitigation includes notifying other backcountry users, issuing advisories or recommendations, or issuing closures to prevent further conflicts and maintain public safety. Additionally, managers may respond to reports of bear-human conflict with bear management techniques such as hazing or aversive conditioning. Obtaining current accurate information on bear sightings and interactions is essential for public safety and to effectively manage bears and visitors to minimize conflicts. Summary statistics (without personal information) may be generated to examine long-term trends in types and locations of bear-human interactions. Observations and interactions can be recorded by visitors using two forms: NPS 10–405, ''Tatshenshini—Alsek River Bear Report'' and 10–406, ''Bear Information Management Report.'' The collection and timeliness of the data enhance NPS' ability to provide for the safety of future visitors and to protect the bear population at the park.

The submission of NPS Form 10–405 is voluntary upon or after exiting the park backcountry and is used to collect information regarding bear sightings within GLBA. Information collected via NPS Form 10–405 includes:

- Group name;
- Take-out date;
- Whether visitor encountered dirty campsites left by previous users or observe unsafe or inappropriate behavior by other groups; and
- Detailed information for each sighting documented on the form, to include:
  - Date/time
  - Species type
  - Total number of bears seen together (for each sighting)
  - Bear unit type
  - Estimation of distance between visitor and bear(s)
  - Whether the bear was aware of the group
  - Bear reaction to group
  - Activity of group
  - Number of observers and
  - Location description/campsite name/GPS position/other comments

Submission of a completed NPS Form 10–406 is voluntary and can be used to document when a bear enters camp, approaches the group, damages gear, obtains food, and/or acts in an aggressive or threatening manner towards the group. Information collected via NPS Form 10–406 includes:

- Name and phone number of the primary person involved in the interaction;
- Group type: Park visitor, concession employee, contractor, researcher, NPS employee, or other;
- Number of people who encountered the bear;
- Corresponding sighting number on NPS Form 10–405; Location 1–28 (Backcountry vs. Developed Area A and B);
- Types of vegetation in area of encounter;
- The bear's activity when it was first observed;
- The group's activity prior to seeing the bear;
- The bear's initial and subsequent reaction to the group;
- Group's response to bear's reaction;
- Group's distance to the bear;
- Whether food was present, and if so, if it was eaten by the bear;
- Whether property was damaged;
- Detailed description of the interaction;
- Detailed description of the bear, to include color, markings, scars, tags, etc.;
- Date, time, and duration of encounter;
- Exact location of encounter documented on map provided by GLBA, to include the latitude/longitude;
- Where did the individual learn about how to behave while in bear country; and
- Whether visitor encountered dirty campsites left by previous users or observe unsafe or inappropriate behavior by other groups.

Title of Collection: Glacier Bay National Park and Preserve Bear Sighting and Encounter Reports.

OMB Control Number: 1024–0281.

Form Number: 10–405, ''Tatshenshini—Alsek River Bear Report'' and 10–406, ''Bear Information Management Report''.

Type of Review: Extension of a currently approved collection.

Description of Respondents: Backcountry and frontcountry visitors to Glacier Bay National Park and Preserve.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Activity	Estimated annual number of responses	Estimated completion time per response	Estimated total annual burden hours
NPS Form 10–405, "Tatshenshini—Alsek River Bear Report Form 1"	40	5 mins	3
NPS Form 10–406, "Tatshenshini—Alsek River Bear Information Management (BIM) Report Form 2".	10	5 mins	1
Totals	50		4

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.*).

Phadrea Ponds,

Acting Information Collection Clearance Officer, National Park Service.

[FR Doc. 2020–01974 Filed 1–29–20; 4:15 pm]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRSS–EQD–SSB–NPS0028090; PPAKWEARS2, PPMPRLE1Z.LS0000 (200); OMB Control Number 1024–0262]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Community Harvest Assessments for Alaskan National Parks, Preserves, and Monuments

AGENCY: National Park Service, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before March 2, 2020.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's (OMB) Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or by facsimile at 202–395–5806. Please provide a copy of your comments to Phadrea Ponds, Acting Information Collection Clearance Officer, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525; or by email at *phadrea_ponds@nps.gov.* Please reference OMB Control Number 1024–0262 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nicole Braem, Cultural Anthropologist, Bering Land Bridge National Preserve, Nome, AK 99762; or by email at *nicole_braem@nps.gov;* or by telephone at 907–443–6107. Please reference OMB Control Number 1024–0262 in the subject line of your comments. 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 November 21, 2019 we published a **Federal Register** notice soliciting comments on this collection of information for 60 days, ending on January 21, 2020 (84 FR 64336). We received one comment via email, on January 21, 2020 from the State of Alaska ANILCA Implementation Program that represented the consolidated views of state resource agencies. No actions were required.

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 NPS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the NPS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the NPS 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: Under the provisions of the Alaska National Interest Lands Conservation Act (ANILCA), qualified rural residents are provided the opportunity to harvest fish, wildlife, and other subsistence resources in national parks, preserves and monuments in Alaska. This collection gathers information on subsistence harvest patterns and the impact of rural economy from resident zone communities associated with Alaskan parks, preserves, and monuments. This information collection is authorized by the NPS Management Policies 2006, Section 8.11.1, which states that social science research will be used to provide an understanding of park visitors, the non-visiting public, gateway communities and regions, and human interactions with park resources. The NPS is seeking an extension to continue to survey Alaska residents who customarily and traditionally engage in subsistence activities within NPS units.

In 2012, a survey was conducted in Wrangell-St. Elias National Park and Preserve and Gates of the Arctic National Park and Preserve to understand the effects of subsistence harvesting. In 2017, this collection increased the scope of inquiry and was updated to include the following Alaskan National Parks, Preserves, and Monuments:

- Aniakchak National Monument (ANIA)
- Bering Land Bridge National Preserve (BELA)
- Cape Krusenstern National Monument (CAKR)

- Gates of the Arctic National Park and Preserve (GAAR)
- Kobuk Valley National Park (KOVA)
- Noatak National Preserve (NOAT)
- Wrangell-St. Elias National Park and Preserve (WRST)
- Yukon-Charley Rivers National Preserve (YUCH)

To conduct the surveys, a facilitator uses in-person interviews to collect information about harvests, uses, and sharing of subsistence resources. Search and harvest areas are also mapped over the course of the interview. At the end of the study, reports are provided to park managers, state and other federal agencies involved in management of subsistence resources, citizen advisory groups, and the surveyed communities describing levels and patterns of subsistence uses in these parks. Information from this collection is also used by the Federal Subsistence Board and the State of Alaska in making recommendations and decisions regarding seasons and harvest limits of fish, wildlife, and plants in the regions which communities have customarily and traditionally gathered resources.

Title of Collection: Community Harvest Assessments for Alaskan National Parks, Preserves, and Monuments.

OMB Control Number: 1024–0262.

Form Number: None.

Type of Review: Revision of a currently approved collection.

Respondent's Obligation: Voluntary.

Frequency of Collection: One-time.

Total Estimated Annual Nonhour Burden Cost: None.

Activity	Estimated annual respondents	Estimated annual responses	Average completion time per response (minutes)	Estimated annual burden hours *
Community Harvest Assessments	1,389	1,389	60	1,389
Non-response Survey	1,834	1,834	10	306
Totals:	3,223	3,223	.....	1,695

* Rounded

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Acting, Information Collection Clearance Officer, National Park Service.

[FR Doc. 2020–01802 Filed 1–30–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–PVE–LWCF–NPS0028089; 1PPWOSLAD00 PCA00SA82.Y00000 19XP503582 (PS.SSLAD0019.00.1); OMB Control Number 1024–0031]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Land and Water Conservation Fund State Assistance Program

AGENCY: National Park Service, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before March 2, 2020.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's (OMB) Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or by facsimile at 202–395–5806. Please provide a copy of your comments to Phadrea Ponds, Acting Information Collection Clearance Officer, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525; or by email at *phadrea_ponds@nps.gov.* Please reference OMB Control Number 1024–0031 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Elisabeth Fondriest, Recreation Grants Chief, 1849 C Street NW (2225), Washington, DC 20240; or by email at *elisabeth_fondriest@nps.gov;* or by telephone at 202–354–6916. Please reference OMB Control Number 1024–0031 in the subject line of your comments. 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 14, 2019, we published a **Federal Register** notice soliciting comments on this collection of information for 60 days, ending on July 15, 2019 (84 FR 21357). We received one comment from the public in response to that notice. This comment did not necessitate any revisions to the information collection.

We are again soliciting comments on the proposed ICR described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the NPS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the NPS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the NPS 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 Land and Water Conservation Fund Act of 1965 (LWCF Act) (54 U.S.C. 200305) was enacted to help preserve, develop, and ensure access for the public to outdoor recreation opportunities. The LWCF Act provides funds for and authorizes federal assistance to the States for planning, acquisition, and development of needed land and water areas and facilities. In accordance with the LWCF Act, the National Park Service (we, NPS) administers the LWCF State Assistance Program, which provides matching grants to States and through the States to local units of government. As used in this information collection request, the term ''States'' includes the 50 States; the Commonwealths of Puerto Rico and the Northern Mariana Islands; the District of Columbia; and the Territories of Guam, the U.S. Virgin Islands, and American Samoa.

LWCF grants are provided to States on a matching basis for up to 50 percent of the total project-related allowable costs. Grants to eligible insular areas may be for 100 percent assistance. States establish their own priorities and criteria and award their grant money through a competitive selection process based on a state-wide recreation plan. Payments for all projects are made to the State agency that is authorized to accept and administer funds paid for approved projects. Local units of government participate in the program as sub-grantees of the State, with the State retaining primary grant compliance responsibility.

The following information is collected to administer the LWCF State Assistance Program:

Application (Forms 10–903 and 10–904). States may seek financial assistance for acquisition, development, or planning projects to be conducted under the LWCF Act. To receive a grant, States must submit an application to NPS for review and approval. We use the information provided in applications to determine eligibility under the authorizing legislation and to select those projects that will provide the highest return on the federal investment. Project proposals for LWCF grants comprise the following:

• *NPS Form 10–902 Project Agreement, Request for Discontinuation.* Previously, Form 10–902 was used to document the agreement between the NPS and the State for accomplishing the project, binding the Federal Government and the State to certain obligations through its acceptance of federal assistance. With this renewal the NPS requests to discontinue use of this form in favor of a standard grant and cooperative agreement template that is used across the NPS, which is prepared by LWCF State Assistance Program staff.

• *NPS Form 10–903 Description and Notification Form (DNF).* The State must submit a DNF for each park or other recreation area that will be assisted with grant funds. This form provides data about the assisted project site(s), such as location, acreages and details about improvements, as understood at the beginning of each grant project.

• *NPS Form 10–904 Grant Application and Revision Form, Request for Form Revision.* In response to State and NPS LWCF Program staff suggestions, the NPS is proposing to revise the form previously named 10–904 Proposal Description and Environmental Screening Form (PD/ESF) to create two sub-versions, one for grant-related actions (renamed to Form 10–904, Grant Application and Revision Form) and one for post-grant stewardship and compliance actions (Form 10–904A, Compliance and Stewardship Form). Both versions of the form will continue to provide administrative and descriptive information federal decision-makers need to understand the nature of the proposed grant-funded project or subsequent amendments, including conversions and other non-recreation uses.

The revised NPS Form 10–904, renamed the Grant Application and Revision Form, will be required from States submitting applications for a new project and any requested amendments to the subsequent grant agreement.

• *Budget Narrative.* Project sponsors must prepare estimates of the cost(s) of the proposed grant project.

• *Pre-award On-site Inspection Report.* The State must physically inspect proposed project sites prior to the award of grant funds and report on the findings. The inspection must be conducted in accord with the onsite inspection agreement between the State and NPS. See additional information under Reports, below.

• *Maps and other supporting documentation.* Applicants must develop and submit two maps: One depicting the general location of the park as well as the entrance area; the other delineating the specific boundary of the outdoor recreation area that will be protected for outdoor recreation purposes and subject to the conversion provisions at 54 U.S.C. 200305(f). Applicants should submit other documents that have a significant bearing on the project.

Grant Amendment (Forms 10–903 and 10–904). After initial award and over the course of the award performance period, a State or project sponsor may seek to amend the agreed-upon terms (*e.g.,* award end date, scope of work, or budget). NPS must review and approve such changes. To describe the reasons the change(s) is/are needed and the impact(s) to the overall project, States must submit an amendment request on behalf of themselves or the local sponsor, which depending on the nature of the change could comprise the following elements:

1. Request and recommendation letter from the State Liaison Officer (SLO),
2. Revised SF–424 forms and budget narrative,
3. Revised boundary map, and/or
4. Revised 10–903, DNF.

• *NPS Form 10–904 Grant Application and Revision Form.* The revised NPS Form 10–904 (PD/ESF), renamed the Grant Application and Revision Form, will be required from States requesting amendments to the subsequent grant agreement. The revised form will constitute the cover and certification pages, Steps 1 through 3A, plus Steps 5 through 7 of the previous version of Form 10–904—PD/ESF.

• *NPS Form 10–903 Description and Notification Form.* A revised DNF may be required for changes in scope that significantly alter the planned facility development or the acreage of the site or area to be protected under 6(f).

Conversion of Use and Other Post-Award Stewardship Issues (Forms 10–902A, 10–903, and 10–904A). In accordance with 54 U.S.C. 200305(f) and implementing regulations found at 36 CFR 59, no lands acquired or developed with LWCF funds can be converted to other than public outdoor recreation uses without the approval of the Secretary of the Interior. States must submit a formal request to the appropriate NPS Regional Office with documentation to substantiate that: (a) All alternatives to the conversion have been evaluated and then rejected on a sound basis; (b) required replacement land being offered as a substitute is of reasonably equivalent location and recreational usefulness as the assisted site proposed for conversion; (c) the property proposed for substitution meets the eligibility requirements for LWCF assistance; and (d) replacement property is of at least equal fair market value as established by an appraisal developed in accordance with federal appraisal standards. Required documentation is similar to that submitted for grant applications and amendment requests. Additional documents include maps showing the existing protected recreation area and

delineating the area to be converted and of the proposed replacement property.

• *NPS Form 10–904A Compliance and Stewardship Form, Request for New Form.* As part of the revision to Form 10–904, this is a new form request. The proposed form will be required from States post-grant completion when seeking approval to convert a property from recreation use or for a non-recreation use of the site. The new form will constitute the cover and certification pages, Steps 3B through 4, plus Steps 5 through 7 of the previous version of Form 10–904—PD/ESF. In addition, some information previously requested in a narrative format will now be requested in a question and answer format.

• *NPS Form 10–902A Project Amendment Agreement.* With this renewal the NPS is requesting to discontinue use of the 10–902A for grant amendments in favor of a standard grant and cooperative agreement amendment template that is used across the NPS, which is prepared by LWCF State Assistance Program staff. Form 10–902A will continue to be used for compliance and stewardship actions. It is required to alter the signed Project Agreement for conversion requests. When the amendment is signed by the NPS, it becomes part of the agreement and supersedes it in the specified matters.

Statewide Comprehensive Outdoor Recreation Plan (SCORP). The LWCF Act requires that to be eligible for LWCF financial assistance, each State must prepare and submit a SCORP to NPS for approval. The NPS requires a new or updated SCORP at least once every 5 years. The SCORP must include:

• The name of the State agency that will have the authority to represent and act for the State.

• An evaluation of the demand for and supply of outdoor recreation resources and facilities in the State.

• A program for the implementation of the plan.

• Certification by the Governor that ample opportunity for public participation has taken place in plan development.

Open Project Selection Process (OPSP). Each State must develop an OPSP that provides objective criteria and standards for grant selection that are explicitly based on each State's priority needs for the acquisition and development of outdoor recreation resources as identified in the SCORP. The OPSP is the connection between the SCORP and the use of LWCF grants to assist State efforts in meeting high priority outdoor recreation resource needs. To ensure continuing close ties between the SCORP and the OPSP, States must review project selection criteria each time that a new or amended SCORP is approved by the NPS. States must submit to the NPS a revised set of OPSP criteria that conform to any changes in SCORP priorities or submit an appropriate certification that no such revisions are necessary.

Request for a Public Facility (Form 10–904A). Except for certain kinds of recreation-supporting facilities (*e.g.,* restrooms, visitor information centers), project sponsors must seek NPS approval when constructing an indoor structure on a property that has received LWCF assistance. In most cases, development of an indoor structure would constitute a conversion, but, in certain cases NPS may approve them where it can be shown that they will enhance the outdoor recreation uses of a park and there will be a net gain in benefits to the outdoor recreating public using that park. The request describes the nature of the facility, how it will support and enhance the outdoor recreation use of the site, and ownership and management; as well as a copy of a revised boundary map indicating the location of the proposed facility.

Request for Temporary Non-Conforming Use (Form 10–904A). Project sponsors must seek NPS approval for the temporary (up to 6 months) use of an LWCF-assisted site for purposes that do not conform to the public outdoor recreation requirements. Besides Form 10–904A, the State's proposal to NPS must include:

1. Request and recommendation letter from the SLO, and

2. Acknowledgement by the SLO that a full conversion will result if the temporary use has not ceased after 6 months.

Request for Significant Change of Use (Form 10–904A). Project sponsors must seek NPS approval to change the use of an assisted site from one eligible use to another when the proposed use significantly contravenes the plans or intent for the area as they were outlined in the original LWCF application for federal assistance; *e.g.,* changing a site's use from passive to active recreation.

Request to Shelter Facilities (Form 10–904A). Project sponsors must seek NPS approval to construct a new outdoor recreation facility, or partially or fully enclose an existing facility, such as a pool or ice rink, to shelter them from severe climatic conditions and thereby increase the recreational opportunities. This approval is required whether seeking to use LWCF grant funds for this purpose or not.

Extension of the 3-year Limit for Delayed Outdoor Recreation Development. Project sponsors must seek NPS approval to continue a non-recreation use beyond the 3-year limit for acquisition projects that were previously approved with delayed outdoor recreation development. The State must submit a written request and justification for such an extension to NPS before the end of the initial 3-year period. This request must include:

1. A full description of the property's current public outdoor recreation resources and the public's current ability to use the property; and

2. An update of the project sponsor's plans and schedule for developing outdoor recreation facilities on the property.

Reports. We use this information provided in reports to ensure that the grantee is accomplishing the work on schedule and to identify any problems that the grantee may be experiencing in accomplishing that work.

• *Onsite Inspection Reports.* States must administer a regular and continuing program of onsite inspections of projects. Onsite inspection reports are prepared for all inspections conducted and are included in the official project files maintained by the State. Progress onsite inspection reports occur during the grant project period and are generally combined with the annual performance report or when grant payments are made. Final onsite inspection reports must be submitted to the NPS within 90 days after the date of completing a project and prior to final reimbursement and administrative closeout. Post-completion onsite inspection reports must be completed within 5 years after the final project reimbursement and every 5 years thereafter. If there are problems, the report should include a description of the discrepancy and the corrective action to be taken. Only reports indicating problems are forwarded to the NPS for review and necessary action; all other reports are maintained in State files.

• *Financial and Program Performance Reports.* In accordance with 2 CFR 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), grantees must monitor grant and sub-grant supported activities to ensure compliance with applicable federal requirements and to ensure performance goals are being achieved. States must submit reports to NPS at least annually that include performance and financial information.

Request for Reimbursement/Record of Electronic Payment (Form 10–905). States use the Automated Standard Application for Payments (ASAP)

system for drawing funds on approved grants. For planning grants, States must submit to NPS a progress report and request for reimbursement before they may request payments. Payments on acquisition and development projects do not require prior approval, but upon completion of an electronic payment on a given date the State must concurrently (within 24 hours) submit a completed NPS Form 10–905, ''Record of Electronic Payment'' to the LWCF Program offices in Washington, DC and applicable NPS Region.

Recordkeeping. To comply with the grant requirements of 2 CFR 200, States must maintain financial records, supporting documents, statistical records, and all other records pertinent to a grant program for a period of 3 years after final payment on a project. The records must be retained beyond the 3-year period if audit findings have not been resolved. However, to comply with the LWCF Act perpetuity requirements, States must maintain sufficient records to allow them to keep track of parks and other recreation areas that have been assisted.

Title of Collection: Land and Water Conservation Fund State Assistance Program, 54 U.S.C. 200305.

OMB Control Number: 1024–0031.

Form Number: NPS Forms, 10–902A, 10–903, 10–904, 10–904A and 10–905.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: States Governments; the Commonwealths of Puerto Rico and the Northern Mariana Islands; the District of Columbia; and the territories of Guam, U.S. Virgin Islands, and American Samoa.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Activity	Estimated annual respondents	Estimated annual responses	Average completion time per response (hours)	Estimated annual burden hours *
Application (NPS Forms 10–903, and 10–904):				
State/Local/Tribal Governments	56	448	16	7,168
Grant Amendment (NPS Forms 10–903 and 10–904):				
State/Local/Tribal Governments	50	180	5	900
Conversion of Use (NPS Forms 10–902A, 10–903, and 10–904A):				
State/Local/Tribal Governments	50	50	92.5	4,625
Statewide Comprehensive Outdoor Recreation Plan (SCORP):				
State/Local/Tribal Governments	11	11	600	6,600
Open Project Selection Process:				
State/Local/Tribal Governments	11	11	30	330
Request for Public Facility (NPS Form 10–904A):				
State/Local/Tribal Governments	8	8	16	128
Request for Temporary Non-Conforming Use (NPS Form 10–904A):				
State/Local/Tribal Governments	5	5	16	80
Request for Significant Change of Use (NPS Form 10–904):				
State/Local/Tribal Governments	2	2	16	32
Extension of 3-Year Limit for Delayed Outdoor Recreation Development:				
State/Local/Tribal Governments	5	5	16	80
Onsite Inspection Reports:				
State/Local/Tribal Governments	56	5040	5.75	28,980
Financial and Program Performance Reports:				
State/Local/Tribal Governments	56	840	1	840
Recordkeeping:				
State/Local/Tribal Governments	56	56	40	2,240
Request for Reimbursement/Record of Electronic Payment (NPS Form 10–905):				
State/Local/Tribal Governments	56	448	1	448
Proposal to Shelter Facilities:				
State/Local/Tribal Governments	1	1	16	16
Totals	423	7,105	.....	52,467

* Rounded.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Acting, NPS Information Collection Clearance Officer, National Park Service.

[FR Doc. 2020–01801 Filed 1–30–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–PCE–COR–NTS–NPS0028331; PPWOPCADT0, PPMPSPD1T.Y00000 (200); OMB Control Number 1024–0283]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Application for Designation as National Recreation Trail or National Water Trail

AGENCY: National Park Service, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before March 2, 2020.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's (OMB) Desk Officer for the Department of the Interior by email at

OIRA_Submission@omb.eop.gov; or by facsimile at 202–395–5806. Please provide a copy of your comments to Phadrea Ponds, Acting Information Collection Clearance Officer, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525; or by email at *phadrea_ponds@nps.gov.* Please reference OMB Control Number 1024–0283 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Peter Bonsall, National Trails System Program Specialist, National Recreation Trails Coordinator for the Department of the Interior 12795 W. Alameda Parkway, Lakewood, CO 80228; or by email at *peter_bonsall@nps.gov;* or by telephone at 303–969–2620. Please reference OMB Control Number 1024–0283 in the subject line of your comments. 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 October 11, 2019, we published a **Federal Register** notice soliciting comments on this collection of information for 60 days, ending on December 10, 2019 (84 FR 54921). No public comments were received in response to this notice.

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 NPS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the NPS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the NPS 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 NPS administers the NRT program as authorized by section 4 of the National Trails System Act (16 U.S.C. 1243) and Secretarial Order No. 3319, which establishes National Water Trails as a class of National Recreation Trails and directs that such trails collectively be considered in a National Water Trails System.

The NPS uses forms 10–1002: *Application for Designation as National Water Trail* and 10–1003: *Application for Designation as National Recreation Trail,* to evaluate the applications for adherence to NRT requirements and criteria. NPS Approval of an application is based on (1) the sufficiency of information provided on the application form and in supporting documentation, such as photographs, maps, and written landowner consents that accompany the form, and (2) successfully meeting the NRT requirements and criteria. Successful applications are forwarded to the Secretary of the Interior for approval.

Title of Collection: Application for Designation as National Recreation Trail or National Water Trail.

OMB Control Number: 1024–0283.

Form Number: NPS 10–1002: *Application for Designation as National Water Trail* and NPS 10–1003: *Application for Designation as National Recreation Trail.*

Type of Review: Extension of a currently approved collection.

Description of Respondents: Private individuals; businesses; educational institutions; nonprofit organizations; state, tribal, and local governments; and Federal agency land units.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

	Annual respondents	Total annual responses	Average time per response (hours)	Total annual burden hours *
Application for Designation—National Recreation Trails:				
Individual	1	1	8	8
Private Sector	5	5	8	40
State, Local, or Tribal Governments	6	7	8	56
Application for Designation—National Water Trails System:				
Individual	1	1	11	11
Private Sector	2	2	11	22
State, Local, or Tribal Governments	3	3	11	33
Amendments/Updates—National Recreation Trails:				
Individual	1	1	0.5	1
Private Sector	1	1	0.5	1
State, Local, or Tribal Governments	3	3	0.5	2
Amendments/Updates—National Water Trails System:				
Individual	1	1	0.5	1
Private Sector	1	1	0.5	1
State, Local, or Tribal Governments	1	1	0.5	1
Total	22	28		185

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.*).

Phadrea Ponds,

Acting, Information Collection Clearance Officer, National Park Service.

[FR Doc. 2020–01803 Filed 1–30–20; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–575]

Seafood Obtained via Illegal, Unreported, and Unregulated Fishing: U.S. Imports and Economic Impact on U.S. Commercial Fisheries; Institution of Investigation and Scheduling of Hearing

AGENCY: United States International Trade Commission.

ACTION: Notice of investigation and scheduling of a public hearing.

SUMMARY: Following receipt of a request dated December 19, 2019 from the U.S. House of Representatives, Committee on Ways and Means (Committee) under section 332(g) of the Tariff Act of 1930, the U.S. International Trade Commission (Commission) instituted investigation No. 332–575: *Seafood Obtained via Illegal, Unreported, and Unregulated Fishing: U.S. Imports and Economic Impact on U.S. Commercial Fisheries.*

DATES: April 21, 2020: Deadline for filing requests to appear at the public hearing.

April 30, 2020: Deadline for filing pre-hearing briefs and statements.

May 12, 2020: Public hearing.

May 22, 2020: Deadline for filing post-hearing briefs and statements.

June 26, 2020: Deadline for filing all other written submissions.

December 21, 2020: Transmittal of Commission report to the Committee.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW, Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov/edis3-internal/app.*

FOR FURTHER INFORMATION CONTACT: Project Leader Renee Berry (202–205–3498 or *renee.berry@usitc.gov*) or Deputy Project Leader Daniel Matthews (202–205–5991 or *daniel.matthews@usitc.gov*) for information specific to this investigation. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: As requested by the Committee, the investigation will cover the extent to which seafood products obtained from illegal, unreported, and unregulated (IUU) fishing are imported into the United States and the potential economic effects on U.S. fishermen of competition with such imports. IUU seafood includes products obtained in contravention of fisheries management regulations or in violation of labor laws. The Commission's report will provide to the extent practicable:

- A review of the existing data and literature on the prevalence of IUU products in the U.S. import market, and an overview of international mechanisms for monitoring and enforcement to address IUU fishing;
- A description of the size and structure of the U.S. commercial fishing industry;
- A description of the major global producers of IUU products, including but not limited to China, and country practices related to IUU production and exports.
- An analysis of the extent to which IUU product is imported into the United States, as well as major U.S. import sources and the global supply chains of such products; and
- A quantitative analysis of the economic impact of IUU imports on U.S. commercial fishermen and U.S. commercial fishing production, trade, and prices.

The Committee asked that the Commission transmit its report not later than 12 months after receipt of the request, and the Commission will transmit its report by December 21, 2020. The Committee also stated that it intends to make the Commission's report available to the public in its entirety and asked that the report not include any confidential business information.

Public Hearing: A public hearing in connection with this investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on May 12, 2020. Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m., April 21, 2020 in accordance with the requirements in the ''Submissions'' section below. All pre-hearing briefs and statements should be filed no later than 5:15 p.m., April 30, 2020; and all post-hearing briefs and statements should be filed not later than 5:15 p.m., May 22, 2020. In the event that, as of the close of business on April 28, 2020, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant should contact the Office of the Secretary at 202–205–2000 after April 28, 2020, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., June 26, 2020. All written submissions must conform to the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures require that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 p.m. eastern time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential information must be deleted (see the following paragraphs for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202–205–1802).

Confidential Business Information. Any submissions that contain confidential business information must also conform to the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the

''confidential'' or ''non-confidential'' version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

As requested by the Committee, the Commission will not include any confidential business information in the report that it sends to the Committee or makes available to the public. However, all information, including confidential business information, submitted in this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel for cybersecurity purposes. The Commission will not otherwise disclose any confidential business information in a manner that would reveal the operations of the firm supplying the information.

Summaries of Written Submissions: The Commission intends to publish summaries of the positions of interested persons in an appendix to the report. Persons wishing to have a summary of their position included in the report should include a summary with their written submission, titled ''Public Summary,'' and should mark the summary as having been provided for that purpose. The summary may not exceed 500 words, should be in a format that can be easily converted to MS Word, and should not include any confidential business information. The summary will be published as provided if it meets these requirements and is germane to the subject matter of the investigation. The Commission will identify the name of the organization furnishing the summary and will include a link to the Commission's Electronic Document Information System (EDIS) where the full written submission can be found.

By order of the Commission.

Issued: January 27, 2020.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2020–01799 Filed 1–30–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–622 and 731–TA–1448 (Final)]

Dried Tart Cherries From Turkey; 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 not materially injured or threatened with material injury by reason of imports of dried tart cherries from Turkey, provided for in subheading 0813.40.30 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 Turkey.

Background

The Commission instituted these investigations effective April 23, 2019, following receipt of petitions filed with the Commission and Commerce by the Dried Tart Cherry Trade Committee.[2] The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of dried tart cherries from Turkey 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 October 4, 2019 (84 FR 53175). The hearing was held in Washington, DC, on December 3, 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 January 27, 2020. The views of the Commission are contained in USITC Publication 5014 (January 2020), entitled *Dried Tart Cherries from Turkey: Investigation Nos. 701–TA–622 and 731–TA–1448 (Final).*

By order of the Commission.

Issued: January 28, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–01822 Filed 1–30–20; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The Dried Tart Cherry Trade Committee consists of Cherry Central Cooperative; Graceland Fruit, Inc.; Payson Fruit Growers Coop; Shoreline Fruit, LLC; and Smeltzer Orchard, Co.

INTERNATIONAL TRADE COMMISSION

[USITC SE–20–003]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 4, 2020 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote on Inv. No. 731–TA–1145 (Second Review)(Steel Threaded Rod from China). The Commission is currently scheduled to complete and file its determination and views of the Commission by February 26, 2020.
5. Vote on Inv. No. 731–TA–1022 (Third Review)(Refined Brown Aluminum Oxide from China). The Commission is currently scheduled to complete and file its determination and views of the Commission by February 20, 2020.
6. Outstanding action jackets: None.

CONTACT PERSON FOR MORE INFORMATION: William Bishop, Supervisory Hearings and Information Officer, 202–205–2595.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier notification of this meeting was not possible.

By order of the Commission.

Issued: January 29, 2020.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2020–02003 Filed 1–29–20; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Odva, Inc.

Notice is hereby given that, on January 15, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ODVA, Inc. (''ODVA'') 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, READY Robotics Corporation, Columbus, OH; SABO Elektronik GmbH, Schwerte, GERMANY; BARTA-SCHOENEWALD, INC., Camarillo, CA; Motortronics UK Ltd., Ivybridge, Gillard Way, UNITED KINGDOM; TRIDIMEO, Orsay, FRANCE; Bayshore Networks, Inc., Durham, NC; UNIPULSE Corporation, Tokyo, JAPAN; Conch Electronic Co., Ltd., Tainan City, Taiwan, PEOPLE'S REPUBLIC OF CHINA; Sigma (NSW) PTY LTD, Macquarie Park, AUSTRALIA; JTEKT Corporation, Kariya-shi, Aichi Prefecture, JAPAN; Knick Elektronische Messgeräte GmbH & Co. KG, Berlin, GERMANY; RICOH Industrial Solutions Inc., Yokohama, JAPAN; Shanghai Junqian Sensing Technology Co. Ltd., Shanghai, PEOPLE'S REPUBLIC OF CHINA; Teknic, Inc., Victor, NY; RIFTEK LLC, Minsk, REPUBLIC OF BELARUS; and Intelligent Platforms LLC, Charlottesville, VA, have been added as parties to this venture.

Also, profichip GmbH, Herzogenaurach, GERMANY; Automation Solutions, Inc., Houston, TX; WITZ Corporation, Nagoya, JAPAN; General Cable Industries, Inc., Highland Heights, KY; Hitachi, Ltd., Saitama-shi, Saitama, JAPAN; Rosemount Inc., Chanhassen, MN; and Trinité Automatisering B.V., Uithoorn, THE NETHERLANDS, have withdrawn as parties to this venture.

In addition, Omron Scientific Technologies, Inc. has changed its name to Omron Robotics and Safety Technologies, Inc., Fremont, CA; and Beijing HORIBA METRON Instruments Co., Ltd., to HORIBA Precision Instruments (Beijing) Co., Ltd., Beijing, PEOPLE's REPUBLIC OF CHINA.

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 ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA 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 February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on August 1, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 9, 2019 (84 FR 39372).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2020–01820 Filed 1–30–20; 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—Information Warfare Research Project Consortium

Notice is hereby given that, on January 21, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Information Warfare Research Project Consortium (''IWRP'') 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, 11 Cyber Services, LLC, Mt Pleasant, SC; 1901 Group, LLC, Reston, VA; A.T. Kearney Public Sector and Defense Services, LLC, Arlington, VA; A10 Systems LLC dba AiRANACULUS, Chelmsford, MA; Andro Computation Solutions, LLC, Rome, NY; AOSense, Inc., Sunnyvale, CA; Assured Information Security, Inc., Rome, NY; AURA Technologies, Raleigh, NC; Bcubed Engineering Corporation, Rockwall, TX; Center for Human Capital Innovation, Alexandria, VA; CGI Federal, Inc., Fairfax, VA; Cintel, Inc., Huntsville, AL; Clausewitz Technology Incorporated, Madison, AL; Client Solution Architects LLC (CSA), Mechanicsburg, PA; Commonwealth Computer Research, Inc. (CCRi), Charlottesville, VA; Companion Data Services, LLC, Columbia, SC; CSSI, Inc., Washington, DC; DataSource, Inc., McLean, VA; DRS Laurel Technologies, Johnstown, PA; Embry-Riddle Aeronautical University, Daytona Beach, FL; Federated Wireless, Inc., Arlington, VA; Foster Miller Inc. dba QinetiQ North America, Waltham, MA; Fuse Integration, Inc., San Diego, CA; GBS Laboratories, LLC dba InZero Systems, Herndon, VA; HQE Systems, Inc., Temecula, CA; Integrated Computer Solutions, Inc. (ICS), Waltham, MA; Interloc Solutions, Inc., Seattle, WA; InterSystems Corporation, Cambridge, MA; JTEK Data Solutions LLC, Bethesda, MD; KIHOMAC, Inc., Reston, VA; Kingfisher Systems, Inc., Falls Church, VA; Klas Telecom Government, Herndon, VA; L3 Technologies, Inc. Communications Systems West, Salt Lake City, UT; Maga Design Group, Incorporated, Washington, DC; Mercury Systems, Andover, MA; NCI Information Systems, Inc., Reston, VA; Next Tier Concepts, Inc. (NT Concepts), Vienna, VA; Nokia of America Corporation, Murray Hill, NJ; Nuvotronics, Inc., Durham, NC; One Network Enterprises, Inc., Dallas, TX; OneGlobe, LLC, Ashburn, VA; Palo Alto Networks Public Sector, LLC, Reston, VA; Reed Integration, Inc., Suffolk, VA; Rohde & Schwarz USA, Inc., Columbia, MD; RTSync Corp., Chandler, AZ; Serco Inc., Herndon, VA; ServiceNow, Inc., Santa Clara, CA; Signal Point Systems, Inc., Kennesaw, GA; Streif Enterprises, Inc. dba ibeeto, El Cajun, CA; Synergetics Incorporated, Fort Collins, CO; Technical Systems Integrators, Inc., Longwood, FL; TechTrend, Inc., Fairfax, VA; Three Wire Systems, LLC, Falls Church, VA; Trident Technical Solutions LLC dba Ardent Eagle Solutions, Tampa, FL; Triumph Enterprises, Inc., Vienna, VA; Tychon, LLC, Fredericksburg, VA; Universal Consulting Services, Inc., Fairfax, VA; University of South Carolina, Columbia, SC; and Veritech, LLC, Glendale, AZ have been added as parties to this venture.

Also, Applied Signals Intelligence, Inc., Sterling, VA; Aquabotix Technology Corporation, Fall River, MA; Atlantic CommTech Corp, Norfolk, VA; CogniTech Corporation, Salt Lake City, Utah; Craig Technologies, Cape Canaveral, FL; D23 LLC, Tysons, VA; D9Tech Resources LLC, Virginia Beach, VA; DroneShield LLC, Warrenton, VA; Dynamic Systems, El Segundo, CA; Engin LLC, Daniel Island, SC; ENT Technologies Inc., San Diego, CA; ForgeAi, Inc., Cambridge, MA; Gemtek Technology Inc. DBA Connect Pro., Walnut, CA; Georgia Tech Research Corporation, Atlanta, GA; Hamilton Consulting Solutions Corporation

(HCSC), Chesapeake, VA; Indiana Microelectronics, LLC, West Lafayette, IN; Invitix LLC, dba Instant Technologies, Durham, NH; Minerva Systems & Technologies, LLC, Lexington, KY; Pacific Science & Engineering Group, Inc. San Diego, CA; Popily, Inc. d.b.a. New Knowledge, Austin, TX; Poplicus, Inc DBA Govini, Arlington, VA; Quantum Dimension, Inc., Huntington Beach, CA; Quest Government Services Inc. dba CenturyLink QGS, Arlington, VA; Spectral Analytics, LLC, San Diego, CA; and The Samraksh Company, Dublin, OH have withdrawn 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 IWRP intends to file additional written notifications disclosing all changes in membership.

On October 15, 2018, IWRP 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 23, 2018 (83 FR 53499).

The last notification was filed with the Department on October 16, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 30, 2019 (84 FR 58174).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2020–01819 Filed 1–30–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. ZF Friedrichshafen AG, et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *ZF Friedrichshafen AG, et al.,* Civil Action No. 1:20–cv–00182. On January 23, 2020, the United States filed a Complaint alleging that ZF Friedrichshafen AG's proposed acquisition of WABCO Holdings, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Defendants to divest WABCO's R.H. Sheppard Co., Inc. subsidiary, along with certain related WABCO assets.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to John Read, Acting Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530 (telephone: 202–307–0468).

Amy Fitzpatrick,

Counsel to the Senior, Director of Investigations and Litigation.

United States District Court for the District of Columbia

United States of America, U.S. Department of Justice, Antitrust Division, 450 Fifth Street NW, Suite 8700, Washington, DC 20530, Plaintiff, v. *ZF Friedrichshafen A.G., Lowentaler Strasse 20, 88046 Friedrichshafen, Germany,* and *WABCO Holdings, Inc., 1220 Pacific Drive, Auburn Hills, MI 48326,* Defendants.

Civil Action No.: 1:20–cv–00182
Judge: Hon. Ketanji B. Jackson

Complaint

The United States of America (''United States''), acting under the direction of the Attorney General of the United States, brings this civil antitrust action against Defendants ZF Friedrichshafen AG (''ZF'') and WABCO Holdings, Inc. (''WABCO'') to enjoin the proposed merger of ZF and WABCO. The United States complains and alleges as follows:

I. Nature of the Action

1. Pursuant to an agreement and plan of merger dated March 28, 2019, ZF and WABCO propose to merge in a transaction that would unite two of the leading global suppliers of components used in the manufacture of large commercial vehicles (''LCVs''), which include commercial trucks and buses.

2. ZF and WABCO are the only suppliers of steering gears for use in LCVs in North America. Steering gears are an essential part of the steering systems used to direct the front wheels of LCVs. They are also a key component of advanced driver-assisted steering systems that provide safer, more efficient vehicle operation, and could ultimately be developed to enable autonomous operation of LCVs. The proposed merger would eliminate competition between ZF and WABCO and likely create a monopoly for LCV steering gears in North America.

3. As a result, the proposed transaction likely would substantially lessen competition in the market for the design, manufacture, and sale of LCV steering gears in North America in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

II. The Defendants and the Transaction

4. ZF is a German company headquartered in Friedrichshafen, Germany. It has 149,000 employees in 40 countries, and had annual sales of $36.9 billion in 2018, $9.6 billion of which were in the United States. ZF's North American business historically focused on the production and sale of transmissions to passenger and light vehicle manufacturers, but in 2015, ZF acquired a leading U.S. steering systems manufacturer, TRW, Inc. ZF's U.S. headquarters are in Livonia, Michigan.

5. WABCO is a Delaware corporation with a North American headquarters in Auburn Hills, Michigan, and a global headquarters in Bern, Switzerland. WABCO descends from the original Westinghouse Air Brake Company formed in 1869. It has 16,000 employees in 40 countries, and had annual sales in 2018 of $3.8 billion, $850 million of which were in the United States. WABCO's North American business historically focused on commercial vehicle air brake and air suspension components, but in 2017, WABCO acquired a leading U.S. commercial vehicle steering component company, R.H. Sheppard Co., Inc.

6. On March 28, 2019, pursuant to an agreement and plan of merger, ZF agreed to acquire WABCO in a deal valued at approximately $7 billion.

III. Jurisdiction and Venue

7. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. 25, as amended, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

8. Defendants design, manufacture, and sell LCV steering gears in the United States that are used on LCVs in service throughout the United States. Defendants' activities in the design, manufacture, and sale of these products

therefore substantially affect interstate commerce. This Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

9. Defendants have consented to venue and personal jurisdiction in this judicial district. Venue is therefore proper in this district under Section 12 of the Clayton Act, 15 U.S.C. 22, and under 28 U.S.C. 1391(c).

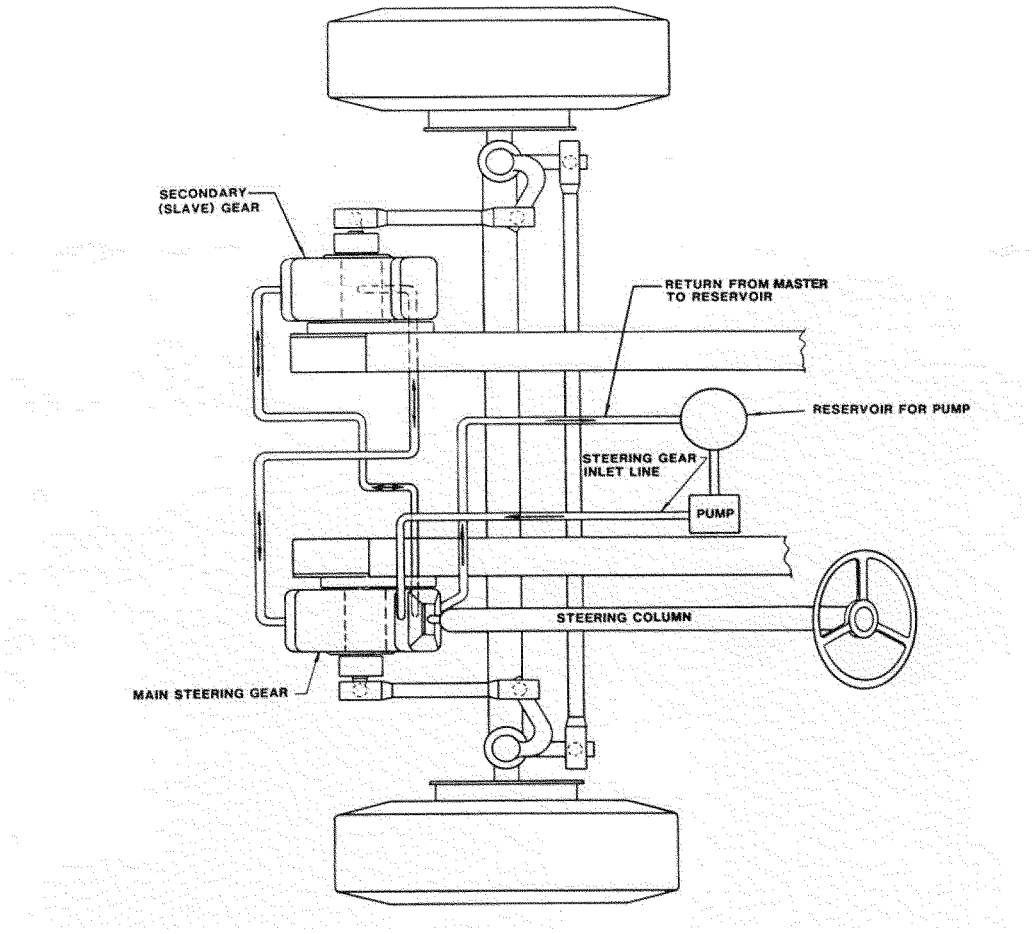
IV. LCV Steering Gears

A. Background

10. Steering system components work together to direct a vehicle, and include steering gears, steering pumps, pitman arms, steering columns, steering linkages, and electronic steering controls. Steering equipment suitable for LCVs is sophisticated and highly engineered, especially the key component: Steering gears. LCVs include all trucks, buses, and off-road vehicles that weigh over 19,501 pounds (defined as Class 6–8 vehicles by the United States Department of Transportation (49 CFR 565.15)).

11. Steering gears are located below the steering column (which is attached to the steering wheel) and translate direction to the steering linkage. Steering gears for LCVs have a complex hydraulic power recirculating ball gear. Steering gears must be tuned carefully to operate within the specifications of the individual LCV's design and performance requirements, and must work together with the entire system of steering equipment. An example of an LCV steering gear system is pictured below:

Figure 1: LCV Steering Gear Diagram



Source: R. H. Sheppard D-Series Integral Power Steering Gear Manual (current).

12. Advanced LCV steering gears also include what is known as a torque overlay. A torque overlay adds hardware that enables the steering gear to quickly and independently direct the vehicle without the input of the steering column, and allows for advanced driver assistance system (''ADAS'') steering features. ADAS technology in general includes features such as lane keeping assist, adaptive cruise control, automated emergency braking, blind spot detection, and other similar features. For ADAS steering features, torque overlay steering gears work with sensors and electronic controls that detect the environment around the vehicle and then work with the steering hardware to keep the vehicle on the correct path and avoid collisions. Within the last five years, truck and bus manufacturers have begun to use steering-related ADAS features, and both Defendants are actively engaged in research and development to improve steering-related ADAS features for eventual use in autonomous trucks and buses. In the future, steering-related ADAS features may be developed to the point where they can be combined with

other ADAS technology related to braking and powertrain control, enabling the potential for fully autonomous operation of commercial vehicles. LCV steering gears will continue to be a key component as future ADAS technology is developed.

13. Truck and bus manufacturers are the primary customers for LCV steering gears. These customers incorporate LCV steering gears into the vehicle's final assembly, and then sell to end-use customers. Other LCV steering gear customers include manufacturers of commercial vehicles for off-road, military, mining, and agriculture uses. Typically, customers purchase LCV steering gears separately from other steering components, although they also may choose to purchase a whole steering system. In some cases, another entity may buy the LCV steering gear from one of the merging parties and then integrate it into a whole steering system that it sells to truck or bus manufacturers. Customers generally buy steering gears either based on pre-established price lists or after a competitive bidding process.

14. The annual size of the North American market for LCV steering gears is approximately $220 million.

B. Relevant Markets

1. Product Market: LCV Steering Gears

15. LCV steering gears must be durable and powerful enough to move large trucks or buses that utilize hydraulic steering systems without electronic power-assisted steering, because electronic power-assisted steering is not used on LCVs. This distinguishes LCV steering gears from lighter and simpler electronic steering gears used for smaller vehicles such as passenger cars. The quality and usefulness of an LCV steering gear is defined by several special characteristics, the most important of which are size, weight, torque required to move, and sensitivity, which relates to the ability of the gear to respond quickly and accurately to the driver or inputs from electronic controls.

16. There are no other steering methods or technologies that can accomplish the required functions of LCV steering gears. Truck and bus manufacturers require the highly-capable LCV steering gears discussed above because the lives and safety of drivers and other motorists, pedestrians, and property depend on the unfailing performance of an LCV steering gear to direct the vehicle. Other steering gears are less capable, and are therefore not a substitute for LCV steering gears purchased for use in LCVs in North America.

17. For the foregoing reasons, customers will not substitute less-capable steering gears, or any other product, for LCV steering gears in response to a small but significant and non-transitory increase in the price of LCV steering gears. Accordingly, LCV steering gears are a relevant product market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. 18.

2. Geographic Market: North America

18. LCV steering gears used in North America require a different design and alignment than those used outside North America. This is because of distinct truck and bus design differences, such as those related to higher weight and power, and a common configuration in which the cab is located behind the axles rather than over them. Because of these differences, truck and bus manufacturers strongly prefer LCV steering gears that have performed successfully on North American commercial vehicles, and have been unwilling to purchase steering gears used only in foreign markets. Customers also require their steering gear manufacturers to have an established North American presence for sales, service, and aftermarket support. Having an installed North American base helps customers to ensure that both in-house and third-party service technicians have experience with the relevant steering gears and have an existing spare parts inventory when gears need to be repaired or replaced. In the face of a small but significant and non-transitory price increase by North American producers of LCV steering gears, customers, therefore, are unlikely to turn to manufacturers located outside North America and who produce LCV steering gears solely for markets outside North America.

19. North America, therefore, is a relevant geographic market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

C. Anticompetitive Effects of the Proposed Transaction

20. ZF and WABCO are the only firms that design, manufacture, and sell LCV steering gears in North America. After its acquisition of TRW in 2015, ZF became the leading North American firm selling steering systems and components for commercial vehicles. In the market for LCV steering gears in North America, it is estimated to have a 54 percent market share. WABCO is the only other market participant and has an estimated 46 percent market share. WABCO sells LCV steering gears through its wholly-owned R.H. Sheppard subsidiary, which it acquired in 2017. The merger would give the combined firm a monopoly over LCV steering gears in North America, leaving North American customers without a sufficient competitive alternative for this critical component.

21. ZF and WABCO compete for sales of LCV steering gears on the basis of price, quality, service, innovation, and contractual terms such as delivery times. This competition has resulted in lower prices, higher quality, better service, and shorter delivery times. Competition between ZF and WABCO has also fostered innovation, leading to LCV steering gears with higher reliability and the innovative features such as torque overlay that are expected to be integral to the development of future ADAS technology, including features for autonomous LCVs. The combination of ZF and WABCO would eliminate this competition and its future benefits to truck and bus manufacturers and end-use customers. Post-transaction, the merged firm likely would have the incentive and ability to increase prices, lower quality or service, offer less favorable contractual terms, and reduce research and development efforts that would otherwise lead to innovative and high-quality products.

22. The proposed merger, therefore, likely would substantially lessen competition in the design, manufacture, and sale of LCV steering gears in North America in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

D. Difficulty of Entry

23. Sufficient, timely entry of additional competitors into the market for LCV steering gears in North America is unlikely. Truck and bus manufacturers have shown little interest in buying steering gears and other components from anyone other than the only two established suppliers, ZF and WABCO, because of their proven performance and North American presence.

24. Production facilities and sales and service infrastructure for LCV steering gears require a substantial investment in both capital equipment and human resources. To be competitively viable, a new entrant would need to construct a factory to produce a range of steering components, establish production lines capable of manufacturing the components, and build assembly lines and establish or acquire access to testing equipment and facilities.

25. A new entrant also would need to retain engineering and research

personnel to design, test, and troubleshoot the detailed manufacturing process necessary to produce LCV steering gears acceptable to North American customers. Any new LCV steering gears also would require extensive customer testing and qualification before they would be used by North American truck and bus manufacturers or accepted by end users. Moreover, because LCV steering gears now being designed and developed by ZF and WABCO are undergoing continuous technological improvement and innovation for use in the development of ADAS features, any new entrant would need to acquire equivalent expertise and proprietary technologies to enable steering-related ADAS features to be efficiently incorporated into the advanced electronic control components of future North American LCVs.

26. Finally, because customers prefer to use LCV steering gear manufacturers with an existing installed base to ensure efficient and quality service by customers' in-house or third-party service centers, a new entrant lacking an installed base would be at a severe disadvantage.

27. As a result of the barriers described above, entry into the market for LCV steering gears would not be timely, likely, or sufficient to defeat the anticompetitive effects likely to result from the merger of ZF and WABCO.

V. Violations Alleged

28. The merger of ZF and WABCO likely would substantially lessen competition in the design, manufacture, and sale of LCV steering gears in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

29. Unless enjoined, the merger likely would have the following anticompetitive effects, among others, related to the relevant market:

(a) Actual and potential competition between ZF and WABCO would be eliminated;

(b) competition likely would be substantially lessened; and

(c) prices likely would increase, quality and the level of service would decrease, innovation would decrease, and contractual terms likely would be less favorable to customers.

VI. Request for Relief

30. The United States requests that this Court:

(a) Adjudge and decree that ZF's merger with WABCO would be unlawful and violate Section 7 of the Clayton Act, 15 U.S.C. 18;

(b) preliminarily and permanently enjoin and restrain Defendants and all persons acting on their behalf from consummating the proposed merger of ZF and WABCO, or from entering into or carrying out any other contract, agreement, plan, or understanding, the effect of which would be to combine ZF and WABCO;

(c) award the United States its costs for this action; and

(d) award the United States such other and further relief as the Court deems just and proper.

Dated: January 23, 2020.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

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United States District Court for the District of Columbia

United States of America, Plaintiff, v. *ZF Friedrichshafen AG, and WABCO Holdings, Inc., Defendants.*

Civil Action No.: 1:20–cv–00182
Judge: Hon. Ketanji B. Jackson

[Proposed] Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on January 23, 2020, the United States and Defendants, ZF Friedrichshafen AG and WABCO Holdings, Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Defendants to assure that competition is not substantially lessened;

And whereas, Defendants agree to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to the United States that the divestitures required below can and will be made and that Defendants will not later raise any claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

The Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' means the entity to whom Defendants divest the Divestiture Assets.

B. ''ZF'' means ZF Friedrichshafen AG, a German corporation with its headquarters in Friedrichshafen, Germany; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''WABCO'' means WABCO Holdings, Inc., a Delaware corporation with its headquarters in Auburn Hills, Michigan; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''R.H. Sheppard'' means R.H. Sheppard Co., Inc., a Pennsylvania corporation with its headquarters in Hanover, Pennsylvania; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees. R.H. Sheppard is a wholly-owned subsidiary of WABCO.

E. ''Divestiture Assets'' means all of Defendants' rights, title, and interests in and to (i) R.H. Sheppard, and (ii) all other WABCO property and assets, tangible and intangible, wherever located, related to or used in connection

with R.H. Sheppard (except for assets primarily used for human resources, legal, or other general or administrative support functions), including but not limited to:

1. The manufacturing and support facilities located at 101 Philadelphia Street, Hanover, Pennsylvania, 17331 (the ''Hanover Facility'');

2. The manufacturing and support facilities located at 1400 Stafford-Umberger Drive, Wytheville, Virginia, 24382 (the ''Wytheville Facility'');

3. All tangible assets, including, but not limited to: Research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and all other tangible property and assets; all licenses, permits, certifications, and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements and development and production contracts; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records; and

4. All intangible assets, including, but not limited to: All patents; licenses and sublicenses; intellectual property; copyrights; trademarks; trade names; service marks; service names (excluding any trademark, trade name, service mark, or service name containing the name ''WABCO''); technical information; computer software (including software developed by third parties), and related documentation; know-how; trade secrets; drawings; blueprints; designs; design protocols; specifications for materials; specifications for parts and devices; safety procedures for the handling of materials and substances; quality assurance and control procedures; design tools and simulation capability; all manuals and technical information WABCO provides to its own employees, customers, suppliers, agents, or licensees; and all research data concerning historic and current research and development efforts, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments.

F. ''Relevant Employees'' means all employees of (i) R.H. Sheppard, and (ii) all additional WABCO employees, wherever located, involved in the design, manufacture, or sale of large commercial vehicle (LCV) steering gears (except for employees primarily engaged in human resources, legal, or other general or administrative support functions).

G. ''Regulatory Approvals'' means (i) any approvals or clearances pursuant to filings with the Committee on Foreign Investment in the United States (''CFIUS''), or under antitrust or competition laws required for the Transaction to proceed; and (ii) any approvals or clearances pursuant to filings with CFIUS, or under antitrust, competition, or other U.S. or international laws required for Acquirer's acquisition of the Divestiture Assets to proceed.

H. ''Transaction'' means the proposed acquisition of WABCO by ZF.

III. Applicability

A. This Final Judgment applies to ZF and WABCO, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and Section V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, Defendants shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer of the Divestiture Assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed, within the later of ninety (90) calendar days after the filing of the Complaint in this matter, or thirty (30) calendar days after Regulatory Approvals have been received, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process, except information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer and the United States with reasonable access to Relevant Employees and with organization charts and information relating to Relevant Employees, including name, job title, past experience relating to the Divestiture Assets, responsibilities, training and educational history, relevant certifications, and to the extent permissible by law, job performance evaluations, and current salary and benefits information, to enable the Acquirer to make offers of employment. Upon request, Defendants shall make Relevant Employees available for interviews with the Acquirer during normal business hours at a mutually agreeable location and will not interfere with efforts by the Acquirer to employ Relevant Employees, such as by offering to increase the salary or benefits of Relevant Employees other than as part of a company-wide increase in salary or benefits granted in the ordinary course of business.

D. For any Relevant Employees who elect employment with the Acquirer, Defendants shall waive all noncompete and nondisclosure agreements, vest all unvested pension and other equity rights, and provide all other benefits to which the Relevant Employees would generally be provided if transferred to a buyer of an ongoing business. For a period of twelve (12) months from the filing of the Complaint in this matter, Defendants may not solicit to hire, or hire, any Relevant Employee who was hired by the Acquirer, unless (1) the individual is terminated or laid off by the Acquirer or (2) the Acquirer agrees in writing that Defendants may solicit or hire that individual. Nothing in Paragraphs IV(C) and (D) shall prohibit Defendants from maintaining any reasonable restrictions on the disclosure by any Relevant Employee who accepts an offer of employment with the Acquirer of the Defendant's proprietary non-public information that is (1) not otherwise required to be disclosed by this Final Judgment, (2) related solely to Defendants' businesses and clients, and (3) unrelated to the Divestiture Assets.

E. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to make inspections of the physical facilities of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall warrant to the Acquirer that the Divestiture Assets will be operational on the date of sale.

G. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

H. Defendants must make best efforts to assign, subcontract, or otherwise transfer all contracts related to the Divestiture Assets, including all supply and sales contracts, to Acquirer. Defendants must not interfere with any negotiations between Acquirer and a contracting party.

I. At the option of the Acquirer, Defendants shall enter into a supply contract for the assembly of active steering electronic control units sufficient to meet all or part of the Acquirer's needs for a period of up to six (6) months. Upon Acquirer's request, the United States, in its sole discretion, may approve one or more extensions of any such agreement for a total of up to an additional six (6) months. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to market conditions for such assembly.

J. At the option of the Acquirer, Defendants shall enter into a transition services agreement for back office, human resource, and information technology services and support for the Divestiture Assets for a period of up to twelve (12) months. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional six (6) months. If the Acquirer seeks an extension of the term of this transition services agreement, Defendants shall notify the United States in writing at least three (3) months prior to the date the transition services contract expires. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to the market value of the expertise of the personnel providing any needed assistance. The employee(s) of Defendants tasked with providing these transition services shall not share any competitively sensitive information of the Acquirer with any other employee of Defendants.

K. Defendants shall warrant to the Acquirer (1) that there are no material defects in the environmental, zoning, or other permits relating to the operation of the Divestiture Assets, and (2) that following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

L. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV or by Divestiture Trustee appointed pursuant to Section V of this Final Judgment shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business of the design, manufacture, and sale of LCV steering gears. If any of the terms of an agreement between Defendants and the Acquirer to effectuate the divestiture required by the Final Judgment varies from the terms of this Final Judgment then, to the extent that Defendants cannot fully comply with both terms, this Final Judgment shall determine Defendants' obligations. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

(1) shall be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the business of the design, manufacture, and sale of LCV steering gears; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Divestiture Trustee

A. If Defendants have not divested the Divestiture Assets within the time period specified in Paragraph IV(A), Defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, in its sole discretion, at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as the Court deems appropriate. Subject to Paragraph V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendants any agents or consultants, including, but not limited to, investment bankers, attorneys, and accountants, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such agents or consultants shall serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

C. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI.

D. The Divestiture Trustee shall serve at the cost and expense of Defendants pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the Divestiture Assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for any of its services yet unpaid and those of any agents and consultants retained by the Divestiture Trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any agents and consultants retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement that provides the Divestiture Trustee with incentives based on the price and terms of the divestiture and the speed with which it is accomplished, but the timeliness of the divestiture is paramount. If the Divestiture Trustee and Defendants are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar days of

the appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other agents or consultants, provide written notice of such hiring and the rate of compensation to Defendants and the United States.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any agents or consultants retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall provide or develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secrets; other confidential research, development, or commercial information; or any applicable privileges. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture; (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished; and (3) the Divestiture Trustee's recommendations. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, the United States may recommend the Court appoint a substitute Divestiture Trustee.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or Section V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not, in its sole discretion, it objects to the Acquirer or any other aspect of the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or Section V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by the Court. Defendants shall take no action that would jeopardize the divestiture ordered by the Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or Section V, Defendants shall deliver to the United States an affidavit, signed by each defendant's Chief Financial Officer and General Counsel, which shall describe the fact and manner of Defendants' compliance with Section IV or Section V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this

matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Hold Separate Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally-recognized privilege, from time to time authorized representatives of the United States, including agents retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) Access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in Section X shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time that Defendants furnish information or documents to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XII. Retention of Jurisdiction

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Enforcement of Final Judgment

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the Final Judgment and the appropriateness of any remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore all competition the United States alleged was harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In any enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with other relief as may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

D. For a period of four (4) years following the expiration of the Final Judgment, if the United States has evidence that a Defendant violated this Final Judgment before it expired, the United States may file an action against that Defendant in this Court requesting that the Court order (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action under this Section, (2) any appropriate contempt remedies, (3) any additional relief needed to ensure the Defendant complies with the terms of the Final Judgment, and (4) fees or expenses as called for in Paragraph XIII(C).

XIV. Expiration of Final Judgment

Unless the Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures have been completed and that the continuation of the Final Judgment no longer is necessary or in the public interest.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, any comments thereon, and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments

filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

[Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16]

_____

United States District Judge

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *ZF Friedrichshafen AG,* and *WABCO Holdings, Inc., Defendants.*

Civil Action No.: 1:20–cv–00182
Judge: Hon. Ketanji B. Jackson

Competitive Impact Statement

The United States of America, under Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the ''APPA'' or ''Tunney Act''), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On March 28, 2019, Defendant ZF Friedrichshafen AG (''ZF'') agreed to acquire Defendant WABCO Holdings, Inc. (''WABCO'') in a transaction that would unite two of the leading global suppliers of large commercial vehicle (''LCV'') components. The United States filed a civil antitrust Complaint on January 23, 2020, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition for the design, manufacture, and sale of LCV steering gears in North America, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order (''Hold Separate'') and proposed Final Judgment, which are designed to address the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, the Defendants are required to divest WABCO's wholly-owned subsidiary R.H. Sheppard Co., Inc. (''R.H. Sheppard'') and other WABCO assets related to LCV steering gears. Under the terms of the Hold Separate, the Defendants will take certain steps to ensure that R.H. Sheppard is operated as a competitively independent, economically viable, and ongoing business concern, which will remain independent and uninfluenced by ZF, and that competition is maintained during the pendency of the required divestiture.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

ZF is a German company headquartered in Friedrichshafen, Germany. It has 149,000 employees in 40 countries, and had annual sales of $36.9 billion in 2018, $9.6 billion of which were in the United States. ZF's North American business historically focused on the production and sale of transmissions to passenger and light vehicle manufacturers, but in 2015, ZF acquired a leading U.S. steering systems manufacturer, TRW, Inc. ZF's U.S. headquarters are in Livonia, Michigan.

WABCO is a Delaware corporation with a North American headquarters in Auburn Hills, Michigan, and a global headquarters in Bern, Switzerland. WABCO descends from the original Westinghouse Air Brake Company formed in 1869. It has 16,000 employees in 40 countries, and had annual sales in 2018 of $3.8 billion, $850 million of which were in the United States. WABCO's North American business historically focused on commercial vehicle air brake and air suspension components, but in 2017, WABCO acquired a leading U.S. commercial vehicle steering component company, R.H. Sheppard.

On March 28, 2019, pursuant to an agreement and plan of merger, ZF agreed to acquire WABCO in a deal valued at approximately $7 billion.

B. The Competitive Effects of the Transaction

1. Background on LCV Steering Gears

Steering system components work together to direct a vehicle, and include steering gears, steering pumps, pitman arms, steering columns, steering linkages, and electronic steering controls. Steering equipment suitable for LCVs is sophisticated and highly engineered, especially the key component: Steering gears. LCVs include all trucks, buses, and off-road vehicles that weigh over 19,501 pounds (defined as Class 6–8 vehicles by the United States Department of Transportation (49 CFR 565.15)).

Steering gears are located below the steering column (which is attached to the steering wheel) and translate direction to the steering linkage. Steering gears for LCVs have a complex hydraulic power recirculating ball gear. Steering gears must be tuned carefully to operate within the specifications of the individual LCV's design and performance requirements, and must work together with the entire system of steering equipment.

Advanced LCV steering gears also include what is known as a torque overlay. A torque overlay adds hardware that enables the steering gear to quickly and independently direct the vehicle without the input of the steering column, and allows for advanced driver assistance system (''ADAS'') steering features. ADAS technology in general includes features such as lane keeping assist, adaptive cruise control, automated emergency braking, blind spot detection, and other similar features. For ADAS steering features, torque overlay steering gears work with sensors and electronic controls that detect the environment around the vehicle and then work with the steering hardware to keep the vehicle on the correct path and avoid collisions. Within the last five years, truck and bus manufacturers have begun to use steering-related ADAS features, and both Defendants are actively engaged in research and development to improve steering-related ADAS features for eventual use in autonomous trucks and buses. In the future, steering-related ADAS features may be developed to the point where they can be combined with other ADAS technology related to braking and powertrain control, enabling the potential for fully autonomous operation of commercial vehicles. LCV steering gears will continue to be a key component as future ADAS technology is developed.

Truck and bus manufacturers are the primary customers for LCV steering gears. These customers incorporate LCV steering gears into the vehicle's final assembly, and then sell to end-use customers. Other LCV steering gear customers include manufacturers of commercial vehicles for off-road, military, mining, and agriculture uses. Typically, customers purchase LCV steering gears separately from other steering components, although they also may choose to purchase a whole steering system. In some cases, another entity may buy the LCV steering gear from one of the merging parties and then integrate it into a whole steering system that it sells to truck or bus manufacturers. Customers generally buy steering gears either based on pre-

established price lists or after a competitive bidding process. The annual size of the North American market for LCV steering gears is approximately $220 million.

2. Relevant Product Market: LCV Steering Gears

As alleged in the Complaint, LCV steering gears must be durable and powerful enough to move large trucks or buses that utilize hydraulic steering systems without electronic power-assisted steering, because electronic power-assisted steering is not used on LCVs. This distinguishes LCV steering gears from lighter and simpler electronic steering gears used for smaller vehicles such as passenger cars. The quality and usefulness of an LCV steering gear is defined by several special characteristics, the most important of which are size, weight, torque required to move, and sensitivity, which relates to the ability of the gear to respond quickly and accurately to the driver or inputs from electronic controls.

The Complaint alleges that there are no other steering methods or technologies that can accomplish the required functions of LCV steering gears. Truck and bus manufacturers require the highly-capable LCV steering gears discussed above, because the lives and safety of drivers and other motorists, pedestrians, and property depend on the unfailing performance of an LCV steering gear to direct the vehicle. Other steering gears are less capable, and are therefore not a substitute for LCV steering gears purchased for use in LCVs in North America.

For the foregoing reasons, according to the Complaint, customers will not substitute less-capable steering gears, or any other product, for LCV steering gears in response to a small but significant and non-transitory increase in the price of LCV steering gears. The Complaint, therefore, alleges that LCV steering gears are a relevant product market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. 18.

3. Relevant Geographic Market: North America

As alleged in the Complaint, LCV steering gears used in North America require a different design and alignment than those used outside North America. This is because of distinct truck and bus design differences, such as those related to higher weight and power, and a common configuration in which the cab is located behind the axles rather than over them. Because of these differences, the Complaint alleges that truck and bus manufacturers strongly prefer LCV steering gears that have performed successfully on North American commercial vehicles, and have been unwilling to purchase steering gears used only in foreign markets. Customers also require their steering gear manufacturers to have an established North American presence for sales, service, and aftermarket support. Having an installed North American base helps customers to ensure that both in-house and third-party service technicians have experience with the relevant steering gears and have an existing spare parts inventory when gears need to be repaired or replaced. According to the Complaint, in the face of a small but significant and non-transitory price increase by North American producers of LCV steering gears, customers are unlikely to turn to manufacturers located outside North America and who produce LCV steering gears solely for markets outside North America. The Complaint therefore alleges that North America is a relevant geographic market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

4. Anticompetitive Effects of the Proposed Transaction

As alleged in the Complaint, ZF and WABCO are the only firms that design, manufacture, and sell LCV steering gears in North America. After its acquisition of TRW in 2015, ZF became the leading North American firm selling steering systems and components for commercial vehicles. In the market for LCV steering gears in North America, it is estimated to have a 54 percent market share. WABCO is the only other market participant and has an estimated 46 percent market share. WABCO sells LCV steering gears through its wholly-owned R.H. Sheppard subsidiary, which it acquired in 2017. The Complaint alleges that the merger would give the combined firm a monopoly over LCV steering gears in North America, leaving North American customers without a sufficient competitive alternative for this critical component.

According to the Complaint, ZF and WABCO compete for sales of LCV steering gears on the basis of price, quality, service, innovation, and contractual terms such as delivery times. This competition has resulted in lower prices, higher quality, better service, and shorter delivery times. Competition between ZF and WABCO has also fostered innovation, leading to LCV steering gears with higher reliability and the innovative features such as torque overlay that are expected to be integral to the development of future ADAS technology, including features for autonomous LCVs. The Complaint alleges that the combination of ZF and WABCO would eliminate this competition and its future benefits to truck and bus manufacturers and end-use customers. Post-transaction, the merged firm likely would have the incentive and ability to increase prices, lower quality or service, offer less favorable contractual terms, and reduce research and development efforts that would otherwise lead to innovative and high-quality products.

According to the Complaint, the proposed merger, therefore, likely would substantially lessen competition in the design, manufacture, and sale of LCV steering gears in North America in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

5. Difficulty of Entry

The Complaint alleges that sufficient, timely entry of additional competitors into the market for LCV steering gears in North America is unlikely. Truck and bus manufacturers have shown little interest in buying steering gears and other components from anyone other than the only two established suppliers, ZF and WABCO, because of these companies' proven performance and North American presence.

According to the Complaint, production facilities and sales and service infrastructure for LCV steering gears require a substantial investment in both capital equipment and human resources. To be competitively viable, a new entrant would need to construct a factory to produce a range of steering components, establish production lines capable of manufacturing the components, and build assembly lines and establish or acquire access to testing equipment and facilities.

A new entrant also would need to retain engineering and research personnel to design, test, and troubleshoot the detailed manufacturing process necessary to produce LCV steering gears acceptable to North American customers. Any new LCV steering gears also would require extensive customer testing and qualification before they would be used by North American truck and bus manufacturers or accepted by end users. Moreover, because LCV steering gears now being designed and developed by ZF and WABCO are undergoing continuous technological improvement and innovation for use in the development of ADAS features, any new entrant would need to acquire equivalent expertise and proprietary technologies to enable steering-related ADAS features to be efficiently incorporated into the advanced

electronic control components of future North American LCVs. Finally, because customers prefer to use LCV steering gear manufacturers with an existing installed base to ensure efficient and quality service by customers' in-house or third-party service centers, a new entrant lacking an installed base would be at a severe disadvantage. The Complaint alleges that as a result of all of these barriers, entry would be costly and time-consuming.

The Complaint alleges that as a result of the barriers described above, entry into the market for LCV steering gears would not be timely, likely, or sufficient to defeat the anticompetitive effects likely to result from the merger of ZF and WABCO.

III. Explanation of the Proposed Final Judgment

The divestiture required by the proposed Final Judgment will remedy the loss of competition alleged in the Complaint by establishing an independent and economically viable competitor in the market for LCV steering gears in North America. Paragraph IV(A) of the proposed Final Judgment requires the Defendants, within the later of ninety (90) calendar days after the filing of the Complaint in this matter or thirty (30) calendar days after Regulatory Approvals have been received, to divest the entirety of WABCO's subsidiary R.H. Sheppard, as well as related WABCO assets, to an Acquirer acceptable to the United States it its sole discretion.[1] Paragraph IV(L) of the proposed Final Judgment requires that the Divestiture Assets must be divested in such a way as to satisfy the United States in its sole discretion that they can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the design, manufacture, and sale of LCV steering gears. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and must cooperate with prospective purchasers.

If the Defendants do not accomplish the divestiture within the period prescribed in the proposed Final Judgment, Section V of the proposed Final Judgment provides that the Court will appoint a divestiture trustee selected by the United States to effect the divestiture. If a divestiture trustee is appointed, the proposed Final Judgment provides that the Defendants will pay all costs and expenses of the trustee. The divestiture trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After the divestiture trustee's appointment becomes effective, the trustee will provide periodic reports to the United States setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the divestiture trustee and the United States will make recommendations to the Court, which will enter such orders as appropriate, in order to carry out the purpose of the trust, including by extending the trust or the term of the divestiture trustee's appointment.

The proposed Final Judgment contains several provisions to facilitate the immediate use of the Divestiture Assets by the Acquirer. Paragraph IV(I) of the proposed Final Judgment requires Defendants, at the Acquirer's option, to enter into a supply contract for the assembly of active steering electronic control units sufficient to meet all or part of the Acquirer's needs for a period of up to six (6) months. Upon Acquirer's request, the United States, in its sole discretion, may approve one or more extensions of any such agreement for a total of up to an additional six (6) months. In addition, Paragraph IV(J) of the proposed Final Judgment requires Defendants, at the Acquirer's option, to enter into a transition services agreement for back office, human resource, and information technology services and support for the Divestiture Assets for a period of up to twelve (12) months. The paragraph further provides that the United States, in its sole discretion, may approve one or more extensions for a total of up to an additional six (6) months if the Defendants notify the United States in writing at least three (3) months prior to the date the transition services contract expires. Finally, Paragraph IV(J) provides that employees of the Defendants tasked with providing any transition services must not share any competitively sensitive information of the Acquirer with any other employee of the Defendants.

The proposed Final Judgment also contains provisions intended to facilitate the Acquirer's efforts to hire the employees involved in the R.H. Sheppard business, including any additional WABCO employees, wherever located, involved in the design, manufacture, or sale of LCV steering gears. Paragraph IV(C) of the proposed Final Judgment requires the Defendants to provide the Acquirer with organization charts and information relating to these employees and make them available for interviews, and provides that Defendants will not interfere with any negotiations by the Acquirer to hire them. In addition, Paragraph IV(D) provides that for employees who elect employment with the Acquirer, the Defendants, subject to exceptions, shall waive all noncompete and nondisclosure agreements, vest all unvested pension and other equity rights, and provide all benefits to which the employees would generally be provided if transferred to a buyer of an ongoing business. The paragraph further provides that, for a period of 12 months from the filing of the Complaint, the Defendants may not solicit to hire, or hire any such person who was hired by the Acquirer, unless such individual is terminated or laid off by the Acquirer or the Acquirer agrees in writing that Defendants may solicit or hire that individual.

The proposed Final Judgment also contains provisions designed to promote compliance and make the enforcement of the Final Judgment as effective as possible. Paragraph XIII(A) provides that the United States retains and reserves all rights to enforce the provisions of the proposed Final Judgment, including its rights to seek an order of contempt from the Court. Under the terms of this paragraph, the Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that the Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph XIII(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment was drafted to restore competition that would otherwise be harmed by the transaction. The Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as

[1] Paragraph II(G) of the proposed Final Judgment defines Regulatory Approvals as ''(i) any approvals or clearances pursuant to filings with the Committee on Foreign Investment in the United States (''CFIUS''), or under antitrust or competition laws required for the Transaction to proceed; and (ii) any approvals or clearances pursuant to filings with CFIUS, or under antitrust, competition, or other U.S. or international laws required for Acquirer's acquisition of the Divestiture Assets to proceed.''

interpreted in light of this procompetitive purpose.

Paragraph XIII(C) of the proposed Final Judgment provides that if the Court finds in an enforcement proceeding that the Defendants have violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the proposed Final Judgment, Paragraph XIII(C) provides that in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, that the Defendants will reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with any enforcement effort, including the investigation of the potential violation.

Paragraph XIII(D) states that the United States may file an action against a Defendant for violating the Final Judgment for up to four (4) years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XIV of the proposed Final Judgment provides that the Final Judgment will expire ten years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and the Defendants that the divestiture has been completed and that the continuation of the Final Judgment is no longer necessary or in the public interest.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against the Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to: John R. Read, Acting Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against the Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against ZF's acquisition of WABCO. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will remedy the anticompetitive effects alleged in the Complaint, preserving competition for the design, manufacture, and sale of LCV steering gears in North America. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States* v. *U.S. Airways Grp., Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev*

N.V./S.A., No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable'').

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not ''make de novo determination of facts and issues.'' *United States* v. *W. Elec. Co.,* 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead, ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.'' *W. Elec. Co.,* 993 F.2d at 1577 (quotation marks omitted). ''The court should bear in mind the *flexibility* of the public interest inquiry: The court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *Microsoft,* 56 F.3d at 1460 (quotation marks omitted). More demanding requirements would ''have enormous practical consequences for the government's ability to negotiate future settlements,'' contrary to congressional intent. *Id.* at 1456. ''The Tunney Act was not intended to create a disincentive to the use of the consent decree.'' *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft,* 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United States* v. *Iron Mountain, Inc.,* 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'') (internal citations omitted); *United States* v. *Republic Servs., Inc.,* 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.''). The ultimate question is whether ''the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft,* 56 F.3d at 1461 (*quoting W. Elec. Co.,* 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged.''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using consent judgments proposed by the United States in antitrust enforcement, Pub. L. 108–237 § 221, and added the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). ''A court can make its public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways,* 38 F. Supp. 3d at 76 (citing *Enova Corp.,* 107 F. Supp. 2d at 17).

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: January 23, 2020

Respectfully submitted,

Daniel J. Monahan, Jr.,*
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*Attorney of Record

[FR Doc. 2020–01759 Filed 1–30–20; 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—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

Notice is hereby given that, on January 10, 2020, 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 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, Marathon Oil Company, Houston, TX, has been added 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 Permian Basin—Phase 2 intends to file additional written notifications disclosing all changes in membership.

On August 15, 2019, Permian Basin—Phase 2 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, 2019 (84 FR 48377).

The last notification was filed with the Department on December 4, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 9, 2020 (85 FR 1184).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2020–01853 Filed 1–30–20; 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 ROS-Industrial Consortium Americas

Notice is hereby given that, on December 30, 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 ROS-Industrial Consortium—Americas (''RIC—Americas'') 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, Arm Limited, Cambridge, UNITED KINGDOM, has been added 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 RIC—Americas intends to file additional written notifications disclosing all changes in membership.

On April 30, 2014, RIC—Americas 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 June 9, 2014 (79 FR 32999).

The last notification was filed with the Department on November 13, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 5, 2019 (84 FR 66695).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2020–01757 Filed 1–30–20; 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—ODPI, Inc.

Notice is hereby given that on January 6, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ODPi, Inc. (''ODPi'') 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, Syncsort Incorporated, Woodcliff Lake, NJ; and Linaro Limited, Cambridge, UNITED KINGDOM, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open and ODPi intends to file additional written notifications disclosing all changes in membership.

On November 23, 2015, ODPi 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 December 23, 2015 (80 FR 79930).

The last notification was filed with the Department on May 7, 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. 2020–01751 Filed 1–30–20; 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 Armaments Consortium

Notice is hereby given that, on January 10, 2020, 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 Armaments Consortium (''NAC'') 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, AirBorn Interconnect, Inc., Georgetown, TX; Rapid Imaging Technologies LLC, Middleton, WI; Innovative Concepts Engineering Inc., Greenbelt, MD; Trijicon, Inc., Wixon, MI; Univ of Missouri System DBA Missouri Univ of Science & Tech, Rolla, MO; Bridge 12 Technologies, Inc., Framingham, MA; Nuvotronics, Inc., Radford, VA; Boise State University, Boise, ID; BLASH, LLC, J dba Magnum Metals, Ashland, OH; RUAG Ammotec USA, Inc., Tampa, FL; All Foam Products, Co., Middlefield, OH; American Warrior Enterprises, Inc., Sioux Falls, SD; Systel, Inc., Sugar Land, TX; Dillon Aero, Inc., Scottsdale, AZ; and CatalystE, LLC, Huntsville, AL, have been added as parties to this venture.

Also, Jim Sutton & Associates LLC, Woodbridge, VA; LUXUS ARMS LLC, Mount Orab, OH; Applied Poleramic, Inc., Benicia, CA; Colorado School of Mines, Golden, CO; BlankSafe, LLC, San Juan Bautista, CA; Streamline Circuits Corp., Santa Clara CA; RDM Engineering, LLC, Oak Ridge, NJ; Harbour Mechanical Corporation, Hoboken, NJ; NPC Robotics Corp., Mound, MN; Materion Brush, Inc., Elmore, OH; Florida International University, Miami, FL; Strategic

Resilience Group, LLC, Stafford, VA; O Base Design LLC, Wake Forest, NC; Darkblade Systems Corporation, Stafford, VA; California State University, Long Beach Research Foundation, Long Beach, CA; and OFS Laboratories, LLC, Somerset, NJ, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open and NAC intends to file additional written notifications disclosing all changes in membership.

On May 2, 2000, NAC 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 June 30, 2000 (65 FR 40693).

The last notification was filed with the Department on November 4, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 11, 2019 (84 FR 67754).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit Antitrust Division.

[FR Doc. 2020–01823 Filed 1–30–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Lead in General Industry Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Safety and Health Administration sponsored information collection request (ICR) titled, ''Lead in General Industry Standard'' to the Office of Management and Budget (OMB) for review and approval, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before March 2, 2020.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAView ICR?ref_nbr=201909-1218-001* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the ''Lead in General Industry Standard'' information collection. This program ensures that information is in the desired format, the reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act, or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (see 29 U.S.C. 657). The OSH Act also requires OSHA to obtain such information with a minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining said information (see 29 U.S.C. 657).

The purpose of the Lead in General Industry Standard (29 CFR 1910.1025) and the collection of information requirements is to reduce occupational lead exposure in general industry. Lead exposure can result in both acute and chronic effects and can be fatal in severe cases of lead toxicity. The standard contains the following collection of information requirements: Conducting worker exposure monitoring; notifying workers of their lead exposure levels; establishing, implementing and reviewing a written compliance program annually; labeling containers of contaminated protective clothing and equipment; providing medical surveillance to workers; providing examining physicians with specific information; notifying workers of their medical surveillance results (including medical examinations and biological monitoring) and of the option for multiple physician review; posting warning signs; establishing and maintaining exposure monitoring, medical surveillance, and medical removal records; and providing workers with access to these records. The records are used by employees, physicians, employers, and OSHA to determine the effectiveness of the employer's compliance efforts.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0092.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on January 31, 2020. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 27, 2019 (84 FR 44931).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty-(30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number

1218–0092. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Lead in General Industry Standard (29 CFR 1910.1025).

OMB Control Number: 1218–0092.

Affected Public: Private sector: Businesses or other for-profits.

Total Estimated Number of Respondents: 53,469.

Total Estimated Number of Responses: 3,667,403.

Total Estimated Annual Time Burden: 1,071,602 hours.

Total Estimated Annual Other Costs Burden: $166,855,380.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: January 24, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–01788 Filed 1–30–20; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Benzene Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Benzene Standard'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before March 2, 2020.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201912-1218-009* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Benzene Standard information collection. This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657). The information collection requirements specified in the Benzene Standard (29 CFR 1910.1028) protects workers from the adverse health effects that may result from occupational exposure to benzene. The major information collection requirements in the Standard include conducting worker exposure monitoring, notifying workers of the benzene exposure, implementing a written compliance program, implementing medical surveillance for workers, providing examining physicians with specific information, ensuring that workers receive a copy of their medical surveillance records, and providing access to these records by OSHA, the National Institute for Occupational Safety and Health, the worker who is the subject of the records, the worker's representative, and other designated parties.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0129.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on January 31, 2020. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 29, 2019 (84 FR 65848).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty-(30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number

1218–0129. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Benzene Standard (29 CFR 1910.1028).

OMB Control Number: 1218–0129.

Affected Public: Private Sector: Businesses or other for-profits.

Total Estimated Number of Respondents: 12,148.

Total Estimated Number of Responses: 227,684.

Total Estimated Annual Time Burden: 158,770 hours.

Total Estimated Annual Other Costs Burden: $11,940,431.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: January 22, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–01790 Filed 1–30–20; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Cadmium in Construction Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Cadmium in Construction Standard'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before March 2, 2020.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201912-1218-012* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Cadmium in Construction Standard (29 CFR 1926.1127) information collection. This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657). The collection of information requirements specified in the Cadmium in Construction Standard (29 CFR 1926.1127) protect workers from the adverse health effects that may result from their exposure to cadmium. The major collection of information requirements of the Standard include: Conducting worker exposure monitoring, notifying workers of their cadmium exposures, implementing a written compliance program, implementing medical surveillance of workers, providing examining physicians with specific information, ensuring that workers receive a copy of their medical surveillance results, maintaining workers' exposure monitoring and medical surveillance records for specific periods, and providing access to these records by the worker who is the subject of the records, the worker's representative, and other designated parties.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0186.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on January 31, 2020. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 29, 2019 (84 FR 65844).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty-(30) days of publication of this notice in the **Federal**

Register. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0186. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Cadmium in Construction Standard (29 CFR 1926.1127).

OMB Control Number: 1218–0186.

Affected Public: Private Sector: Businesses or other for-profits.

Total Estimated Number of Respondents: 10,000.

Total Estimated Number of Responses: 258,250.

Total Estimated Annual Time Burden: 33,720 hours.

Total Estimated Annual Other Costs Burden: $2,082,199.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: January 22, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–01789 Filed 1–30–20; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Respirable Crystalline Silica Standards for General Industry, Maritime and Construction

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Respirable Crystalline Silica Standards for General Industry, Maritime and Construction'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before March 2, 2020.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201908-1218-003* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Respirable Crystalline Silica Standards for General Industry, Maritime and Construction information collection. This collection contains the following requirements: Conducting worker exposure assessments and notifying workers of the assessment results and any corrective actions being taken; establishing, implementing, reviewing, evaluating, and updating a written exposure control plan and making the plan available to workers and designated representatives; creating and submitting air quality permit notifications; establishing a respiratory protection program; providing qualitative fit-testing and maintaining records; providing medical surveillance to workers; providing the physician or other licensed health care provider (PLHCP), or the specialist, with specific information; ensuring that the PLHCP, or specialist, explains the results of the medical examination to the employee and provides each employee with a copy of their written medical report; obtaining a written medical opinion from the PLHCP, or specialist, and ensuring that each employee receives a copy of the opinion; and making and maintaining air monitoring data, objective data, and medical surveillance records; and providing workers and designated representatives with access to these records. The records are used by workers, employers, and OSHA to determine the effectiveness of the employer's compliance efforts.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0266.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on January 31, 2020. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 1, 2019 (84 FR 52144).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty-(30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number

1218–0266. The OMB is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Respirable Crystalline Silica Standards for General Industry, Maritime (29 CFR 1910.1053) and Construction (29 CFR 1926.1053).

OMB Control Number: 1218–0266.

Affected Public: Private Sector: Businesses or other for-profits.

Total Estimated Number of Respondents: 682,581.

Total Estimated Number of Responses: 17,858,154.

Total Estimated Annual Time Burden: 12,468,266 hours.

Total Estimated Annual Other Costs Burden: $393,789,550.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: January 22, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–01791 Filed 1–30–20; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278; NRC–2018–0130]

Exelon Generation Company, LLC; Peach Bottom Atomic Power Station, Units 2 and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Final supplemental environmental impact statement.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has published a final plant-specific supplement, Supplement 10, Second Renewal, to the Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants, NUREG–1437, regarding the subsequent renewal of Facility Operating License Nos. DPR–44 and DPR–56 for an additional 20 years of operation for Peach Bottom Atomic Power Station, Units 2 and 3, respectively (Peach Bottom). Peach Bottom is located in York County, Pennsylvania.

DATES: The final Supplement 10, Second Renewal to the GEIS is available as of January 24, 2020.

ADDRESSES: Please refer to Docket ID NRC–2018–0130 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

• *Federal Rulemaking website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2018–0130. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access 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 final Supplement 10, Second Renewal is available in ADAMS under Accession No. ML20023A937.

• *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.

• *Library:* A copy of the final Supplement 10, Second Renewal to the GEIS for License Renewal of Nuclear Plants, NUREG–1437, is available at the Hartford County Public Library, Whiteford Branch, 2407 Whiteford Road, Whiteford, MD 21160.

FOR FURTHER INFORMATION CONTACT: Lois M. James, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3306, email: *Lois.James@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 51.118 of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC is making available final Supplement 10, Second Renewal to NUREG–1437, regarding the renewal of Exelon Generation Company, LLC. (Exelon), operating licenses DPR–44 and DPR–56 for an additional 20 years of operation for Peach Bottom Atomic Power Station, Units 2 and 3 (Peach Bottom). A Notice of Availability of Draft Supplement 10, Second Renewal to NUREG–1437 was published in the **Federal Register** on August 9, 2019 (84 FR 39296), by the Environmental Protection Agency. The public comment period on draft Supplement 10, Second Renewal to NUREG–1437 ended on September 23, 2019, and the comments received are addressed in final Supplement 10, Second Renewal to NUREG–1437.

II. Discussion

As discussed in Chapter 5 of final Supplement 10, Second Renewal to NUREG–1437, the NRC staff determined that the adverse environmental impacts of subsequent license renewal for Peach Bottom are not so great that preserving the option of subsequent license renewal for energy-planning decisionmakers would be unreasonable. This recommendation is based on: (1) The analysis and findings in the GEIS; (2) information provided in the environmental report and other documents submitted by Exelon; (3) consultation with Federal, State, local, and Tribal agencies; (4) the NRC staff's independent environmental review; and (5) consideration of public comments received during the scoping process and on the Draft Supplemental Environmental Impact Statement.

Dated at Rockville, Maryland, this 27th day of January, 2020.

For the Nuclear Regulatory Commission.

Robert B. Elliott,

Chief, Environmental Review License Renewal Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2020–01769 Filed 1–30–20; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF SPECIAL COUNSEL

[OMB Control No. 3255–0005]

Submission for Review: OSC Form-14

AGENCY: Office of Special Counsel (OSC)

ACTION: 30-Day notice and request for comments.

SUMMARY: OSC is providing 30 additional days for individuals to comment on OSC Form-14, the form used to file complaints and disclosures with OSC.

DATES: Comments are encouraged and will be accepted until March 2, 2020.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Special Counsel or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Special Counsel or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: OSC is a permanent independent federal investigative and prosecutorial agency. OSC's basic authorities come from four federal statutes: The Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment & Reemployment Rights Act. OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing, and to serve as a safe channel for allegations of wrongdoing.

OSC offers the general public and other Federal agencies the opportunity to comment on an existing information collection request (ICR) Reference Number 201907–3255–002. As required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. chapter 35), OSC is soliciting comments for this collection. In particular, OSC and the Office of Management and Budget are interested in comments on this information collection request that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

This information collection was previously published in the **Federal Register** at 84 FR 55188 allowing for a 60-day public comment period. One (1) commenter responded to the notice and provided two (2) suggestions. One suggestion was to add capability for additional interactive ''platforms'' complainants could use to submit OSC Form-14. OSC's technical team considered the comment but decided not to add platforms because implementing new capabilities at this time would take additional time, resources, and budget. The current platform is a dynamic fillable Adobe PDF form which allows users to file without having to log into a system and gives them the ability to keep a copy of the file they submitted. Adobe Acrobat Reader DC software is the free global standard for reliably viewing, printing, and commenting on PDF documents. OSC will continue to consider updating capabilities in the future. The other suggestion was to combine retaliation claims alleging unlawful reprisal for engaging in whistleblowing or engaging in protected activity under 5 U.S.C. 2302(b)(8) and (b)(9), arguing that the separate boxes would be ''confusing'' to pro se complainants. OSC does not adopt the proposed suggestion, first, because the separate categories are precisely defined at the beginning of the document, and also because the second category, protected activity, includes a more expansive list of protected activities such as pursuing an appeals process or refusing to obey an order that the employee reasonably believes is contrary to law, rule, or regulation, that may not involve whistleblowing. Because the legal ramifications for whistleblower retaliation claims are different from most of the claims alleging retaliation for engaging in protected activity, OSC needs to maintain two distinct allegation boxes.

Analysis

Agency: U.S. Office of Special Counsel.

Title: OSC Form-14: Electronic Submission of Allegations and Disclosures.

OMB Control No.: 3255–0005.

Frequency of Use of Updated OSC Form-14: Daily.

Affected Public: Current and former Federal employees, applicants for Federal employment, state and local government employees, and their representatives, and the general public.

Number of Respondents: 6000 (estimate based on a review of recent OSC Annual Reports and Congressional Budget Justifications, and trends).

Estimated Average Amount of Time for a Person to Respond Using OSC Form-14: For prohibited personnel practice and other prohibited activities allegations, one hour and 15 minutes; for whistleblower disclosures, one hour; and for Hatch Act allegations, 30 minutes to complete the form. OSC based these estimates on testing completed by OSC employees during the development of the collection form.

Estimated Annual Burden for Filing OSC Form-14: 6917.5 hours.

Abstract: The electronic form must be used to submit allegations of possible prohibited personnel practices or other prohibited activity for investigation and possible prosecution by OSC, and to file disclosures of covered wrongdoing for review and possible referral to heads of agencies. The form may also be used by individuals to file complaints under the Hatch Act.

Dated: January 27, 2020.

Travis Millsaps,

Deputy Special Counsel for Public Policy.

[FR Doc. 2020–01768 Filed 1–30–20; 8:45 am]

BILLING CODE 7405–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88051; File No. SR–EMERALD–2020–03]

Self-Regulatory Organizations; Miami Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

January 27, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 15, 2020, Miami Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the ''Fee Schedule'') to make minor, non-substantive corrective edits and clarifying changes.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend several sections of the Fee Schedule to make minor, non-substantive edits to harmonize terms in the Fee Schedule with that of the Exchange's rulebook and the rulebooks of the Exchange's affiliates, Miami International Securities Exchange, LLC (''MIAX'') and MIAX PEARL, LLC (''MIAX PEARL''). Currently, throughout the Fee Schedule, the Exchange's affiliate, MIAX, is referred to as ''MIAX Options.'' The Exchange now proposes that all references throughout the Fee Schedule that are to ''MIAX Options'' will be amended to delete the words ''Options'', such that all references will be to the singular word ''MIAX.'' The proposed amendments would be to references to ''MIAX Options'' in the following sections of the Fee Schedule: (i) The Routing Fee table in Section (1)(b); (ii) the text underneath the Monthly Member Network Connectivity Fee table in Section (5)(a); and (iii) the text underneath the Monthly Non-Member Network Connectivity Fee table in Section (5)(b). The purpose of these changes is to harmonize the term ''MIAX'' in the Exchange's Fee Schedule with the MIAX Emerald rulebook, and to provide consistency for the term ''MIAX'' across the Fee Schedules and rulebooks of the Exchange's affiliates, MIAX and MIAX PEARL.[3]

Next, the Exchange proposes to amend the Definitions section of the Fee Schedule to amend a cross-reference in one of the defined terms. Currently, the term ''ABBO'' contains a cross-reference to Exchange Rule 1400(f), which is meant to be a cross-reference to the definition for an ''Eligible Exchange.'' The correct citation to the definition for ''Eligible Exchange'' is Exchange Rule 1400(g).[4] Accordingly, the Exchange proposes to amend the cross-reference in the definition for ''ABBO'' in the Definitions section of the Fee Schedule to be to Exchange Rule 1400(g).

Next, the Exchange proposes to amend Section (2)(c) of the Fee Schedule, Web CRD Fees, to make non-substantives edits to the sentence in parentheses following the FINRA Disclosure Processing Fee under the section titled ''GENERAL REGISTRATION FEES.'' Currently, the FINRA Disclosure Processing Fee includes the following in parentheses ''(Form U4, Form U5, Form BD & amendments)''. The Exchange now proposes to delete the ampersand in that sentence and replace it with the word ''and''. Similarly, the last paragraph of Section (2)(c) has a sentence that describes that the FINRA Disclosure Processing Fee applies to all registration, transfer, or termination filings with new or amended disclosure information or that require certification, as well any amendment to disclosure information. Within that sentence, there is the following in parentheses ''(Form U4, Form U5, Form BD, & Amendments)''. The Exchange now proposes to: (i) Delete the comma following ''Form BD,''; (ii) delete the ampersand in that sentence and replace it with the word ''and''; (iii) and make lowercase the word ''Amendments''. The purpose of these proposed changes are for clarity and uniformity with the fee schedules of the Exchange's affiliates, MIAX and MIAX PEARL.

Next, the Exchange proposes to amend the cross-reference in last paragraph of Section (2)(c) of the Fee Schedule. The last paragraph of Section (2)(c) currently states as follows: ''The Continuing Education Fee applies to each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to MIAX Emerald Rule 1304.'' Recently, the Exchange reorganized and enhanced the Exchange's membership, registration and qualification rules, and consolidated these rules into new Chapter XIX, Registration, Qualification and Continuing Education.[5] Accordingly, the Exchange proposes to amend the cross-reference in the last paragraph of Section (2)(c) of the Fee Schedule to reflect these changes. The cross-reference in the last paragraph of Section (2)(c) will now be to Exchange Rule 1903, Continuing Education Requirements, which contains, among other things, the requirements for individuals to complete the Regulatory Element of the Continuing Education Program. With the proposed change, the last paragraph of Section (2)(c) will state as follows: ''The Continuing Education Fee applies to each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to MIAX Emerald Rule 1903.''

The Exchange notes that its affiliate, MIAX PEARL, will also make similar changes to its Fee Schedule as described above.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposed changes promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes make clarifying, non-substantive edits to the Fee Schedule, and update a cross-reference to the Exchange's rulebook. The

[3] *See* MIAX and MIAX PEARL Fee Schedules, Definitions sections. *See also* MIAX Rule 100 and MIAX PEARL Rule 100.

[4] *See* Securities Exchange Act Release No. 87693 (December 9, 2019), 84 FR 68264 (December 13, 2019) (SR–MIAX–2019–48) (which amended, among other rules, MIAX Rule 1400 citations). The Exchange notes that the rules contained in MIAX Chapter XIV are incorporated by reference into MIAX Emerald Chapter XIV. *See* MIAX Emerald Rulebook, Chapter XIV.

[5] *See* Securities Exchange Act Release No. 87942 (January 10, 2020) (SR–EMERALD–2020–02).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

Exchange believes that these proposed changes will provide greater clarity to Members and the public regarding the Exchange's Fee Schedule and that it is in the public interest for the Fee Schedule to be accurate and concise so as to eliminate the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not a competitive filing but rather is designed to remedy minor non-substantive issues and provide added clarity to the Fee Schedule in order to avoid potential confusion on the part of market participants. In addition, the Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal does not address any competitive issues and is intended to protect investors by providing further transparency regarding the Exchange's Fee Schedule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[8] and Rule 19b–4(f)(2)[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2020–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–EMERALD–2020–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMERALD–2020–03, and should be submitted on or before February 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01787 Filed 1–30–20; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88050; File No. SR–DTC–2020–002]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Decommission the Web Inquiry Notification System and Make Other Related and Technical Changes

January 27, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 22, 2020, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change is to (i) decommission DTC's Web Inquiry Notification System (''WINS''); (ii) update the DTC Deposits Service Guide and the DTC Corporate Actions Distributions Service Guide (collectively, ''Guides'')[5] to direct DTC participants (''Participants'') to submit inquiries via The Depository Trust & Clearing Corporation (''DTCC'')[6] Client Center,[7] instead of using WINS; and (iii) make other technical, grammatical, and drafting updates to the Guides.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] *Available at http://www.dtcc.com/legal/rules-and-procedures.*

[6] DTCC is the parent company of DTC and its affiliated clearing agencies, National Securities Clearing Corporation (''NSCC'') and Fixed Income Clearing Corporation (''FICC''). DTCC operates on a shared services model for DTC, NSCC, and FICC. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to DTC, NSCC, or FICC.

[7] *Available at http://www.dtcc.com/client-center.*

concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change is to (i) decommission WINS; (ii) update the Guides to direct Participants to submit inquiries via the DTCC Client Center, instead of using WINS; and (iii) make other technical, grammatical, and drafting updates to the Guides.

WINS was established in 2009 to replace, in part, DTC's Participant Inquiry Notification System (''PINS'').[8] At the time, WINS was a new, browser-based inquiry management system, through which Participants submitted inquiries about their records in various DTC services, including dividends, corporate reorganizations, custody services, and securities processing. WINS offered many improvements over PINS: A more streamlined process for the submission and monitoring of inquiries and requests, easier navigation and data entry, and quicker response times. WINS also provided real-time status updates via email, where the emails notified Participants that their inquiry was received, updated, or closed. Nevertheless, WINS has several drawbacks. For example, it has a rigid user interface that limits the types of inquiries that can be made. Additionally, system changes to WINS—a proprietary, legacy system—are difficult, which makes keeping pace with business improvements challenging.

To address these issues and further improve the inquiry process, DTC proposes to decommission WINS and, instead, direct Participants to the Client Center to submit inquiries. Through the Client Center, which is available via the DTCC homepage, Participants will have various options for submitting inquires, including a general customer support line, dedicated business support lines, and the Participants' MyDTCC portal account.[9]

The inquiry submission options available through the Client Center offer improvements over WINS. For example, if a Participant chooses to submit an inquiry through a Client Center support line, the Participant will receive a live representative who will help the Participant create the inquiry request. That request, and any associated responses, then will be immediately accessible to the Participant through its MyDTCC account. Alternatively, if a Participant submits an inquiry directly through its MyDTCC account, the Participant will experience a modern user interface with enhanced functionality, including robust client support capabilities. These improved support functionalities are designed to better enable Participants to submit and manage inquires and support requests on various issues.

To effectuate this proposed rule change, the WINS Function Guide will be deleted and references to WINS in the Guides will be updated to direct Participants to submit inquiries through the Client Center. Relatedly, a technical update will be made to the Deposits Service Guide to delete a reference to a specific Customer Help Center support line and, instead, direct Participants to the Client Center, which will provide the most current support lines. Finally, the proposed rule change will make other technical, grammatical, and drafting updates to the Guides to improve clarity and readability.

Effective Date

By February 29, 2020, Participants will no longer be permitted to submit new inquiries via WINS. Nevertheless, all inquiries previously submitted via WINS will remain accessible to Participants in WINS until the inquiries are closed. DTC plans to close all open WINS inquiries by March 31, 2020, at which time WINS will be decommissioned. Participants will be notified of specific dates, in advance, via Important Notice.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act,[10] requires that the rules of the clearing agency be designed, *inter alia,* to promote the prompt and accurate clearance and settlement of securities transactions. DTC believes that the proposed rule change is consistent with this provision of the Act.

As described above, the proposal would decommission the outdated, legacy system WINS, through which Participants submit service inquires, including inquiries regarding their clearance and settlement activity at DTC. Instead, the Guides would be updated to direct Participants to submit inquiries and contact customer support through the Client Center, which offers various inquiry submission options (*e.g.,* customer support lines and the MyDTCC account portal), with improved functionality over WINS. Additionally, as noted above, the proposal will make various technical, grammatical, and drafting updates to the Guides.

By removing WINS and directing inquiries through the options available on the Client Center, the proposal will improve the means by which Participants submit service inquires and, in turn, receive responses, including inquiries and responses regarding clearance and settlement activity. Similarly, by deleting a reference to a specific Customer Help Center support line, in favor of support lines available in the Client Center, and by making technical, grammatical, and drafting updates to the Guides, the Guides will be clearer, more readable, and provide the most up-to-date customer support information to help manage Participant questions about their clearance and settlement activity.

Therefore, for the above reasons, DTC believes that the proposed rule change helps promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17(A)(b)(3)(F) of the Act.[11]

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact on competition because neither the decommissioning of WINS nor the other related, technical, grammatical, and drafting updates to the Guides, as described above, will change the ability of Participants to submit support inquiries or contact customer support, as Participants will be directed to do both through the Client Center.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to this proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

[8] Securities Exchange Act Release No. 60096 (June 11, 2009), 74 FR 28745 (June 17, 2009) (SR–DTC–2009–10).

[9] MyDTCC is a secure website portal of DTCC that provides a single point-of-entry for DTCC clients, including Participants, when obtaining access to services that require client authentication.

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] *Id.*

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and paragraph (f) of Rule 19b–4 thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2020–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–DTC–2020–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2020–002 and should be submitted on or before February 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01786 Filed 1–30–20; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88046; File No. SR–NASDAQ–2020–005]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Certain Changes to Investments of the First Trust TCW Opportunistic Fixed Income ETF

January 27, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 15, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes certain changes regarding investments of the First Trust TCW Opportunistic Fixed Income ETF, shares of which are currently listed and traded on the Exchange under Nasdaq Rule 5735 (''Managed Fund Shares'').

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes certain changes, described below under ''Application of Generic Listing Requirements'', regarding investments of the First Trust TCW Opportunistic Fixed Income ETF (''Fund''), shares (''Shares'') of which are currently listed and traded on the Exchange under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares [3] on the Exchange. Shares of the Fund commenced trading on the Exchange on February 15, 2017 in accordance with the generic listing standards in Nasdaq Rule 5735.

The Shares are offered by First Trust Exchange-Traded Fund VIII (the ''Trust''), which is registered with the Securities and Exchange Commission (''SEC'' or ''Commission'') as an open-end management investment company.[4] The Fund is a series of the Trust.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[4] The Trust is registered under the 1940 Act. On December 30, 2019, the Trust filed with the Commission its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–210186 and 811–23147) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the

First Trust Advisors L.P. is the investment adviser (''First Trust'' or ''Adviser'') to the Fund. TCW Investment Management Company LLC (''TCW'' or the ''Sub-Adviser''), serves as the Fund's investment sub-adviser. First Trust Portfolios L.P. is the distributor (''Distributor'') for the Fund's Shares. The Bank of New York Mellon acts as the administrator, custodian and transfer agent (''Custodian'' or ''Transfer Agent'') for the Fund.

Paragraph (g) of Nasdaq Rule 5735 provides that if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[5] In addition, paragraph (g) further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Adviser and Sub-Adviser are not registered as broker-dealers. The Adviser is affiliated with First Trust Portfolios L.P., a broker-dealer, and has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. The Sub-Adviser is affiliated with multiple broker-dealers and has implemented and will maintain a fire wall with respect to its broker-dealer affiliates regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser or the Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to relevant personnel and any broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

First Trust TCW Opportunistic Fixed Income ETF

Principal Investments

According to the Registration Statement, the investment objective of the Fund is to seek to maximize long-term total return. Under normal market conditions,[6] the Fund intends to invest at least 80% of its net assets (including investment borrowings) in a portfolio of ''Fixed Income Securities'' (described below).

In managing the Fund's portfolio, the Sub-Adviser intends to attempt to focus the Fund's portfolio holdings in areas of the fixed income market (based on quality, sector, coupon or maturity) that the Sub-Adviser believes to be relatively undervalued. Pursuant to this investment strategy, the Fund may invest in the following Fixed Income Securities, which may be represented by derivatives relating to such securities, as discussed below:

- Securities issued or guaranteed by the U.S. government or its agencies, instrumentalities or U.S. government-sponsored entities (''U.S. government securities'');
- Treasury Inflation Protected Securities (''TIPS'');
- the following non-agency, non-government-sponsored entity (''GSE'') and privately-issued mortgage-related and other asset-backed securities: Residential mortgage-backed securities (''RMBS''), commercial mortgage-backed securities (''CMBS''), asset-backed securities (''ABS''), and collateralized loan obligations (''CLOs'' and, together with such RMBS, CMBS and ABS ''Private ABS/MBS'');[7]
- Agency RMBS, agency CMBS, and agency ABS;
- domestic corporate bonds;
- Fixed Income Securities issued by non-U.S. corporations and non-U.S. governments;
- bank loans, including first lien senior secured floating rate bank loans (''Senior Loans''), secured and unsecured loans, second lien or more junior loans, and bridge loans;
- fixed income convertible securities;
- fixed income preferred securities; and
- municipal bonds.

The Fund may invest in agency RMBS and CMBS by investing in to-be-announced transactions (''TBA Transactions'').

The Fund may hold cash and cash equivalents.[8] In addition, the Fund may hold the following short-term instruments with maturities of three months or more: Certificates of deposit; bankers' acceptances; repurchase agreements and reverse repurchase agreements; bank time deposits; and commercial paper.

The Fund may enter into short sales of any securities in which the Fund may invest.

The Fund may utilize exchange-listed and over-the-counter (''OTC'') traded derivatives instruments for duration/yield curve management and/or hedging purposes, for risk management purposes or as part of its investment strategies. The Fund will use derivative instruments primarily to hedge interest rate risk, actively manage interest rate exposure, hedge foreign currency risk and actively manage foreign currency exposure. The Fund may also use derivative instruments to enhance returns, as a substitute for, or to gain

Commission has issued an order upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812–13795).

[5] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[6] The term ''normal market conditions'' is defined in Nasdaq Rule 5735(c)(5). On a temporary basis, including for defensive purposes, during the initial invest-up period (*i.e.,* the six-week period following the commencement of trading of Shares on the Exchange) and during periods of high cash inflows or outflows (*i.e.,* rolling periods of seven calendar days during which inflows or outflows of cash, in the aggregate, exceed 10% of the Fund's net assets as of the opening of business on the first day of such periods), the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Adviser and/or the Sub-Adviser believes securities in which the Fund normally invests have elevated risks due to market, political or economic factors and in other extraordinary circumstances.

[7] For avoidance of doubt, ''Private ABS/MBS'' as referenced herein are non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities as stated in Nasdaq Rule 5735(b)(1)(B)(v).

[8] For purposes of this filing, cash equivalents are the short-term instruments with maturities of less than 3 months enumerated in Nasdaq Rule 5735(b)(1)(C).

exposure to, a position in an underlying asset, to reduce transaction costs, to maintain full market exposure, to manage cash flows or to preserve capital. Derivatives may also be used to hedge risks associated with the Fund's other portfolio investments. The Fund will not use derivative instruments to gain exposure to Private ABS/MBS, and derivative instruments linked to such securities will be used for hedging purposes only. Derivatives that the Fund may enter into are the following: Futures on interest rates, currencies, Fixed Income Securities and fixed income indices; exchange-traded and OTC options on interest rates, currencies, Fixed Income Securities and fixed income indices; swap agreements on interest rates, currencies, Fixed Income Securities and fixed income indices; credit default swaps (''CDX''); and currency forward contracts.

Other Investments

While the Fund, under normal market conditions, invests at least 80% of its net assets in the Principal Investments described above, the Fund may invest its remaining assets in the following ''Non-Principal Investments.''

The Fund may invest in exchange-traded common stock, exchange-traded preferred stock, and exchange-traded real estate investment trusts (''REITs'').

The Fund may invest in the securities of other investment companies registered under the 1940 Act, including money market funds, exchange-traded funds (''ETFs''), open-end funds (other than money market funds and other ETFs), and U.S. exchange-traded closed-end funds.[9]

- The Fund may hold exchange-traded notes (''ETNs'').[10]
- The Fund may hold exchange-traded or OTC ''Work Out Securities.''[11]
- The Fund may hold exchange-traded or OTC equity securities issued upon conversion of fixed income convertible securities.

Investment Restrictions

The Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis. The Fund's holdings in derivative instruments for hedging purposes would be excluded from the determination of compliance with this 2% limitation. The total gross notional value of the Fund's holdings in derivative instruments used to gain exposure to a specific asset is limited to 2% of the Fund's total assets.

The Fund may invest up to 50% of its total assets in the aggregate in Private ABS/MBS, provided that the Fund (1) may not invest more than 30% of its total assets in non-agency RMBS; (2) may not invest more than 25% of its total assets in non-agency CMBS and CLOs; and (3) may not invest more than 25% of its total assets in non-agency ABS.

With respect to the Fund's investments in up to 30% of its total assets in Private ABS/MBS that exceed the 20% of the weight of the Fund's portfolio[12] that may be invested in Private ABS/MBS under Nasdaq Rule 5735(b)(1)(B)(v),[13] the following restrictions will apply:

- Non-agency RMBS shall have a weighted average loan age of 84 months or more;
- Non-agency CMBS and CLOs shall have a weighted average loan age of 60 months or more; and
- Non-agency ABS shall have a weighted average loan age of 12 months or more.[14]

The Exchange proposes that up to 25% of the Fund's assets may be invested in OTC derivatives that are used to reduce currency, interest rate or credit risk arising from the Fund's investments (that is, ''hedge''). The Fund's investments in OTC derivatives other than OTC derivatives used to hedge the Fund's portfolio against currency, interest rate or credit risk will be limited to 20% of the assets in the Fund's portfolio. For purposes of these percentage limitations on OTC derivatives, the weight of such OTC derivatives will be calculated as the aggregate gross notional value of such OTC derivatives.

The Fund's holdings of bank loans will not exceed 15% of the Fund's total assets, and the Fund's holdings of bank loans other than Senior Loans will not exceed 5% of the Fund's total assets.

The Fund's holdings in fixed income convertible securities and in equity securities issued upon conversion of such convertible securities will not exceed 10% of the Fund's total assets.

The Fund's holdings in Work Out Securities will not exceed 5% of the Fund's total assets.

The Fund will not invest in securities or other financial instruments that have not been described in this proposed rule change.

Other Restrictions

The Fund's investments, including derivatives, will be consistent with the Fund's investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2X or −3X) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).[15]

Use of Derivatives by the Fund

The Fund may invest in the types of derivatives described in the ''Principal Investments'' section above for the purposes described in that section. Investments in derivative instruments will be made in accordance with the Fund's investment objective and policies.

To limit the potential risk associated with such transactions, the Fund will enter into offsetting transactions or segregate or ''earmark'' assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees (the ''Trust Board''). In addition, the Fund has included appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.

[9] For purposes of this filing, the term ''ETFs'' are Index Fund Shares (as described in Nasdaq Rule 5705(b)); Portfolio Depository Receipts (as described in Nasdaq Rule 5705(a)); and Managed Fund Shares (as described in Nasdaq Rule 5735). All ETFs will be listed and traded in the U.S. on a national securities exchange. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (*e.g.,* 2X, −2X, 3X or −3X) ETFs.

[10] For purposes of this filing, ETNs are Linked Securities (as described in Nasdaq Rule 5710). While the Fund may invest in inverse ETNs, the Fund will not invest in leveraged or inverse leveraged ETNs (*e.g.,* 2X or −3X).

[11] For purposes of this filing, Work Out Securities are U.S. or foreign equity securities of any type acquired in connection with restructurings related to issuers of Fixed Income Securities held by the Fund. Work Out Securities are generally traded OTC, but may be traded on a U.S. or foreign exchange.

[12] *See* Securities Exchange Act Release No. 86399 (July 17, 2019), 84 FR 35446 (July 23, 2019) (SR–NASDAQ–2019–054) (approving an amendment to Nasdaq Rule 5735(b)(1)(B)(v) to delete the reference to the ''fixed income portion of the'' portfolio, such that non-agency, non-GSE, and privately-issued mortgage-related and other asset-backed securities components of a portfolio may not account, in the aggregate, for more than 20% of the weight of the whole portfolio).

[13] Nasdaq Rule 5735(b)(1)(B)(v) provides that non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the portfolio.

[14] Information relating to weighted average loan age for non-agency RMBS, non-agency CMBS, CLOs and non-agency ABS is widely available from major market data vendors such as Bloomberg.

[15] The Fund's broad-based securities benchmark index is the Bloomberg Barclays U.S. Aggregate Bond Index.

Because the markets for certain assets, or the assets themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for the Fund to obtain the desired asset exposure.

Impact on Arbitrage Mechanism

The Adviser and the Sub-Adviser believe there will be minimal, if any, impact to the arbitrage mechanism as a result of the Fund's use of derivatives and Private ABS/MBS. The Adviser and the Sub-Adviser understand that market makers and participants should be able to value derivatives and Private ABS/MBS as long as the positions are disclosed with relevant information. The Adviser and the Sub-Adviser believe that the price at which Shares of the Fund trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem Shares of the Fund at their net asset value (''NAV''), which should ensure that Shares of the Fund will not trade at a material discount or premium in relation to their NAV.

The Adviser and Sub-Adviser do not believe there will be any significant impacts to the settlement or operational aspects of the Fund's arbitrage mechanism due to the use of derivatives and Private ABS/MBS.

Creation and Redemption of Shares

The Fund will issue and redeem Shares on a continuous basis at NAV [16] only in large blocks of Shares (''Creation Units'') in transactions with authorized participants, generally including broker-dealers and large institutional investors (''Authorized Participants''). Creation Units generally will consist of 50,000 Shares. The size of a Creation Unit is subject to change. As described in the Registration Statement, the Fund will issue and redeem Creation Units in exchange for an in-kind portfolio of instruments and/or cash in lieu of such instruments (the ''Creation Basket'').[17] In addition, if there is a difference between the NAV attributable to a Creation Unit and the market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments (which may include cash-in-lieu amounts) with the lower value will pay to the other an amount in cash equal to the difference (referred to as the ''Cash Component'').

Creations and redemptions must be made by or through an Authorized Participant that has executed an agreement that has been agreed to by the Distributor and the Transfer Agent with respect to creations and redemptions of Creation Units. All standard orders to create Creation Units must be received by the Transfer Agent no later than the closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m., E.T.) (the ''Closing Time'') in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares as next determined on such date after receipt of the order in proper form. Shares may be redeemed only in Creation Units at their NAV next determined after receipt not later than the Closing Time of a redemption request in proper form by the Fund through the Transfer Agent and only on a business day. The Custodian, through the National Securities Clearing Corporation (''NSCC''), will make available on each business day, prior to the opening of business of the Exchange, the list of the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Component (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day prior to commencement of trading in the Shares.

Application of Generic Listing Requirements

The Exchange is submitting this proposed rule change because the portfolio for the Fund will not meet all of the ''generic'' listing requirements of Nasdaq Rule 5735(b)(1) applicable to the listing of Managed Fund Shares. The Fund's portfolio will meet all such requirements except for those set forth in Nasdaq Rule 5735(b)(1)(A)(i), (b)(1)(A)(ii), (b)(1)(B)(i), (b)(1)(B)(iv), (b)(1)(B)(v), and (b)(1)(E), as described below. The Exchange notes that the proposed rule change set forth in this filing is based on a very similar proposed rule change that was recently approved by the Commission with respect to another actively-managed ETF for which the Adviser serves as investment adviser and the Sub-Adviser serves as investment sub-adviser.[18]

The Fund will not comply with the requirements set forth in Nasdaq Rule 5735(b)(1)(A)(i) [19] and (b)(1)(A)(ii) [20]

[16] The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange (''NYSE''), generally 4:00 p.m., Eastern Time (''E.T.'') (the ''NAV Calculation Time''). NAV per Share will be calculated by dividing the Fund's net assets by the number of Fund Shares outstanding.

[17] It is expected that the Fund will typically issue and redeem Creation Units on a cash basis; however, at times, the Fund may issue and redeem Creation Units on an in-kind (or partially in-kind) (or partially cash) basis.

[18] *See* Securities Exchange Act Release No. 87410 (October 28, 2019), 84 FR 58750 (November 1, 2019) (SR–NYSEArca–2019–33) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, Regarding Changes to Investments of the First Trust TCW Unconstrained Plus Bond ETF) (the ''Recent Approval'').

[19] Nasdaq Rule 5735(b)(1)(A)(i) provides that the component stocks of the equity portion of a portfolio that are U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:

(a) Component stocks (excluding Exchange Traded Derivative Securities and Linked Securities) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Exchange Traded Derivative Securities and Linked Securities) each shall have a minimum market value of at least $75 million;

(b) Component stocks (excluding Exchange Traded Derivative Securities and Linked Securities) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding such Exchange Traded Derivative Securities and Linked Securities) each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months;

(c) The most heavily weighted component stock (excluding Exchange Traded Derivative Securities and Linked Securities) shall not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Exchange Traded Derivative Securities and Linked Securities) shall not exceed 65% of the equity weight of the portfolio;

(d) Where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Exchange Traded Derivative Securities or Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Exchange Traded Derivative Securities or Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares;

(e) Except as provided herein, equity securities in the portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934; and

(f) American Depositary Receipts (''ADRs'') in a portfolio may be exchange-traded or non-exchange-traded. However, no more than 10% of the equity weight of a portfolio shall consist of non-exchange-traded ADRs.

[20] Nasdaq Rule 5735(b)(1)(A)(ii) provides that the component stocks of the equity portion of a portfolio that are Non-U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:

(a) Non-U.S. Component Stocks each shall have a minimum market value of at least $100 million;

(b) Non-U.S. Component Stocks each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months;

(c) The most heavily weighted Non-U.S. Component stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio;

(d) Where the equity portion of the portfolio includes Non-U.S. Component Stocks, the equity

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with respect to the Fund's investments in equity securities.[21] Instead, the Exchange proposes that the Fund's investments in equity securities will meet the requirements of Nasdaq Rule 5735(b)(1)(A) with the exception of Nasdaq Rule 5735(b)(1)(A)(i)(c) and (d) (with respect to U.S. Component Stocks) and Nasdaq Rule 5735(b)(1)(A)(ii)(c) and (d) (with respect to Non-U.S. Component Stocks). Any Fund investment in exchange-traded common stocks, preferred stocks, REITS, ETFs, ETNs, exchange-traded equity securities issued upon conversion of fixed income convertible securities, exchange-traded Work Out Securities and U.S. exchange-traded closed-end funds would provide for enhanced diversification of the Fund's portfolio and, in any case, would be Non-Principal Investments and would not exceed 20% of the Fund's net assets in the aggregate. With respect to any Fund holdings of exchange-traded equity securities issued upon conversion of fixed income convertible securities and exchange-traded Work Out Securities, such securities will not exceed 10% and 5%, respectively, of the Fund's total assets.

The Adviser and Sub-Adviser represent that the Fund generally will not actively invest in equity securities issued upon conversion of fixed income convertible securities or Work Out Securities, but may, at times, receive a distribution of such securities in connection with the Fund's holdings in other securities. Therefore, the Fund's holdings in equity securities issued upon conversion of fixed income convertible securities and Work Out Securities generally would not be acquired as the result of the Fund's voluntary investment decisions. The Adviser and Sub-Adviser represent that, under these circumstances, application of the weighting requirements of Nasdaq Rules 5735(b)(1)(A)(i)(c) and 5735(b)(1)(A)(ii)(c) and the minimum number of components requirements of Nasdaq Rules 5735(b)(1)(A)(i)(d) and 5735(b)(1)(A)(ii)(d) would impose an unnecessary burden on the Fund's ability to hold such equity securities.

The Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(B)(i) that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $100 million or more. Instead, the Exchange proposes that components that in the aggregate account for at least 50% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $50 million or more. As noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis. In addition, at least 50% of the weight of the Fund's portfolio would continue to be subject to a substantial minimum (*i.e.,* $50 million) original principal amount outstanding. The Exchange believes this limitation would provide significant additional diversification to the Fund's investments in Fixed Income Securities, and reduce concerns that the Fund's investments in such securities would be readily susceptible to market manipulation.

The Fund will not comply with the requirements in Nasdaq Rule 5735(b)(1)(B)(iv) that component securities that in the aggregate account for at least 90% of the fixed income weight of the portfolio meet one of the criteria specified in Nasdaq Rule 5735(b)(1)(B)(iv), because certain Private ABS/MBS cannot satisfy the criteria in Nasdaq Rule 5735(b)(1)(B)(iv).[22] Instead, the Exchange proposes that the Fund's investments in Fixed Income Securities other than Private ABS/MBS will be required to comply with the requirements of Nasdaq Rule 5735(b)(1)(B)(iv). As noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis. The Exchange believes this limitation would provide additional diversification to the Fund's investments in Private ABS/MBS, and reduce concerns that the Fund's investment in such securities would be readily susceptible to market manipulation.

The Exchange notes that the Commission has previously approved the listing of Managed Fund Shares with similar investment objectives and strategies without imposing requirements that a certain percentage of such funds' securities meet one of the criteria corresponding to those set forth in Nasdaq Rule 5735(b)(1)(B)(iv).[23]

The Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(B)(v) that Private ABS/MBS in the Fund's portfolio account, in the aggregate, for no more than 20% of the weight of the Fund's portfolio.[24] Instead, the Exchange proposes that, in order to enable the portfolio to be more diversified and provide the Fund with an opportunity to earn higher returns, the Fund may invest up to 50% of its total assets in the aggregate in Private ABS/MBS, provided that the Fund (1) may not invest more than 30% of its total assets in non-agency RMBS; (2) may not invest more than 25% of its total assets in non-agency CMBS and CLOs; and (3) may not invest more than 25% of its total assets in non-agency ABS.[25]

With respect to the Fund's investments in up to 30% of its total assets in Private ABS/MBS that exceed the 20% of the weight of the Fund's portfolio that may be invested in Private ABS/MBS under Nasdaq Rule 5735(b)(1)(B)(v),[26] the following restrictions (which are identical to those set forth in the Recent Approval) will apply:

- Non-agency RMBS shall have a weighted average loan age of 84 months or more;
- Non-agency CMBS and CLOs shall have a weighted average loan age of 60 months or more; and

portion of the portfolio shall include a minimum of 20 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Exchange Traded Derivative Securities or Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Exchange Traded Derivative Securities or Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares; and

(e) Each Non-U.S. Component Stock shall be listed and traded on an exchange that has last-sale reporting.

[21] For purposes of these exceptions, investments in equity securities that are OTC Work Out Securities, OTC equity securities issued upon conversion of fixed income convertible securities, or non-exchange-traded securities of other open-end investment companies (*e.g.,* mutual funds) are excluded and are discussed further below.

[22] Nasdaq Rule 5735(b)(1)(B)(iv) provides that component securities that in the aggregate account for at least 90% of the fixed income weight of the portfolio must be either: (a) From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

[23] *See* the Recent Approval, *supra* note 18. In addition, *see, e.g.,* Exchange Act Release Nos. 67894 (September 20, 2012), 77 FR 59227 (September 26, 2012) (SR–BATS–2012–033) (order approving the listing and trading of shares of the iShares Short Maturity Bond Fund); 70342 (September 6, 2013), 78 FR 56256 (September 12, 2013) (SR–NYSEArca–2013–71) (order approving the listing and trading of shares of the SPDR SSgA Ultra Short Term Bond ETF, SPDR SSgA Conservative Ultra Short Term Bond ETF and SPDR SSgA Aggressive Ultra Short Term Bond ETF).

[24] *See* note 13, *supra.*

[25] The Exchange notes that substantially the same proposal was set forth in the Recent Approval.

[26] *See* note 13, *supra.*

• Non-agency ABS shall have a weighted average loan age of 12 months or more.

In addition, as noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis.[27] The Exchange believes these limitations would provide additional diversification to the Fund's Private ABS/MBS investments and reduce concerns that the Fund's investment in such securities would be readily susceptible to market manipulation.

The Adviser and Sub-Adviser represent that the RMBS sector can be an important component of the Fund's investment strategy because of the potential for attractive risk-adjusted returns relative to other fixed income sectors and the potential to add significantly to the diversification in the Fund's portfolio. Similarly, the Private ABS/MBS sectors also have the potential for attractive risk-adjusted returns and added portfolio diversification.

The Fund's portfolio will not comply with the requirements set forth in Nasdaq Rule 5735(b)(1)(E).[28] Specifically, the Fund's investments in OTC derivatives may exceed 20% of Fund assets, calculated as the aggregate gross notional value of such OTC derivatives. The Exchange proposes that up to 25% of the Fund's assets (calculated as the aggregate gross notional value) may be invested in OTC derivatives that are used to reduce currency, interest rate or credit risk arising from the Fund's investments (that is, ''hedge''). The Fund's investments in OTC derivatives other than OTC derivatives used to hedge the Fund's portfolio against currency, interest rate or credit risk will be limited to 20% of the assets in the Fund's portfolio, calculated as the aggregate gross notional value of such OTC derivatives.

The Adviser and Sub-Adviser believe that it is important to provide the Fund with additional flexibility to manage risk associated with its investments. Depending on market conditions, it may be critical that the Fund be able to utilize available OTC derivatives for this purpose to attempt to reduce impact of currency, interest rate or credit fluctuations on Fund assets. Therefore, the Exchange believes it is appropriate to apply a limit of up to 25% of the Fund's assets to the Fund's investments in OTC derivatives (calculated as the aggregate gross notional value of such OTC derivatives), including forwards, options and swaps, that are used for hedging purposes, as described above.[29]

As noted above, the Fund may hold equity securities that are Work Out Securities, which generally are traded OTC (but that may be traded on a U.S. or foreign exchange), exchange-traded or OTC equity securities issued upon conversion of fixed income convertible securities, and non-exchange-traded securities of other open-end investment company (*e.g.,* mutual funds). The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Nasdaq Rule 5735(b)(1)(A)(i)(a) through (e) with respect to the Fund's investments in non-exchange-traded securities of open-end investment companies,[30] and notwithstanding that the Fund's holdings of OTC equity securities issued upon conversion of fixed income convertible securities and OTC Work Out Securities would not meet the requirements of Nasdaq Rule 5735(b)(1)(A)(i)(a) through (e) and Nasdaq Rule 5735(b)(1)(A)(ii)(a) through (e). Investments in non-exchange-traded securities of open-end investment companies will not be principal investments of the Fund.[31] Such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term. With respect to any Fund holdings of OTC equity securities issued upon conversion of fixed income convertible securities and OTC Work Out Securities, such securities will not exceed 10% and 5%, respectively, of the Fund's total assets. The Adviser and Sub-Adviser represent that the Fund generally will not actively invest in OTC equity securities issued upon conversion of fixed income convertible securities or OTC Work Out Securities, but may, at times, receive a distribution of such securities in connection with the Fund's holdings in other securities. Therefore, the Fund's holdings in equity securities issued upon conversion of fixed income convertible securities and Work Out Securities generally would not be acquired as the result of the Fund's voluntary investment decisions.

With respect to investments in non-exchange-traded investment company securities, because such securities have a net asset value based on the value of securities and financial assets the investment company holds, the Exchange believes it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Nasdaq Rule 5735(b)(1)(A)(i).[32]

The Exchange notes that Nasdaq Rule 5735(b)(1)(A)(i)(a) through (d) exclude application of those provisions to certain ''Exchange Traded Derivative Securities'' that are exchange-traded investment company securities, including Portfolio Depository Receipts (as described in Nasdaq Rule 5705(a)), Index Fund Shares (as described in Nasdaq Rule 5705(b)) and Managed Fund Shares (as described in Nasdaq Rule 5735).[33] In the 2008 NYSEArca

[27] As noted above, the Fund's holdings in derivative instruments for hedging purposes would be excluded from the determination of compliance with this 2% limitation. The total gross notional value of the Fund's holdings in derivative instruments used to gain exposure to a specific asset is limited to 2% of the Fund's total assets.

[28] Nasdaq Rule 5735(b)(1)(E) provides that the portfolio may hold OTC derivatives, including forwards, options and swaps on commodities, currencies and financial instruments (*e.g.,* stocks, fixed income, interest rates, and volatility) or a basket or index of any of the foregoing; however, on both an initial and continuing basis, no more than 20% of the assets in the portfolio may be invested in OTC derivatives. For purposes of calculating this limitation, a portfolio's investment in OTC derivatives will be calculated as the aggregate gross notional value of the OTC derivatives.

[29] In the Recent Approval, *supra* note 18, the Commission approved an exception to the applicable generic listing requirements relating to investments in OTC derivatives that was substantially the same as that proposed in this filing. *See also* Securities Exchange Act Release No. 80657 (May 11, 2017), 82 FR 22702 (May 17, 2017) (SR–NYSEArca–2017–09) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, Regarding Investments of the Janus Short Duration Income ETF Listed Under NYSE Arca Equities Rule 8.600).

[30] Nasdaq Rule 5735(b)(1)(A) specifies the equity securities accommodated by the generic criteria in Nasdaq Rule 5735(b)(1)(A), namely, U.S. Component Stocks (as described in Nasdaq Rule 5705); Non-U.S. Component Stocks (as described in Nasdaq Rule 5705); Exchange Traded Derivative Securities (as described in Nasdaq Rule 5735(c)(6)); and Linked Securities (as described in Nasdaq Rule 5710).

[31] For purposes of this section of the filing, non-exchange-traded securities of other registered investment companies do not include money market funds, which are cash equivalents under Nasdaq Rule 5735(b)(1)(C) and for which there is no limitation in the percentage of the portfolio invested in such securities.

[32] The Commission has previously approved proposed rule changes under Section 19(b) of the Act for series of Managed Fund Shares that may invest in non-exchange traded investment company securities. *See, e.g.,* the Recent Approval, *supra* note 18; Securities Exchange Act Release No. 78414 (July 26, 2016), 81 FR 50576 (August 1, 2016) (SR–NYSEArca–2016–79) (order approving listing and trading of shares of the Virtus Japan Alpha ETF under NYSE Arca Equities Rule 8.600).

[33] The Commission initially approved the Exchange's proposed rule change to provide

Continued

Approval Order, the Commission stated that ''based on the trading characteristics of Derivative Securities Products, it may be difficult for component Derivative Securities Products to satisfy certain quantitative index criteria, such as the minimum market value and trading volume limitations.'' The Exchange notes that it would be difficult or impossible to apply to non-exchange-traded investment company securities the generic quantitative criteria (*e.g.,* market capitalization, trading volume, or portfolio criteria) in Nasdaq Rule 5735(b)(1)(A)(i)(a) through (d) applicable to U.S. Component Stocks. For example, the requirement for U.S. Component Stocks in Nasdaq Rule 5735(b)(1)(A)(i)(b) that there be a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months, is tailored to exchange-traded securities (*e.g.,* U.S. Component Stocks) and not to mutual fund shares, which do not trade in the secondary market. Moreover, application of such criteria would not serve the purpose served with respect to U.S. Component Stocks, namely, to establish minimum liquidity and diversification criteria for U.S. Component Stocks held by series of Managed Fund Shares.

The Exchange notes that the Commission has previously approved listing and trading of issues of Managed Fund Shares that may invest in equity securities that are non-exchange-traded securities of other open-end investment companies notwithstanding that a fund would not meet requirements corresponding to those of Nasdaq Rule 5735(b)(1)(A)(i)(a) through (e) with respect to such fund's investments in such securities.[34] Thus, the Exchange believes that it is appropriate to permit the Fund to invest in non-exchange-traded open-end management investment company securities, as described above.

Deviations from the generic requirements are necessary for the Fund to achieve its investment objective in a manner that is cost-effective and that maximizes investors' returns. Further, the proposed alternative requirements are narrowly tailored to allow the Fund to achieve its investment objective in manner that is consistent with the principles of Section 6(b)(5) of the Act. In addition, the proposed deviations from the generic requirements and proposed alternative requirements set forth in this filing are consistent with those set forth in the Recent Approval. As a result, it is in the public interest to approve listing and trading of Shares of the Fund on the Exchange pursuant to the requirements set forth herein.

The Exchange notes that, other than Nasdaq Rule 5735(b)(1)(A)(i), (b)(1)(A)(ii), (b)(1)(B)(i), (b)(1)(B)(iv), (b)(1)(B)(v), and (b)(1)(E), as described above, the Fund's portfolio will meet all other requirements of Nasdaq Rule 5735.

Availability of Information

The Fund's website (*www.ftportfolios.com*) will include the prospectus for the Fund that may be downloaded. The Fund's website will include additional quantitative information updated on a daily basis including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and midpoint of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[35] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio as defined in Nasdaq Rule 5735(c)(2) that forms the basis for the Fund's calculation of NAV at the end of the business day.[36]

On a daily basis, the Fund will disclose the information required under Nasdaq Rule 5735(c)(2) to the extent applicable. The website information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the NSCC. The basket represents one Creation Unit of the Fund. Authorized Participants may refer to the basket composition file for information regarding Fixed Income Securities, and any other instrument that may comprise the Fund's basket on a given day.

Investors can also obtain the Trust's Statement of Additional Information (''SAI'') and Form N–CEN and the Fund's Shareholder Reports and Form N–CSR. The SAI and the Fund's Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

Intra-day and closing price information regarding exchange-traded options will be available from the exchange on which such instruments are traded. Intra-day and closing price information regarding Fixed Income Securities will be available from major market data vendors. Price information relating to OTC options, forwards and swaps will be available from major market data vendors. Intra-day price information for exchange-traded derivative instruments will be available from the applicable exchange and from major market data vendors. Intra-day and other price information for the Fixed Income Securities in which the

exclusions for ''Derivative Securities Products'' (*e.g.,* Index Fund Shares, Portfolio Depository Receipts and Managed Fund Shares) in Nasdaq Rules 5705(b)(3)(A)(i)(a) through (d) and 5705(b)(3)(A)(ii)(a) through (d). *See* Securities Exchange Act Release No. 69928 (July 3, 2013), 78 FR 41489 (July 10, 2013) (SR–NASDAQ–2013–094) (Notice of Filing and Immediate Effectiveness to Conform Rule 5705 Governing Exchange Traded Funds to the Listing Requirements of Another Market) (the ''2013 Approval''). The 2013 Approval was intended to conform provisions of Nasdaq Rule 5705 to the comparable provisions of the corresponding NYSE Arca rule, as amended in 2008. *See* Securities Exchange Act Release No. 57751 (May 1, 2008), 73 FR 25818 (May 7, 2008) (SR–NYSEArca–2008–29) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units) (''2008 NYSEArca Approval Order''). The Commission subsequently approved generic criteria applicable to the listing and trading of Managed Fund Shares, including exclusions for Exchange Traded Derivative Securities and Linked Securities in Nasdaq Rule 5735(b)(1)(A)(i)(a) through (d) in Securities Exchange Act Release No. 78918 (September 23, 2016), 81 FR 67033 (September 29, 2016) (SR–NASDAQ–2016–104) (Order Granting Approval of a Proposed Rule Change To Amend Nasdaq Rule 5735 To Adopt Generic Listing Standards for Managed Fund Shares). *See also* Securities Exchange Release No. 78616 (August 18, 2016), 81 FR 57968 (August 24, 2016) (Notice of Filing of Proposed Rule Change to Amend Nasdaq Rule 5735 To Adopt Generic Listing Standards for Managed Fund Shares).

[34] *See, e.g.,* the Recent Approval, *supra* note 18; Securities Exchange Act Release No. 83319 (May 24, 2018) (SR–NYSEArca–2018–15) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Continue Listing and Trading Shares of the PGIM Ultra Short Bond ETF Under NYSE Arca Rule 8.600–E).

[35] The Bid/Ask Price of the Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[36] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

Fund will invest will be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other market participants. Additionally, the Trade Reporting and Compliance Engine (''TRACE'') of the Financial Industry Regulatory Authority (''FINRA'') will be a source of price information for corporate bonds, and Private ABS/MBS, to the extent transactions in such securities are reported to TRACE.[37] Trade price and other information relating to municipal bonds is available through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access (''EMMA'') system. Non-exchange-traded open-end investment company securities are typically priced once each business day and their prices will be available through the applicable fund's website or from major market data vendors. Price information regarding U.S. government securities, bank loans, Private ABS/MBS, cash equivalents and short-term instruments with maturities of three months or more generally may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. Information relating to weighted average loan age for Private ABS/MBS is widely available from major market data vendors such as Bloomberg.

Information regarding market price and trading volume of the Shares, ETFs, ETNs, common stocks, preferred stocks, REITs, equity securities issued upon conversion of fixed income convertible securities, Work Out Securities and closed-end funds will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares, ETFs, ETNs, closed-end funds, REITs, certain common stocks, certain preferred stocks, certain equity securities issued upon conversion of fixed income convertible securities, and certain Work Out Securities will be available via the Consolidated Tape Association (''CTA'') high-speed line. Exchange-traded options quotation and last sale information for options cleared via the Options Clearing Corporation (''OCC'') are available via the Options Price Reporting Authority (''OPRA''). In addition, the Intraday Indicative Value (''IIV''), as defined in Nasdaq Rule 5735(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Regular Market Session.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rule 4120(a)(12). Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the other assets constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Fund's Shares also will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m., E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

With the exception of the requirements of Nasdaq Rule 5735(b)(1)(A)(i), (b)(1)(A)(ii), (b)(1)(B)(i), (b)(1)(B)(iv), (b)(1)(B)(v), and (b)(1)(E), as described above in ''Application of Generic Listing Requirements,'' the Shares of the Fund will conform to the initial and continued listing criteria under Nasdaq Rule 5735. Consistent with Nasdaq Rule 5735(d)(2)(B)(ii), the Adviser and Sub-Adviser will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the Fund's portfolio.

The Exchange represents that, for continued listing, the Fund will be in compliance with Rule 10A–3 [38] under the Act. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. The Fund's investments will be consistent with its investment goal and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

Surveillance

The Exchange represents that trading in the Shares will continue to be subject to the existing trading surveillances, administered by the Exchange and also by FINRA, on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. [39]

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain exchange-traded options and certain exchange-traded futures, ETFs, ETNs, closed-end funds, certain common stocks, certain preferred stocks, certain REITs, certain equity securities issued upon conversion of fixed income convertible securities and certain Work Out Securities with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in such securities and financial instruments from such markets and

[37] Broker-dealers that are FINRA member firms have an obligation to report transactions in specified debt securities to TRACE to the extent required under applicable FINRA rules. Generally, such debt securities will have at issuance a maturity that exceeds one calendar year. For Fixed Income Securities that are not reported to TRACE, (i) intra-day price quotations will generally be available from broker-dealers and trading platforms (as applicable) and (ii) price information will be available from feeds from market data vendors, published or other public sources, or online information services, as described above.

[38] 17 CFR 240.10A–3.

[39] FINRA conducts cross-market surveillance on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

other entities.[40] In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to TRACE. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares of the Fund on the Exchange.

The issuer must notify the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

Information Circular

The Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

Additionally, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV Calculation Time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's website.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[41] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares are listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange has in place surveillance procedures that are adequate to properly monitor Exchange trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain exchange-traded options and certain exchange-traded futures, ETFs, ETNs, closed-end funds, certain common stocks, certain preferred stocks, certain REITs, certain equity securities issued upon conversion of fixed income convertible securities and certain Work Out Securities with other markets and other entities that are members of ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in such securities and financial instruments from such markets and other entities. The Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to TRACE. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. The Adviser and Sub-Adviser are not registered as broker-dealers. The Adviser is affiliated with First Trust Portfolios L.P., a broker-dealer, and has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. The Sub-Adviser is affiliated with multiple broker-dealers and has implemented and will maintain a fire wall with respect to its broker-dealer affiliates regarding access to information concerning the composition and/or changes to the portfolio.

The Exchange notes that, other than Nasdaq Rule 5735(b)(1)(A)(i), (b)(1)(A)(ii), (b)(1)(B)(i), (b)(1)(B)(iv), (b)(1)(B)(v), and (b)(1)(E), as described above, the Fund's portfolio will meet all other requirements of Nasdaq Rule 5735. Additionally, the Exchange notes that the proposed rule change set forth in this filing is based on a very similar proposed rule change that was recently approved by the Commission with respect to another actively-managed ETF for which the Adviser serves as investment adviser and the Sub-Adviser serves as investment sub-adviser.[42]

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares, ETFs, ETNs, closed-end funds, certain REITs, certain common stocks, certain preferred stocks, certain equity securities issued upon conversion of

[40] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (''CSSA'').

[41] 15 U.S.C. 78f(b)(5).

[42] *See* note 18, *supra.*

fixed income convertible securities, and certain Work Out Securities will be available via the CTA high-speed line. Exchange-traded options quotation and last sale information for options cleared via the OCC are available via OPRA. The Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rule 4120(a)(12), or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Fund's Shares also will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, NAV, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that generally will principally hold fixed income securities and that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, NAV, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

Deviations from the generic requirements, as described above, are necessary for the Fund to achieve its investment objective in a manner that is cost-effective and that maximizes investors' returns. Further, the proposed alternative requirements are narrowly tailored to allow the Fund to achieve its investment objective in a manner that is consistent with the principles of Section 6(b)(5) of the Act. In addition, the proposed deviations from the generic requirements and proposed alternative requirements set forth in this filing are consistent with those set forth in the Recent Approval. As a result, it is in the public interest to approve listing and trading of Shares of the Fund on the Exchange pursuant to the requirements set forth herein.

As noted above, the Fund will not comply with the requirements set forth in Nasdaq Rule 5735(b)(1)(A)(i) and (b)(1)(A)(ii) with respect to the Fund's investments in equity securities. Instead, the Exchange proposes that the Fund's investments in equity securities will meet the requirements of Nasdaq Rule 5735(b)(1)(A) with the exception of Nasdaq Rule 5735(b)(1)(A)(i)(c) and (d) (with respect to U.S. Component Stocks) and Nasdaq Rule 5735(b)(1)(A)(ii)(c) and (d) (with respect to Non-U.S. Component Stocks).[43] The Exchange believes it is appropriate and in the public interest to approve listing and trading of Shares of the Fund notwithstanding that the Fund's holdings in such equity securities do not comply with the requirements set forth in Nasdaq Rules 5735(b)(1)(A)(i) and 5735(b)(1)(A)(ii) in that any Fund investment in exchange-traded common stocks, preferred stocks, REITS, ETFs, ETNs, U.S. exchange-traded closed-end funds, exchange-traded equity securities issued upon conversion of fixed income convertible securities, and exchange-traded Work Out Securities would provide for enhanced diversification of the Fund's portfolio. Such securities would be Non-Principal Investments, not exceeding 20% of the Fund's net assets in the aggregate.

The Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(B)(i) that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $100 million or more. Instead, the Exchange proposes that components that in the aggregate account for at least 50% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $50 million or more. As noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis. In addition, at least 50% of the weight of the Fund's portfolio would continue to be subject to a substantial minimum (*i.e.,* $50 million) original principal amount outstanding. The Exchange believes this limitation would provide significant additional diversification to the Fund's investments in Fixed Income Securities, and reduce concerns that the Fund's investments in such securities would be readily susceptible to market manipulation.

The Exchange proposes that Private ABS/MBS will not be required to comply with the requirements of Nasdaq Rule 5735(b)(1)(B)(iv) because certain Private ABS/MBS cannot satisfy the criteria in Nasdaq Rule 5735(b)(1)(B)(iv). Instead, the Exchange proposes that the Fund's investments in Fixed Income Securities other than Private ABS/MBS will be required to comply with the requirements of Nasdaq Rule 5735(b)(1)(B)(iv). The Exchange believes that this is appropriate because Nasdaq Rule 5735(b)(1)(B)(iv) does not appear to be designed for structured finance vehicles such as Private ABS/MBS. As noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis. The Exchange believes this limitation would provide additional diversification to the Fund's investments in Private ABS/MBS, and reduce concerns that the Fund's investment in such securities would be readily susceptible to market manipulation.

As noted above, the Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(B)(v) that Private ABS/MBS in the Fund's portfolio account, in the aggregate, for no more than 20% of the weight of the Fund's portfolio. Instead, the Exchange proposes that, in order to enable the portfolio to be more diversified and provide the Fund with an opportunity to earn higher returns, the Fund may invest up to 50% of its total assets in the aggregate in Private ABS/MBS, provided that the Fund (1) may not invest more than 25% of its total assets in non-agency ABS; (2) may not invest more than 30% of its total assets in non-agency RMBS; and (3) may not invest more than 25% of its total assets in non-agency CMBS and CLOs. With respect to the Fund's investments in up to 30% of its total assets in Private ABS/MBS that exceed the 20% of the weight of the Fund's portfolio that may be invested in Private ABS/MBS under Nasdaq Rule 5735(b)(1)(B)(v), the Fund's holdings in Private ABS/MBS will be subject to minimum weighted average loan age restrictions described above.[44] In addition, as noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis.[45] The Exchange believes these

[43] *See* notes 19 and 20, *supra. See also* note 21, *supra.*

[44] *See* note 13 [sic] and accompanying text, *supra.*

[45] *See* note 27, *supra.*

limitations would provide additional diversification to the Fund's Private ABS/MBS investments and reduce concerns that the Fund's investment in such securities would be readily susceptible to market manipulation.

The Exchange believes it is appropriate and in the public interest to approve listing and trading of Shares of the Fund notwithstanding that the Fund's holdings in such Private ABS/MBS do not comply with the requirements set forth in Nasdaq Rule 5735(b)(1)(B)(v) in that the Fund's investment in Private ABS/MBS is expected to provide the Fund with benefits associated with increased diversification, as Private ABS/MBS investments tend to be less correlated to interest rates than many other fixed income securities. The Fund's investment in Private ABS/MBS will be subject to the Fund's liquidity procedures as adopted by the Trust Board, and the Adviser and Sub-Adviser do not expect that investments in Private ABS/MBS of up to 50% of the total assets of the Fund will have any material impact on the liquidity of the Fund's investments.

The Adviser and Sub-Adviser represent that the RMBS sector can be an important component of the Fund's investment strategy because of the potential for attractive risk-adjusted returns relative to other fixed income sectors and the potential to add significantly to the diversification in the Fund's portfolio. Similarly, the Private ABS/MBS sectors also have the potential for attractive risk-adjusted returns and added portfolio diversification.

The Exchange believes the loan age parameters described above are appropriate for the corresponding Private ABS/MBS; the 84, 60 and 12 month time frames take into account that the longer Private ABS/MBS continue to trade, the more price discovery has occurred in the market and the more opportunity there has been for market participants to perform due diligence in understanding and evaluating the underlying loans for such securities.

With respect to non-agency RMBS, a weighted average loan age of 84 months accommodates investment in well-seasoned securities that are continuing to trade with resilient pricing notwithstanding events during the market crisis of 2008–2010, during which loan defaults drastically impacted pricing in non-agency RMBS. Pricing in such securities is generally more reliable than RMBS with a lower loan age in that pricing is no longer reliant on market expectations but on actual post-crisis loan performance.

With respect to non-agency CMBS, a weighted average loan age of 60 months would include securities for which there is a known track record regarding cash flows and default rates for loans underlying real estate and other assets underlying CMBS. A five year loan age facilitates pricing based on actual loan performance rather than default projections. Similarly, for non-agency CLOs, a weighted average loan age of 60 months provides the opportunity for market participants to evaluate data regarding the bank loans underlying the CLOs and to assess how the loans are actually being used—for example, to implement corporate strategy or for capital usage—rather than relying on pro forma statements regarding the loans.

With respect to non-agency ABS, a weighted average loan age of 12 months provides an appropriately limited time frame for market participants to assess the likely trajectory of expected defaults (for example, for sub-prime auto loans). The loans underlying non-agency ABS are typically of much shorter duration than other Private ABS/MBS. Because such loans are more likely to default within a short time after issuance, a one-year minimum loan age can be expected to provide a sufficient time frame for market participants to assess the reliability of loan pricing for loans underlying non-agency ABS.

As noted above, the Fund's portfolio will not comply with the requirements set forth in Nasdaq Rule 5735(b)(1)(E). The Exchange proposes that up to 25% of the Fund's assets (calculated as the aggregate gross notional value) may be invested in OTC derivatives that are used to reduce currency, interest rate or credit risk arising from the Fund's investments (that is, ''hedge''), and that the Fund's investments in OTC derivatives other than OTC derivatives used to hedge the Fund's portfolio against currency, interest rate or credit risk will be limited to 20% of the assets in the Fund's portfolio, calculated as the aggregate gross notional value of such OTC derivatives. As noted above, the Fund will not use derivative instruments to gain exposure to Private ABS/MBS, and derivative instruments linked to such securities will be used for hedging purposes only.

The Exchange believes it is appropriate and in the public interest to approve listing and trading of Shares of the Fund notwithstanding that the Fund's holdings in OTC derivatives do not comply with the requirements set forth in Nasdaq Rule 5735(b)(1)(E) in that, depending on market conditions, it may be critical that the Fund be able to utilize available OTC derivatives to attempt to reduce impact of currency, interest rate or credit fluctuations on Fund assets. Therefore, the Exchange believes it is appropriate to apply a limit of up to 25% of the Fund's assets to the Fund's investments in OTC derivatives (calculated as the aggregate gross notional value of such OTC derivatives), including forwards, options and swaps, that are used for hedging purposes, as described above.

The Adviser and Sub-Adviser represent that OTC derivatives can be tailored to hedge the specific risk arising from the Fund's investments and frequently may be a more efficient hedging vehicle than listed derivatives. For example, the Fund could obtain an OTC foreign currency derivative in a notional amount that exactly matches the notional amount of the Fund's investments. If the Fund were limited to investing up to 20% of assets in OTC derivatives, the Fund might have to ''over hedge'' or ''under hedge'' if round lot sizes in listed derivatives were not available. In addition, for example, an OTC CDX option can be structured to provide protection tailored to the Fund's credit exposure and can be a more efficient way to hedge credit risk with respect to specific exposures than listed derivatives. Similarly, OTC interest rate derivatives can be more effective hedges of interest rate exposure because they can be customized to match the basis risk arising from the term of the investments held by the Fund.

Because the Fund, in furtherance of its investment objective, may invest a substantial percentage of its investments in foreign currency denominated Fixed Income Securities, the 20% limit in Nasdaq Rule 5735(b)(1)(E) could result in the Fund being unable to fully pursue its investment objective while attempting to sufficiently mitigate investment risks. The inability of the Fund to adequately hedge its holdings would effectively limit the Fund's ability to invest in certain instruments, or could expose the Fund to additional investment risk. For example, if the Fund's assets (on a gross notional value basis) were $100 million and no listed derivative were suitable to hedge the Fund's risk, under the generic standards the Fund would be limited to holding up to $20 million gross notional value in OTC derivatives ($100 million * 20%). Accordingly, the maximum amount the Fund would be able to invest in foreign currency denominated Fixed Income Securities while remaining adequately hedged would be $20 million. The Fund then would hold

$60 million in assets that could not be hedged, other than with listed derivatives, which, as noted above, might not be sufficiently tailored to the specific instruments to be hedged.

In addition, by applying the 20% limitation in Nasdaq Rule 5735(b)(1)(E), the Fund would be less able to protect its holdings from more than one risk simultaneously. For example, if the Fund's assets (on a gross notional basis) were $100 million and the Fund held $20 million in foreign currency denominated Fixed Income Instruments with two types of risks (*e.g.,* currency and credit risk) which could not be hedged using listed derivatives, the Fund would be faced with the choice of either holding $20 million aggregate gross notional value in OTC derivatives to mitigate one of the risks while passing the other risk to its shareholders, or, for example, holding $10 million aggregate gross notional value in OTC derivatives on each of the risks while passing the remaining portion of each risk to the Fund's shareholders.

The Adviser and Sub-Adviser believe that it is in the best interests of the Fund's shareholders for the Fund to be allowed to reduce the currency, interest rate or credit risk arising from the Fund's investments using the most efficient financial instrument. While certain risks can be hedged via listed derivatives, OTC derivatives (such as forwards, options and swaps) can be customized to hedge against precise risks. Accordingly, the Adviser and Sub-Adviser believe that OTC derivatives may frequently be a more efficient hedging vehicle than listed derivatives. Therefore, the Exchange believes that increasing the percentage limit in Nasdaq Rule 5735(b)(1)(E), as described above, to the Fund's investments in OTC derivatives, including forwards, options and swaps, that are used specifically for hedging purposes would help protect investors and the public interest.

As noted above, the Fund's portfolio will not meet the requirements of Nasdaq Rule 5735(b)(1)(A)(i)(a) through (e) with respect to the Fund's investments in non-exchange-traded securities of open-end investment companies, and, with respect to the Fund's holdings of OTC equity securities issued upon conversion of fixed income convertible securities and OTC Work Out Securities, will not meet the requirements of Nasdaq Rule 5735(b)(1)(A)(i)(a) through (e) and Nasdaq Rule 5735(b)(1)(A)(ii)(a) through (e). The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Nasdaq Rule 5735(b)(1)(A)(i)(a) through (e) with respect to the Fund's investments in non-exchange-traded securities of open-end investment companies,and notwithstanding that the Fund's holdings of OTC equity securities issued upon conversion of fixed income convertible securities and OTC Work Out Securities would not meet the requirements of Nasdaq Rule 5735(b)(1)(A)(i)(a) through (e) and Nasdaq Rule 5735(b)(1)(A)(ii)(a) through (e). Investments in non-exchange-traded securities of open-end investment companies will not be principal investments of the Fund.[46] Such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term.

With respect to any Fund holdings of exchange-traded or OTC equity securities issued upon conversion of fixed income convertible securities and Work Out Securities, such securities will not exceed 10% and 5%, respectively, of the Fund's total assets. The Adviser and Sub-Adviser represent that the Fund generally will not actively invest in equity securities issued upon conversion of fixed income convertible securities or Work Out Securities, but may, at times, receive a distribution of such securities in connection with the Fund's holdings in other securities. Therefore, the Fund's holdings in equity securities issued upon conversion of fixed income convertible securities and Work Out Securities generally would not be acquired as the result of the Fund's voluntary investment decisions.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of shares of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that generally will principally hold fixed income securities and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[47] and subparagraph (f)(6) of Rule 19b–4 thereunder.[48]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–NASDAQ–2020–005 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.

[46] *See* note 31, *supra.*

[47] 15 U.S.C. 78s(b)(3)(A)(iii).

[48] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self–regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

All submissions should refer to File Number *SR–NASDAQ–2020–005.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2020–005 and should be submitted on or before February 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01783 Filed 1–30–20; 8:45 am]

BILLING CODE 8011–01–P

[49] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission Fixed Income Market Structure Advisory Committee (''FIMSAC'') will hold a public meeting on Monday, February 10, 2020 at 9:30 a.m.

PLACE: The meeting will be held in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE, Washington, DC.

STATUS: The meeting will begin at 9:30 a.m. and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 9:00 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED: On January 13, 2020, the Commission published notice of the Committee meeting (Release No. 34–87956), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting will include panel discussions and potential recommendations from the Municipal Securities Transparency, Credit Ratings, and Technology and Electronic Trading subcommittees.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: January 29, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–02017 Filed 1–29–20; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88055; File No. SR–MIAX–2020–03]

Self-Regulatory Organizations: Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

January 27, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 14, 2020, Miami International Securities Exchange LLC (''MIAX Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (''Fee Schedule'') to make minor, non-substantive corrective edits and clarifying changes.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to make minor, non-substantive corrective edits and clarifying changes. First, the Exchange proposes to amend Section 2)c) of the Fee Schedule, Web CRD Fees, to make non-substantives edits to the sentence in parentheses following the FINRA Disclosure Processing Fee under the section titled ''GENERAL REGISTRATION FEES.'' Currently, the FINRA Disclosure Processing Fee includes the following in parentheses ''(Form U4, Form U5, Form BD & amendments)''. The Exchange now proposes to delete the ampersand in that sentence and replace it with the word ''and''. The purpose of this proposed change is for clarity and uniformity with the fee schedules of the Exchange's affiliates, MIAX PEARL, LLC (''MIAX PEARL'') and MIAX Emerald, LLC (''MIAX Emerald'').

Next, the Exchange proposes to amend the cross-reference in footnote 18 of the Fee Schedule. Footnote 18 currently states ''The session fee will be assessed to each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to MIAX Rule

1304.'' Recently, the Exchange deleted Exchange Rule 1304 and amended and/or deleted numerous other rules, in order to reorganize and enhance the Exchange's membership, registration and qualification rules, and consolidated these rules into new Chapter XIX, Registration, Qualification and Continuing Education.[3] Accordingly, the Exchange proposes to amend the cross-reference in footnote 18 of the Fee Schedule to reflect the deletion of Exchange Rule 1304. The cross-reference in footnote 18 will now be to Exchange Rule 1903, Continuing Education Requirements, which contains, among other things, the requirements for individuals to complete the Regulatory Element of the Continuing Education Program. With the proposed change, footnote 18 would state as follows: ''The session fee will be assessed to each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to MIAX Rule 1903.''

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed changes promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes make clarifying, non-substantive edits to the Fee Schedule, and update a cross-reference to the Exchange's rulebook. The Exchange believes that these proposed changes will provide greater clarity to Members and the public regarding the Exchange's Fee Schedule and that it is in the public interest for the Fee Schedule to be accurate and concise so as to eliminate the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not a competitive filing but rather is designed to remedy minor non-substantive issues and provide added clarity to the Fee Schedule in order to avoid potential confusion on the part of market participants. In addition, the Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal does not address any competitive issues and is intended to protect investors by providing further transparency regarding the Exchange's Fee Schedule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[7] and Rule 19b–4(f)(2)[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MIAX–2020–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2020–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2020–03, and should be submitted on or before February 21, 2020.

[3] *See* Securities Exchange Act Release No. 87830 (December 20, 2019), 84 FR 72025 (December 30, 2019) (SR–MIAX–2019–50).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *Id.*

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01780 Filed 1–30–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88021; File No. SR–LCH SA–2019–011]

Self-Regulatory Organizations; LCH SA; Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to Amendments to CDS Clearing Supplement To Reflect the ISDA NTCE Protocol and Supplement

January 23, 2020.

I. Introduction

On November 21, 2019, Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–)4 thereunder,[2] a proposed rule change to amend its CDS Clearing Supplement (''LCH SA CDS Supplement'') to: (1) Implement the 2019 Narrowly Tailored Credit Event Supplement to the 2014 ISDA Credit Derivatives Definitions (the ''NTCE Supplement'') and (2) make certain clarifications as to the defined term ''Outstanding Principal Balance''. The proposed rule change was published for comment in the **Federal Register** on December 9, 2019.[3] The Commission did not receive comments on the proposed rule change. On January 6, 2020, LCH SA filed Partial Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on Partial Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Partial Amendment No. 1 (hereinafter, ''proposed rule change'') on an accelerated basis.

II. Description of the Proposed Rule Change

A. Background

Following certain events in the credit default swap (''CDS'')[5] market, the International Swaps and Derivatives Association, Inc. (''ISDA''), in consultation with market participants, developed and published the NTCE Supplement.[6] The NTCE Supplement reflects an effort by ISDA to address so-called narrowly-tailored credit events. According to ISDA, a narrowly-tailored credit event is an arrangement between a participant in the CDS marketplace and a corporation, through which the corporation triggers a credit event on CDS covering the corporation, thereby increasing payment to the buyers of CDS protection on the corporation while minimizing the impact on the corporation.[7]

The NTCE Supplement, if applied to a CDS transaction, would make two principal changes to the 2014 ISDA Credit Derivatives Definitions to address narrowly-tailored credit events.[8] First, the NTCE Supplement would change the definition of the ''Failure to Pay'' credit event to exclude certain narrowly-tailored credit events through a new Credit Deterioration Requirement. The Credit Deterioration Requirement would provide that a failure of a corporation to make a payment on an obligation would not constitute a Failure to Pay Credit Event triggering CDS on that corporation if the failure does not directly or indirectly result from, or result in, a deterioration in the creditworthiness or financial condition of the corporation.[9] Thus, a narrowly-tailored or manufactured failure to pay that does not reflect or result in a credit deterioration by a corporation would not constitute a Credit Event for CDS Contracts that incorporate the NTCE Supplement and thus would not necessarily trigger payment to buyers of CDS protection. The NTCE Supplement would also provide guidance related to the factors that would be relevant to determining whether a Failure to Pay Credit Event satisfies the Credit Deterioration Requirement. As would be the case with other Failure to Pay Credit Events under CDS contracts, the relevant Credit Derivatives Determinations Committee would, in the normal course, make the determination as to whether a Failure to Pay Credit Event satisfies the Credit Deterioration Requirement.

Second, the NTCE Supplement would reduce the amount of payout a CDS protection buyer could claim in certain circumstances by imposing a new provision for Fallback Discounting. Fallback Discounting would discount a CDS protection buyer's claim for payout under a CDS contract where that claim for payout is based on an obligation issued by a corporation at a discount.[10] This would address the potential scenario where a corporation issues a bond at a substantial discount to its principal amount and the bond is delivered in settlement of a CDS at its full principal amount. In this scenario, Fallback Discounting would prevent a buyer of CDS protection from using the full principal amount of the bond issued at a discount as a basis for payout under the CDS contract.

B. Changes to the LCH SA CDS Supplement

Because LCH SA will clear and settle CDS contracts to which the NTCE Supplement will apply, it must ensure that its relevant Rules accurately reflect the changes described above that will be implemented by the NTCE Supplement. Accordingly, the proposed rule change would ensure that the changes being implemented by the NTCE Supplement are accurately reflected in LCH SA's relevant Rules by making substantially similar amendments to both Part B of

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 87649 (Dec. 3, 2019), 84 FR 67325 (Dec. 9, 2019) (SR–LCH–SA–2019–011) (''Notice'').

[4] Partial Amendment No. 1 clarifies the proposed rule change by modifying certain references in the CDS Clearing Supplement. Currently, the CDS Clearing Supplement refers to certain supplements to the standard contract terms as published by ISDA on certain dates. Rather than referring to the supplements as published by ISDA on certain dates, Partial Amendment No. 1 modifies the CDS Clearing Supplement to refer to the latest versions of the supplements in force. In other words, Partial Amendment No. 1 amends the CDS Clearing Supplement to incorporate whichever versions of the ISDA supplements are most recent and therefore currently effective, rather than referring to multiple supplements with specific dates.

[5] The following description is substantially excerpted from the Notice. *See* Notice, 84 FR at 67325. Capitalized terms not otherwise defined herein have the meanings assigned to them in the LCH SA rulebook or LCH SA CDS Supplement.

[6] *See* ISDA Board Statement on Narrowly Tailored Credit Events, *available at https://www.isda.org/2018/04/11/isda-board-statement-on-narrowly-tailored-credit-events/; see also* Joint Statement on Opportunistic Strategies in the Credit Derivatives Market (''The continued pursuit of various opportunistic strategies in the credit derivatives markets, including but not limited to those that have been referred to as 'manufactured credit events,' may adversely affect the integrity, confidence and reputation of the credit derivatives markets, as well as markets more generally.'') *available at https://www.sec.gov/news/press-release/2019-106.*

[7] *See* ISDA Board Statement on Narrowly Tailored Credit Events, *available at https://www.isda.org/2018/04/11/isda-board-statement-on-narrowly-tailored-credit-events/.*

[8] *See* ISDA 2019 NTCE Protocol FAQ, *available at https://www.isda.org/protocol/isda-2019-ntce-protocol.*

[9] *See* ISDA 2019 Narrowly Tailored Credit Event Supplement to the 2014 ISDA Credit Derivatives Definitions (Published on July 15, 2019), *available at https://www.isda.org/a/KDqME/Final-NTCE-Supplement.pdf.*

[10] *Id.*

the CDS Supplement, which applies to single-name CDS contracts and components of index CDS contracts that incorporate the 2014 ISDA Credit Derivatives Definitions, and Part C of the CDS Supplement, which applies to swaptions transactions. The proposed rule change would do so by amending the CDS Clearing Supplement to incorporate the versions of the ISDA supplement and confirmations that are currently in-force. After the NTCE Supplement becomes effective, the latest versions of the ISDA supplement and confirmations will incorporate the NTCE Supplement and by default specify that the two concepts described above—the Credit Deterioration Requirement and Fallback Discounting—are applicable. Thus, in specifying that the versions of the ISDA supplement and confirmations that are currently in-force would apply to single-name CDS contracts and components of index CDS contracts that incorporate the 2014 ISDA Credit Derivatives Definitions and swaptions, the proposed rule change would automatically apply the NTCE Supplement to such transactions.

The proposed rule change would also specify that the amendments resulting from the NTCE Supplement to the 2014 ISDA Credit Derivatives Definitions would only be applicable where the Protocol Effectiveness Condition, as defined in the ISDA 2019 Narrowly Tailored Credit Event Protocol, is satisfied. Because ISDA has already determined that the Protocol Effectiveness Condition is satisfied, effectively the proposed rule change would apply the amendments resulting from the NTCE Supplement to all single-name CDS contracts and components of index CDS contracts that incorporate the 2014 ISDA Credit Derivatives Definitions and all swaptions transactions currently in place or that are entered into on or after January 27, 2020 (the implementation date determined by ISDA).[11]

C. Outstanding Principal Balance

Unrelated to the changes discussed above, the proposed rule change would also harmonize the use of the term ''Outstanding Principal Balance'' throughout the LCH SA CDS Supplement by ensuring that the term is only used with capital letters. Section 1.1 of the LCH SA CDS Supplement specifies that capitalized terms not otherwise defined therein shall have the meaning given pursuant to, among other documents, the ISDA 2003 and 2014 Credit Derivatives Definitions, and explicitly incorporates into the LCH SA CDS Supplement such defined terms. The term ''Outstanding Principal Balance'' is defined in the ISDA 2003 and 2014 Credit Derivatives Definitions, and according to LCH SA is intended to be incorporated into the LCH SA CDS Supplement. However, the term ''Outstanding Principal Balance'' is not consistently capitalized throughout the current version of the LCH SA CDS Supplement. Accordingly, because LCH SA intends that the term ''Outstanding Principal Balance'' should be an incorporated defined term as defined in Section 1.1 of the LCH SA CDS Supplement, the proposed rule change would amend the LCH SA CDS Supplement by capitalizing the term ''Outstanding Principal Balance'' where not already capitalized.

III. Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.[12] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[13] and Rule 17Ad–22(e)(1) thereunder.[14]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of LCH SA be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of LCH SA or for which it is responsible, and, in general, to protect investors and the public interest.[15]

As described above, the NTCE Supplement would amend the underlying legal terms applicable to CDS contracts and swaptions to which it applies by, among other things, limiting Credit Events to those that reflect a deterioration in the creditworthiness or financial condition of the relevant company. It also would reduce the amount of payout a CDS protection buyer could claim in certain circumstances where the claim for payout is based on an obligation issued by a company at a discount. Further, because ISDA has determined that the Protocol Effectiveness Condition is satisfied and set an implementation date of January 27, 2020, the NTCE Supplement will apply to all swaptions and single-name CDS contracts and components of index CDS contracts that incorporate the 2014 ISDA Credit Derivatives Definitions currently in place or entered into on or after that date.

As noted above, because LCH SA will clear and settle CDS contracts and swaptions that are subject to the changes being made by the NTCE Supplement, the proposed rule change would amend the LCH SA CDS Supplement to incorporate the amendments resulting from the NTCE Supplement, thereby ensuring that LCH SA's Rules accurately reflect and appropriately apply the legal terms and conditions applicable to such CDS contracts and swaptions. Separately, to help clarify and ensure that the term ''Outstanding Principal Balance'' is and remains an incorporated defined term pursuant to Section 1.1 of the CDS Supplement, the proposed rule change would amend the CDS Supplement to capitalize the term ''Outstanding Principal Balance'' consistently throughout the document.

In the Commission's view, a lack of clarity in the underlying legal terms and conditions applicable to the transactions that LCH SA clears and settles could hinder LCH SA's ability to promptly and accurately clear and settle such transactions. Likewise, disputes regarding the applicable legal terms and conditions of such transactions could lead to disputes or confusion regarding the necessary and appropriate margin submitted in connection with such transactions, thereby threatening LCH SA's ability to safeguard such margin. Accordingly, by making the changes described above, and in particular by ensuring LCH SA's Rules accurately reflect and appropriately apply the legal terms and conditions applicable to the CDS contracts and swaptions that are cleared and settled by LCH SA, the Commission believes that the proposed rule change would help ensure that LCH SA's Rules continue to promote the prompt and accurate clearance and settlement of such the CDS contracts and swaptions and assure the safeguarding of securities and funds in LCH SA's custody and control. For these same reasons the Commission also finds that the proposed rule change would, in general, protect investors and the public interest.

[11] *See* ISDA 2019 NTCE Protocol, *available at https://www.isda.org/protocol/isda-2019-ntce-protocol/.*

[12] 15 U.S.C. 78s(b)(2)(C).

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 17 CFR 240.17Ad–22(e)(1).

[15] 15 U.S.C. 78q–1(b)(3)(F).

Therefore, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.[16]

B. Consistency With Rule 17Ad–22(e)(1)

Rule 17Ad–22(e)(1) requires that LCH SA establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[17] As discussed above, the proposed rule change would help to clarify and ensure that LCH SA's Rules accurately reflect and appropriately apply the legal terms and conditions applicable to the CDS contracts and swaptions that are cleared and settled by LCH SA. The Commission believes that this, in turn, would help ensure that the LCH SA CDS Supplement provides a consistent and enforceable legal basis for clearing and settling CDS contracts and swaptions to which the NTCE Supplement applies in light of the amendments made by the NTCE Supplement.

Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(1).[18]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Partial Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–LCH SA–2019–011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–LCH SA–2019–011. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of LCH SA and on LCH SA's website at: *https://www.lch.com/resources/rules-and-regulations/proposed-rule-changes-0.* All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–LCH SA–2019–011 and should be submitted on or before February 21, 2020.

V. Accelerated Approval of the Proposed Rule Change, as Modified by Partial Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[19] to approve the proposed rule change prior to the 30th day after the date of publication of Partial Amendment No. 1 in the **Federal Register**. As discussed above, Partial Amendment No. 1 amends the CDS Clearing Supplement so that, instead of referring to the specific date for various ISDA supplements, it explicitly refers to and incorporates whichever versions of the supplements to the standard contract terms are currently effective. By providing this additional clarity, Partial Amendment No. 1 provides for a more clear and comprehensive understanding of the estimated application of the proposed rule change, which helps to improve the Commission's review of the proposed rule change for consistency with the Act and helps market participants understand the impact of the proposed rule change.

Additionally, because Partial Amendment No. 1 would help clarify and ensure that the appropriate legal terms and conditions are applied to the CDS contracts and swaptions cleared and settled by LCH SA, and for similar reasons as discussed above, the Commission finds that Partial Amendment No. 1 is designed to promote the prompt and accurate clearance and settlement of securities transactions, help assure the safeguarding of securities and funds which are in the custody or control of LCH SA, and, in general, to protect investors and the public interest, consistent with Section 17A(b)(3)(F) of the Act.[20] Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Partial Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Exchange Act.[21]

VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[22] and Rule 17Ad–22(e)(1) thereunder.[23]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[24] that the proposed rule change, as modified by Partial Amendment No. 1 (SR–LCH–SA–2019–011), be, and hereby is, approved on an accelerated basis.[25]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–01517 Filed 1–30–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Wednesday, February 5, 2020.

PLACE: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain

[16] 15 U.S.C. 78q–1(b)(3)(F).

[17] 17 CFR 240.17Ad–22(e)(1).

[18] *Id.*

[19] 15 U.S.C. 78s(b)(2).

[20] 15 U.S.C. 78q–1(b)(3)(F).

[21] 15 U.S.C. 78s(b)(2).

[22] 15 U.S.C. 78q–1(b)(3)(F).

[23] 17 CFR 240.17Ad–22(e)(1).

[24] 15 U.S.C. 78s(b)(2).

[25] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[26] 17 CFR 200.30–3(a)(12).

staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov*.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: January 29, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–02018 Filed 1–29–20; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88049; File No. SR–DTC–2020–001]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the DTC Fee Guide

January 27, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 21, 2020, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rules 19b–4(f)(2) and (f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change [5] of DTC would amend the Guide to the DTC Fee Schedule [6] (''Fee Guide'') to (i) eliminate certain fees within the Corporate Actions section [7] and the Securities Processing section [8] of the Fee Guide and (ii) modify the names and descriptions of certain fees in the Settlement Services section [9] of the Fee Guide, as described below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend the Guide to the Fee Schedule to (i) eliminate certain fees within the Corporate Actions section [10] and the Securities Processing section [11] of the Fee Guide, including the addition and deletion of fees and (ii) modify the descriptions of certain fees in the Settlement Services section [12] of the Fee Guide, as described below.

Corporate Actions Fee Eliminations

To streamline the Corporate Actions fee schedule, DTC proposes to eliminate certain corporate actions fees relating to services relating to physical securities processing, specifically, bearer bonds and the Coupon Collection service (''CCS''),[13] as described below. The related products have seen a substantial decrease in volume over the years due to increased dematerialization leading to limited use of the services.[14]

A bearer bond is a corporate or municipal debt Security for which whoever physically holds the Security certificate is the presumptive owner of the instrument. Bearer bond coupons for interest payments are physically attached to the Security and must be submitted to an authorized agent, in order to receive payment. Due to changes in the marketplace, including the increasing move towards dematerialization of Securities, the issuance of bearer bonds has significantly curtailed over the years, and as a result, the inventory of bearer bonds held by DTC on behalf of Participants has significantly diminished. In 1990, DTC had 24 million bearer bonds in its vault, the bulk of which have matured.[15] In 2010 the amount of bearer bonds held by DTC was just over 132,800 bearer bonds.[16] As of November 2019, DTC holds approximately 46 issues of bearer bonds in its vault and, based on the historical trend, the number of bearer bonds in DTC's vault is expected to continue to rapidly diminish, with the final bond on deposit scheduled to mature by 2030.

DTC charges a Participant a fee of $4.00 per interest and principal payment on bearer bonds. Due to the steep drop in the amount of bearer bonds on deposit at DTC, DTC's need to allocate staff and systems resources to the processing of such payments has diminished to an insignificant level and DTC believes it would be appropriate to eliminate this fee.

Under CCS, DTC provides Participants with a method for collecting interest payable on coupons

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2) and (f)(4).

[5] Each capitalized term not otherwise defined herein has its respective meaning as set forth the Rules, By-Laws and Organization Certificate of DTC (the ''Rules''), *available at http://www.dtcc.com/legal/rules-and-procedures.aspx.*

[6] *Available at http://www.dtcc.com/~/media/Files/Downloads/legal/fee-guides/dtcfeeguide.pdf.*

[7] *See id.* at 6–8.

[8] *See id.* at 4–6.

[9] *See id.* at 19–21.

[10] *See id.* at 6–8.

[11] *See id.* at 4–6.

[12] *See id.* at 19–21.

[13] *See* DTC Custody Service Guide (''Custody Guide''), *available at http://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Custody.pdf,* at 8, 11 and 14. CCS is referred to in the Custody Guide alternatively as the Coupon Collection service and the Coupon Clipping service. *Id.*

[14] Michael Scholl, The Incredible Shrinking Vaults, *available at http://www.dtcc.com/news/2010/march/01/the-incredible-shrinking-vaults* (March 1, 2010).

[15] Edward C. Kelleher, Certificates in DTC Vaults Drop Below 1 Million, *available at http://www.dtcc.com/news/2011/march/01/certificates-in-dtc-vaults-drop-below-1-million* (March 1, 2011).

[16] *Id.*

from bearer bonds.[17] The Participants using CCS are required to deposit coupons in a standard sealed envelope or ''shell.'' [18] DTC submits the contents of the shells to the appropriate issuer or paying agent and then credits the interest to the Participant's account. DTC charges a Participant a fee of $75.00 per shell to process coupons and payments through CCS.[19] Due to the steep decline in the amount of bearer bonds on deposit at DTC, as described above, DTC's need to allocate staff and systems resources to the processing of coupon payments has diminished to an insignificant level and DTC believes it would be appropriate to eliminate this fee.

Elimination of Audit and CD Confirmation Fees

DTC offers confirmations of audit information relating to Securities held at DTC to issuers and their agents upon request.[20] DTC also offers confirmations (''CD Confirmations'') relating to certificates of deposit held at DTC.[21] The fees charged by DTC to an issuer or agent to process an audit confirmation (''Audit Confirmation Fee'') or CD Confirmation (''CD Confirmation Fee''), which are set forth in the Securities Processing section [22] of the Fee Guide, are $22 for the first 5 CUSIPS included in the confirmation request and $5 for each additional CUSIP.[23] DTC's billing process for audit and CD Confirmations to issuers and agents is different from that for Participant fees. Participant fees are billed monthly based on activity volumes that are generally automatically fed into the billing system and Participants are debited for their monthly charges in their monthly settlement statement. Issuers and agents that are not Participants do not maintain settlement accounts at DTC and the process of billing for items such as audit and CD Confirmations is manually intensive. In fact, as DTC's physical inventory has decreased, DTC has received fewer confirmation requests, resulting in diminishing revenue over time, to the point that the cost to DTC to bill for the processing of confirmations is greater than the amount of revenue collected by DTC in this regard. Therefore, to eliminate the associated billing costs to DTC that exceed related revenue collected by DTC for audit confirmations and CD Confirmations, DTC proposes to amend the Fee Schedule to eliminate the Audit Confirmation Fee and CD Confirmation Fee. Recognizing a need for issuers and agents to obtain audit confirmations and CD Confirmations for their own regulatory and compliance purposes, DTC would continue to process such requests for issuers and agents free of charge.

Settlement Fee Name and Description Changes

The proposed rule change would amend the Settlement Services section [24] of the Fee Guide to change certain fee names and descriptions of fee amounts, as described below. The proposed changes to this section would not result in any change in the actual amounts charged for the relevant fees.

Revise Fee Name for Fees for Stock Loan Transactions

Pursuant to the proposed rule change, the fee named ''Stock loans and returns'' would be renamed as ''Repos, Stock loans and returns.'' The amount of this fee is 18 cents per receive or delivery and would not change. This fee applies to deliver orders [25] (''DO'') of Securities effected through DTC's settlement system that Participants using a reason code designated for tracking though DTC's income tracking systems, specifically, the stock loan income tracking system [26] or the repurchase agreement (''Repo'') tracking system.[27] The word ''Repos'' would be added to the fee name for clarity in this regard.

Revise Fee Name for Institutional Transactions

Pursuant to the proposed rule change, the fee named ''Institutional receive or delivery (ID)'' would be renamed as ''Matched Institutional Transactions.'' This fee relates to the receive for delivery of Securities associated with the processing of an institutional transaction submitted to DTC by a Matching Utility on behalf of the Participants to the transaction.[28] The amount of this fee is charged to a Participant at a rate of 4 cents per receive or delivery related to a transaction submitted on its behalf by a Matching Utility and would not change. The fee name would be changed to eliminate the redundancy between the fee name and description of the amount, which both reference that the fee applies to a receive or delivery.

Revise Fee Name for Fees for ACATS Transactions and Related Description of Fee Amount

Pursuant to the proposed rule change, the description of the fee amount named ''Book Entry NSCC ACATS Long Allocations and Short Covers'' would be renamed ''Delivery to/from CNS ACATS.'' In addition, the description of the fee which is ''$0.06 Per Message'' would be revised to ''$0.12 per receive or delivery.'' The proposed rule change would not change the actual amount charged to a Participant per transaction. In this regard, a delivering Participant is charged for each message (or delivery instruction): (1) For the delivery of Securities from the account of the Participant to the National Securities Clearing Corporation's (''NSCC'') ACATS [29] system and (2) for the associated receive of the Securities by the NSCC account. Likewise, the

[17] *See* Custody Guide, *supra* note 13, at 14.

[18] *See* Securities Exchange Act Release No. 39955 (May 4, 1998), 63 FR 26236 (May 12, 1998) (SR–DTC–97–17).

[19] *See* Fee Guide, *supra* note 6, at 8.

[20] Securities Exchange Act Release No. 53471 (March 13, 2006), 71 FR 13872 (March 17, 2006) (SR–DTC–2005–21).

[21] *Id.*

[22] *See id.* at 4–6.

[23] *See* Fee Guide, *supra* note 6, at 5.

[24] *See id.* at 19–21.

[25] A deliver order is book-entry movement of shares of a Security between two Participants. *See* Settlement Service Guide (''Settlement Guide''), *available at http://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Settlement.pdf,* at 5.

[26] In a stock loan agreement, the lender of a Security is entitled to recover from the borrower any income distributions paid on the loaned Security. The stock loan income tracking system allows DTC to track the lender's (deliverer's) position on these Securities. The stock loan income tracking system tracks cash dividend and interest payments relating to DOs submitted using certain reason codes for stock loan transactions, as described in the DTC Corporate Actions Distributions Service Guide (''Distributions Guide''). *See* Distributions Guide, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Service%20Guide%20Distributions.pdf,* at 36–37, for additional information relating to stock loan transactions and the related reason codes.

[27] A Repo is an agreement between two parties that allows the seller of Securities to later repurchase them at an agreed-upon price. The seller usually retains the right to periodic income distributions. However, since the Securities will not reside in the seller's account on record date, the seller would not be credited the periodic principal and income distributions paid on the Securities. To recover these entitlements, the seller must claim the Repo buyer. DTC's Repo Tracking System automates claims of these entitlements by tracking the Repo transactions (deliveries) relating to DOs submitted with using certain reason codes designated for Repo transactions and adjusting the entitlement payments accordingly on payable date. *See* Distributions Guide, *supra* note 26, at 37–38, for additional information relating to Repo transactions and related reason codes.

[28] *See* Settlement Guide, *supra* note 25, at 36, for additional information on the role of a Matching Utility in the submission of an institutional transaction on behalf of Participants to the transactions.

[29] NSCC's Rules & Procedures, *available at, http://www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf,* establish the NSCC ACATS Settlement Accounting Operation which interfaces with DTC's system to move customer Securities from the account of one Participant to another. *See* Settlement Guide, *supra* note 25, at 18. NSCC maintains an account at DTC with respect to the associated securities movements. *Id.*

receiving Participant is charged an equal amount per transaction, respectively, for the receive of the Securities to its account and for DTC to deliver the Securities from the NSCC account to the Participant.

For example, for a Participant delivering Securities to the NSCC ACATS system, the Participant incurs a charge of 12 cents, which is the sum of the 6-cent cost to the Participant for DTC to deliver the Securities to NSCC's account as well as for the 6-cent cost to the Participant for the receive by the NSCC account for the Securities. Likewise, the receiving Participant, in connection with the same instruction, is charged 12 cents, which is the sum of the cost of 6 cents for the delivery of the Securities from NSCC to the receiving Participant and the receive by the Participant for those Securities.

Also, proposal would revise the fee name to eliminate the reference to long allocations and short covers, because ACATS transactions have no funds settlement obligations associated with them.[30] The change would eliminate potential confusion that could be created in this regard, because the Settlement Guide refers to short covers and long allocations as transactions that have an associated Collateral Value.[31]

Description of Fee for Deliveries to and From CNS

Like the billing of ACATS transactions, a delivering Participant is charged for the delivery of a Security to the NSCC CNS account at DTC (''CNS Account'') on the Participant's behalf and for the receive of the Security by the CNS Account. Likewise, the receiving Participant to the transaction is charged for the delivery of the Securities from the CNS Account to its account, and for the receive of the Securities by its account. The charge for each side of the transaction is 8 cents per item. For example, the delivering Participant is charged a total of 16 cents, representing 8 cents for the side representing its delivery of the Security to the CNS Account and is charged 8 cents for the side representing the receive of the Security from the Participant to the CNS Account. Likewise, the receiving Participant is charged 16 cents for the transaction, representing 8 cents for the delivery of the Securities from the CNS Account to the Participant's account and 8 cents for the receive of the Securities from the CNS Account by the Participant. In this regard, DTC believes that clarifying the related item in the Fee Guide to clarify the total amount a Participant is charged for a transaction as a whole, rather than by delivering and receiving sides for the transfer of Securities between the Participant's account and the CNS Account, would provide clarity to Participant's on the total fees incurred with respect to the processing of a movement of Securities at DTC for a CNS transaction. Therefore, DTC proposes to revise the Fee Guide to change the description of the fee amount for the related item in the Fee Guide from ''$0.08 Per item delivered, charged to both sides'' to ''$0.16 per delivery or receive.''

Fee Name for Payments or Withdrawal of Payments

Pursuant to the Settlement Guide, a Participant may make settlement progress payments (''SPP'') to DTC to increase their Collateral balance at DTC and/or reduce its Net Debit Balance and the Participant also has the ability to withdraw SPP amounts if such withdrawal would not cause the Participant to violate DTC's risk controls, including the Collateral Monitor and Net Debit Cap.[32] A Participant may also receive principal & interest payments on Securities deposited in its account and withdraw payments it has received intraday so long as such withdrawal does not place the Participant in a debit balance.[33]

A Participant is charged a fee of 70 cents per payment or withdrawal of payment for both the making of a SPP to DTC and the withdrawal of SPP amounts from DTC. This fee is also charged for the intraday withdrawal of P&I by the Participant. Pursuant to the Fee Guide, the related fee item is named ''Payment or withdrawal of payment.'' The Participant is not charged this 70-cent fee for the intraday payment of P&I because DTC charges a separate ''Cash Dividend'' fee[34] for the allocation of principal and interest. To provide enhanced clarity on how this fee is applied, DTC proposes to revise this fee name to ''Progress payment or withdrawal of SPP/P&I.''

Proposed Rule Change

Pursuant to the proposed rule change, the following entries in the Fee Guide would be deleted from the Corporate Actions section:[35]

Fee Name	Amount ($)	Conditions
Bearer Bond[36]	4.00	Per interest and principal payment on bearer bonds.
Coupon Collection Service[37]	75.00	Per shell for CUSIP numbers and Customer-assigned identifiers on a shell.

Pursuant to the proposed rule change, the following entries in the Fee Guide would be deleted from the Securities Processing section:[38]

Fee Name	Amount ($)	Conditions
Audit confirmation:[39]		
First five CUSIPs	22.00	Per CUSIP.
Each additional CUSIP	5.00	Per CUSIP
CD confirmation:[40]		
First five CUSIPS	22.00	Per CUSIP.
Each additional CUSIP	5.00	Per CUSIP.

[30] *See* Settlement Guide, *supra* note 25, at 17.
[31] *Id.*
[32] *See id.* at 63.
[33] *See id.* at 62.
[34] *See* Fee Guide, *supra* note 6, at 6.
[35] *See id.*
[36] *See id.* at 7.
[37] *See id.* at 8.
[38] *See id.* at 4–6.
[39] *See id.* at 5.
[40] *Id.*

Pursuant to the proposed rule change, DTC would modify descriptions for certain fees set forth in the Settlement section as set forth below:

Current fee name	Proposed fee name	Old amount description	New Amount Description	Change
Stock loans and returns	Repos, stock loans and returns.	$0.18 per receive or delivery.	$0.18 per receive or delivery.	Added Repo to fee name.
Institutional receive or delivery (ID).	Matched Institutional Transactions.	$0.04 per receive or delivery.	$0.04 per receive or delivery.	Changed description.
Book Entry NSCC ACATS Long Allocations and Short Covers.	Delivery to/from CNS ACATS.	$0.06 Per Message	$0.12 Per receive or delivery.	Changed description, no longer per message.
Delivery to/from CNS	Delivery to/from CNS	$0.08 Per item delivered; charged to both sides.	$0.16 per delivery or receive.	No longer per side.
Payment or withdrawal of payment.	Progress payment or withdrawal of SPP/P&I.	$0.70 Per payment or withdrawal of payment.	$0.70 Per payment or withdrawal of payment.	Added P&I.

Implementation Timeframe

The proposed rule change would become effective upon filing with the Commission such that the text of the Fee Guide would be revised as discussed above.

2. Statutory Basis

DTC believes that this proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, DTC believes that this proposal is consistent with Sections 17A(b)(3)(D) [41] and 17A(b)(3)(F) [42] of the Act and Rule 17Ad–22(e)(23)(ii),[43] as promulgated under the Act, for the reasons described below.

(i) Section 17A(b)(3)(D) of the Act requires, *inter alia,* that the Rules provide for the equitable allocation of reasonable dues, fees, and other charges among participants.[44] For the reasons set forth below, DTC believes that each of the proposed rule changes described above that would eliminate certain fees would provide for the equitable allocation of reasonable dues, fees, and other charges among participants, as discussed below.

Fee Eliminations

DTC believes the proposed rule change to eliminate fees set forth in the Corporate Actions section and Securities Processing sections of the Fee Guide would provide for the equitable allocation of reasonable fees. DTC believes the proposed elimination of the fees relating to these fees would provide for the equitable allocation of fees because the respective fees are rarely charged due to the low volume of activity in the related processes, as described above, and if ever charged, given the amount of each fee, any charge would be in a negligible amount. DTC believes the elimination of these fees is reasonable because of the lack of activity and therefore it is unlikely that DTC would need to charge these fees. Also, DTC also believes that the proposed rule change for the elimination of the fee relating to audit and CD confirmations is reasonable, because it costs DTC more to administer the charges than it collects from the agents for this fee. Given the low volume of activity and fees collected in this regard, DTC does not believe it would be reasonable to raise these fees simply to cover the cost of billing for them.

(ii) Section 17A(b)(3)(F) [45] of the Act requires, *inter alia,* that the Rules provide for the prompt and accurate clearance and settlement of securities transactions by DTC.

Changes of Fee Names and Descriptions of Fee Amounts

DTC believes that each of the proposed rule changes with respect to the revision of fee names and fee amount descriptions for certain fees set forth in the Settlement Services section of the Fee Guide, as described above, is designed to promote the prompt and accurate clearance and settlement of securities transactions in accordance with this section. Each of these changes would amend certain fee names and fee descriptions to improve the accuracy and clarity of the Fee Guide. Improving the accuracy and clarity of the Rules and Procedures, including the Fee Guide, would help Participants to better understand their rights and obligations regarding DTC services. When Participants better understand their rights and obligations regarding DTC services, they can act in accordance with the Rules and Procedures, which DTC believes would promote the prompt and accurate clearance and settlement of securities transactions by DTC. As such, DTC believes the proposed rule changes to clarify the Fee Guide for certain items set for in the Settlement Services section, as described above, are consistent with Section 17A(b)(3)(F) [46] of the Act.

(iii) Rule 17Ad–22(e)(23)(ii) under the Act requires DTC to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in DTC.[47] DTC believes that the proposed rule changes with respect to (1) deleting fees with little or no volume and (2) amending fee names and descriptions of amounts, would help ensure that the pricing structure of the Fee Guide is well-defined and clear to Participants. Having a well-defined and clear Fee Guide would help Participants to better understand the fees and help provide Participants with increased predictability and certainty regarding the fees they incur in participating in DTC. In this way, DTC believes the proposed rule changes to the Fee Guide, as described above, are consistent with Rule 17Ad–22(e)(23)(ii) under the Act, cited above.

(B) Clearing Agency's Statement on Burden on Competition

Fee Eliminations

Impact on Competition. DTC believes that each of the proposed rule changes with respect to the deletion of fees with little or no volume, as described above, may impact competition by potentially reducing Participants' operating costs. Therefore, DTC believes that the proposed rule changes with respect to the deletion of fees with little or no volume, as described above, would not

[41] 15 U.S.C. 78q–1(b)(3)(D).

[42] 15 U.S.C. 78q–1(b)(3)(F).

[43] 17 CFR 240.17Ad–22(e)(23)(ii).

[44] 15 U.S.C. 78q–1(b)(3)(D).

[45] 15 U.S.C. 78q–1(b)(3)(F).

[46] *Id.*

[47] 17 CFR 240.17Ad–22(e)(23)(ii).

impose a burden on competition, but may promote competition.

Changes of Fee Names and Descriptions of Fee Amounts

No Impact on Competition. DTC believes that each of the proposed clarifications to the Settlement Services section of the Fee Guide, as described, would not have an impact on competition.[48] Each of these changes would amend certain fee names and or fee amount descriptions to improve the accuracy and clarity of the Fee Guide. Having an accurate and clear Fee Guide would facilitate Participants' understanding of the Fee Guide and their obligations thereunder, and so would not affect the rights and obligations of any Participant or other interested party. Therefore, DTC believes that each of the proposed clarifications to the Settlement Services section of the Fee Guide, as described above, would not have an impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to this proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[49] and paragraph (f) of Rule 19b–4 thereunder.[50] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2020–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–DTC–2020–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2020–001 and should be submitted on or before February 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[51]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01785 Filed 1–30–20; 8:45 am]

BILLING CODE 8011–01–P

[48] *Id.*

[49] 15 U.S.C. 78s(b)(3)(A).

[50] 17 CFR 240.19b–4(f).

[51] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88045; File No. SR–CboeBYX–2020–002]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delete Partial Post Only at Limit Orders and References to Those Orders From the Rules

January 27, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 17, 2020, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') proposes to delete Partial Post Only at Limit Orders and references to those orders from the Rules. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to delete Partial Post Only at Limit Orders and references to those orders from the Rules. Current Rule 11.9(c)(7) defines a Partial Post Only at Limit Order as an order to be ranked and executed on the Exchange pursuant to Rules 11.12 (regarding the priority of orders) and 11.13(a)(4) (regarding the execution and routing of orders) or cancelled, as appropriate, without routing away to another trading center except that the order will only remove liquidity from the BYX Book under the following circumstances:

- A Partial Post Only at Limit Order will remove liquidity from the BYX Book up to the full size of the order if, at the time of receipt, it can be executed at prices better than its limit price (*i.e.,* price improvement).
- Regardless of any liquidity removed from the BYX Book under the circumstances described in the previous bulleted paragraph, a User may enter a Partial Post Only at Limit Order instructing the Exchange to also remove liquidity from the BYX Book at the order's limit price up to a designated percentage of the remaining size of the order after any execution pursuant to the previous bulleted paragraph (''Maximum Remove Percentage'') if, after removing such liquidity at the order's limit price, the remainder of such order can then post to the BYX Book. If no Maximum Remove Percentage is entered, such order will only remove liquidity to the extent such order will obtain price improvement as described in the previous bulleted paragraph.

A Partial Post Only at Limit Order will be subject to the price sliding process as set forth in Rule 11.9(g) unless a User has entered instructions not to use the price sliding process.

The Exchange proposes to delete Partial Post Only at Limit Order from the list of order types in Rule 11.9(c)(7) and references to that order type in Rules 11.1(a), 11.9(c)(10), 11.9(g)(1)(D), 11.9(g)(2)(D), 11.13(b)(4)(C), 11.23(a)(2), and 11.23(e)(1). The Exchange notes that use of Partial Post Only at Limit Orders is voluntary, and there is currently limited demand for this order type. Indeed, in December 2019, fewer than three Users submitted Partial Post Only at Limit Orders. Eliminating this order type would therefore allow the Exchange to reduce the complexity of its trading systems, without any significant impact on members and investors. Additionally, the Exchange will continue to offer a variety of other order types and functionality that provide Users with similar opportunities for trading, including BYX Post Only Orders offered pursuant to Rule 11.9(c)(6), which similarly allow the User to identify their orders as being willing to remove liquidity from the BYX Book in specified circumstances.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that eliminating Partial Post Only at Limit Orders will remove impediments to and perfect a national market system by reducing the complexity of its orders types, and simplifying the functionality offered to members and investors. The Exchange also believes that eliminating this order type is consistent with the public interest and the protection of investors given the minimal demand for and use of this order type. Further, the proposed rule change may remove impediments to and perfect the mechanism of a free and open market and national market system and protect investors by allowing the Exchange to reduce the overall complexity of its trading systems and reallocate System capacity and resources to more frequently used functionality. The Exchange does not believe elimination of this order type will harm investors, as use of this order type is voluntary, and the Exchange will continue to offer other similar order types, including BYX Post Only Orders. Additionally, the Exchange believes that deleting corresponding references to this order type in the Rules will further remove impediments to and perfect and the mechanism of a free and open market furthering the goal of transparency and clarity in the Exchange's Rules regarding the availability of order types.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues, but rather to remove order functionality that is infrequently used. Additionally, as noted above, the use of this order type is voluntary, and the Exchange will continue to offer other similar order types.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[10] normally does not become operative for 30 days after the date of its

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

filing. However, Rule 19b–4(f)(6)(iii) [11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the operative delay would allow it to promptly remove an infrequently used order type, thereby reducing the overall complexity of its trading system. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBYX–2020–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBYX–2020–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBYX–2020–002 and should be submitted on or before February 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01782 Filed 1–30–20; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88052; File No. SR–CboeBZX–2020–004]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Programs in Connection With the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options

January 27, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 21, 2020, Cboe BZX Exchange, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX Options'') proposes to extend the pilot programs in connection with the listing and trading of P.M.-settled series on certain broad-based index options. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change extends the listing and trading of P.M.-settled series on certain broad-based index options on a pilot basis.[5] Rule 29.11(a)(6) currently

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange is authorized to list for trading options that overlie the Mini-SPX Index (''XSP'') and the Russell 2000 Index (''RUT''). *See* Rule 29.11(a). *See also* Securities Exchange Act Release No. 84480 (October 24, 2018), 83 FR 54635 (October 30, 2018) (Notice of Filing of a Proposed Rule

Continued

permits the listing and trading of XSP options with third-Friday-of-the-month expiration dates, whose exercise settlement value will be based on the closing index value on the expiration day (''P.M.-settled'') on a pilot basis set to expire on January 28, 2020 (the ''XSPPM Pilot Program''). Rule 29.11(j)(3) also permits the listing and trading of P.M.-settled options on broad-based indexes with weekly expirations (''Weeklys'') and end-of-month expirations (''EOMs'') on a pilot basis set to expire on January 28, 2020 (the ''Nonstandard Expirations Pilot Program'', and together with the XSPPM Pilot Program, the ''Pilot Programs''). The Exchange proposes to extend the Pilot Programs through May 4, 2020.

XSPPM Pilot Program

Rule 29.11(a)(6) permits the listing and trading, in addition to A.M.-settled XSP options, of P.M.-settled XSP options with third-Friday-of-the-month expiration dates on a pilot basis. The Exchange believes that continuing to permit the trading of XSP options on a P.M.-settled basis will continue to encourage greater trading in XSP options. Other than settlement and closing time on the last trading day (pursuant to Rule 29.10(a)),[6] contract terms for P.M.-settled XSP options are the same as the A.M.-settled XSP options. The contract uses a $100 multiplier and the minimum trading increments, strike price intervals, and expirations are the same as the A.M.-settled XSP option series. P.M.-settled XSP options have European-style exercise. The Exchange also has flexibility to open for trading additional series in response to customer demand.

If the Exchange were to propose another extension of the XSPPM Pilot Program or should the Exchange propose to make the XSPPM Pilot Program permanent, the Exchange would submit a filing proposing such amendments to the XSPPM Pilot Program. Further, any positions established under the XSPPM Pilot Program would not be impacted by the expiration of the XSPPM Pilot Program. For example, if the Exchange lists a P.M.-settled XSP option that expires after the XSPPM Pilot Program expires (and is not extended), then those positions would continue to exist. If the pilot were not extended, then the positions could continue to exist. However, any further trading in those series would be restricted to transactions where at least one side of the trade is a closing transaction.

As part of the XSPPM Pilot Program, the Exchange submits a pilot report to the Commission at least two months prior to the expiration date of the pilot. This annual report contains an analysis of volume, open interest, and trading patterns. In proposing to extend the XSPPM Pilot Program, the Exchange will continue to abide by the reporting requirements described in the Notice.[7] Additionally, the Exchange will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the XSPPM Pilot Program is consistent with the Exchange Act. The Exchange is in the process of making public on its website data and analyses previously submitted to the Commission under the Pilot Program, and will make public any data and analyses it submits to the Commission under the Pilot Program in the future. The Exchange also notes that its affiliated options exchange, Cboe Exchange, Inc. (''Cboe Options'') currently has pilots that permit P.M.-settled third Friday-of-the-month XSP options.[8]

Nonstandard Expirations Pilot Program

Rule 29.11(j)(1) permits the listing and trading, on a pilot basis, of P.M.-settled options on broad-based indexes with nonstandard expiration dates and is currently set to expire on January 28, 2020. The Nonstandard Expirations Pilot Program permits both Weeklys and EOMs as discussed below. Contract terms for the Weekly and EOM expirations are similar to those of the A.M.-settled broad-based index options, except that the Weekly and EOM expirations are P.M.-settled.

In particular, Rule 29.11(j)(1) permits the Exchange to open for trading Weeklys on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM). Weeklys are subject to all provisions of Rule 29.11 and are treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, under the Nonstandard Expirations Pilot Program, Weeklys are P.M.-settled, and new Weekly series may be added up to and including on the expiration date for an expiring Weekly.

Rule 29.11(a)(2) permits the Exchange to open for trading EOMs on any broad-based index eligible for standard options trading to expire on the last trading day of the month. EOMs are subject to all provisions of Rule 29.11 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, under the Nonstandard Expirations Pilot Program, EOMs are P.M.-settled, and new series of EOMs may be added up to and including on the expiration date for an expiring EOM.

As stated above, this proposed rule change extends the Nonstandard Expirations Pilot Program for broad-based index options on a pilot basis, for a period of 12 months. If the Exchange were to propose an additional extension of the Nonstandard Expirations Pilot Program or should the Exchange propose to make it permanent, the Exchange would submit additional filings proposing such amendments. Further, any positions established under the Nonstandard Expirations Pilot Program would not be impacted by the expiration of the pilot. For example, if the Exchange lists a Weekly or EOM that expires after the Nonstandard Expirations Pilot Program expires (and is not extended), then those positions would continue to exist. However, any further trading in those series would be restricted to transactions where at least one side of the trade is a closing transaction.

As part of the Nonstandard Expirations Pilot Program, the Exchange submits a pilot report to the Commission at least two months prior to the expiration date of the pilot. This annual report contains an analysis of volume, open interest, and trading patterns. In proposing to extend the Nonstandard Expirations Pilot Program, the Exchange will continue to abide by the reporting requirements described in the Notice.[9] Additionally, the Exchange will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the Nonstandard Expirations Pilot Program is consistent with the Exchange Act. The Exchange is in the process of making public on its website data and analyses previously

Change To Permit the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options on a Pilot Basis) (SR–CboeBZX–2018–066); and *see* Securities Exchange Act Release No. 85181 (February 22, 2019), 84 FR 6842 (February 28, 2019) (Notice of Deemed Approval of a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options on a Pilot Basis) (SR–CboeBZX–2018–066).

[6] Rule 29.10(a) permits transactions in P.M.-settled XSP options on their last trading day to be effected on the Exchange between the hours of 9:30 a.m. and 4:00 p.m. Eastern time. All other transactions in index options are effected on the Exchange between the hours of 9:30 a.m. and 4:15 p.m. Eastern time.

[7] *See supra* note 5.

[8] *See* Cboe Options Rule 4.13.13.

[9] *See supra* note 5.

submitted to the Commission under the Pilot Program, and will make public any data and analyses it submits to the Commission under the Pilot Program in the future. The Exchange notes that other exchanges, including its affiliated exchange, Cboe Options, currently have pilots that have weekly and end-of-month expirations.[10]

Additional Information

The Exchange believes there is sufficient investor interest and demand in the XSPPM and Nonstandard Expirations Pilot Programs to warrant their extension. The Exchange believes that the Programs have provided investors with additional means of managing their risk exposures and carrying out their investment objectives. The proposed extensions will continue to offer investors the benefit of added transparency, price discovery, and stability, as well as the continued expanded trading opportunities in connection with different expiration times. The Exchange proposes the extension of the Pilot Programs in order to continue to give the Commission more time to consider the impact of the Pilot Programs. To this point, the Exchange believes that the Pilot Programs have been well-received by its Members and the investing public, and the Exchange would like to continue to provide investors with the ability to trade P.M.-settled XSP options and contracts with nonstandard expirations. All terms regarding the trading of the Pilot Products shall continue to operate as described in the XSPPM and Nonstandard Expirations Notice.[11] The Exchange merely proposes herein to extend the terms of the Pilot Programs to May 4, 2020.

Furthermore, the Exchange has not experienced any adverse market effects with respect to the Programs. The Exchange will continue to monitor for any such disruptions or the development of any factors that would cause such disruptions. The Exchange represents it continues to have an adequate surveillance program in place for index options and that the proposed extension will not have an adverse impact on capacity.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes that the proposed extension of the Pilot Programs will continue to provide greater opportunities for investors. The Exchange believes that the Pilot Programs have been successful to date. The proposed rule change allows for an extension of the Program for the benefit of market participants. The Exchange believes that there is demand for the expirations offered under the Program and believes that P.M.-settled XSP, Weekly Expirations and EOMs will continue to provide the investing public and other market participants with the opportunities to trade desirable products and to better manage their risk exposure. The proposed extension will also provide the Commission further opportunity to observe such trading of the Pilot Products. Further, the Exchange has not encountered any problems with the Programs; it has not experienced any adverse effects or meaningful regulatory or capacity concerns from the operation of the Pilot Programs. Also, the Exchange believes that such trading pursuant to the XSPPM Pilot Program has not, and will not, adversely impact fair and orderly markets on Expiration Fridays for the underlying stocks comprising the S&P 500 index.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Pilot Programs, the proposed rule change will allow for further analysis of the Program and a determination of how the Program shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

Specifically, the Exchange does not believe the continuation of the Pilot Program will impose any unnecessary or inappropriate burden on intramarket competition because it will continue to apply equally to all BZX Options market participants, and the Pilot Products will continue to be available to all BZX Options market participants. The Exchange believes there is sufficient investor interest and demand in the Pilot Programs to warrant its extension. The Exchange believes that, for the period that the Pilot Programs has been in operation, it has provided investors with desirable products with which to trade. Furthermore, as stated above, the Exchange maintains that it has not experienced any adverse market effects or regulatory concerns with respect to the Pilot Programs. The Exchange further does not believe that the proposed extension of the Pilot Programs will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it only applies to trading on BZX Options. To the extent that the continued trading of the Pilot Products may make BZX Options a more attractive marketplace to market participants at other exchanges, such market participants may elect to become BZX Options market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[15]

[10] *See* Cboe Options Rule 4.13(e); and Phlx Rule 1101A(b)(5).

[11] *See supra* note 5.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change,

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A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[16] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[17] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that investors may continue to trade options that are part of the Pilot Programs on an uninterrupted basis. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Pilot Programs to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the Pilot Programs. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeBZX–2020–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2020–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2020–004 and should be submitted on or before February 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01778 Filed 1–30–20; 8:45 am]

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at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88047; File No. SR–ICC–2020–002]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to the ICC Risk Management Model Description, ICC Stress Testing Framework, ICC Liquidity Risk Management Framework, ICC Back-Testing Framework, and ICC Risk Parameter Setting and Review Policy

January 27, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 14, 2020, ICE Clear Credit LLC (''ICE Clear Credit'' or ''ICC'') filed with the Securities and Exchange Commission (''SEC'' or the ''Commission'') the proposed rule change, security-based swap submission, or advance notice as described in Items I, II and III below, which Items have been prepared by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change, security-based swap submission, or advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The principal purpose of the proposed rule change is to make certain changes to the Risk Management Model Description (''RMMD''), Stress Testing Framework (''STF''), Liquidity Risk Management Framework (''LRMF''), Back-Testing Framework (''BTF'') and Risk Parameter Setting and Review Policy (''RPSRP'') (together, the ''Risk Policies'') in connection with the clearing of credit default index swaptions.[3]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used but not defined herein have the meanings specified in the Clearing Rules (the ''Rules'').

the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

(a) Purpose

ICE Clear Credit is proposing amendments to its Risk Policies in connection with its proposed launch of the clearing of credit default index swaptions (''Index Swaptions'').[4] ICC has previously filed with the Commission related changes to its Rules, End-of-Day Price Discovery Policies and Procedures and Risk Management Framework related to the clearing of Index Swaptions (the ''Swaption Rule Filing'').[5] As set out in the Swaption Rule Filing, ICC intends to adopt certain related policies and procedures in preparation for the launch of clearing of Index Swaptions, including those set out in this filing, and does not intend to commence clearing of Index Swaptions until such policies and procedures have been approved by the Commission or otherwise become effective. As such, ICC proposes to make the changes to the RMMD, LRMF, RPSRP, BTF and STF effective following the approval of all such policies and procedures and the completion of the ICC governance process surrounding the Index Swaptions product expansion.

As discussed in the Swaption Rule Filing, pursuant to an Index Swaption, one party (the ''Swaption Buyer'') has the right (but not the obligation) to cause the other party (the ''Swaption Seller'') to enter into an index credit default swap transaction at a pre-determined strike price on a specified expiration date on specified terms. In the case of Index Swaptions that would be cleared by ICC, the underlying index credit default swap would be limited to certain CDX and iTraxx Europe index credit default swaps that are accepted for clearing by ICC, and which would be automatically cleared by ICC upon exercise of the Index Swaption by the Swaption Buyer in accordance with its terms.

I. Risk Management Model Description

The amendments to the RMMD further implement certain changes made to the Risk Management Framework, as described in the Swaption Rule Filing, and would include in particular enhancements to the initial margin (''IM'') and guaranty fund (''GF'') methodologies to address Index Swaptions. The IM and GF approach for Index Swaptions would be an extension of the existing index and single name (''SN'') methodologies for IM and GF.

A. Initial Margin Methodology

The description of the IM methodology would be amended to add a description of Index Swaptions and to define an index option instrument as a specific combination of underlying index, expiration date, strike price, optionality type, exercise style, denomination currency, and transaction type. The index options referencing an index would be treated as part of the underlying index risk sub-factor (''RSF'').

Several aspects of the IM methodology would be amended to take into account Index Swaptions.

Jump-to-Default Requirement

For the jump-to-default requirement (''JTDR'') of the loss-given default (''LGD'') risk analysis, the amendments would introduce the concept of a delta equivalent notional amount (''DENA'') for each Index Swaption. The DENA for each Index Swaption would be added to the aggregate outright position in index CDS for purposes of index decomposition and application of all of the components of the JTDR (including the idiosyncratic, general wrong way risk and contagion components).

Liquidity Charge

Pursuant to the amendments, the index level liquidity charge (''LC'') that ICE Clear Credit calculates as part of the margin methodology would contain an Index Swaption LC component added to the LC component for the outright index CDS positions. A new subsection would be added to set out the formulas for calculation of the LC of an Index Swaption position related to a particular underlying index, taking into account, among other factors, the direction of the underlying position (bought or sold protection), other option characteristics, bid-offer width scaling factors and the LC for the underlying CDS position. Relevant formulas would establish the LC for a set of options related to a common underlying index RSF and the total options LC for a given index risk factor (''RF''). For purposes of this determination, all option positions would be categorized as either option-derived bought protection positions, or option-derived sold protection positions. The instrument LCs for all option instruments which share the same effective underlying directionality would be added together, and the worst sum would establish the RSF-specific options LCs. The portfolio level LC calculation would be modified to incorporate the impact of index option risk factor LC values as well as outright index and SN positions. The model would not provide portfolio benefits for reduction of LC between outright underlying positions and corresponding Index Swaptions.

Concentration Charge

The calculation of concentration charges would also be amended to address the additional concentration risk characteristics from Index Swaptions. Index Swaption position sizes for purposes of this calculation would be based on their option-derived effective notional amount (''ENA'') and their 5 year equivalent analogs, based on the DENA. The amendments would set out formulas for determining RSF-specific net DENA at a specific maturity/tenor for a particular CDS instrument, the RSF-specific net DENA across all tenors, the 5 year equivalent notional amount of DENA and the 5 year equivalent analogs of the aggregate DENAs. The related maximum loss conditions and LGD calculation corresponding to each series would also be modified to incorporate DENAs in the context of index option positions, among other clarifications.

The overall RSF and RF concentration charge analysis would also be amended to take into account Index Swaption positions combined with outright index CDS positions, based on these ENA determinations and the stress loss associated with the option positions of a particular underlying index series, the total P/L responses of all option positions to defined boundary underlying index price scenarios and the cumulative losses under defined boundary underlying index price scenarios. As with LCs, the amendments would not provide portfolio offsets between underlying index CDS and Index Swaptions for purposes of concentration charges.

Interest Rate Sensitivity Requirement

The calculation of the interest rate sensitivity risk requirement would be amended to account for the risk associated with changes in the default-free discount interest rate term structure used to price Index Swaption instruments. The existing approach of

[4] Index Swaptions are also referred to herein and in the Risk Policies as ''index options'' or ''index CDS options'', or in similar terms.

[5] SEC Release No. 34–87297; File No. SR–ICC–2019–007 (Oct. 15, 2019) (approval), 84 FR 56270 (Oct. 21, 2019).

considering parallel shifts of the discount term structure for index CDS would be extended to be used to reprice Index Swaptions as well, with an appropriate adjustment for Index Swaptions to account for price changes rather than upfront fee changes. Under this approach, portfolio offsets between underlying index CDS and corresponding Index Swaptions would be considered.

Basis Risk

As described in the Swaption Rule Filing, the amendments would provide that Index Swaptions would not be eligible for index-SN decomposition benefits in terms of long-short offsets, and therefore would not be subject to basis risk requirements based on decomposed index positions.

Spread Response

The amendments would modify the integrated spread response component of the margin model to incorporate an options-implied credit spread distribution. Under this approach, relevant distribution parameters for Index Swaptions would be implied from option prices established in the end-of-day pricing process. Specifically, ICC would model an implied distribution of credit spread log-returns for each put and call instrument at each given expiry, such that the implied-distribution option prices would be as close as possible to the option prices established via the end-of-day process. The amendments also address determination of expected options payoffs, forward prices and spreads, and shape parameters for swaption instruments with the relevant expiry, for purposes of determining the relevant distribution of implied prices.

Corresponding amendments would also be made to the spread recovery-rate bivariate calculation to take into account the implied distribution of option pricing for Index Swaptions of the relevant maturity. With respect to instrument P/L estimations, an additional formula would be set out to demonstrate the computation of the option instrument P/L vector elements. With respect to RF P/L estimations, ICC proposes edits to a formula that sets out the computation of RF R/L vector elements and to note an alternative option position P/L computation.

Amendments would also be made with respect to anti-procyclicality measures. The current RMMD examines instrument price changes observed during the Lehman Brothers (''LB'') default, including consideration of the greatest price decreases between end-of-day prices on September 11, 2008 and any of the next five consecutive trading days. The amendments would require consideration of the next six consecutive trading days instead of five. The same change would also be made to the opposite Lehman Brothers (''OLB'') scenario.

The amendments would address the impact of the price change scenarios on Index Swaption prices. This would be estimated by repricing the option instruments under the corresponding underlying stress scenarios. In addition, under the considered underlying stress scenario, each option price is computed at a stress implied mean absolute deviation (''MAD'') level incorporating a sudden implied MAD (''implied volatility'') level shift. The amendments would introduce new formulas to compute the P/L of the LB and OLB scenarios in the context of options, which would reflect the sum of the differences between the option prices computed under the stress scenarios and the current levels for each instrument in the considered portfolio.

B. Guaranty Fund Methodology

With respect to the calculation of the GF, the stress spread response component would be revised to add that the index RF level GF stress spread response for a given spread regime would be computed by combining index CDS and index option instrument P/Ls over the three term structure scenarios and determining the worst combined P/L for contracting and widening regimes. Additional language would be included relating to the computation of option instrument P/Ls depending on the remaining time to expiry for option instruments. Certain other clarifications would be made as to the use of spot/forward spreads in the calculations.

Certain other typographical corrections and similar clarifications, renumbering and updates to cross-references would be made throughout the RMMD.

II. Liquidity Risk Management Framework

The amendments would add references to CDS index option instruments eligible for clearing throughout the LRMF, including for purposes of determination of the margin period of risk (''MPOR''). For the liquidity stress testing analysis, the amendments would augment the historically observed extreme but plausible CDS market scenarios with extreme but plausible stress test options-implied MAD scenarios for CDS index options. These scenarios would be created by pricing the option instruments, by means of the implied credit spread distribution discussed above in connection with the RMMD, at the corresponding underlying stress levels and stress options-implied MAD levels. The amendments would also add that all classifications of scenarios would include assumptions with regards to CDS instrument prices/spreads, co-movements among instrument prices/spreads, the dependence structure of instrument behavior, CDS index option implied distribution parameters, the magnitude of provided portfolio benefits, and explicit assumptions about the occurrence of credit events. The historically observed extreme but plausible market scenarios would specifically incorporate the stress options-implied MAD parameters for widening and tightening scenarios.

With respect to hypothetical (forward looking) liquidity stress scenarios, in the LGD scenario, the amendments would provide that the losses attributable to the considered credit events would reflect CDS instrument positions and CDS index option positions in terms of their DENA underlying positions.

In order to determine the hypothetical profit or loss for each clearing participant representing the largest cumulative loss over the relevant risk horizon, the amendments would clarify that the aggregate amount would be comprised of the price changes corresponding to outright CDS instruments and CDS index options associated with the hypothetical scenarios.

III. Risk Parameter Setting and Review Policy

The proposed amendments to the RPSRP would add references to the CDS index option throughout. They would provide that the Statistical Analysis of Input Data (''SAID'') system used to review risk management model assumptions would maintain CDS index option prices and parameters for purposes of risk management. New sections would be added to describe LC, concentration charge, implied distribution and option pricing parameters (including distribution shape and MAD parameters) for Index Swaptions, consistent with the changes to the RMMD discussed above. The revisions would also address the process for periodic analysis and review of parameters and proposed parameter updates by ICC risk personnel, in connection with the Trading Advisory Group and Risk Working Group. The amendments also provide procedures for ongoing sensitivity analysis of MAD estimates for Index Swaptions, for the use of alternative assumptions and

methods for implied distributions and other factors to provide supplementary information to assess on an ongoing basis the validity and quality of assumptions used to price Index Swaptions, and for comparison of implied factors to other relevant metrics. The amendments would make certain clarifying amendments and similar corrections.

IV. Back-Testing Framework

ICC proposes changes relating to multi-horizon back-testing and univariate back-testing. The proposed amendments would add special CDS strategy portfolio definitions used for back-testing that refer specifically to Index Swaptions. The amendments would also provide that CDS index option instruments are subject to periodic univariate back-testing analysis. For this purpose, the unrealized worst P/Ls over the appropriate time period, projected risk measures and exceedances would be computed and reported as an average over all strikes for each time-to-expiry strip.

With respect to remediating back-testing results, the amendments would add that if poor back-testing results were found to be directly related to CDS index options, an analysis would be carried out on the CDS index option implied distribution assumptions, estimation techniques and estimated parameters. The ICC risk management department (''ICC Risk'') would also review the results from the execution within the SAID engine and the statistical assumptions related to options. If the back-testing results based on daily parameter estimates did not exhibit poor performance, ICC Risk could immediately update the statistical parameters, and increase the frequency of parameter updates. If the daily parameter updates did not remediate poor back-testing results, ICC Risk could recalibrate and update the implied MAD scaling factors.

V. Stress Testing Framework

Under the amended STF, for each of the predefined stress scenarios categories, CDS index option price scenarios would be created by pricing the option instruments, by means of the calibrated implied distribution, at the corresponding underlying stress levels and stress options-implied MAD levels.

Specifically, the historically observed extreme but plausible market scenarios set out in the STF would be augmented by the following scenarios for CDS index option instruments: (i) The stress options-implied MAD widening scenario (which would be designed to produce a significant extreme but plausible increase in the options-implied MAD); and (ii) the stress options-implied MAD tightening scenario (which would be designed to produce a significant extreme but plausible decrease in the options-implied MAD). With respect to scenarios intended to replicate the observed instrument price changes during the LB default, in the context of CDS index options, these scenarios would incorporate the stress options-implied MAD parameters for widening and tightening scenarios.

With respect to hypothetically constructed (forward looking) extreme but plausible market scenarios, the losses attributable to the considered credit events would reflect CDS instrument positions and CDS index option positions in terms of their DENA underlying positions.

With respect to the extreme model response test, the stress options-implied MAD scenarios that complement the extreme model response test scenarios would be derived from the stress scaling factors for the options-implied MADs by an increase of the magnitude of the stress options-implied MAD widening scaling factor and an increase of the magnitude of the stress options-implied MAD tightening scaling factor.

Pursuant to the amendments, scenarios designed to reproduce significant discordant market outcomes would be augmented with respect to CDS index options with stress options-implied MAD scenarios.

With respect to general wrong way risk and contagion stress tests, the LGD attributable to the considered credit events would incorporate CDS index options positions in terms of their DENA underlying positions. The amendments would also update consideration of the most severe LGD used in the GF reverse stress testing adequacy analysis. The risk factor group ranking by severity of LGD would take into account CDS index option exposures based on the DENA of each option position.

Other conforming changes to incorporate references to Index Swaptions would be made throughout the document.

(b) Statutory Basis

ICC believes that the proposed rule changes are consistent with the requirements of Section 17A of the Act [6] and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad–22.[7] In particular, Section 17A(b)(3)(F) of the Act [8] requires that that the rule change be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest. The amendments would provide for enhanced risk management measures in relation to clearing services for an additional type of contract, Index Swaptions, consistent with the changes to the Risk Management Framework set out in the Swaption Rule Filing. The amendments revise the RMMD to provide for the calculation of IM and GF requirements in respect of portfolios that contain Index Swaptions, taking into account the particular characteristics and risks of Index Swaptions. In particular, the amendments incorporate Index Swaptions into key components of the IM model, including the jump-to-default and stress responses components, LCs, concentration charges and interest rate sensitivity. The amendments make corresponding changes to the LRMF to provide for liquidity stress testing in connection with Index Swaptions, as well as amendments to the STF and BTF to address Index Swaptions. In ICC's view, these adjustments will expand its overall existing risk model for use with Index Swaptions and thus facilitate its ability to manage the participant default risk with respect to cleared Index Swaptions. In ICC's view, the amendments, taken together with the amendments in the Swaption Rule Filing, are therefore consistent with the prompt and accurate clearing and settlement of the contracts cleared by ICC, including Index Swaptions, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[9]

The amendments would also satisfy relevant requirements of Rule 17Ad–22,[10] including the following:

Margin Requirements. Rule 17Ad–22(b)(2) [11] requires, in relevant part, that a clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to ''use margin requirements to limit its credit exposures to participants under

[6] 15 U.S.C. 78q–1.

[7] 17 CFR 240.17Ad–22.

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 17 CFR 240.17Ad–22.

[11] 17 CFR 240.17Ad–22(b)(2).

normal market conditions and use risk-based models and parameters to set margin requirements.'' As discussed above, ICC is modifying the RMMD, and in particular the IM calculations, to address the credit exposure to participants with respect to Index Swaptions. The RPSRP would also be updated to address the calibration of the option-related parameters to compute IM and GF requirements. These modifications to ICC's IM model are intended to ensure that ICC appropriately limits its credit exposures to participants relating to the new Index Swaptions and accordingly sets appropriate IM levels for these products. The amendments also provide for back-testing and stress-testing of such margin requirements. As such, ICC believes the amendments to be compliant with Rule 17Ad–22(b)(2).[12]

Financial Resources. Rule 17Ad–22(b)(3)[13] requires, in relevant part, a clearing agency for security-based swaps to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain financial resources ''sufficient to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions.'' As discussed above, ICC is modifying the RMMD, including enhancements to the IM and GF methodologies to address Index Swaptions, and related policies, including enhancements to provide for stress testing, back testing, risk parameter setting and review, and liquidity stress testing in connection with Index Swaptions. With these modifications, ICC believes that its IM and GF resources will be sufficient to meet ICC's financial obligations to Participants with respect to cleared Index Swaptions as well as other cleared Contracts notwithstanding a default by the two Participant families creating the largest combined loss, in extreme but plausible market conditions, consistent with these regulatory requirements. ICC does not propose to otherwise reduce or change its financial resources.

Governance Arrangements. Rule 17Ad–22(d)(8)[14] requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of ICC's risk management procedures. The RMMD, LRMF, RPSRP, BTF, and STF clearly assign and document responsibility and accountability for risk decisions and require consultation with or approval from the ICC Board, committees, or management. As described above, the revisions to the RPSRP would address the process for periodic analysis and review of parameters and proposed parameter updates by ICC risk personnel, in connection with the Trading Advisory Group and Risk Working Group. The proposed changes to the BTF also assign and document responsibility and accountability for performing back-testing analyses and remediating poor back-testing results related to Index Swaptions. These governance arrangements continue to be clear and transparent, such that information relating to the assignment of responsibilities and the requisite involvement of the ICC Board, committees, management, or ICC Risk is clearly detailed, and promote the effectiveness of ICC's risk management procedures by documenting responsibility and accountability for risk decisions, consistent with the requirements of Rule 17Ad–22(d)(8).[15]

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Credit does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. The amendments would enhance risk management relating to the launch of clearing of Index Swaptions as an additional type of cleared Contract. Index Swaptions would be available to all ICC Participants for clearing. ICC does not believe acceptance of Index Swaptions for clearing and the management of related risks would adversely affect the trading markets for such contracts, and in fact acceptance of such contracts by ICC would provide market participants with the additional flexibility to have their Index Swaptions cleared. In light of the enhancements proposed to be made to its risk models and related policies, as discussed herein, acceptance of Index Swaptions for clearing would not, in ICC's view, adversely affect clearing of any other currently cleared product. As a result, ICC does not believe the amendments would adversely affect the ability of Participants, their customers or other market participants to continue to clear contracts, including CDS Contracts. ICC also does not believe the enhancements would adversely affect the cost of clearing or otherwise limit market participants' choices for selecting clearing services in Index Swaptions, credit default swaps or other products. Accordingly, ICC does not believe the amendments would impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission, or advance notice is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ICC–2020–002 on the subject line.

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

[12] 17 CFR 240.17Ad–22(b)(2).

[13] 17 CFR 240.17Ad–22(b)(3).

[14] 17 CFR 240.17Ad–22(d)(8).

[15] 17 CFR 240.17Ad–22(d)(8).

All submissions should refer to File Number SR–ICC–2020–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, security-based swap submission, or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission, or advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation*. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2020–002 and should be submitted on or before February 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01784 Filed 1–30–20; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88054; File No. SR–CboeEDGX–2020–002]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Programs in Connection With the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options

January 27, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 21, 2020, Cboe EDGX Exchange, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX Options'') proposes to extend the pilot programs in connection with the listing and trading of P.M.-settled series on certain broad-based index options. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change extends the listing and trading of P.M.-settled series on certain broad-based index options on a pilot basis.[5] Rule 29.11(a)(6) currently permits the listing and trading of XSP options with third-Friday-of-the-month expiration dates, whose exercise settlement value will be based on the closing index value on the expiration day (''P.M.-settled'') on a pilot basis set to expire on January 28, 2020 (the ''XSPPM Pilot Program''). Rule 29.11(j)(3) also permits the listing and trading of P.M.-settled options on broad-based indexes with weekly expirations (''Weeklys'') and end-of-month expirations (''EOMs'') on a pilot basis set to expire on January 28, 2020 (the ''Nonstandard Expirations Pilot Program'', and together with the XSPPM Pilot Program, the ''Pilot Programs''). The Exchange proposes to extend the Pilot Programs through May 4, 2020.

XSPPM Pilot Program

Rule 29.11(a)(6) permits the listing and trading, in addition to A.M.-settled XSP options, of P.M.-settled XSP options with third-Friday-of-the-month expiration dates on a pilot basis. The Exchange believes that continuing to permit the trading of XSP options on a P.M.-settled basis will continue to encourage greater trading in XSP options. Other than settlement and closing time on the last trading day (pursuant to Rule 29.10(a)),[6] contract

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange is authorized to list for trading options that overlie the Mini-SPX Index (''XSP'') and the Russell 2000 Index (''RUT''). *See* Rule 29.11(a). *See also* Securities Exchange Act Release No. 84481 (October 24, 2018), 83 FR 54624 (October 30, 2018) (Notice of Filing of a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options on a Pilot Basis) (SR–CboeEDGX–2018–037); and *see* Securities Exchange Act Release No. 85182 (February 22, 2019), 84 FR 6846 (February 28, 2019) (Notice of Deemed Approval of a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options on a Pilot Basis) (SR–CboeEDGX–2018–037).

[6] Rule 29.10(a) permits transactions in P.M.-settled XSP options on their last trading day to be effected on the Exchange between the hours of 9:30 a.m. and 4:00 p.m. Eastern time. All other transactions in index options are effected on the Exchange between the hours of 9:30 a.m. and 4:15 p.m. Eastern time.

terms for P.M.-settled XSP options are the same as the A.M.-settled XSP options. The contract uses a $100 multiplier and the minimum trading increments, strike price intervals, and expirations are the same as the A.M.-settled XSP option series. P.M.-settled XSP options have European-style exercise. The Exchange also has flexibility to open for trading additional series in response to customer demand.

If the Exchange were to propose another extension of the XSPPM Pilot Program or should the Exchange propose to make the XSPPM Pilot Program permanent, the Exchange would submit a filing proposing such amendments to the XSPPM Pilot Program. Further, any positions established under the XSPPM Pilot Program would not be impacted by the expiration of the XSPPM Pilot Program. For example, if the Exchange lists a P.M.-settled XSP option that expires after the XSPPM Pilot Program expires (and is not extended), then those positions would continue to exist. If the pilot were not extended, then the positions could continue to exist. However, any further trading in those series would be restricted to transactions where at least one side of the trade is a closing transaction.

As part of the XSPPM Pilot Program, the Exchange submits a pilot report to the Commission at least two months prior to the expiration date of the pilot. This annual report contains an analysis of volume, open interest, and trading patterns. In proposing to extend the XSPPM Pilot Program, the Exchange will continue to abide by the reporting requirements described in the Notice.[7] Additionally, the Exchange will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the XSPPM Pilot Program is consistent with the Exchange Act. The Exchange is in the process of making public on its website data and analyses previously submitted to the Commission under the Pilot Program, and will make public any data and analyses it submits to the Commission under the Pilot Program in the future. The Exchange also notes that its affiliated options exchange, Cboe Exchange, Inc. (''Cboe Options'') currently has pilots that permit P.M.-settled third Friday-of-the-month XSP options.[8]

Nonstandard Expirations Pilot Program

Rule 29.11(j)(1) permits the listing and trading, on a pilot basis, of P.M.-settled options on broad-based indexes with nonstandard expiration dates and is currently set to expire on January 28, 2020. The Nonstandard Expirations Pilot Program permits both Weeklys and EOMs as discussed below. Contract terms for the Weekly and EOM expirations are similar to those of the A.M.-settled broad-based index options, except that the Weekly and EOM expirations are P.M.-settled.

In particular, Rule 29.11(j)(1) permits the Exchange to open for trading Weeklys on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM). Weeklys are subject to all provisions of Rule 29.11 and are treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, under the Nonstandard Expirations Pilot Program, Weeklys are P.M.-settled, and new Weekly series may be added up to and including on the expiration date for an expiring Weekly.

Rule 29.11(a)(2) permits the Exchange to open for trading EOMs on any broad-based index eligible for standard options trading to expire on the last trading day of the month. EOMs are subject to all provisions of Rule 29.11 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, under the Nonstandard Expirations Pilot Program, EOMs are P.M.-settled, and new series of EOMs may be added up to and including on the expiration date for an expiring EOM.

As stated above, this proposed rule change extends the Nonstandard Expirations Pilot Program for broad-based index options on a pilot basis, for a period of 12 months. If the Exchange were to propose an additional extension of the Nonstandard Expirations Pilot Program or should the Exchange propose to make it permanent, the Exchange would submit additional filings proposing such amendments. Further, any positions established under the Nonstandard Expirations Pilot Program would not be impacted by the expiration of the pilot. For example, if the Exchange lists a Weekly or EOM that expires after the Nonstandard Expirations Pilot Program expires (and is not extended), then those positions would continue to exist. However, any further trading in those series would be restricted to transactions where at least one side of the trade is a closing transaction.

As part of the Nonstandard Expirations Pilot Program, the Exchange submits a pilot report to the Commission at least two months prior to the expiration date of the pilot. This annual report contains an analysis of volume, open interest, and trading patterns. In proposing to extend the Nonstandard Expirations Pilot Program, the Exchange will continue to abide by the reporting requirements described in the Notice.[9] Additionally, the Exchange will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the Nonstandard Expirations Pilot Program is consistent with the Exchange Act. The Exchange is in the process of making public on its website data and analyses previously submitted to the Commission under the Pilot Program, and will make public any data and analyses it submits to the Commission under the Pilot Program in the future. The Exchange notes that other exchanges, including its affiliated exchange, Cboe Options, currently have pilots that have weekly and end-of-month expirations.[10]

Additional Information

The Exchange believes there is sufficient investor interest and demand in the XSPPM and Nonstandard Expirations Pilot Programs to warrant their extension. The Exchange believes that the Programs have provided investors with additional means of managing their risk exposures and carrying out their investment objectives. The proposed extensions will continue to offer investors the benefit of added transparency, price discovery, and stability, as well as the continued expanded trading opportunities in connection with different expiration times. The Exchange proposes the extension of the Pilot Programs in order to continue to give the Commission more time to consider the impact of the Pilot Programs. To this point, the Exchange believes that the Pilot Programs have been well-received by its Members and the investing public, and the Exchange would like to continue to provide investors with the ability to trade P.M.-settled XSP options and contracts with nonstandard expirations. All terms regarding the trading of the Pilot Products shall continue to operate as described in the XSPPM and Nonstandard Expirations Notice.[11] The Exchange merely proposes herein to

[7] *See supra* note 1 [sic].

[8] *See* Cboe Options Rule 4.13.13.

[9] *See supra* note 1 [sic].

[10] *See* Cboe Options Rule 4.13(e); and Phlx Rule 1101A(b)(5).

[11] *See supra* note 1 [sic].

extend the terms of the Pilot Programs to May 4, 2020.

Furthermore, the Exchange has not experienced any adverse market effects with respect to the Programs. The Exchange will continue to monitor for any such disruptions or the development of any factors that would cause such disruptions. The Exchange represents it continues to have an adequate surveillance program in place for index options and that the proposed extension will not have an adverse impact on capacity.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes that the proposed extension of the Pilot Programs will continue to provide greater opportunities for investors. The Exchange believes that the Pilot Programs have been successful to date. The proposed rule change allows for an extension of the Program for the benefit of market participants. The Exchange believes that there is demand for the expirations offered under the Program and believes that P.M.-settled XSP, Weekly Expirations and EOMs will continue to provide the investing public and other market participants with the opportunities to trade desirable products and to better manage their risk exposure. The proposed extension will also provide the Commission further opportunity to observe such trading of the Pilot Products. Further, the Exchange has not encountered any problems with the Programs; it has not experienced any adverse effects or meaningful regulatory or capacity concerns from the operation of the Pilot Programs. Also, the Exchange believes that such trading pursuant to the XSPPM Pilot Program has not, and will not, adversely impact fair and orderly markets on Expiration Fridays for the underlying stocks comprising the S&P 500 index.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Pilot Programs, the proposed rule change will allow for further analysis of the Program and a determination of how the Program shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

Specifically, the Exchange does not believe the continuation of the Pilot Program will impose any unnecessary or inappropriate burden on intramarket competition because it will continue to apply equally to all EDGX Options market participants, and the Pilot Products will continue to be available to all EDGX Options market participants. The Exchange believes there is sufficient investor interest and demand in the Pilot Programs to warrant its extension. The Exchange believes that, for the period that the Pilot Programs has been in operation, it has provided investors with desirable products with which to trade. Furthermore, as stated above, the Exchange maintains that it has not experienced any adverse market effects or regulatory concerns with respect to the Pilot Programs. The Exchange further does not believe that the proposed extension of the Pilot Programs will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it only applies to trading on EDGX Options. To the extent that the continued trading of the Pilot Products may make EDGX Options a more attractive marketplace to market participants at other exchanges, such market participants may elect to become EDGX Options market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[15]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[16] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[17] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that investors may continue to trade options that are part of the Pilot Programs on an uninterrupted basis. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Pilot Programs to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the Pilot Programs. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeEDGX–2020–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2020–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2020–002 and should be submitted on or before February 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01779 Filed 1–30–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88044; File No. SR–CboeBZX–2020–005]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delete Partial Post Only at Limit Orders and References to Those Orders From the Rules

January 27, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 17, 2020, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to delete Partial Post Only at Limit Orders and references to those orders from the Rules. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to delete Partial Post Only at Limit Orders and references to those orders from the Rules. Current Rule 11.9(c)(7) defines a Partial Post Only at Limit Order as an order to be ranked and executed on the Exchange pursuant to Rules 11.12 (regarding the priority of orders) and 11.13(a)(4) (regarding the execution and routing of orders) or cancelled, as appropriate, without routing away to another trading center except that the order will only remove liquidity from the BZX Book under the following circumstances:

- A Partial Post Only at Limit Order will remove liquidity from the BZX Book up to the full size of the order if, at the time of receipt, it can be executed at prices better than its limit price (*i.e.,* price improvement).
- Regardless of any liquidity removed from the BZX Book under the circumstances described in the previous bulleted paragraph, a User may enter a Partial Post Only at Limit Order instructing the Exchange to also remove liquidity from the BZX Book at the order's limit price up to a designated percentage of the remaining size of the order after any execution pursuant to the previous bulleted paragraph (''Maximum Remove Percentage'') if, after removing such liquidity at the order's limit price, the remainder of such order can then post to the BZX Book. If no Maximum Remove Percentage is entered, such order will only remove liquidity to the extent such order will obtain price improvement as described in the previous bulleted paragraph.

A Partial Post Only at Limit Order will be subject to the price sliding process as set forth in Rule 11.9(g)

unless a User has entered instructions not to use the price sliding process.

The Exchange proposes to delete Partial Post Only at Limit Order from the list of order types in Rule 11.9(c)(7) and references to that order type in Rules 11.1(a), 11.9(c)(10), 11.9(g)(1)(D), 11.9(g)(2)(D), 11.13(b)(4)(C), and 11.23(a)(8)(C)(iv).[5] The Exchange notes that use of Partial Post Only at Limit Orders is voluntary, and there is currently limited demand for this order type. Indeed, in December 2019, fewer than five Users submitted Partial Post Only at Limit Orders. Eliminating this order type would therefore allow the Exchange to reduce the complexity of its trading systems, without any significant impact on members and investors. Additionally, the Exchange will continue to offer a variety of other order types and functionality that provide Users with similar opportunities for trading, including BZX Post Only Orders offered pursuant to Rule 11.9(c)(6), which similarly allow the User to identify their orders as being willing to remove liquidity from the BZX Book in specified circumstances.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that eliminating Partial Post Only at Limit Orders will remove impediments to and perfect a national market system by reducing the complexity of its orders types, and simplifying the functionality offered to members and investors. The Exchange also believes that eliminating this order type is consistent with the public interest and the protection of investors given the minimal demand for and use of this order type. Further, the proposed rule change may remove impediments to and perfect the mechanism of a free and open market and national market system and protect investors by allowing the Exchange to reduce the overall complexity of its trading systems and reallocate System capacity and resources to more frequently used functionality. The Exchange does not believe elimination of this order type will harm investors, as use of this order type is voluntary, and the Exchange will continue to offer other similar order types, including BZX Post Only Orders. Additionally, the Exchange believes that deleting corresponding references to this order type in the Rules will further remove impediments to and perfect and the mechanism of a free and open market furthering the goal of transparency and clarity in the Exchange's Rules regarding the availability of order types.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues, but rather to remove order functionality that is infrequently used. Additionally, as noted above, the use of this order type is voluntary, and the Exchange will continue to offer other similar order types.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[11] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the operative delay would allow it to promptly remove an infrequently used order type, thereby reducing the overall complexity of its trading system. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[5] The proposed rule change renumbers current Rule 11.23(a)(8)(C)(v) to become Rule 11.23(a)(8)(C)(iv).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2020–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2020–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2020–005 and should be submitted on or before February 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01781 Filed 1–30–20; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 11015]

30-Day Notice of Proposed Information Collection: Employee Self-Certification and Ability To Perform in Emergencies (ESCAPE) Posts, Pre-Deployment Physical Exam Acknowledgement Form; Correction

ACTION: Notice; correction.

SUMMARY: The State Department published a document in the **Federal Register** on January 17, 2020, concerning the information collection submitted to the Office of Management and Budget (OMB) for approval. The document contained incorrect burden estimates.

FOR FURTHER INFORMATION CONTACT: Karl Field, 202–663–1591.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of January 17, 2020, in FR Doc. 2020–00763, on page 3102, in the second column, correct **SUPPLEMENTARY INFORMATION** to read:

- *Estimated Number of Respondents:* 532.
- *Estimated Number of Responses:* 532.
- *Total Estimated Burden Time:* 266 hours.

Dated: January 27, 2020.

Karl Field,

Director of Medical Clearances.

[FR Doc. 2020–01881 Filed 1–30–20; 8:45 am]

BILLING CODE 4710–36–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36374]

East Penn Railroad, L.L.C.—Lease and Operation Exemption Containing Interchange Commitment—Norfolk Southern Railway Company

East Penn Railroad, L.L.C. (ESPN), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to continue to lease and operate approximately 5.2 miles of rail lines from Norfolk Southern Railway Company (NSR), in York, Pa.[1] ESPN will continue to lease: (1) The York Industrial Track, located between mileposts YR 7.50 and YR 12.31 (York Track) (4.81 miles in length); and (2) the Wye Track that connects the York Track to NSR's line, located between mileposts YR 12.31 and YR 12.70 (Wye Track) (0.39 miles in length).

ESPN leased the York Track and the Wye Track from NSR in 2011. *See E. Penn R.R.—Lease & Operation Exemption—Norfolk S. Ry.,* FD 35533 (STB served July 15, 2011). According to the present verified notice, ESPN and NSR have entered into an amended lease agreement (Amended Agreement) which, among other things, extends the term of the lease to July 31, 2026.

ESPN certifies that the projected annual revenues as a result of the proposed transaction will not result in ESPN's becoming a Class II or Class I rail carrier and will not exceed $5 million. As required under 49 CFR 1150.43(h)(1), ESPN has disclosed in its verified notice that the Amended Lease contains an interchange commitment, in the form of a lease credit for each car interchanged with NSR.[2] ESPN has provided additional information regarding the interchange commitment as required by 49 CFR 1150.43(h).

The transaction may be consummated on or after February 14, 2020, the effective date of the exemption (30 days after the verified notice of exemption was filed). If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed by February 7, 2020 (at least seven days prior to the date the exemption becomes effective).

All pleadings, referring to Docket No. FD 36374, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on ESPN's representative, Karl Morell, Karl Morell & Associates, 440 1st Street NW, Suite 440, Washington, DC 20001.

According to ESPN, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: January 24, 2020.

[1] ESPN initially submitted the verified notice on January 6, 2020. On January 15, 2020, ESPN filed a supplement to provide a map of the Wye Track. In light of that supplement, January 15, 2020, is deemed the filing date of the verified notice.

[2] A copy of the Amended Agreement with the interchange commitment was submitted under seal. *See* 49 CFR 1150.43(h)(1).

By the Board, Allison C. Davis, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2020–01826 Filed 1–30–20; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36324]

Georgia Southern Railway Co.—Lease and Operation Exemption Containing Interchange Commitments—The South Western Rail Road Company, Central of Georgia Railroad Company, and Norfolk Southern Railway Company

Georgia Southern Railway Co. (GASR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to continue to lease and operate three rail lines totaling approximately 52.8 miles in length (not inclusive of yard track). GASR will continue to lease: (1) From Norfolk Southern Railway Company (NSR) the Roberta Line, from milepost 95.5–FV, at or near Roberta, to milepost 105.3–FV, at or near Fort Valley, in Peach and Crawford Counties, Ga. (approximately 9.8 miles); (2) from Central of Georgia Railroad Company (CGR), a wholly owned subsidiary of NSR, the Metter Line, from milepost W–57.5, at or near Dover, to milepost W–86.7 at or near Metter, in Candler, Bulloch, and Screven Counties, Ga. (approximately 29.2 miles); and (3) from CGR and the South Western Rail Road Company (SWRR), a subsidiary of CGR, the Perry Line, from milepost N–219.7, at or near Fort Valley to milepost N–232.6, at or near Perry, in Peach and Houston Counties, Ga. (approximately 12.9 miles) (the Lines).[1]

In 2009, Georgia Midland Railroad, Inc., assigned its lease of the Lines to GASR. *See Ga. S. Ry.—Lease & Operation Exemption & Operation Exemption—Certain Lines of Ga. Midland R.R., et al.,* FD 35322 (STB served Dec. 2, 2009). According to the verified notice, GASR has executed lease renewal agreements with NSR for the Roberta Line, with CGR for the Metter Line, and with CGR and SWRR for the Perry Line, for a period of ten years.

GASR certifies that its projected annual revenues as a result of the proposed transaction will not result in GASR's becoming a Class I or Class II rail carrier and will not exceed $5 million. GASR has disclosed in its verified notice that the lease renewals with CGR and SWRR contain an interchange commitment, in the form of lease credits.[2] GASR has provided additional information regarding the interchange commitments as required by 49 CFR 1150.43(h).

The transaction may be consummated on or after February 14, 2020, the effective date of the exemption (30 days after the verified notice of exemption was filed). If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by February 7, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36324, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on GASR's representative, W. Karl Hansen, Stinson LLP, 50 South Sixth Street, Suite 2600, Minneapolis, MN 55402.

According to GASR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: January 28, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2020–01900 Filed 1–30–20; 8:45 am]

BILLING CODE 4915–01–P

[1] On January 27, 2020, GASR filed a supplement to correct the description of the Metter Line.

[2] Copies of the lease renewal agreements with the interchange commitments were submitted under seal. *See* 49 CFR 1150.43(h)(1).

SURFACE TRANSPORTATION BOARD

[Docket No. FD 35347 (Sub-No. 2)]

Elkhart & Western Railroad Co.—Amended Lease and Operation Exemption Containing Interchange Commitment—Norfolk Southern Railway Company

Elkhart & Western Railroad Co. (EWR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to continue to lease and operate approximately 23.0 miles of rail line from Norfolk Southern Railway Company (NSR) between milepost I 108.6+/- (at Argos, Ind.) and milepost I 131.6 +/- (at Walkerton, Ind.) (the Line).

The verified notice states that EWR entered into a lease agreement with NSR in 2010. *See Elkhart & W. R.R.—Lease & Operation Exemption—Norfolk S. Ry.,* FD 35347 (STB served Feb. 19, 2010). The parties amended the lease in 2016. *See Elkhart & W. R.R.—Amended Lease & Operation Exemption Containing Interchange Commitment—Norfolk S. Ry.,* FD 35347 (Sub-No. 1) (STB served Oct. 14, 2016). According to the verified notice, EWR and NSR have agreed to further amend the lease agreement to extend the term of the lease to July 31, 2029, and to modify certain other specific terms of the agreement.[1] EWR states that the amended lease agreement will take effect upon the effective date of the notice of exemption.

According to EWR, it will continue to interchange traffic with NSR at a track in the vicinity of the Argos Yard. EWR states that the lease agreement, as amended, does not prohibit or limit EWR from interchanging with third-party connecting carriers that connect to the Line, nor does the agreement set forth terms governing EWR's interchange of traffic with such third-party carriers. However, as required under 49 CFR 1150.43(h)(1), EWR has disclosed in its verified notice that the lease agreement, as amended, contains an interchange commitment in the form of lease credits. EWR has also provided additional information regarding the interchange commitment as required by 49 CFR 1150.43(h).

EWR certifies that its projected annual revenues do not exceed those that would qualify it as a Class II or Class I rail carrier and would not exceed $5 million.

The proposed transaction may be consummated on February 14, 2020, the effective date of the exemption (30 days after the verified notice of exemption was filed). If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than February 7, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 35347 (Sub-No. 2), must be filed with the Surface Transportation Board, either via e-filing or in writing addressed to 395 E Street SW,

[1] A copy of the amended agreement with the interchange commitment was submitted under seal. *See* 49 CFR 1150.43(h)(1).

Washington, DC 20423–0001. In addition, a copy of each pleading must be served on EWR's representative, W. Karl Hansen, Stinson LLP, 50 South Sixth Street, Suite 2600, Minneapolis, MN 55402.

According to EWR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: January 27, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2020–01807 Filed 1–30–20; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2019–0914]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 15, 2019. The collection involves the recordkeeping requirement for owners/operators of aircraft issued a special airworthiness certificate in the light-sport aircraft category (SLSA) to keep the current status of applicable safety directives, and transfer these records with the aircraft at the time the aircraft is sold. The information to be collected is necessary to determine and ensure the SLSA aircraft is in a condition for safe flight prior to aircraft operation.

DATES: Written comments should be submitted by March 2, 2020.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Tanya Glines by email at: *Tanya.glines@faa.gov;* phone: 801–257–5085.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0730.

Title: Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft.

Form Numbers: Aircraft maintenance records/logs.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 15, 2019 (84 FR 62563). Title 14 CFR 91.327(b)(4) states that aircraft issued a special airworthiness certificate in the light-sport category (SLSA) cannot be operated unless the owner or operator complies with each safety directive applicable to the aircraft. Title 14 CFR 91.417(a)(2)(v) requires each registered owner or operator to retain records containing the current status of applicable safety directives including, for each, the method of compliance, the safety directive number and revision date. Additionally, if the safety directive involves recurring action, the time and date when the next action is required.

Recording safety directive compliance and retaining these records is necessary to determine if unsafe conditions have been corrected on aircraft issued a special airworthiness certificate in the light-sport category (SLSA), which assists in ensuring that the SLSA aircraft is in a condition safe for flight prior to its operation within the national airspace.

Respondents include owners/operators of SLSA, aircraft mechanics, and LSA repairmen with a Maintenance rating. The records of SLSA safety directive compliance are retained by the aircraft owner/operator, who must keep the records for the life of the SLSA aircraft and transfer them to the new owner at the time the aircraft is sold. The burden estimates are based on the current number of registered SLA and a projected future growth rate.

Respondents: 2935 owners/operators of SLSA aircraft.

Frequency: On occasion.

Estimated Average Burden per Response: 2 Hours.

Estimated Total Annual Burden: 5870 hours annual industry burden.

Issued in Washington, DC, on January 27, 2020.

Tanya A. Glines,

Aviation Safety Inspector, Safety Standards, General Aviation Maintenance Branch (AFS–350).

[FR Doc. 2020–01766 Filed 1–30–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Aviation Rulemaking Advisory Committee (ARAC) meeting.

SUMMARY: This notice announces a meeting of the ARAC.

DATES: The meeting will be held on Thursday, March 19, 2020, from 1:00 p.m. to 4:00 p.m. Eastern Standard Time.

Requests to attend the meeting must be received by Monday, March 2, 2020.

Requests for accommodations to a disability must be received by Monday, March 2, 2020.

Requests to submit written materials to be reviewed during the meeting must be received no later than Monday, March 2, 2020.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591. General committee information including copies of the meeting minutes will be available on the FAA Committee website at *https://www.faa.gov/regulations_policies/rulemaking/committees/documents/.*

FOR FURTHER INFORMATION CONTACT: Lakisha Pearson, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, telephone (202) 267–4191; fax (202) 267–5075; email *9-awa-arac@faa.gov.* Any committee-related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The ARAC was created under the Federal Advisory Committee Act (FACA), in accordance with Title 5 of the United States Code (5 U.S.C. App. 2) to provide advice and recommendations to the FAA concerning rulemaking activities, such as aircraft operations, airman and air agency certification, airworthiness standards and certification, airports, maintenance, noise, and training.

II. Agenda

At the meeting, the agenda will cover the following topics:

- Status Report from the FAA
- Status Updates:
  - Active Working Groups
  - Transport Airplane and Engine (TAE) Subcommittee
- Recommendation Reports
- Any Other Business

Additional information will be posted on the FAA Committee website at *https://www.faa.gov/regulations_policies/rulemaking/committees/documents/* at least one week in advance of the meeting.

III. Public Participation

The meeting will be open to the public on a first-come, first-served basis, as space is limited. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than March 2, 2020. Please provide the following information: Full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are attending as a public citizen, please indicate so.

For persons participating by telephone, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by email or phone for the teleconference call-in number and passcode. Callers are responsible for paying long-distance charges.

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

The FAA is not accepting oral presentations at this meeting due to time constraints. Any member of the public may present a written statement to the committee at any time. The public may present written statements to the Aviation Rulemaking Advisory Committee by providing 25 copies to the Designated Federal Officer, or by bringing the copies to the meeting.

Issued in Washington, DC, on January 27, 2020.

Brandon Roberts,

Acting Executive Director, Office of Rulemaking.

[FR Doc. 2020–01916 Filed 1–30–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind Notice of Intent To Prepare an Environmental Impact Statement and Draft Environmental Impact Statement: Cape Fear Crossing in Brunswick and New Hanover Counties, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice to rescind notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The FHWA is issuing this notice to advise the public that it is rescinding its Notice of Intent (NOI), published in the **Federal Register** on May 11, 2006, to prepare an Environmental Impact Statement (EIS) for the Cape Fear Crossing, a proposed multi-lane highway facility in Brunswick and New Hanover Counties, North Carolina. The project was previously known as the Cape Fear Crossing.

FOR FURTHER INFORMATION CONTACT: Clarence W. Coleman, P.E., Director of Preconstruction, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601–1418, Telephone: (919) 747–7014; or Mr. Chad Kimes, P.E., Division Engineer, Division 3, North Carolina Department of Transportation, 5501 Barbados Blvd., Castle Hayne, NC 28429, Telephone 910–341–2000.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT) and the North Carolina Turnpike Authority (NCTA), issued a notice of intent in May 11, 2006, to prepare an EIS for a proposal to construct a multi-lane highway facility in Brunswick and New Hanover Counties, North Carolina. Known as the Cape Fear Skyway, the proposed improvement would extend from US 17 in Brunswick County, near the community of Bishop, to US 421 in the city of Wilmington for a distance of approximately 9.5 miles. The project would include a crossing of the Cape Fear River. Currently, the project is known as the Cape Fear Crossing project. The purpose of the Cape Fear Crossing is to improve traffic flow and enhance freight movements beginning in the vicinity of US 17 and I–140 in Brunswick County, across the Cape Fear River to US 421 near the Port of Wilmington in southern New Hanover County. The Cape Fear Crossing would also help expedite an evacuation of residents and visitors in the event of a hurricane or other emergency. The FHWA and the NCDOT, in cooperation with the US Army Corps of Engineers, prepared a Draft Environmental Impact Statement (DEIS), which was approved on March 25, 2019. The DEIS was circulated to the public, and a public hearing was held on April 29, 2019. The NCDOT initially considered six different corridors for the project that would have connected US 17 and I–140 in Brunswick County to US 421 near the Port of Wilmington.

On August 13, 2019, the NCDOT published their decision to discontinue planning and preliminary design work on the Cape Fear Crossing highway-bridge project at this time. See: *https://www.ncdot.gov/news/press-releases/Pages/2019/2019-08-13-cape-fear-crossing-update.aspx.*

Based on NCDOT's decision to discontinue work, FHWA is rescinding the NOI and the March 2019 DEIS. Comments or questions concerning this rescinding notice for the Cape Fear Crossing project, formerly known as Cape Fear Skyway, should be directed to FHWA and NCDOT at the addresses provided above.

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

Clarence W. Coleman,

Director of Preconstruction, Raleigh, North Carolina.

[FR Doc. 2020–01864 Filed 1–30–20; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0118; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming Model Year 1994 to 1997 Jaguar Daimler Double Six Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: This document announces the National Highway Traffic Safety Administration (NHTSA) receipt of a petition for a decision that model year (MY) 1994 to 1997 Jaguar Daimler Double Six passenger cars (PCs) that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 1994 to 1997 Jaguar Daimler Double Six PCs) and are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 2, 2020.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard along with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Robert Mazurowski, Office of Vehicle Safety Compliance, NHTSA (202–366–1012).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same MY as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice of each petition that it receives in the **Federal Register**, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc, (Registered Importer R–90–007), of Santa Ana, California has petitioned NHTSA to decide whether nonconforming 1994 to 1997 Jaguar Daimler Double Six PCs are eligible for importation into the United States. The vehicles which G&K Automotive Conversion believes are substantially similar to MY 1995 Jaguar XJ PCs sold in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified MY 1994 to 1997 Jaguar Daimler Double Six PCs to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

G&K Automotive Conversion, Inc. submitted information with its petition intended to demonstrate that non-U.S. certified MY 1994 to 1997 Jaguar Daimler Double Six PCs, as originally manufactured, conform to many applicable FMVSS in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified MY 1994 to 1997 Jaguar Daimler Double Six PCs, as originally manufactured, conform to FMVSS Nos. 102, *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103, *Windshield Defrosting and Defogging Systems,* 104, *Windshield Wiping and Washing Systems,* 105, *Hydraulic and Electric Brake Systems,* 106, *Brake Hoses,* 113, *Hood Latch System,* 114, *Theft Protection,* 116, *Motor Vehicle Brake Fluids,* 118, *Power-Operated Window, Partition, and Roof Panel System,* 124, *Accelerator Control Systems,* 139, *New Pneumatic Radial Tires for Light Vehicles,* 201, *Occupant Protection in Interior Impact,* 202, *Head Restraints,* 204, *Steering Control Rearward Displacement,* 205, *Glazing Materials,* 206, *Door Locks and Door Retention Components,* 207, *Seating Systems,* 208, *Occupant Crash Protection,* 209, *Seat Belt Assemblies,* 210, *Seat Belt Assembly Anchorages,* 212, *Windshield Mounting,* 214, *Side Impact Protection,* 216, *Roof Crush Resistance,* 219, *Windshield Zone Intrusion,* 301, *Fuel system integrity,*

and 302, *Flammability of Interior Materials.*

The petitioner also contends that the subject non-U.S. certified vehicles are capable of being readily altered to meet the following FMVSS, in the manner indicated:

FMVSS No. 101, *Controls and Displays:* Modification of the speedometer for units of miles per hour. FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment:* Addition of third brake light and replacement of headlamps. FMVSS No. 110, *Tire Selection and Rims:* Installation of the required tire information placard. FMVSS No. 111, *Rearview Mirrors:* Inscription of the required warning statement on the face of the passenger mirror.

The petitioner additionally stated that a vehicle anti-theft device will be installed, if needed, to meet the requirements of 49 CFR part 541, *Anti-Theft Devices,* and that the vehicles meet the requirements of 49 CFR part 581, *Bumper Standard.* Also, a vehicle identification plate must be affixed to the vehicle, near the left windshield pillar, to meet the requirements of 49 CFR part 565, *Vehicle Identification Requirements,* as well as, a reference and certification label added to the left front door post area to meet the requirements of 49 CFR part 567, *Certification.*

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2020–01828 Filed 1–30–20; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0119; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming Model Year 2015 Ford Fusion SE Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: This document announces the National Highway Traffic Safety Administration (NHTSA) receipt of a petition for a decision that model year (MY) 2015 Ford Fusion SE passenger cars (PCs) that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 2015 Ford Fusion SE PCs) and are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 2, 2020.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard along with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Robert Mazurowski, Office of Vehicle Safety Compliance, NHTSA (202–366–1012).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same MY as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice of each petition that it receives in the **Federal Register**, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc, (Registered Importer R–90–007), of Santa Ana, California has petitioned NHTSA to decide whether nonconforming 2015 Ford Fusion SE PCs are eligible for importation into the United States. G&K Automotive Conversion believes the vehicles are substantially similar to MY 2015 Ford Fusion SE PCs sold in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified MY 2015 Ford Fusion SE PCs to their U.S.-certified counterparts, and found the vehicles to

be substantially similar with respect to compliance with most FMVSS.

G&K Automotive Conversion, Inc. submitted information with its petition intended to demonstrate that non-U.S. certified MY 2015 Ford Fusion SE PCs, as originally manufactured, conform to many applicable FMVSS in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that the non-U.S. certified MY 2015 Ford Fusion SE PCs, as originally manufactured, conform to: FMVSS Nos. 101, *Controls and Displays,* 102, *Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect,* 103, *Windshield Defrosting and Defogging Systems,* 104, *Windshield Wiping and Washing Systems,* 106, *Brake Hoses,* 113, *Hood Latch System,* 114, *Theft Protection and Rollaway Prevention,* 116, *Motor Vehicle Brake Fluids,* 118, *Power-Operated Window, Partition, and Roof Panel Systems,* 124, *Accelerator Control Systems,* 126, *Electronic Stability Control Systems,* 135, *Light Vehicle Brake Systems,* 138, *Tire Pressure Monitoring Systems,* 139, *New Pneumatic Radial Tires for Light Vehicles,* 201, *Occupant Protection in Interior Impact,* 202, *Head Restraints,* 204, *Steering Control Rearward Displacement,* 205, *Glazing Materials,* 206, *Door Locks and Door Retention Components,* 207, *Seating Systems,* 208, *Occupant Crash Protection,* 209, *Seat Belt Assemblies,* 210, *Seat Belt Assembly Anchorages,* 212, *Windshield Mounting,* 214, *Side Impact Protection,* 216, *Roof Crush Resistance,* 219, *Windshield Zone Intrusion,* 225, *Child Restraint Anchorage Systems,* 301, *Fuel System Integrity,* and 302, *Flammability of Interior Materials,* 401, *Internal Trunk Release.*

The petitioner also contends that the subject non-U.S. certified vehicles are capable of being readily altered to meet the following FMVSS, in the manner indicated:

FMVSS No. 101 *Controls and Displays:* Modification of the speedometer for units of miles per hour. FMVSS No. 108, *Lamps, Reflective Devices and Associated Equipment:* Replacement of the front and rear side markers. FMVSS No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less:* Installation of the required tire information placard. FMVSS No. 111, *Rear Visibility:* Inscription of the required warning statement on the face of the passenger mirror.

The petitioner additionally stated that a vehicle anti-theft device will be installed, if needed, to meet the requirements of 49 CFR part 541, *Anti-Theft Devices.* The petitioner further stated, that a vehicle identification plate must be affixed to the vehicle, near the left windshield pillar, to meet the requirements of 49 CFR part 565, *Vehicle Identification Requirements,* as well as, a reference and certification label added to the left front door post area to meet the requirements of 49 CFR part 567, *Certification.* The petitioner also stated that the vehicles meet the requriements of 49 CFR part 581, *Bumper Standard.*

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2020–01829 Filed 1–30–20; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0116; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming Model Year 2015 A. Smith GT Bentley/Bodex Model: T5 Trailers Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: This document announces the National Highway Traffic Safety Administration (NHTSA) receipt of a petition for a decision that model year (MY) 2015 A. Smith GT Bentley/Bodex Model: T5 trailers that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS), are eligible for importation into the United States because they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 2, 2020.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard along with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Robert Mazurowski, Office of Vehicle Safety Compliance, NHTSA (202–366–1012).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same MY as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice of each petition that it receives in the **Federal Register**, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

America's Import & Export Authority, Inc., (Registered Importer R–17–423), of Fort Myers, Florida has petitioned NHTSA to decide whether nonconforming MY 2015 A. Smith GT Bentley/Bodex Model: T5 trailers are eligible for importation into the United States. America's Import & Export Authority, Inc. believes that the vehicles are capable of being readily altered to conform to all applicable FMVSS.

America's Import & Export Authority, Inc. submitted information with its petition intended to demonstrate that non-U.S. certified MY 2015 A. Smith GT Bentley/Bodex Model: T5 trailers, as originally manufactured, conform to many applicable FMVSS, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that the non-U.S. certified MY 2015 A. Smith GT Bentley/Bodex Model: T5 trailers, as originally manufactured, are only subject to: FMVSS Nos. 106, *Brake Hoses,* 108, *Lamps, Reflective Devices, and Associated Equipment,* 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than 4,536 kilograms (10,000 pounds) and Motorcycles,* 120, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of More Than 4,536 kilograms (10,000 pounds),* 121, *Air Brake Systems,* 223, *Rear Impact Guards,* 224, *Rear Impact Protection.*

The petitioner also contends that the subject non-U.S. certified vehicles are capable of being readily altered to meet the following FMVSS, in the manner indicated:

FMVSS Nos. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than 4,536 kilograms (10,000 pounds) and Motorcycles,* and 120, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of More Than 4,536 kilograms (10,000 pounds):* A tire placard will be added.

FMVSS Nos. 223, *Rear Impact Guards,* and 224, *Rear Impact Protection:* The trailer is equipped with a hydraulically movable FMVSS No. 223 compliant rear impact guard, however, the rear portion of the trailer chassis is measured to be no more than 17 inches (432 millimeters) ground clearance within 12 inches (300 millimeters) of the rear of the vehicle and therefore excluded from the FMVSS No. 224 requirement.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2020–01827 Filed 1–30–20; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Revision of an Approved Information Collection; Submission for OMB Review; Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions With Total Consolidated Assets of $250 Billion or More Under the Dodd-Frank Wall Street Reform and Consumer Protection Act

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning a revision to a regulatory reporting requirement for national banks and federal savings associations titled, ''Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of $250 Billion or More under the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be received on or before March 2, 2020.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Office of the Comptroller of the Currency, Attention: Comment Processing, 1557–0319, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0319'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0319, U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503 or by email to *oira_submission@omb.eop.gov.*

You may review comments and other related materials that pertain to this information collection [1] following the close of the 30-Day comment period for this notice by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under

[1] On October 10, 2019, 84 FR 52174, the OCC published a 60-day notice for this information collection.

Review'' section heading, from the drop-down menu, select ''Department of Treasury'' and then click ''submit''. This information collection can be located by searching by OMB control number ''1557–0319'' or ''Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of $100 Billion or More under the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.

• For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

• *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7 St. SW, Washington, DC 20219. In addition, copies of the templates referenced in this notice can be found on the OCC's website under News and Issuances (*http://www.occ.treas.gov/tools-forms/forms/bank-operations/stress-test-reporting.html*).

SUPPLEMENTARY INFORMATION: The OCC is requesting comment on the following revision to an approved information collection:

Title: Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of $250 Billion or More under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

OMB Control No.: 1557–0319.

Description: Section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act [2] (Dodd-Frank Act) requires certain financial companies, including national banks and federal savings associations, to conduct annual stress tests [3] and requires the primary financial regulatory agency [4] of those financial companies to issue regulations implementing the stress test requirements.[5] Under section 165(i)(2), a covered institution is required to submit to the Board of Governors of the Federal Reserve System (Board) and to its primary financial regulatory agency a report at such time, in such form, and containing such information as the primary financial regulatory agency may require.[6]

On October 9, 2012, the OCC published in the **Federal Register** a final rule implementing the section 165(i)(2) annual stress test requirement.[7] This rule describes the reports and information collections required to meet the reporting requirements under section 165(i)(2). These information collections will be given confidential treatment (5 U.S.C. 552(b)(4)) to the extent permitted by law.

In 2012, the OCC first implemented the reporting templates referenced in the final rule.[8] The OCC published proposed revisions to these templates on October 10, 2019.[9] The OCC is now finalizing these proposed revisions as described below.

The OCC intends to use the data collected to assess the reasonableness of the stress test results of covered institutions and to provide forward-looking information to the OCC regarding a covered institution's capital adequacy. The OCC also may use the results of the stress tests to determine whether additional analytical techniques and exercises could be appropriate to identify, measure, and monitor risks at the covered institution. The stress test results are expected to support ongoing improvement in a covered institution's stress testing practices with respect to its internal assessments of capital adequacy and overall capital planning.

The OCC recognizes that many covered institutions with total consolidated assets of $250 billion or more are required to submit reports using Comprehensive Capital Analysis and Review (CCAR) reporting form FR Y–14A.[10] The OCC also recognizes the Board has modified the FR Y–14A and, to the extent practical, the OCC has kept its reporting requirements consistent with the Board's FR Y–14A in order to minimize burden on covered institutions.[11] Therefore, the OCC is revising its reporting requirements to mirror the Board's FR Y–14A for covered institutions with total consolidated assets of $250 billion or more. The changes include updates to various schedules to reflect the current expected credit loss (CECL) accounting methodology. These changes accommodate covered institutions that have adopted CECL by the reporting date and those that have not yet adopted CECL by the reporting date. The changes also include a collection of supplemental CECL information. The changes also include items not related to CECL adoption. The purpose of these changes is to keep the reporting forms in line with changes in the Consolidated Reports of Condition and Income (Call Report) as well as to provide further clarity or alignment of the instructions with the XML reporting files. There are also changes that require information to be reported at a different level of granularity.

Type of Review: Revision.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 8.

Estimated Total Annual Burden: 4,212 hours.

The OCC believes that the systems covered institutions use to prepare the FR Y–14 reporting templates to submit to the Board will also be used to prepare the reporting templates described in this notice.

On October 10, 2019, 84 FR 52174, the OCC published a 60-day notice for this information collection, 84 FR 52174. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC'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 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,

[2] Public Law 111–203, 124 Stat. 1376, July 2010.

[3] 12 U.S.C. 5365(i)(2)(A).

[4] 12 U.S.C. 5301(12).

[5] 12 U.S.C. 5365(i)(2)(C).

[6] 12 U.S.C. 5365(i)(2)(B).

[7] 77 FR 61238 (October 9, 2012) (codified at 12 CFR part 46).

[8] *See* 77 FR 49485 (August 16, 2012) and 77 FR 66663 (November 6, 2012).

[9] 84 FR 52174 (October 10, 2019).

[10] *http://www.federalreserve.gov/reportforms.*

[11] 74 FR 70529 (Dec. 23, 2019).

maintenance, and purchase of services to provide information.

Dated: January 27, 2020.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2020–01825 Filed 1–30–20; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for date(s) sanctions become effective.

FOR FURTHER INFORMATION CONTACT: *OFAC:* Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Assistant Director for Licensing, tel.: 202–622–2480.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treas.gov/ofac*).

Notice of OFAC Actions

On December 19, 2019, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

BILLING CODE 4810–AL–P

Individual

1. SALAVATI, Abolghassem (Arabic: ابوالقاسم صلواتی) (a.k.a. SALAVATI, Abdolghassem; a.k.a. SALAVATI, Abloqasem; a.k.a. SALAVATI, Abolghasem; a.k.a. SALAVATI, Abolqasem; a.k.a. SALAVATI, Abulghasem; a.k.a. SALAVATI, Abu'l-Qasim; a.k.a. SALEVATI, Abughasem), Tehran, Iran; DOB Mar 1962 to Feb 1963; POB Isfahan Province; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Judge, Head of Tehran Revolutionary Court, Branch 15 (individual) [IRAN] [IRAN-TRA].

Designated pursuant to section 7(a)(v) of Executive Order 13846 of August 6, 2018, 83 FR 38939, 3 CFR, 2019 Comp., p. 854, for having engaged in censorship or other activities with respect to Iran on or after June 12, 2009, that prohibit limit, or penalize the exercise of freedom of expression or assembly by citizens of Iran.

2. MOGHISSEH, Mohammad (Arabic: محمد مقیسه) (a.k.a. MOGHISEH, Mohammad; a.k.a. MOGHISSEH, Mohammad Nasser (Arabic: محمد ناصر مقیسه); a.k.a. MOQISEH, Mohammad; a.k.a. "NASERIAN" (Arabic: "ناصریان"); a.k.a. "NASSERIAN"), Tehran, Iran; DOB 1956 to 1957; POB Moqiseh, Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Judge, Head of Tehran Revolutionary Court, Branch 28 (individual) [IRAN] [IRAN-TRA].

Designated pursuant to section 7(a)(v) of E.O. 13846 for having engaged in censorship or other activities with respect to Iran on or after June 12, 2009, that prohibit limit, or penalize the exercise of freedom of expression or assembly by citizens of Iran.

Dated: December 19, 2019.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2019–28460 Filed 1–30–20; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Internal Revenue Service Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before March 2, 2020 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

1. Title: Carryforward Election of Unused Private Activity Bond Volume Cap.

OMB Control Number: 1545–0874.

Type of Review: Revision of a currently approved collection.

Description: Section 146(f) of the Internal Revenue Code requires that issuing authorities of certain types of tax-exempt bonds must notify the IRS if they intend to carry forward the unused limitation for specific projects. The IRS uses the information to complete the required study of tax-exempt bonds (required by Congress).

Form: 8328.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 200.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 200.

Estimated Time per Response: 13 hours and 13 minutes.

Estimated Total Annual Burden Hours: 2,644.

2. Title: Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests: Form 8288–A, Statement of Withholding on Dispositions by Foreign Persons.

OMB Control Number: 1545–0902.

Type of Review: Extension without change of a currently approved collection.

Description: Internal Revenue Code section 1445 requires transferees to withhold tax on the amount realized from sales or other dispositions by foreign persons of U.S. real property interests. Form 8288 is used to report and transmit the amount withheld to the IRS. Form 8288–A is used by the IRS to validate the withholding, and a copy is returned to the transferor for his or her use in filing a tax return.

Form: 8288, 8288–A.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 27,500.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 27,500.

Estimated Time per Response: 8 hours and 52 minutes.

Estimated Total Annual Burden Hours: 243,675.

3. Title: Qualified Disclaimers of Property.

OMB Control Number: 1545–0959.

Type of Review: Extension without change of a currently approved collection.

Description: 26 U.S.C. Section 2518 allows a person to disclaim an interest in property received by gift or inheritance. The interest is treated as if the dis-claimant never received or transferred such interest for Federal gift tax purposes. A qualified disclaimer must be in writing and delivered to the transferor or trustee.

Form: None.

Affected Public: Individuals and households.

Estimated Number of Respondents: 2,000.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 2,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 1,000.

4. Title: Buildings qualifying for carryover allocations.

OMB Control Number: 1545–0990.

Type of Review: Extension without change of a currently approved collection.

Description: State housing credit agencies (Agencies) are required by Code section 42(l)(3) to report annually the amount of low-income housing credits that they allocated to qualified buildings during the year. Agencies report the amount allocated to the building owners and to the IRS in Part I of Form 8609. Carryover allocations are reported to the Agencies in carryover allocation documents. The Agencies report the carryover allocations to the IRS on Schedule A (Form 8610). Form 8610 is a transmittal and reconciliation document for Forms 8609, Schedule A (Form 8610), binding agreements, and election statements.

Form: 8610, Schedule A (Form 8610).

Affected Public: State and Local Governments.

Estimated Number of Respondents: 53.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 1,353.

Estimated Time per Response: 5 hours.

Estimated Total Annual Burden Hours: 6,738.

5. Title: Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations.

OMB Control Number: 1545–1099.

Type of Review: Extension without change of a currently approved collection.

Description: Form 8811 is used to collect name, address, and phone number of a representative of a REMIC who can provide brokers with the correct income amounts that the broker's clients must report on their income tax returns. The form allows the IRS to provide the REMIC industry the information necessary to issue correct information returns to investors.

Form: 8811.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 1,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 1,000.

Estimated Time per Response: 4 hours and 23 minutes.

Estimated Total Annual Burden Hours: 4,380.

6. Title: Continuing Education Provider Application and Request for Provider Number.

OMB Control Number: 1545–1459.

Type of Review: Extension without change of a currently approved collection.

Description: Section 10.6(g) of Treasury Department Circular No. 230, Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries and Appraisers before the Internal Revenue Service (31 CFR part 10), requires those who desire to qualify as a sponsor of continuing professional education programs for enrolled agents to file an application to be recognized by the Director of Practice.

Form: 8498.

Affected Public: Individuals and households.

Estimated Number of Respondents: 800.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 800.

Estimated Time per Response: 36 minutes.

Estimated Total Annual Burden Hours: 480.

7. Title: Hedging Transactions.

OMB Control Number: 1545–1480.

Type of Review: Revision of a currently approved collection.

Description: TD 8985 contains final regulations relating to the character of gain or loss from hedging transactions. The regulations reflect changes to the law made by the Ticket to Work and Work Incentives Improvement Act of 1999. The regulations affect businesses entering into hedging transactions.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 127,100.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 167,100.

Estimated Time per Response: 1 hour and 1 minute.

Estimated Total Annual Burden Hours: 171,050.

8. Title: Treatment of Shareholders of Certain Passive Investment Companies.

OMB Control Number: 1545–1507.

Type of Review: Extension without change of a currently approved collection.

Description: Sections 1291 thru 1297 of the Internal Revenue Code of 1986 provide special rules for the taxation of shareholders of passive foreign investment companies (PFICs). Section 1295 of the Code permits a shareholder to elect to treat a PFIC as a qualified electing fund (QEF) in order to include a pro rata share of the QEF's annual earnings under section 1293. If the shareholder makes the QEF election after the first year as a PFIC in the shareholder's holding period of the foreign corporation, the shareholder is subject to both sections 1291 and 1293. The final regulations provide rules for elections that may be made by shareholders of such QEFs.

This collection covers final regulations added to the Income Tax Regulations (26 CFR part 1) under section 1291(d)(2) of the Internal Revenue Code. The final regulations provide rules for making a deemed sale or deemed dividend election to purge a shareholder's holding period of stock of a PFIC of those taxable years during which the PFIC was not a QEF. The Tax Reform Act of 1986 added section 1291(d)(2)(A), relating to the deemed sale election, effective for taxable years of foreign corporations beginning after December 31, 1986. The Technical and Miscellaneous Revenue Act of 1988 amended section 1291(d)(2) to add new section 1291(d)(2)(B), relating to the deemed dividend election, effective for taxable years of foreign corporations beginning after December 31, 1986.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 276,250.

Frequency of Response: Annually, On occasion.

Estimated Total Number of Annual Responses: 406,250.

Estimated Time per Response: 31 minutes.

Estimated Total Annual Burden Hours: 212,500.

9. Title: Revenue Procedure 97–22, Examination of returns and claims for refund, credits, or abatement, determination of correct tax liability.

OMB Control Number: 1545–1533.

Type of Review: Extension without change of a currently approved collection.

Description: The information requested in Revenue Procedure 97–22 under sections 4 and 5 is required to ensure that records maintained in an electronic storage system will constitute records within the meaning of section 6001.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 50,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 50,000.

Estimated Time per Response: 20 hours.

Estimated Total Annual Burden Hours: 1,000,400.

10. Title: Rule to be Included in Final Regulations under Section 897(e) of the Code.

OMB Control Number: 1545–1660.

Type of Review: Extension without change of a currently approved collection.

Description: Notice 99–43 announced modification of the current rules under Temporary Regulation section 1.897–6T(a)(1) regarding transfers, exchanges and other dispositions of U.S. real property interests in nonrecognition transactions occurring after June 18, 1980. The notice provided that, contrary to section 1.897–6T(a)(1), a foreign taxpayer will not recognize a gain under Code 897(e) for an exchange described in Code section 368(a)(1)(E) or (F), provided the taxpayer receives substantially identical shares of the same domestic corporation with the same divided rights, voting power, liquidation preferences, and convertibility as the shares exchanged without any additional rights or features.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 100.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 100.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 200.

11. Title: Practice before the Internal Revenue Service.

OMB Control Number: 1545–1726.

Type of Review: Extension without change of a currently approved collection.

Description: Form 14360 is used to file a complaint against an approved IRS Continuing Education Provider (CE) who is not meeting Revenue Procedure 2012–12 standards while offering CE programs to enrolled agents, enrolled retirement plan agents, and other tax return preparers.

Form's 14364 primary purpose of this form is to evaluate the content and delivery of our continuing education programs.

Form 14392—This waiver is typically requested when an individual has not been or will not be able to acquire the required CE credits prior to the renewal deadline for Enrolled Agents, or Enrolled Retirement Plan Agents.

The purpose of Rev. Proc. 2012–12 is to describe the procedures and standards that organizations must follow to be identified by the Internal Revenue Service as a qualifying organization that may accredit continuing education providers under section10.9(a)(1)(iii) of Circular 230. This revenue procedure also describes the standards for a continuing education

provider under section 10.9(a)(1) and the procedures that individuals and entities must follow to be approved by the Internal Revenue Service as a continuing education provider under section 10.9(a)(1)(iv).

TD 9527—These regulations affect individuals who practice before the IRS and providers of continuing education programs. The regulations modify the general standards of practice before the IRS and the standards with respect to tax returns.

TD 9011—These regulations affect individuals who are eligible to practice before the Internal Revenue Service. These regulations modify the general standards of practice before the Internal Revenue Service.

Form: 14360, 14364, 14392.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 718,400.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 718,400.

Estimated Time per Response: 2 hours and 28 minutes.

Estimated Total Annual Burden Hours: 1,777,125.

12. Title: Special rules for long-term contracts under section 460.

OMB Control Number: 1545–1732.

Type of Review: Extension without change of a currently approved collection.

Description: Internal Revenue Code (IRC) section 1.460 provides rules for determining whether a contract for the manufacture, building, installation, or construction of property is a long-term contract under section 460 and what activities must be accounted for as a single long-term contract. Specific rules for long-term manufacturing and construction contracts are provided in §§ 1.460–2 and 1.460–3, respectively. A taxpayer generally must determine the income from a long-term contract using the percentage-of-completion method described in § 1.460–4(b) (PCM) and the cost allocation rules described in § 1.460–5(b) or (c). In addition, after a contract subject to the PCM is completed, a taxpayer generally must apply the look-back method described in § 1.460–6 to determine the amount of interest owed on any hypothetical underpayment of tax, or earned on any hypothetical overpayment of tax, attributable to accounting for the long-term contract under the PCM.

TD 8929 requires that information be collected in order to notify the Commissioner of a taxpayer's decision to sever or aggregate one or more long-term contracts under the regulations. The statement is needed so the Commissioner can determine whether the taxpayer properly severed or aggregated its contract(s). The regulations affect any taxpayer that manufactures or constructs property under long-term contracts.

TD 8775 and requires taxpayers to attach a notification statement to their returns when they make the election and TD 8995 is required to enable taxpayers to make look-back computations when the income from a long-term contract has been previously reported by another taxpayer.

Form: 8697.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 79,333.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 79,333.

Estimated Time per Response: 1 hour and 15 minutes.

Estimated Total Annual Burden Hours: 99,078.

13. Title: Health Coverage Tax Credit (HCTC) Advance Payments (Form 1099–H).

OMB Control Number: 1545–1813.

Type of Review: Extension without change of a currently approved collection.

Description: Section 6050T requires that if you are a provider of qualified health insurance coverage (defined in section 35(e)) and you receive advance payments from the Department of the Treasury on behalf of eligible recipients pursuant to section 7527, you must file Forms 1099–H to report those advance payments. You must also furnish a statement reporting that information to the eligible recipient.

Form: 1099–H.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 300.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 49,000.

Estimated Time per Response: 18 minutes.

Estimated Total Annual Burden Hours: 49,000.

14. Title: Consent to Disclosure of Return Information.

OMB Control Number: 1545–1856.

Type of Review: Extension without change of a currently approved collection.

Description: The Consent Form is provided to external applicant that will allow the Service the ability to conduct tax checks to determine if an applicant is suitability for employment once they are determined qualified and within reach to receive an employment offer. Form 13362 can be sent and received electronically.

Form: 13362.

Affected Public: Individuals and households.

Estimated Number of Respondents: 46,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 46,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 7,664.

15. Title: Taxation and Reporting of REIT Excess Inclusion Income by REITs, RICs, and Other Pass-Through Entities (Notice 2006–97).

OMB Control Number: 1545–2036.

Type of Review: Extension without change of a currently approved collection.

Description: The notice requires certain REITs, RICs, partnerships and other Pass-Through Entities that have excess inclusion income to disclose the amount and character of such income allocable to their record interest owners. The record interest owners need the information to properly report and pay taxes on such income.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 50.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 50.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 100.

16. Title: Form 8933—Carbon Dioxide Sequestration Credit.

OMB Control Number: 1545–2132.

Type of Review: Extension without change of a currently approved collection.

Description: Form 8933 will provide a standardized format to claim this credit to an eligible person that captures, after October 3, 2008, qualified carbon dioxide at a qualified facility and physically or contractually ensures the disposal of or the use as a tertiary injectant of the qualified carbon dioxide.

Form: 8933.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 100.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 100.

Estimated Time per Response: 2 hours and 9 minutes.

Estimated Total Annual Burden Hours: 215.

17. Title: Election to Expense Certain Depreciable Assets.

OMB Control Number: 1545–2197.

Type of Review: Extension without change of a currently approved collection.

Description: Form 1097–BTC, Bond Tax Credit, is an information return used to report tax credit bond credits distributed to shareholders. Shareholders of the RIC include in income, their proportionate share of the interest income attributable to the credits and are allowed the proportionate share of credits. A RIC must report the shareholder's proportionate share of credits and gross income after the close of the RIC's tax year. Form 1097–BTC, Bond Tax Credit, has been designed to report to the taxpayers and the IRS the tax credit distributed.

Form: 1097–BTC.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 212.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 212.

Estimated Time per Response: 19 minutes.

Estimated Total Annual Burden Hours: 67 hours.

18. Title: Country-by-Country Reporting.

OMB Control Number: 1545–2272.

Type of Review: Extension without change of a currently approved collection.

Description: 26 CFR 1.6038–4, issued under the authority of 26 U.S.C. 6001, 6011, 6012, 6031, 6038, and 7805, requires U.S. taxpayers (generally, U.S. business entities with at least $850,000,000 in revenue in the prior reporting period) to furnish certain information with respect to their global operations.

Except as provided in 1.6038–4(h), every ultimate parent entity of a U.S. multinational enterprise (MNE) group must make an annual return on Form 8975, Country-by-Country Report, setting forth the information described in paragraph (d) of this section, and any other information required by Form 8975, with respect to the reporting period described in 1.6038–4(c).

Form 8975 was developed to provide certain information required to report annual country-by-country reporting by certain United States persons that are the ultimate parent entity of a US MNE that has annual revenue for the preceding annual accounting period of $850 million or more. Separate Schedule A's (Form 8975) are to be filed for each tax jurisdiction in which a group has one or more constituent entities resident.

Form: 8975, 8975 Schedule A.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 3,120.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 3,120.

Estimated Time per Response: 1 hour and 30 minutes.

Estimated Total Annual Burden Hours: 4,680.

19. Title: Form 14693—Application for Reduced Rate of Withholding on Whistleblower Award Payment.

OMB Control Number: 1545–2273.

Type of Review: Extension without change of a currently approved collection.

Description: The Application for Reduced Rate of Withholding on Whistleblower Award Payment will be used by the whistleblower to apply for a reduction in withholding to minimize the likelihood of the IRS over withholding tax from award payments providing whistleblowers with a pre-award payment opportunity to substantiate their relevant attorney fees and court costs. The Whistleblower Office will review and evaluate the form and calculate the rate.

Form: 14693.

Affected Public: Individuals and households.

Estimated Number of Respondents: 100.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 100.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 75.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: January 28, 2020.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2020–01846 Filed 1–30–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Bank Enterprise Award Program Application

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before March 2, 2020 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Community Development Financial Institutions Fund (CDFIF)

Title: Bank Enterprise Award Program Application.

OMB Control Number: 1559–0005.

Type of Review: Extension without change of a currently approved collection.

Description: The purpose of the Bank Enterprise Award Program (BEA Program) is to provide an incentive to Federal Deposit Insurance Corporation-insured (FDIC-insured) depository institutions to increase their lending, investment, and financial services to residents and businesses located in economically distressed communities, and provide assistance to Community Development Financial Institutions (CDFIs) through grants, stock purchases, loans, deposits, and other forms of financial and technical assistance. The CDFI Fund will make awards through the BEA Program to FDIC-insured depository institutions, based upon such institutions' demonstrated increase of qualified activities, as reported in the Application. The Application will solicit information concerning: Applicants' eligibility to participate in the BEA Program; the increase in total dollar value of applicants' qualified activities; impact of qualified activities; and appropriate supporting documentation. The questions that the Application contains, and the

information generated thereby, will enable the CDFI Fund to evaluate applicants' activities and determine the extent of applicants' eligibility for BEA Program awards.

Form: CDFI–0002.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 120.

Frequency of Response: Once, Annually.

Estimated Total Number of Annual Responses: 120.

Estimated Time per Response: 60 hours.

Estimated Total Annual Burden Hours: 7,200.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: January 28, 2020.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2020–01882 Filed 1–30–20; 8:45 am]

BILLING CODE 4810–70–P

FEDERAL REGISTER

Vol. 85 Friday,

No. 21 January 31, 2020

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 218

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Navy Training and Testing Activities in the Mariana Islands Training and Testing (MITT) Study Area; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[Docket No. 200109–0005]

RIN 0648–BJ00

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Navy Training and Testing Activities in the Mariana Islands Training and Testing (MITT) Study Area

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

ACTION: Proposed rule; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) to take marine mammals incidental to training and testing activities conducted in the Mariana Islands Training and Testing (MITT) Study Area. Pursuant to the MMPA, NMFS is requesting comments on its proposal to issue regulations and subsequent Letter of Authorization (LOA) to the Navy to incidentally take marine mammals during the specified activities. NMFS will consider public comments prior to issuing any final rule and making final decisions on the issuance of the requested LOA. Agency responses to public comments will be summarized in the notice of the final decision. The Navy's activities qualify as military readiness activities pursuant to the MMPA, as amended by the National Defense Authorization Act for Fiscal Year 2004 (2004 NDAA).

DATES: Comments and information must be received no later than March 16, 2020.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2020–0006, 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-2020-0006,* 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 application, NMFS' proposed and final rules and subsequent LOA 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: Stephanie Egger, 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 provide 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 and in-water detonations throughout the MITT Study Area. The Study Area includes the seas off the coasts of Guam and the Commonwealth of the Northern Mariana Islands (CNMI), the in-water areas around the Mariana Islands Range Complex (MIRC), the transit corridor between the MIRC and the Hawaii Range Complex (HRC), and select pierside and harbor locations. The transit corridor is outside the geographic boundaries of the MIRC and represents a great circle route across the high seas for Navy vessels transiting between the MIRC and the HRC. The proposed activities also include various activities in Apra Harbor such as sonar maintenance alongside Navy piers located in Inner Apra Harbor.

NMFS received an application from the Navy requesting seven-year regulations and an authorization to incidentally take individuals of multiple species of marine mammals (''Navy's rulemaking/LOA application'' or ''Navy's application''). Take is anticipated to occur by Level A and Level B harassment incidental to the Navy's training and testing activities, with no serious injury or mortality expected or proposed for authorization.

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 and provided 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 applied to a ''military readiness activity.'' The definition of harassment for military readiness activities (section 3(18)(B) of the MMPA) is (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 the least practicable adverse impact analysis 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 and Background of Request

On February 11, 2019, NMFS received an application from the Navy for authorization to take marine mammals by Level A and Level B harassment incidental to training and testing activities (categorized as military readiness activities) from the use of sonar and other transducers and in-water detonations in the MITT Study Area over a seven-year period beginning when the current authorization expires.

The following types of training and testing, which are classified as military readiness activities pursuant to the MMPA, as amended by the 2004 NDAA, would be covered under the regulations and LOA (if authorized): Amphibious warfare (in-water detonations), anti-submarine warfare (sonar and other transducers, in-water detonations), surface warfare (in-water detonations), and other testing and training (sonar and other transducers). The activities would not include any pile driving/removal or use of air guns.

This will be the third time NMFS has promulgated incidental take regulations pursuant to the MMPA relating to similar military readiness activities in the MITT Study Area, following those effective from August 3, 2010, through August 3, 2015 (75 FR 45527; August 3, 2010) and from August 3, 2015 through August 3, 2020 (80 FR 46112; August 3, 2015). For this third rulemaking, the Navy is proposing to conduct similar activities as they have conducted over the past nine years under the previous rulemakings.

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 requires the readiness of the naval forces of the United States. The Navy executes this responsibility by training and testing at sea, often in designated operating areas (OPAREA) and testing and training ranges. The Navy must be able to access and utilize these areas and associated sea space and air space in order to develop and maintain skills for conducting naval operations. The Navy's testing activities ensure naval forces are equipped with well-maintained systems that take advantage of the latest technological advances. The Navy's research and acquisition community conducts military readiness activities that involve testing. The Navy tests ships, aircraft, weapons, combat systems, sensors, and related equipment, and conducts scientific research activities to achieve and maintain military readiness.

The tempo and types of training and testing activities have fluctuated because of the introduction of new technologies, the evolving nature of international events, advances in warfighting doctrine and procedures, and changes in force structure (*e.g.,* organization of ships, submarines, aircraft, weapons, and personnel). Such developments influence the frequency, duration, intensity, and location of required training and testing activities, but the basic nature of sonar and explosive events conducted in the MITT Study Area has remained the same.

The Navy's rulemaking/LOA application reflects the most up-to-date compilation of training and testing activities deemed necessary to accomplish military readiness requirements. The types and numbers of activities included in the proposed rule account for fluctuations in training and testing in order to meet evolving or emergent military readiness requirements. These proposed regulations would cover training and testing activities that would occur for a seven-year period following the expiration of the current MMPA authorization for the MITT Study Area, which expires on August 3, 2020.

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 explosive stressors are most likely to result in impacts on marine mammals that could rise to the level of harassment, and NMFS concurs with this determination. Detailed descriptions of these activities are provided in Chapter 2 of the 2019 MITT Draft Supplemental Environmental Impact Statement (SEIS)/Overseas EIS (OEIS) (MITT DSEIS/OEIS) and in the Navy's rule making/LOA application (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities*) and are summarized here.

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 5).

Geographical Region

The MITT Study Area is comprised of three components: (1) The MIRC, (2) additional areas on the high seas, and (3) a transit corridor between the MIRC and the HRC as depicted in Figure 1 below. The MIRC includes the waters south of Guam to north of Pagan (CNMI), and from the Pacific Ocean east of the Mariana Islands to the Philippine Sea to the west, encompassing 501,873 square nautical miles (NM^2) of open ocean (Figure 1). For the additional areas of the high seas, this includes the area to the north of the MIRC that is within the U.S. Exclusive Economic Zone (EEZ) of the CNMI and the areas to the west of the MIRC. The transit corridor is outside the geographic boundaries of the MIRC and represents a great circle route (*i.e.,* the shortest distance) across the high seas for Navy ships transiting between the MIRC and the HRC. Although not part of any defined range complex, the transit corridor is important to the Navy in that it provides available air, sea, and undersea space where vessels and aircraft conduct training and testing while in transit. While in transit and along the corridor, vessels and aircraft would, at times, conduct basic and routine unit-level activities such as gunnery and sonar training. Ships also conduct sonar maintenance, which includes active sonar transmissions.

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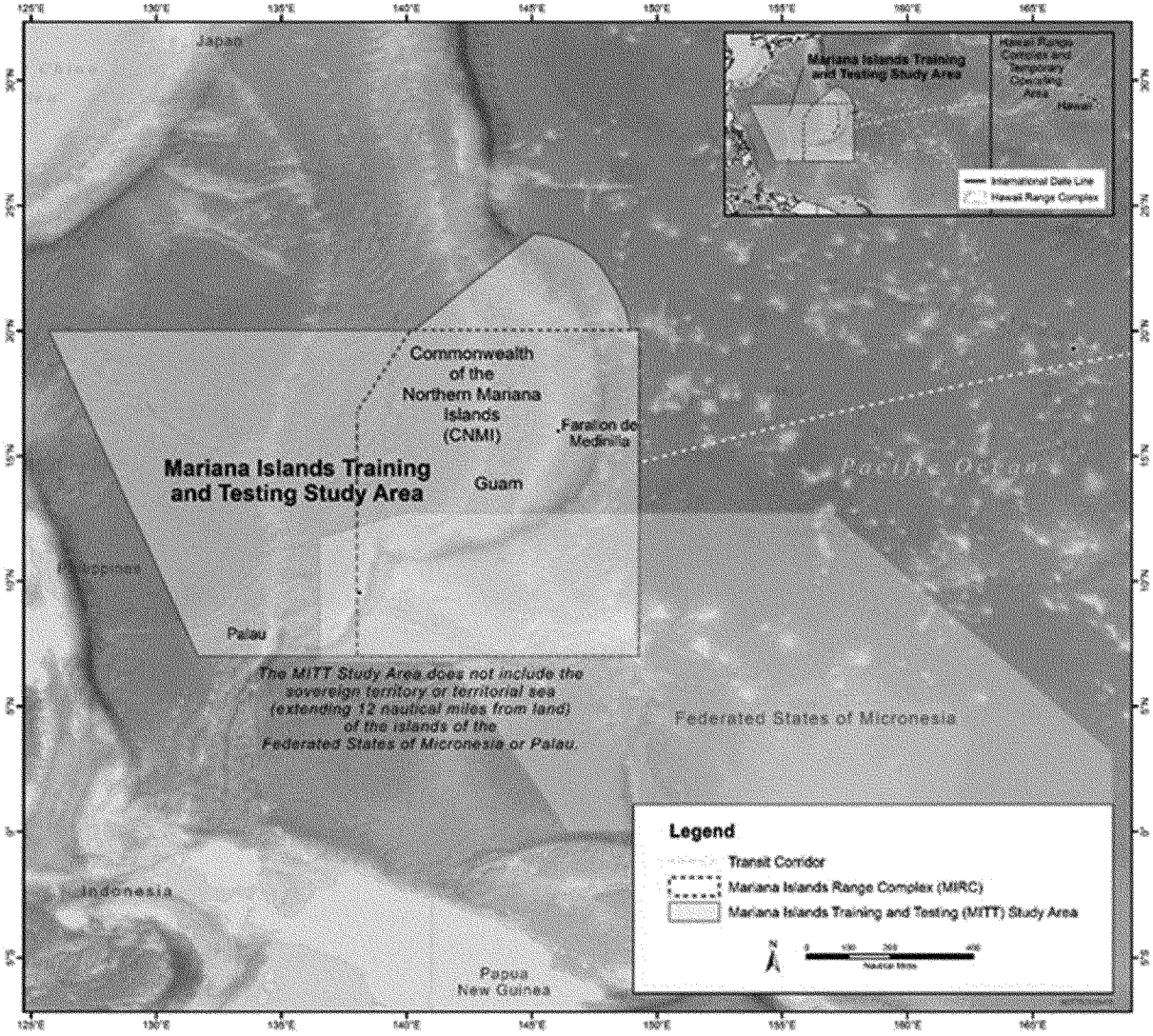

Figure 1. Map of the MITT Study Area

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Training and testing activities occur within the MITT Study Area, which is composed of a designated set of specifically bounded geographic areas encompassing a water component (above and below the surface), airspace, and for training a land component, such as Farallon de Medinilla (FDM). The MIRC includes established OPAREAs and special use airspace, which may be further divided to provide safety and better control of the area and activities being conducted.

The MIRC includes approximately 40,000 NM^2 of special use airspace. This airspace is almost entirely over the ocean (except W13A) and includes warning areas, and restricted areas (R) (see the MITT Draft SEIS/OEIS, Figure 2.1–2 and Figure 2.1–3, for details). Warning Areas (W)–517 and W–12 include approximately 11,800 NM^2 of special use airspace; W–11 (A/B) is approximately 10,500 NM^2 of special use airspace, and W–13 (A/B/C) is approximately 18,000 NM^2 of special use airspace. The restricted area airspace over or near land areas within the MIRC includes approximately 2,463 NM^2 of special use airspace and restricted areas (R) 7201 and R7201A, which extends in a 12 NM radius around FDM.

The MIRC includes the sea and undersea space from the ocean surface to the ocean floor. The MIRC also consists of designated sea and undersea space training areas, which include designated drop zones; underwater demolition and floating mine exclusion zones; danger zones associated with live-fire ranges; and training areas associated with military controlled beaches, harbors, and littoral areas.

Additionally, the MITT Study Area includes pierside locations in the Apra Harbor Naval Complex where surface ship and submarine sonar maintenance and testing occur. Activities in Apra Harbor include channels and routes to and from the Navy port in the Apra Harbor Naval Complex, and associated wharves and facilities within the Navy port.

Primary Mission Areas

The Navy categorizes its at-sea activities into functional warfare areas called primary mission areas. These activities generally fall into the following eight primary mission areas: Air warfare; amphibious warfare; anti-submarine warfare (ASW); electronic warfare; expeditionary warfare; mine warfare (MIW); strike warfare; and surface warfare (SUW). Most activities

addressed in the MITT Study Area are categorized under one of the primary mission areas. Activities that do not fall within one of these areas are listed as ''other activities.'' Each warfare community (surface, subsurface, aviation, and expeditionary warfare) may train in some or all of these primary mission areas. The testing community also categorizes most, but not all, of its testing activities under these primary mission areas. A description of the sonar, munitions, targets, systems, and other material used during training and testing activities within these primary mission areas is provided in the 2019 MITT DSEIS/OEIS Appendix A (*Training and Testing Activities Descriptions*).

The Navy describes and analyzes the effects of its activities within the 2019 MITT DSEIS/OEIS (U.S. Department of the Navy, 2019). In its assessment, the Navy concluded that sonar and other transducers and in-water detonations were the stressors that would result in impacts on marine mammals that could rise to the level of harassment as defined under the MMPA. Therefore, the Navy's rulemaking/LOA application provides the Navy's assessment of potential effects from these stressors in terms of the various warfare mission areas in which they would be conducted. Those mission areas include the following:

- Amphibious warfare (underwater detonations)
- ASW (sonar and other transducers, underwater detonations)
- MIW (sonar and other transducers, underwater detonations)
- SUW (underwater detonations)
- Other training and testing activities (sonar and other transducers)

The Navy's training and testing activities in air warfare, electronic warfare, and expeditionary warfare do not involve sonar and other transducers, underwater detonations, or any other stressors that could result in harassment, serious injury, or mortality of marine mammals. Therefore, the activities in air, electronic, and expeditionary warfare areas are not discussed further in this proposed rule, but are analyzed fully in the Navy's 2019 MITT DSEIS/OEIS.

Amphibious Warfare

The mission of amphibious warfare is to project military power from the sea to the shore (*i.e.,* attack a threat on land by a military force embarked on ships) through the use of naval firepower and expeditionary landing forces. Amphibious warfare operations range from small unit reconnaissance or raid missions to large-scale amphibious exercises involving multiple ships and aircraft combined into a strike group.

Amphibious warfare training spans from individual, crew, and small unit events to large task force exercises. Individual and crew training include amphibious vehicles and naval gunfire support training. Such training includes shore assaults, boat raids, airfield or port seizures, and reconnaissance. Large-scale amphibious exercises involve ship-to-shore maneuver, naval fire support, such as shore bombardment, and air strike and attacks on targets that are in close proximity to friendly forces.

Testing of guns, munitions, aircraft, ships, and amphibious vessels and vehicles used in amphibious warfare are often integrated into training activities and, in most cases, the systems are used in the same manner in which they are used for training activities. Amphibious warfare tests, when integrated with training activities or conducted separately as full operational evaluations on existing amphibious vessels and vehicles following maintenance, repair, or modernization, may be conducted independently or in conjunction with other amphibious ship and aircraft activities. Testing is performed to ensure effective ship-to-shore coordination and transport of personnel, equipment, and supplies. Tests may also be conducted periodically on other systems, vessels, and aircraft intended for amphibious operations to assess operability and to investigate efficacy of new technologies.

ASW

The mission of anti-submarine warfare is to locate, neutralize, and defeat hostile submarine forces that threaten Navy surface forces. Anti-submarine warfare can involve various assets such as aircraft, ships, and submarines, which all search for hostile submarines. These forces operate together or independently to gain early warning and detection, and to localize, track, target, and attack submarine threats.

Anti-submarine warfare training addresses basic skills such as detecting and classifying submarines, as well as evaluating sounds to distinguish between enemy submarines and friendly submarines, ships, and marine life. More advanced training integrates the full spectrum of anti-submarine warfare from detecting and tracking a submarine to attacking a target using either exercise torpedoes (*i.e.,* torpedoes that do not contain an explosive warhead) or simulated weapons. These integrated anti-submarine warfare training exercises are conducted in coordinated, at-sea training events involving submarines, ships, and aircraft.

Testing of anti-submarine warfare systems is conducted to develop new technologies and assess weapon performance and operability with new systems and platforms, such as unmanned systems. Testing uses ships, submarines, and aircraft to demonstrate capabilities of torpedoes, missiles, countermeasure systems, and underwater surveillance and communications systems. Tests may be conducted as part of a large-scale training event involving submarines, ships, fixed-wing aircraft, and helicopters. These integrated training events offer opportunities to conduct research and acquisition activities and to train personnel in the use of new or newly enhanced systems during a large scale, complex exercise.

MIW

The mission of mine warfare is to detect, classify, and avoid or neutralize (disable) mines to protect Navy ships and submarines and to maintain free access to ports and shipping lanes. Mine warfare also includes training and testing in offensive mine laying. Naval mines can be laid by ships, submarines, or aircraft.

Mine warfare training includes exercises in which ships, aircraft, submarines, underwater vehicles, unmanned vehicles, or marine mammal detection systems search for mine shapes. Personnel train to destroy or disable mines by attaching underwater explosives to or near the mine or using remotely operated vehicles to destroy the mine. Towed influence mine sweep systems mimic a particular ship's magnetic and acoustic signature, which would trigger a real mine causing it to explode.

Testing and development of mine warfare systems is conducted to improve sonar, laser, and magnetic detectors intended to hunt, locate, and record the positions of mines for avoidance or subsequent neutralization. Mine warfare testing and development fall into two primary categories: Mine detection and classification, and mine countermeasure and neutralization testing. Mine detection and classification testing involves the use of air, surface, and subsurface vessels and uses sonar, including towed and side scan sonar, and unmanned vehicles to locate and identify objects underwater. Mine detection and classification systems are sometimes used in conjunction with a mine neutralization system. Mine countermeasure and neutralization testing includes the use

of air, surface, and subsurface units and uses tracking devices and countermeasure and neutralization systems to evaluate the effectiveness of neutralizing mine threats. Most neutralization tests use mine shapes, or non-explosive practice mines, to accomplish the requirements of the activity. For example, during a mine neutralization test, a previously located mine is destroyed or rendered nonfunctional using a helicopter or manned/unmanned surface vehicle-based system that may involve the deployment of a towed neutralization system.

Most training and testing activities use mine shapes, or non-explosive practice mines, to accomplish the requirements of the activity. A small percentage of mine warfare activities require the use of high-explosive mines to evaluate and confirm the ability of the system or the crews conducting the training to neutralize a high-explosive mine under operational conditions. The majority of mine warfare systems are deployed by ships, helicopters, and unmanned vehicles. Tests may also be conducted in support of scientific research to support these new technologies.

SUW

The mission of surface warfare is to obtain control of sea space from which naval forces may operate, which entails offensive action against surface targets while also defending against aggressive actions by enemy forces. In the conduct of surface warfare, aircraft use guns, air-launched cruise missiles, or other precision-guided munitions; ships employ naval guns and surface-to-surface missiles; and submarines attack surface ships using torpedoes or submarine-launched, anti-ship cruise missiles.

Surface warfare training includes surface-to-surface gunnery and missile exercises, air-to-surface gunnery and missile exercises, submarine missile or torpedo launch activities, and other munitions against surface targets.

Testing of weapons used in surface warfare is conducted to develop new technologies and to assess weapon performance and operability with new systems and platforms, such as unmanned systems. Tests include various air-to-surface guns and missiles, surface-to-surface guns and missiles, and bombing tests. Testing activities may be integrated into training activities to test aircraft or aircraft systems in the delivery of munitions on a surface target. In most cases the tested systems are used in the same manner in which they are used for training activities.

Other Activities

Naval forces conduct additional training, testing and maintenance activities that do not fit into the primary mission areas that are listed above. The 2019 MITT DSEIS/OEIS combines these training and testing activities together in an ''other activities'' grouping for simplicity. These training and testing activities include, but are not limited to, sonar maintenance for ships and submarines, submarine navigation, and acoustic and oceanographic research. These activities include the use of various sonar systems.

Overview of Major Training Activities and Exercises Within the MITT Study Area

A major training exercise (MTE) for purposes of this rulemaking is comprised of several unit-level activities conducted by several units operating together, commanded and controlled by a single Commander, and typically generating more than 100 hours of active sonar. These exercises typically employ an exercise scenario developed to train and evaluate the exercise participants in tactical and operational tasks. In an MTE, most of the activities being directed and coordinated by the Commander in charge of the exercise are identical in nature to the activities conducted during individual, crew, and smaller unit-level training events. In an MTE, however, these disparate training tasks are conducted in concert, rather than in isolation.

Exercises may also be categorized as integrated or coordinated ASW exercises. The distinction between integrated and coordinated ASW exercises is how the units are being controlled. Integrated ASW exercises are controlled by an existing command structure, and generally occur during the Integrated Phase of the training cycle. Coordinated exercises may have a command structure stood up solely for the event; for example, the commanding officer of a ship may be placed in tactical command of other ships for the duration of the exercise. Not all integrated ASW exercises are considered MTEs, due to their scale, number of participants, duration, and amount of active sonar. The distinction between large, medium, and small integrated or coordinated exercises is based on the scale of the exercise *(i.e.,* number of ASW units participating), the length of the exercise, and the total number of active sonar hours. NMFS considered the effects of all training exercises, not just these major, integrated, and coordinated training exercises in this proposed rule.

Overview of Testing Activities Within the MITT Study Area

Navy's research and acquisition community engages in a broad spectrum of testing activities in support of the Fleet. These activities include, but are not limited to, basic and applied scientific research and technology development; testing, evaluation, and maintenance of systems (missiles, radar, and sonar) and platforms (surface ships, submarines, and aircraft); and acquisition of systems and platforms. The individual commands within the research and acquisition community include Naval Air Systems Command, Naval Sea Systems Command, and Office of Naval Research.

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 following subsections describe the acoustic and explosive stressors for marine mammals and their habitat (including prey species) within the MITT Study Area. Because of the complexity of analyzing sound propagation in the ocean environment, the Navy relies on acoustic models in its environmental analyses and rulemaking/LOA application that consider sound source characteristics and varying ocean conditions across the MITT Study Area. Stressor/resource interactions that were determined to have de minimis or no impacts (*i.e.,* vessel, aircraft, or weapons noise, and explosions in air) were not carried forward for analysis in the Navy's rulemaking/LOA application. NMFS reviewed the Navy's analysis and conclusions on de minimis sources and finds them complete and supportable.

Acoustic Stressors

Acoustic stressors include acoustic signals emitted into the water for a specific purpose, such as sonar and other transducers (devices that convert energy from one form to another—in this case, into sound waves), as well as incidental sources of broadband sound produced as a byproduct of vessel movement and use of weapons or other deployed objects. Explosives also produce broadband sound but are characterized separately from other acoustic sources due to their unique hazardous characteristics. Characteristics of each of these sound

sources are described in the following sections.

In order to better organize and facilitate the analysis of approximately 300 sources of underwater sound used for training and testing by the Navy, including sonar and other transducers and explosives, a series of source classifications, or source bins, was developed. The source classification bins do not include the broadband sounds produced incidental to vessel or aircraft transits, weapons firing, and bow shocks.

The use of source classification bins provides the following benefits:

- Provides the ability for new sensors or munitions to be covered under existing authorizations, as long as those sources fall within the parameters of a ''bin;''
- Improves efficiency of source utilization data collection and reporting requirements anticipated under the MMPA authorizations;
- Ensures a conservative approach to all impact estimates, as all sources within a given class are modeled as the most impactful source (highest source level, longest duty cycle, or largest net explosive weight) within that bin;
- Allows analyses to be conducted in a more efficient manner, without any compromise of analytical results; and
- Provides a framework to support the reallocation of source usage (hours/explosives) between different source bins, as long as the total numbers of takes remain within the overall analyzed and authorized limits. This flexibility is required to support evolving Navy training and testing requirements, which are linked to real world events.

Sonar and Other Transducers

Active sonar and other transducers emit non-impulsive sound waves into the water to detect objects, navigate safely, and communicate. Passive sonars differ from active sound sources in that they do not emit acoustic signals; rather, they only receive acoustic information about the environment, or listen. In this proposed rule, the terms sonar and other transducers will be used to indicate active sound sources unless otherwise specified.

The Navy employs a variety of sonars and other transducers to obtain and transmit information about the undersea environment. Some examples are mid-frequency hull-mounted sonars used to find and track enemy submarines; high-frequency small object detection sonars used to detect mines; high-frequency underwater modems used to transfer data over short ranges; and extremely high-frequency (greater than 200 kilohertz (kHz)) doppler sonars used for navigation, like those used on commercial and private vessels. The characteristics of these sonars and other transducers, such as source level, beam width, directivity, and frequency, depend on the purpose of the source. Higher frequencies can carry more information or provide more information about objects off which they reflect, but attenuate more rapidly. Lower frequencies attenuate less rapidly, so may detect objects over a longer distance, but with less detail.

Propagation of sound produced underwater is highly dependent on environmental characteristics such as bathymetry, bottom type, water depth, temperature, and salinity. The sound received at a particular location will be different than near the source due to the interaction of many factors, including propagation loss; how the sound is reflected, refracted, or scattered; the potential for reverberation; and interference due to multi-path propagation. In addition, absorption greatly affects the distance over which higher-frequency sounds propagate.

The sound sources and platforms typically used in naval activities analyzed in the Navy's rulemaking/LOA application are described in Appendix A (*Training and Testing Activities Descriptions*) of the 2019 MITT DSEIS/OEIS. The effects of these factors are explained in Appendix H (Acoustic and Explosive Concepts) of the MITT DEIS/OEIS. Sonars and other transducers used to obtain and transmit information underwater during Navy training and testing activities generally fall into several categories of use described below.

ASW

Sonar used during ASW training and testing would impart the greatest amount of acoustic energy of any category of sonar and other transducers analyzed in this proposed rule. Types of sonars used to detect vessels include hull-mounted, towed, line array, sonobuoy, helicopter dipping, and torpedo sonars. In addition, acoustic targets and torpedo countermeasures may be deployed to emulate the sound signatures of vessels or repeat received signals.

Most ASW sonars are mid-frequency (1–10 kHz) because mid-frequency sound balances sufficient resolution to identify targets with distance over which threats can be identified. However, some sources may use higher or lower frequencies. Duty cycles can vary widely, from rarely used to continuously active. The beam pattern of ASW sonars can be wide-ranging in a search mode or highly directional in a track mode.

Most ASW activities involving submarines or submarine targets would occur in waters greater than 600 feet (ft.) deep due to safety concerns about running aground at shallower depths. Sonars used for ASW activities would typically be used beyond 12 NM from shore. Exceptions include use of dipping sonar by helicopters, maintenance of systems while in Apra Harbor, and system checks while transiting to or from Apra Harbor.

Mine Warfare, Small Object Detection and Imaging

Sonars used to locate mines and other small objects, similar to those used in imaging, are typically high frequency or very high frequency. Higher frequencies allow for greater resolution and, due to their greater attenuation, are most effective over shorter distances. Mine detection sonar can be deployed (towed or vessel hull-mounted) at variable depths on moving platforms (ships, helicopters, or unmanned vehicles) to sweep a suspected mined area. Hull-mounted anti-submarine sonars can also be used in an object detection mode known as ''Kingfisher'' mode. Kingfisher mode on vessels is most likely to be used when transiting to and from port. Sound sources used for imaging could be used throughout the MITT Study Area.

Sonars used for imaging are usually used in close proximity to the area of interest, such as pointing downward near the seafloor.

Mine detection sonar use would be concentrated in areas where practice mines are deployed, typically in water depths less than 200 ft., and at established training and testing minefields, temporary minefields close to strategic ports and harbors, or at targets of opportunity such as navigation buoys.

Navigation and Safety

Similar to commercial and private vessels, Navy vessels employ navigational acoustic devices including speed logs, Doppler sonars for ship positioning, and fathometers. These may be in use at any time for safe vessel operation. These sources are typically highly directional to obtain specific navigational data.

Communication

Sound sources used to transmit data (such as underwater modems), provide location (pingers), or send a single brief release signal to bottom-mounted devices (acoustic release) may be used throughout the MITT Study Area. These

sources typically have low duty cycles and are usually only used when it is desirable to send a detectable acoustic message.

Classification of Sonar and Other Transducers

Sonars and other transducers are grouped into classes that share an attribute, such as frequency range or purpose of use. As detailed below, classes are further sorted by bins based on the frequency or bandwidth; source level; and, when warranted, the application in which the source would be used. Unless stated otherwise, a reference distance of 1 meter (m) is used for sonar and other transducers.

- Frequency of the non-impulsive acoustic source;
  - Low-frequency sources operate below 1 kHz;
  - Mid-frequency sources operate at and above 1 kHz, up to and including 10 kHz;
  - High-frequency sources operate above 10 kHz, up to and including 100 kHz;
  - Very high-frequency sources operate above 100 kHz but below 200 kHz;
- Sound pressure level of the non-impulsive source;
  - Greater than 160 decibels (dB) re 1 micro Pascal (μPa), but less than 180 dB re 1 μPa;
  - Equal to 180 dB re 1 μPa and up to 200 dB re 1 μPa;
  - Greater than 200 dB re 1 μPa;
- Application in which the source would be used;
  - Sources with similar functions that have similar characteristics, such as pulse length (duration of each pulse), beam pattern, and duty cycle.

The bins used for classifying active sonars and transducers that are quantitatively analyzed in the MITT Study Area are shown in Table 1 below. While general parameters or source characteristics are shown in the table, actual source parameters are classified.

TABLE 1—SONAR AND TRANSDUCERS QUANTITATIVELY ANALYZED IN THE MITT STUDY AREA

Source class category	Bin	Description
Low-Frequency (LF): Sources that produce signals less than 1 kHz.	LF4	LF sources equal to 180 dB and up to 200 dB.
	LF5	LF sources less than 180 dB.
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–60).
	MF1K	
	MF3	Kingfisher mode associated with MF1 sonars.
		Hull-mounted submarine sonars (*e.g.,* AN/BQQ–10).
	MF4	Helicopter-deployed dipping sonars (*e.g.,* AN/AQS–22).
	MF5	Active acoustic sonobuoys (*e.g.,* DICASS).
	MF6	Underwater sound signal devices (*e.g.,* MK 84 SUS).
	MF9	Sources (equal to 180 dB and up to 200 dB) not otherwise binned.
	MF11	Hull-mounted surface ship sonars with an active duty cycle greater than 80 percent.
	MF12	Towed array surface ship sonars with an active duty cycle greater than 80 percent.
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).
	HF3	Other hull-mounted submarine sonars (classified).
	HF4	Mine detection, classification, and neutralization sonar (*e.g.,* AN/SQS–20).
	HF6	Sources (equal to 180 dB and up to 200 dB) not otherwise binned.
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.
	ASW2	MF Multistatic Active Coherent sonobuoy (*e.g.,* AN/SSQ–125).
	ASW3	MF towed active acoustic countermeasure systems (*e.g.,* AN/SLQ–25).
	ASW4	
	ASW5	MF expendable active acoustic device countermeasures (*e.g.,* MK 3).
		MF sonobuoys with high duty cycles.
Torpedoes (TORP): Active acoustic signals produced by torpedoes.	TORP1	Lightweight torpedo (*e.g.,* MK 46, MK 54, or Anti-Torpedo Torpedo).
	TORP2	
	TORP3	Heavyweight torpedo (*e.g.,* MK 48).
		Heavyweight torpedo (*e.g.,* MK 48).
Forward Looking Sonar (FLS): Forward or upward looking object avoidance sonars used for ship navigation and safety.	FLS2	HF sources with short pulse lengths, narrow beam widths, and focused beam patterns.
Acoustic Modems (M): Sources used to transmit data	M3	MF acoustic modems (greater than 190 dB).
Synthetic Aperture Sonars (SAS): Sonars used to form high-resolution images of the seafloor.	SAS2	HF SAS systems.
	SAS4	MF to HF broadband mine countermeasure sonar.

Explosive Stressors

This section describes the characteristics of explosions during naval training and testing. The activities analyzed in Navy's rulemaking/LOA application that use explosives are described in Appendix A (*Training and Testing Activities Descriptions*) of the 2019 MITT DSEIS/OEIS. Explanations of the terminology and metrics used when describing explosives in the Navy's rule making/LOA application are also in Appendix H (*Acoustic and Explosive Concepts*) of the 2019 MITT DSEIS/OEIS.

The near-instantaneous rise from ambient to an extremely high peak pressure is what makes an explosive shock wave potentially damaging. Farther from an explosive, the peak pressures decay and the explosive waves propagate as an impulsive, broadband sound. Several parameters influence the effect of an explosive: The weight of the explosive in the warhead, the type of explosive material, the boundaries and characteristics of the propagation medium, and, in water, the detonation depth and the depth of the receiver (*i.e.,* marine mammal). The net

explosive weight, which is the explosive power of a charge expressed as the equivalent weight of trinitrotoluene (TNT), accounts for the first two parameters. The effects of these factors are explained in Appendix H (*Acoustic and Explosive Concepts*) of the 2019 MITT DSEIS/OEIS.

Explosions in Water

Explosive detonations during training and testing activities are associated with high-explosive munitions, including, but not limited to, bombs, missiles, rockets, naval gun shells, torpedoes, mines, demolition charges, and explosive sonobuoys. Explosive detonations during training and testing involving the use of high-explosive munitions (including bombs, missiles, and naval gun shells), could occur in the air or at the water's surface. Explosive detonations associated with torpedoes and explosive sonobuoys could occur in the water column; mines and demolition charges could be detonated in the water column or on the ocean bottom. Most detonations would occur in waters greater than 200 ft in depth, and greater than 3 NM from shore, with the exception of three existing mine warfare areas (Outer Apra Harbor, Piti, and Agat Bay). Nearshore small explosive charges only occur at the three mine warfare areas. Piti and Agat Bay, while nearshore, are in very deep water and used for floating mine neutralization activities. In order to better organize and facilitate the analysis of explosives used by the Navy during training and testing that could detonate in water or at the water surface, explosive classification bins were developed. The use of explosive classification bins provides the same benefits as described for acoustic source classification bins discussed above and in Section 1.4.1 (Acoustic Stressors) of the Navy's rulemaking/LOA application.

Explosives detonated in water are binned by net explosive weight. The bins of explosives that are proposed for use in the MITT Study Area are shown in Table 2 below.

TABLE 2—EXPLOSIVES ANALYZED IN THE MITT STUDY AREA

Bin	Net explosive weight (lb)	Example explosive source	Modeled detonation depths (ft)
E1	0.1–0.25	Medium-caliber projectiles	0.3, 60.
E2	>0.25–0.5	Anti-swimmer grenade	0.3.
E3	>0.5–2.5	57 mm projectile	0.3, 60.
E4	>2.5–5	Mine neutralization charge	33, 197.
E5	>5–10	5 in projectiles	0.3, 10, 98.
E6	>10–20	Hellfire missile	0.3, 98.
E8	>60–100	250 lb. bomb; Lightweight torpedo	0.3, 150.
E9	>100–250	500 lb bomb	0.3.
E10	>250–500	1,000 lb bomb	0.3.
E11	>500–650	Heavyweight torpedo	150, 300.
E12	>650–1,000	2,000 lb bomb	0.3.

Notes: (1) Net Explosive Weight refers to the equivalent amount of TNT. The actual weight of a munition may be larger due to other components; (2) in = inch(es), lb = pound(s), ft = feet.

Propagation of explosive pressure waves in water is highly dependent on environmental characteristics such as bathymetry, bottom type, water depth, temperature, and salinity, which affect how the pressure waves are reflected, refracted, or scattered; the potential for reverberation; and interference due to multi-path propagation. In addition, absorption greatly affects the distance over which higher-frequency components of explosive broadband noise can propagate. Appendix H (*Acoustic and Explosive Concepts*) of the 2019 MITT DSEIS/OEIS explains the characteristics of explosive detonations and how the above factors affect the propagation of explosive energy in the water.

Explosive Fragments

Marine mammals could be exposed to fragments from underwater explosions associated with the specified activities. When explosive ordnance *(e.g.,* bomb or missile) detonates, fragments of the weapon are thrown at high-velocity from the detonation point, which can injure or kill marine mammals if they are struck. These fragments may be of variable size and are ejected at supersonic speed from the detonation. The casing fragments will be ejected at velocities much greater than debris from any target due to the proximity of the casing to the explosive material. Risk of fragment injury reduces exponentially with distance as the fragment density is reduced. Fragments underwater tend to be larger than fragments produced by in-air explosions (Swisdak and Montaro, 1992). Underwater, the friction of the water would quickly slow these fragments to a point where they no longer pose a threat. Opposingly, the blast wave from an explosive detonation moves efficiently through the seawater. Because the ranges to mortality and injury due to exposure to the blast wave are likely to far exceed the zone where fragments could injure or kill an animal, the thresholds for assessing the likelihood of harassment from a blast, which are also used to inform mitigation zones, are assumed to encompass risk due to fragmentation.

Other Stressor—Vessel Strike

NMFS also considered the chance that a vessel utilized in training or testing activities could strike a marine mammal. Vessel strikes have the potential to result in incidental take from serious injury and/or mortality. Vessel strikes are not specific to any particular training or testing activity, but rather are a limited, sporadic, and incidental result of Navy vessel movement within a study area. Vessel strikes from commercial, recreational, and military vessels are known to seriously injure and occasionally kill cetaceans (Abramson *et al.,* 2011; Berman-Kowalewski *et al.,* 2010; Calambokidis, 2012; Douglas *et al.,* 2008; Laggner, 2009; Lammers *et al.,* 2003; Van der Hoop *et al.,* 2012; Van der Hoop *et al.,* 2013), although reviews of the literature on ship strikes mainly involve collisions between commercial vessels and whales (Jensen and Silber, 2003; Laist *et al.,* 2001). Vessel speed, size, and mass are all important factors in determining both the potential likelihood and impacts of a vessel strike to marine mammals (Conn and Silber, 2013; Gende *et al.,* 2011; Silber *et al.,* 2010; Vanderlaan and Taggart, 2007; Wiley *et al.,* 2016). For large vessels,

speed and angle of approach can influence the severity of a strike.

Navy vessels transit at speeds that are optimal for fuel conservation and to meet training and testing requirements. Vessels used as part of the proposed specified activities include ships, submarines, unmanned vessels, and boats ranging in size from small, 22 ft (7 m) rigid hull inflatable boats to aircraft carriers with lengths up to 1,092 ft (333 m). The average speed of large Navy ships ranges between 10 and 15 knots (kn), and submarines generally operate at speeds in the range of 8 to 13 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 to 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 other Navy ranges from 2011–2015 varied from 5 to 10 kn with variations by ship class and location (*i.e.,* slower speeds close to the coast). Similar patterns would occur in the MITT Study Area. A full description of Navy vessels that are used during training and testing activities can be found in Chapter 2 (Description of Proposed Action and Alternatives) of the 2019 MITT DSEIS/OEIS.

While these speeds are representative of most events, some vessels need to temporarily operate outside of these parameters for certain times or during certain activities. For example, to produce the required relative wind speed over the flight deck, an aircraft carrier engaged in flight operations must adjust its speed through the water accordingly. Also, there are other instances, such as launch and recovery of a small rigid hull inflatable boat; vessel boarding, search, and seizure training events; or retrieval of a target when vessels would be dead in the water or moving slowly ahead to maintain steerage.

Large Navy vessels (greater than 18 m in length) within the offshore areas of range complexes and testing ranges operate differently from commercial vessels in ways that may reduce potential whale collisions. Surface ships operated by or for the Navy have multiple personnel assigned to stand watch at all times, when a ship or surfaced submarine is moving through the water (underway). A primary duty of personnel standing watch on surface ships is to detect and report all objects and disturbances sighted in the water that may indicate a threat to the vessel and its crew, such as debris, a periscope, surfaced submarine, or surface disturbance. Per vessel safety requirements, personnel standing watch also report any marine mammals sighted in the path of the vessel as a standard collision avoidance procedure. All vessels proceed at a safe speed so they can take proper and effective action to avoid a collision with any sighted object or disturbance, and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

Detailed Description of the Specified Activities

Proposed Training and Testing Activities

The Navy's Operational Commands and various System Commands have identified activity levels that are needed in the MITT Study Area to ensure naval forces have sufficient training, maintenance, and new technology to meet Navy missions in the Pacific. Training prepares Navy personnel to be proficient in safely operating and maintaining equipment, weapons, and systems to conduct assigned missions. Navy research develops new science and technology followed by concept testing relevant to future Navy needs. Unlike other Navy range complexes, training and testing in the MITT Study Area is more episodic as transiting strike groups or individual units travel through on the way to and from the Western Pacific, or forward deployed assets temporarily travel to the MITT Study Area for individual or group activities. This section analyzes a maximum number of activities that could occur each year and then a maximum total of activities that could occur for seven years. One activity, Torpedo (Explosive) Testing, does not occur every year, but the maximum times it could occur over one year and seven years was analyzed.

The training and testing activities that the Navy proposes to conduct in the MITT Study Area are summarized in Table 3. The table is organized according to primary mission areas and includes the activity name, associated stressors of Navy's activities, description of the activity, sound source bin, the locations of those activities in the MITT Study Area, and the number of Specified Activities. For further information regarding the primary platform used (*e.g.,* ship or aircraft type) see Appendix A (*Training and Testing Activities Descriptions*) of the 2019 MITT DSEIS/OEIS.

TABLE 3—PROPOSED TRAINING AND TESTING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE MITT STUDY AREA

Stressor category	Activity	Description	Typical duration of event	Source bin [1]	Location	Annual # of events	7-Year # of events
Major Training Event—Large Integrated Anti-Submarine Warfare Training (ASW)							
Acoustic	Joint Multi-Strike Group Exercise.	Typically a 10-day Joint exercise, in which up to three carrier strike groups would conduct training exercises simultaneously.	10 days	ASW2, ASW3, ASW4, HF1, MF1, MF11, MF3, MF4, MF5, MF12, TORP1.	Study Area; MIRC	1	4
Major Training Event—Medium Integrated ASW							
Acoustic	Joint Expeditionary Exercise.	Typically a 10-day exercise that could include a Carrier Strike Group and Expeditionary Strike Group, Marine Expeditionary Units, Army Infantry Units, and Air Force aircraft together in a joint environment that includes planning and execution efforts as well as military training activities at sea, in the air, and ashore.	10 days	ASW2, ASW3, MF1, MF4, MF5, MF12.	Study Area; Apra Harbor.	1	7

TABLE 3—PROPOSED TRAINING AND TESTING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE MITT STUDY AREA—Continued

Stressor category	Activity	Description	Typical duration of event	Source bin [1]	Location	Annual # of events	7-Year # of events
Medium Coordinated ASW							
Acoustic	Marine Air Ground Task Force Exercise (Amphibious)—Battalion.	Typically a 10-day exercise that conducts over the horizon, ship to objective maneuver for the elements of the Expeditionary Strike Group and the Amphibious Marine Air Ground Task Force. The exercise utilizes all elements of the Marine Air Ground Task Force (Amphibious), conducting training activities ashore with logistic support of the Expeditionary Strike Group and conducting amphibious landings.	10 days	ASW3, MF1, MF4, MF12.	Study Area to nearshore; MIRC; Tinian; Guam; Rota; Saipan; FDM.	4	28
ASW							
Acoustic	Tracking Exercise—Helicopter (TRACKEX—Helo).	Helicopter crews search for, detect, and track submarines.	2–4 hours	MF4, MF5	Study Area > 3 NM from land; Transit Corridor.	10	70
Acoustic	Torpedo Exercise—Helicopter (TORPEX—Helo).	Helicopter crews search for, detect, and track submarines. Recoverable air launched torpedoes are employed against submarine targets.	2–5 hours	MF4, MF5, TORP1	Study Area > 3 NM from land.	6	42
Acoustic	Tracking Exercise—Maritime Patrol Aircraft (TRACKEX—Maritime Patrol Aircraft).	Maritime patrol aircraft crews search for, detect, and track submarines.	2–8 hours	MF5	Study Area > 3 NM from land.	36	252
Acoustic	Torpedo Exercise—Maritime Patrol Aircraft (TORPEX—Maritime Patrol Aircraft).	Maritime patrol aircraft crews search for, detect, and track submarines. Recoverable air launched torpedoes are employed against submarine targets.	2–8 hours	MF5, TORP1	Study Area > 3 NM from land.	6	42
Acoustic	Tracking Exercise—Surface (TRACKEX—Surface).	Surface ship crews search for, detect, and track submarines.	2–4 hours	ASW1, ASW3, MF1, MF11, MF12.	Study Area > 3 NM from land.	91	637
Acoustic	Torpedo Exercise—Surface (TORPEX—Surface).	Surface ship crews search for, detect, and track submarines. Exercise torpedoes are used during this event.	2–5 hours	ASW3, MF1, MF5, TORP1.	Study Area > 3 NM from land.	6	42
Acoustic	Tracking Exercise—Submarine (TRACKEX—Sub).	Submarine crews search for, detect, and track submarines.	8 hours	ASW4, HF1, HF3, MF3.	Study Area > 3 NM from land; Transit Corridor.	4	28
Acoustic	Torpedo Exercise—Submarine (TORPEX—Sub).	Submarine crews search for, detect, and track submarines. Recoverable exercise torpedoes are used during this event.	8 hours	ASW4, HF1, MF3, TORP2.	Study Area > 3 NM from land.	9	63
Acoustic	Small Joint Coordinated ASW exercise (Multi-Sail/GUAMEX).	Typically, a 5-day exercise with multiple ships, aircraft and submarines integrating the use of their sensors, including sonobuoys, to search, detect, and track threat submarines.	5 days	ASW2, ASW3, ASW4, HF1, MF1, MF3, MF4, MF5, MF11, MF12.	Study Area > 3 NM from land.	3	21
Mine Warfare							
Acoustic	Civilian Port Defense.	Maritime security personnel train to protect civilian ports and harbors against enemy efforts to interfere with access to those ports.	Multiple days	HF4, SAS2	MIRC, Mariana littorals, Inner and Outer Apra Harbor.	1	7

TABLE 3—PROPOSED TRAINING AND TESTING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE MITT STUDY AREA—Continued

Stressor category	Activity	Description	Typical duration of event	Source bin [1]	Location	Annual # of events	7-Year # of events
Explosive	Mine Neutralization—Remotely Operated Vehicle Sonar (ASQ–235 [AQS–20], SLQ–48).	Ship, small boat, and helicopter crews locate and disable mines using remotely operated underwater vehicles	1–4 hours	E4	Study Area, Mariana littorals, and Outer Apra Harbor.	4	28
Acoustic	Mine Countermeasure Exercise—Surface Ship Sonar (SQQ–32, MCM).	Ship crews detect, locate, identify, and avoid mines while navigating restricted areas or channels, such as while entering or leaving port.	1–4 hours	HF4	Study Area, Apra Harbor.	4	28
Acoustic	Mine Countermeasure Exercise—Towed Sonar (AQS–20).	Surface ship crews detect and avoid mines while navigating restricted areas or channels using towed active sonar systems.	1–4 hours	HF4	Study Area, Apra Harbor.	4	28
Explosive	Mine Neutralization—Explosive Ordnance Disposal.	Personnel disable threat mines using explosive charges.	Up to 4 hours	E5, E6	Agat Bay site, Piti, and Outer Apra Harbor.	20	140
Acoustic	Submarine Mine Exercise.	Submarine crews practice detecting mines in a designated area.	Varies	HF1	Study Area, Mariana Littorals, Inner/Outer Apra Harbor.	1	7
Explosive	Underwater Demolition Qualification/Certification.	Navy divers conduct various levels of training and certification in placing underwater demolition charges.	Varies	E5, E6	Agat Bay site, Piti, and Outer Apra Harbor.	45	315
Surface Warfare (SUW)							
Explosive	Bombing Exercise (Air-to-Surface).	Fixed-wing aircrews deliver bombs against stationary surface targets.	1 hour	E9, E10, E12	Study Area, Special Use Airspace.	37	259
Explosive	Gunnery Exercise (GUNEX) (Air-to-Surface)—Medium-caliber.	Fixed-wing and helicopter aircrews fire medium-caliber guns at surface targets.	1 hour	E1, E2	Study Area > 12 NM from land, Special Use Airspace.	120	840
Explosive	GUNEX (Surface-to-Surface) Boat—Medium-caliber.	Small boat crews fire medium-caliber guns at surface targets.	1 hour	E2	Study Area > 12 NM from land, Special Use Airspace.	20	140
Explosive	GUNEX (Surface-to-Surface) Ship—Large-caliber.	Surface ship crews fire large-caliber guns at surface targets.	Up to 3 hours	E5	Study Area > 12 NM from land, Special Use Airspace.	255	1,785
Explosive	GUNEX (Surface-to-Surface) Ship—Small- and Medium-caliber.	Surface ship crews fire medium and small-caliber guns at surface targets.	2–3 hours	E1	Study Area > 12 NM from land, Special Use Airspace.	234	1,638
Explosive	Maritime Security Operations.	Helicopter, surface ship, and small boat crews conduct a suite of maritime security operations at sea, to include visit, board, search and seizure, maritime interdiction operations, force protection, and anti-piracy operations.	Up to 3 hours	E2	Study Area; MIRC	40	280
Explosive	Missile Exercise (Air-to-Surface) (MISSILEX [A–S]).	Fixed-wing and helicopter aircrews fire air-to-surface missiles at surface targets.	2 hours	E6, E8, E10	Study Area > 12 NM from land, Special Use Airspace.	10	70
Explosive	Missile Exercise (Air-to-Surface)—Rocket (MISSILEX [A–S]—Rocket).	Helicopter aircrews fire both precision-guided and unguided rockets at surface targets.	1 hour	E3	Study Area > 12 NM from land, Special Use Airspace.	110	770
Explosive	Missile Exercise (Surface-to-Surface) (MISSILEX [S–S]).	Surface ship crews defend against surface threats (ships or small boats) and engage them with missiles.	2–5 hours	E6, E10	Study Area > 50 NM from land, Special Use Airspace.	28	196

TABLE 3—PROPOSED TRAINING AND TESTING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE MITT STUDY AREA—Continued

Stressor category	Activity	Description	Typical duration of event	Source bin [1]	Location	Annual # of events	7-Year # of events
Explosive	Sinking Exercise	Aircraft, ship, and submarine crews deliberately sink a seaborne target, usually a decommissioned ship made environmentally safe for sinking according to U.S. Environmental Protection Agency standards, with a variety of ordnance.	4–8 hours, possibly over. 1–2 days	E5, E8, E10, E11, E12, TORP2.	Study Area > 50 NM from land and > 1,000 fathoms depth.	1	4
Other Training Activities							
Acoustic	Submarine Navigation.	Submarine crews operate sonar for navigation and detection while transiting into and out of port during reduced visibility.	Up to 2 hours	HF1, MF3	Study Area, Apra Harbor, and Mariana littorals.	8	56
Acoustic	Submarine Sonar Maintenance.	Maintenance of submarine sonar and other system checks are conducted pierside or at sea.	Up to 1 hour	MF3	Study Area; Apra Harbor and Mariana littorals.	86	602
Acoustic	Surface Ship Sonar Maintenance.	Maintenance of surface ship sonar and other system checks are conducted pierside or at sea.	Up to 4 hours	MF1	Study Area; Apra Harbor and Mariana littorals.	44	308
Acoustic	Unmanned Underwater Vehicle Training.	Units conduct training with unmanned underwater vehicles from a variety of platforms, including surface ships, small boats, and submarines.	Up to 24 hours	FLS2, M3, SAS2, SAS4.	MIRC; Apra Harbor and Mariana littorals.	64	448
Testing Activities—ASW							
Acoustic; Explosive	Anti-Submarine Warfare Tracking Test—Maritime Patrol Aircraft (Sonobuoys).	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.	8 hours	ASW2, ASW5, E1, E3, MF5, MF6.	Study Area > 3 NM from land.	26	182
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.	2–6 flight hours	MF5, TORP1	Study Area > 3 NM from land.	20	140
Acoustic	Anti-Submarine Warfare Mission Package Testing.	Ships and their supporting platforms (*e.g.*, helicopters and unmanned aerial systems) detect, localize, and prosecute submarines.	1–2 weeks, with 4–8 hours of active sonar use with intervals of non-activity in between.	ASW1, ASW2, ASW3, ASW5, MF12, MF4, MF5, TORP1.	Mariana Island Range Complex.	100	700
Acoustic	At-Sea Sonar Testing.	At-sea testing to ensure systems are fully functional in an open ocean environment	From 4 hours to 11 days.	HF1, HF6, M3, MF3, MF9.	Study Area	7	49
Acoustic; Explosive	Torpedo (Explosive) Testing.	Air, surface, or submarine crews employ explosive and non-explosive torpedoes against artificial targets.	1–2 days during daylight hours.	ASW3, HF1, HF6, MF1, MF3, MF4, MF5, MF6, TORP1, TORP2, E8, E11.	Mariana Island Range Complex.	3	9
Acoustic	Torpedo (Non-explosive) Testing.	Air, surface, or submarine crews employ non-explosive torpedoes against submarines or surface vessels.	Up to 2 weeks	ASW3, ASW4, HF1, HF6, LF4, MF1, MF3, MF4, MF5, MF6, TORP1, TORP2, TORP3.	Mariana Island Range Complex.	7	49

TABLE 3—PROPOSED TRAINING AND TESTING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE MITT STUDY AREA—Continued

Stressor category	Activity	Description	Typical duration of event	Source bin [1]	Location	Annual # of events	7-Year # of events
Mine Warfare							
Acoustic; Explosive	Mine Countermeasure and Neutralization Testing.	Air, surface, and subsurface vessels neutralize threat mines and mine-like objects.	1–10 days, with intermittent use of countermeasure/neutralization systems during this period.	HF4, E4	MIRC; nearshore and littorals.	3	21
Vessel Evaluation							
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.	Up to 10 days	HF4, MF1, MF4, MF5, TORP1.	MIRC	1	7

[1] Additional activities utilizing sources not listed in the Major Training Event and coordinated exercise bins above may occur during these exercises. All acoustic sources which may be used during training and testing activities have been accounted for in the modeling and analysis presented in this application and in the 2019 MITT DSEIS/OEIS.

Summary of Acoustic and Explosive Sources Analyzed for Training and Testing

Tables 4 and 5 show the acoustic and explosive source classes, bins and quantity used in either hours or counts associated with the Navy's proposed training and testing activities over a seven-year period in the MITT Study Area that were analyzed in the Navy's rulemaking/LOA application. Table 4 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 4—ACOUSTIC SOURCE CLASSES ANALYZED AND NUMBER USED FOR SEVEN-YEAR PERIOD FOR TRAINING AND TESTING ACTIVITIES IN THE MITT STUDY AREA

Source class category	Bin	Description	Unit	Annual	7-year total
Low-Frequency (LF): Sources that produce signals less than 1 kHz.	LF4	LF sources equal to 180 dB and up to 200 dB	H	1	7
	LF5	LF sources less than 180 dB	H	10	65
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–60).	H	1,818	9,051
	MF1K	Kingfisher mode associated with MF1 sonars	H	3	21
	MF3	Hull-mounted submarine sonars (*e.g.,* AN/BQQ–10).	H	227	1,589
	MF4	Helicopter-deployed dipping sonars (*e.g.,* AN/AQS–22).	H	185	1,295
	MF5	Active acoustic sonobuoys (*e.g.,* DICASS)	C	2,094	14,658
	MF6	Active underwater sound signal devices (*e.g.,* MK 84 SUS).	C	74	518
	MF9	Active sources (equal to 180 dB and up to 200 dB) not otherwise binned.	H	29	203
	MF11	Hull-mounted surface ship sonars with an active duty cycle greater than 80%.	H	304	2.128
+	MF12	Towed array surface ship sonars with an active duty cycle greater than 80%.	H	616	4,312
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	73	511
	HF3	Other hull-mounted submarine sonars (classified).	H	4	28
	HF4	Mine detection, classification, and neutralization sonar (*e.g.,* AN/SQS–20).	H	1,472	10,304
	HF6	Active sources (equal to 180 dB and up to 200 dB) not otherwise binned.	H	309	2,163

TABLE 4—ACOUSTIC SOURCE CLASSES ANALYZED AND NUMBER USED FOR SEVEN-YEAR PERIOD FOR TRAINING AND TESTING ACTIVITIES IN THE MITT STUDY AREA—Continued

Source class category	Bin	Description	Unit	Annual	7-year total
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	192	1,344
	ASW2	MF Multistatic Active Coherent sonobuoy (*e.g.,* AN/SSQ–125).	C	554	3,808
	ASW3	MF towed active acoustic countermeasure systems (*e.g.,* AN/SLQ–25).	H	3,124	21,868
	ASW4	MF expendable active acoustic device countermeasures (*e.g.,* MK 3).	C	332	2,324
	ASW5	MF sonobuoys with high duty cycles	H	50	350
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	71	485
	TORP2	Heavyweight torpedo (*e.g.,* MK 48)	C	62	434
	TORP3	Heavyweight torpedo test (*e.g.,* MK 48)	C	6	42
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	4	28
Acoustic Modems (M): Systems used to transmit data through the water.	M3	MF acoustic modems (greater than 190 dB)	H	31	217
Synthetic Aperture Sonars (SAS): Sonars in which active acoustic signals are post-processed to form high-resolution images of the seafloor.	SAS2	HF SAS systems	H	449	3,143
	SAS4	MF to HF broadband mine countermeasure sonar.	H	6	42

Notes: H= hours; C = count.

Table 5 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 5—EXPLOSIVE SOURCE BINS ANALYZED AND NUMBER USED FOR SEVEN-YEAR PERIOD FOR TRAINING AND TESTING ACTIVITIES WITHIN THE MITT STUDY AREA

Bin	Net explosive weight (lb)	Example explosive source	Modeled detonation depths (ft)	Annual	7-year total
E1	0.1–0.25	Medium-caliber projectiles	0.3, 60	768	5,376
E2	>0.25–0.5	Anti-swimmer grenade	0.3	400	2,800
E3	>0.5–2.5	57 mm projectile	0.3, 60	683	4,591
E4	>2.5–5	Mine neutralization charge	33, 197	44	308
E5	>5–10	5 in projectiles	0.3, 10, 98	1,221	8,547
E6	>10–20	15 lb shaped charge	0.3, 98	29	203
E8	>60–100	250 lb bomb; Light weight torpedo	0.3, 150	134	932
E9	>100–250	500 lb bomb	0.3	110	770
E10	>250–500	1,000 lb bomb	0.3	78	546
E11	>500–650	Heavy weight torpedo	150,300	5	17
E12	>650–1,000	2,000 lb bomb	0.3	48	336

Notes: (1) net explosive weight refers to the equivalent amount of TNT. The actual weight of a munition may be larger due to other components. (2) in = inch(es), lb = pound(s), ft = feet.

Vessel Movement

In the MITT Study Area, there is one port on Guam as well as Naval Base Guam. There are three ports within the CNMI including Port of Rota, Port of Tinian, and Port of Saipan. However, Navy ships are mostly associated with transits into and out of Apra Harbor on Guam. U.S. Navy vessels do not berth at other locations in the MITT Study Area other than Apra Harbor. Within the CNMI, the Port of Rota (also called Rota West Harbor) is located on the southwestern tip of the island. It is a very small, poorly sheltered port with a pierside water depth of 6 to 10 ft, which limits the size of vessels that can access the pier. The Port of Rota is mainly used as a port for ferry boats transporting tourists and residents from its sister island, Tinian. The Port of Tinian is a well-sheltered small port. Mobile Oil operates a fuel plant at the port, and a ferry service transports tourists from Saipan to Tinian. The Port of Saipan is the largest of the three CNMI ports. The port of Saipan is on the southwest shore and houses commercial ships, small local boats or ferries, and military vessels (ships that are not managed by the Navy or part of these proposed activities). Guam's Jose D. Leon Guerrero Commercial Port is on Cabras Island along the southwest portion of Guam. The Port Authority of Guam, administers the Commercial Port, Agana Boat Basin, and the Agat Marina.

While the ships assigned to any particular homeport change periodically, Naval Base Guam is not home to any surface fleet commands. There are no Navy surface warships

homeported in Guam. The types of vessels currently homeported in Apra Harbor include submarines, support vessels like a submarine tender and a military sealift (*i.e.,* logistics) unit, and small vessels like coastal riverine craft. Small vessels stay in nearshore, coastal waters. Navy large vessel movements for training and testing in the MITT Study Area often occur when U.S. West Coast and Hawaii based strike groups or independent deployers (*i.e.,* single vessels) transit to and from the Western Pacific, Indian Ocean, and Arabian Gulf. The Navy also maintains a contingent of vessels homeported in Japan that also visit the MITT Study Area to participate in various single unit or multi-unit training activities and MTEs. Unlike other Navy range complexes associated with fleet concentration areas, there may be long periods, from multiple weeks up to a month or more (*e.g.,* 1–3 months), without any significant Navy large surface vessel presence in the MITT Study Area. These gaps are the result of Navy ships training in other range complexes as part of pre-deployment preparations and Japan-based ships deployed to other portions of the Western Pacific for operational reasons.

The western approaches to Apra Harbor are the central corridor of vessel movements in the MITT Study Area, as visiting, transiting, and homeported vessels pull in and out for port calls and resupply. Depending on a given exercise, many of the participating ships could use Apra Harbor prior to or after the event depending on operational schedules. A significant amount of MIW events with vessel movements would be more likely west of Guam and adjacent to Apra Harbor, depending on the event.

The majority of the Air Warfare (launches from aircraft carriers and surface ships), ASW, Electronic Warfare, Strike Warfare, and SUW training and testing events involving vessel movement (Table 6 below) occurs in or adjacent to the specified training and testing areas shown in Figure 2–2 of the Navy's rulemaking/LOA application. Vessels involved in ASW training and testing typically use water depths greater than 200 m and areas greater than 3 NM from shore, conducting most events in designated areas or other locations well offshore. For safety reasons, the Navy also does not conduct explosive events such as vessel gunnery exercises less than 12 NM from shore, and more often in designated areas further offshore.

These generalities do not preclude individual ships or strike groups from conducting select training and testing between designated Navy training and testing areas, nor does it preclude select training or testing west of Guam in the eastern and central Philippine Sea or in the transit lane between Hawaii and the MITT Study Area. While the vast majority of activities are scheduled in designated areas, operational schedules could necessitate training or testing in other at-sea portions of the MITT Study Area and commanders are always able to conduct unit-level or small group training and testing as opportunities arise and schedules allow.

Destroyers and cruisers would be the only surface ships conducting Naval Surface Fire Support Exercise (FIREX)—Land-based target (Land) and would transit the waters adjacent to FDM, though the duration of these single events is relatively short (4–6 hours). The ships, because of both ship draft and training requirements, are typically a mile or more offshore in deeper waters during execution of FIREX events. Because of constricted scheduling needs at FDM for both surface and aviation activities, ships conducting FIREX move into the desired range, fire off an allotted amount of ordnance (inert or explosive five-inch projectiles), and depart back to other areas within the MITT Study Area.

Amphibious Warfare activities have slightly different vessel movements than activities in other warfare areas. Amphibious MTEs (Joint Expeditionary Exercise, Marine Air Ground Task Force Exercise (Amphibious)—Battalion) and other Amphibious Warfare activities involve amphibious assault ships maneuvering offshore then approaching designated beach landing areas to offload marines in landing craft, amphibious assault vehicles, or helicopters. Typical landing locations depending on activity type include Guam, FDM, Rota, Saipan, and Tinian (Tinian Military Lease Area). For large surface vessels during amphibious warfare activities, the objective is to not approach too close to shore, which would put a ship at risk from shore-based defenses. Typically, amphibious transport ships deploy landing craft, amphibious assault vehicles, or helicopters from several miles offshore. Given the steep nearshore bathymetry in the Mariana Islands greater than 3NM from shore, these ships are still in significantly deep water while deploying units (>200 m).

The only areas with consistently high concentrations of Navy vessel movement would be within Apra Harbor Guam and the coastal approaches to and from Apra Harbor. Some amphibious events use Tinian as a landing area so amphibious ships could occur in the offshore waters off that island. Most other activities are spread throughout the greater MITT Study Area with a high degree of spatial and temporal separation between activities.

The Navy tabulated annual at-sea vessel steaming days proposed for the MITT Study Area. Across all warfare areas and activities, 493 days of Navy at-sea time would occur annually in the MITT Study Area (Table 6). Amphibious Warfare activities account for 48 percent of total surface ship days, MTEs account for 38 percent, ASW activities account for 8 percent, and Air Warfare, ASW and Other activities (sonar maintenance, anchoring) account for 2 percent each (Table 6). In comparison to the Hawaii-Southern California Training and Testing (HSTT) Study Area, the estimated number of at-sea annual days in the MITT Study Area is approximately ten times less than in the HSTT Study Area over the same time period.

TABLE 6—ANNUAL NAVY SURFACE SHIP DAYS WITHIN THE MITT STUDY AREA

MITT events	Annual days	Percent by event	Annual days by warfare area	Percent by warfare area
AIR WARFARE			9	1.9
GUNNEX (Lg)	2	0.3		
GUNNEX (Sm)	3	0.6		
MISSILEX	5	0.9		
AMPHIBIOUS WARFARE			299	60.7
Fire Support (Land Target)	5	1.0		
Amphibious Rehearsal	144	29.2		
Amphibious Assault	14	2.8		

TABLE 6—ANNUAL NAVY SURFACE SHIP DAYS WITHIN THE MITT STUDY AREA—Continued

MITT events	Annual days	Percent by event	Annual days by warfare area	Percent by warfare area
Amphibious Raid	3	0.6		
Marine Air Ground Task Force Exercise	40	8.1		
Non-Combatant Evacuation Op	67	13.5		
Humanitarian Assist/Disaster Relief Op	7	1.4		
Special Purpose Marine Air Ground Task Force Exercise	20	4.1		
SURFACE WARFARE			41	8.4
MISSILEX	2	0.4		
GUNNEX (Lg)	14	2.8		
GUNNEX (Med)	10	2.0		
GUNNEX (Sm)	6	1.3		
SINKEX	7	1.4		
Maritime Security Op	3	0.5		
ANTI-SUBMARINE WARFARE			8	1.6
Tracking Exercise	8	1.5		
Torpedo Exercise	1	0.1		
MAJOR TRAINING EXERCISES			125	24.5
Joint Expeditionary Exercise	63	12.9		
Joint Multi-Strike Group Exercise	62	12.5		
OTHER			10	2.1
Surface Ship Sonar Maintenance	7	1.5%		
Precision Anchoring	3	0.6%		
Total	493			

Additional details on Navy at-sea vessel movement are provided in the 2019 MITT DSEIS/OEIS.

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 military missions and combat operations 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.

Navy standard operating procedures have been developed and refined over years of experience and are broadcast via numerous naval instructions and manuals, including, but not limited to:

- Ship, submarine, and aircraft safety manuals;
- Ship, submarine, and aircraft standard operating manuals;
- Fleet Area Control and Surveillance Facility range operating instructions;
- Fleet exercise publications and instructions;
- Naval Sea Systems Command test range safety and standard operating instructions;
- Navy instrumented range operating procedures;
- Naval shipyard sea trial agendas;
- Research, development, test, and evaluation plans;
- Naval gunfire safety instructions;
- Navy planned maintenance system instructions and requirements;
- Federal Aviation Administration regulations; and
- International Regulations for Preventing Collisions at Sea.

Because standard operating procedures are essential to safety and mission success, the Navy considers them to be part of the proposed Specified Activities, and has included them in the environmental analysis. Standard operating procedures that are recognized as providing a potential benefit to marine mammals during training and testing activities are noted below and discussed in more detail within the 2019 MITT DSEIS/OEIS.

- Vessel Safety
- Weapons Firing Safety
- Target Deployment and Retrieval Safety
- Towed In-Water Device Procedures

Standard operating procedures (which are implemented regardless of their secondary benefits) are different from mitigation measures (which are designed entirely for the purpose of avoiding or reducing potential impacts on the environment). Refer to Section 2.3.3 Standing Operating Procedures of the 2019 MITT DSEIS/OEIS for greater detail.

Description of Marine Mammals and Their Habitat in the Area of the Specified Activities

Marine mammal species that have the potential to occur in the MITT Study Area are presented in Table 7. The Navy requests authorization to take individuals of 26 marine mammal species by Level A and Level B harassment incidental to training and testing activities from the use of sonar and other transducers, and in-water detonations. The Navy does not request authorization for any serious injuries or mortalities of marine mammals, and NMFS agrees that serious injury and mortality is unlikely to occur from the Navy's activities. There are no areas of critical habitat designated under the Endangered Species Act (ESA), Biologically Important Areas, National Marine Sanctuaries, or unusual mortality events for marine mammals in the MITT Study Area. However, there are areas known to be important for humpback whale breeding and calving, which are described below.

Information on the status, distribution, abundance, population trends, habitat, and ecology of marine mammals in the MITT Study Area may be found in Chapter 4 of the Navy's rulemaking/LOA application. NMFS has reviewed this information and found it to be accurate and complete. Additional information on the general biology and ecology of marine mammals are included in the 2019 MITT DSEIS/OEIS. There are only a few species for which

stock information exists for the MITT Study Area. Table 7 incorporates data from the U.S. Pacific and the Alaska Marine Mammal Stock Assessments (Carretta *et al.,* 2017c; Muto *et al.,* 2017b); as well as incorporates the best available science, including monitoring data from the Navy's marine mammal research efforts.

TABLE 7—MARINE MAMMAL OCCURRENCE WITHIN THE MITT STUDY AREA

Common name	Scientific name	Status		Occurrence *	
		MMPA	ESA	Mariana Islands	Transit corridor
Mysticetes					
Blue whale	*Balaenoptera musculus*	D	E	Seasonal	Seasonal.
Bryde's whale	*Balaenoptera edeni*		n/a	Regular	Regular.
Fin whale	*Balaenoptera physalus*	D	E	Rare	Rare.
Humpback whale	*Megaptera novaeangliae*	(1)	E	Seasonal	Seasonal.
Minke whale	*Balaenoptera acutorostrata*		n/a	Seasonal	Seasonal.
Omura's whale	*Balaenoptera omurai*		n/a	Rare	Rare.
Sei whale	*Balaenoptera borealis*	D	E	Seasonal	Seasonal.
Odontocetes					
Blainville's beaked whale	*Mesoplodon densirostris*		n/a	Regular	Regular
Common bottlenose dolphin	*Tursiops truncatus*		n/a	Regular	Regular.
Cuvier's beaked whale	*Ziphius cavirostris*		n/a	Regular	Regular.
Dwarf sperm whale	*Kogia sima*		n/a	Regular	Regular.
False killer whale	*Pseudorca crassidens*		n/a	Regular	Regular.
Fraser's dolphin	*Lagenodelphis hosei*		n/a	Regular	Regular.
Ginkgo-toothed beaked whale	*Mesoplodon ginkgodens*		n/a	Regular	Regular.
Killer whale	*Orcinus orca*		n/a	Regular	Regular.
Longman's beaked whale	*Indopacetus pacificus*		n/a	Regular	Regular.
Melon-headed whale	*Peponocephala electra*		n/a	Regular	Regular.
Pantropical spotted dolphin	*Stenella attenuata*		n/a	Regular	Regular.
Pygmy killer whale	*Feresa attenuata*		n/a	Regular	Regular.
Pygmy sperm whale	*Kogia breviceps*		n/a	Regular	Regular.
Risso's dolphin	*Grampus griseus*		n/a	Regular	Regular.
Rough-toothed dolphin	*Steno bredanensis*		n/a	Regular	Regular.
Short-finned pilot whale	*Globicephala macrorhynchus*		n/a	Regular	Regular.
Sperm whale	*Physeter macrocephalus*	D	E	Regular	Regular.
Spinner dolphin	*Stenella longirostris*		n/a	Regular	Regular.
Striped dolphin	*Stenella coeruleoalba*		n/a	Regular	Regular.

[1] Humpback whales in the Mariana Islands have not been assigned a stock by NMFS in the Alaska or Pacific Stock Assessment Reports given they are not recognized in those reports as being present in U.S. territorial waters (Carretta *et al.,* 2017c; Carretta *et al.,* 2018; Muto *et al.,* 2017b; Muto *et al.,* 2018), but because individuals from the Western North Pacific Distinct Population Segment have been photographically identified in the MITT Study Area, humpback whales in the Mariana Islands are assumed to be part of the Western North Pacific Stock.

Note: Status MMPA, D = depleted; ESA, E = endangered.

* Species occur in both the Mariana Islands and in the Transit Corridor, both of which are included in the overall MITT Study Area. The transit corridor is outside the geographic boundaries of the MIRC, but is a route across the high seas for Navy ships transiting between the MIRC and the HRC. Although not part of a defined range complex, vessels and aircraft would at times conduct basic and routine unit-level activities such as gunnery and sonar training while in transit in the corridor as long as the training would not interfere with the primary objective of reaching their intended destination. Ships also conduct sonar maintenance, which includes active sonar transmissions.

Humpback Whale Breeding and Calving Areas

Humpback whale breeding and calving have been documented in the MITT Study Area and particularly in the shallow waters (mostly within the 200 m isobath) offshore of Saipan at Marpi Reef and Chalan Kanoa Reef. Based on surveys conducted by NMFS' Pacific Islands Fisheries Science Center (PIFSC) during the winter months (January to March) 2015–2019, there were 22 encounters with mother/calf pairs with a total of 14 mother/calf pairs and all calves were considered born within the current season and one neotate (Hitt *et al., in press*). Additionally, competitive groups were observed in 2017 and 2018 (Hill *et al., in press*). Additional information from surveys and passive acoustic hydrophone recordings in the Mariana Islands has confirmed the presence of mother-calf pairs, non-calf whales, and singing males in the MITT Study Area (Fulling *et al.,* 2011; Hill *et al.,* 2016a; Hill *et al.,* 2018; Munger *et al.,* 2014; Munger *et al.,* 2015; Norris *et al.,* 2012; Oleson and Hill, 2010a; Oleson *et al.,* 2015; U.S. Department of the Navy, 2007; Uyeyama *et al.,* 2012). Future surveys are needed to determine the full extent of the humpback whale breeding habitat through the Mariana Archipelago; however, the available data confirms the shallow waters surrounding Marpi and Chalan Kanoa reefs are important to breeding and calving humpback whales.

Species Not Included in the Analysis

Consistent with the analysis provided in the 2015 MITT FEIS/OEIS and the previous Phase II rulemaking for the MITT Study Area, the species carried forward for analysis and in the Navy's rulemaking/LOA application are those likely to be found in the MITT Study Area based on the most recent sighting, survey, and habitat modeling data available. The analysis does not include species that may have once inhabited or transited the area, but have not been sighted in recent years (*e.g.,* species that no longer occur in the area due to factors such as 19th-century commercial exploitation). These species include the North Pacific right whale (*Eubalaena japonica*), the western subpopulation of

gray whale (*Eschrichtius robustus*), short-beaked common dolphin (*Delphinus delphis*), Indo-Pacific bottlenose dolphin (*Tursiops aduncus*), northern elephant seal (*Mirounga angustirostris*), and Hawaiian monk seal (*Monachus schauinslandi*). The reasons for not including each of these species is explained below and NMFS agrees these species are unlikely to occur in the MITT Study Area. Further details can be found in the 2015 MITT FEIS/OEIS.

The North Pacific right whale population is very small, likely in the low hundred (NMFS 2019). Contemporary sightings of North Pacific right whales have mostly occurred in the central North Pacific and Bering Sea. Sightings have been reported as far south as central Baja California in the eastern North Pacific, as far south as Hawaii in the central North Pacific, and as far north as the sub-Arctic waters of the Bering Sea and the Sea of Okhotsk in the summer. Migration patterns of the North Pacific right whale are unknown, although it is thought the whales spend the summer in far northern feeding grounds and migrate south to warmer waters, such as southern California, during the winter. Due to their known homerange it is unlikely that a North Pacific right whale would occur in the MITT Study Area. North Pacific right whales have not been previously documented in the MITT Study Area. For the reasons discussed above, this species is not discussed further.

For the western subpopulation of gray whales there currently are no data available to suggest that gray whales would transit the MITT Study Area when migrating from the western to eastern Pacific. There have only been 13 records of gray whales in Japanese waters since 1990 (Nambu *et al.,* 2010). The Okhotsk Sea and Sakhalin Island are located far to the north off Russia, and the South China Sea begins approximately 1,458 NM east of the MITT Study Area. Given what is known of their present range, nearshore affinity, and extralimital occurrence in tropical waters, it is highly unlikely that this species would be present in the MITT Study Area (Reilly *et al.,* 2000; Weller *et al.,* 2002; Wiles, 2005; Nambu *et al.,* 2010). In addition, no gray whales have been previously documented in the MITT Study Area. For the reasons discussed above, this species is not discussed further.

The short-beaked common dolphin is found worldwide in temperate, tropical, and subtropical seas. The range of this species may extend entirely across the tropical and temperate north Pacific (Heyning and Perrin, 1994); however, this species prefers areas with large seasonal changes in surface temperature and thermocline depth (the point between warmer surface water and colder water) (Au and Perryman, 1985). They are one of the most abundant species found in temperate waters off the U.S. West Coast (Barlow and Forney, 2007). In tropical seas, they are typically sighted in upwelling-modified waters such as those in the eastern tropical Pacific (Au and Perryman, 1985; Ballance and Pitman, 1998; Reilly, 1990). The absence of known areas of major upwelling in the western tropical Pacific suggests that common dolphins are not found in the MITT Study Area (Hammond *et al.,* 2008). In addition, no short-beaked common dolphins have been previously documented in the MITT Study Area. For the reasons discussed above, this species is not discussed further.

The Indo-Pacific bottlenose dolphin generally occurs over shallow coastal waters on the continental shelf. Although typically associated with continental margins, they do occur around oceanic islands; however, the MITT Study Area is not included in their known geographic range, and there are no documented sightings there (Hammond *et al.,* 2008). In addition, no Indo-Pacific bottlenose dolphins have been previously documented in the MITT Study Area. For the reasons discussed above, this species is not discussed further.

The likelihood of a Hawaiian monk seal being present in the MITT Study Area is extremely low. There are no confirmed records of Hawaiian monk seals in the Micronesia region; although, Reeves *et al.* (1999) and Eldredge (1991, 2003) have noted occurrence records for unidentified seal species in the Marshall and Gilbert Islands. It is possible that Hawaiian monk seals wander from the Hawaiian Islands to appear at the Marshall or Gilbert Islands in the Micronesia region (Eldredge, 1991). However, the Marshall Islands are located approximately 1,180 mi. (1,900 km) from Guam and the Gilbert Islands are located even farther to the east. Given the extremely low likelihood of this species occurring in the MITT Study Area. No Hawaiian monk seals have been previously documented in the MITT Study Area. For the reasons discussed above, this species is not discussed further.

Northern elephant seals (*Mirounga angustirostris*) are common on island and mainland haul-out sites in Baja California, Mexico north through central California. Elephant seals spend several months at sea feeding and travel as far north as the Gulf of Alaska and forage in the mid-Pacific as far south as approximately 40 degrees north latitude. Vagrant individuals do sometimes range to the western north Pacific. The most far-ranging individual appeared on Nijima Island off the Pacific coast of Japan in 1989 (Kiyota *et al.,* 1992). Although northern elephant seals may wander great distances, it is very unlikely that they would travel to Japan and then continue traveling to the MITT Study Area. No Northern elephant seals have been previously documented in the MITT Study Area. For the reasons discussed above, this species is not discussed further.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2016) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. The functional groups and the associated frequencies are indicated below (note that these frequency ranges correspond to the range for the composite group, with the entire range not necessarily reflecting the capabilities of every species within that group):

- Low-frequency cetaceans (mysticetes): Generalized hearing is estimated to occur between approximately 7 Hz and 35 kHz;
- Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): Generalized hearing is

estimated to occur between approximately 150 Hz and 160 kHz;

- High-frequency cetaceans (porpoises, river dolphins, and members of the genera Kogia and Cephalorhynchus; including two members of the genus Lagenorhynchus, on the basis of recent echolocation data and genetic data): Generalized hearing is estimated to occur between approximately 275 Hz and 160 kHz;
- Pinnipeds in water; Phocidae (true seals): Generalized hearing is estimated to occur between approximately 50 Hz to 86 kHz; and
- Pinnipeds in water; Otariidae (eared seals): Generalized hearing is estimated to occur between 60 Hz and 39 kHz.

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more details concerning these groups and associated frequency ranges, please see NMFS (2016) for a review of the available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take of Marine Mammals* section later in this rule includes a quantitative analysis of the number of instances of take that could occur from these activities. The *Preliminary Analysis and Negligible Impact Determination* section considers the content of this section, the *Estimated Take of Marine Mammals* section, and the *Proposed Mitigation Measures* section to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts on individuals are likely to adversely affect the species through effects on annual rates of recruitment or survival.

The Navy has requested authorization for the take of marine mammals that may occur incidental to training and testing activities in the MITT Study Area. The Navy analyzed potential impacts to marine mammals from acoustic and explosive sources in its rulemaking/LOA application. NMFS carefully reviewed the information provided by the Navy along with independently reviewing applicable scientific research and literature and other information to evaluate the potential effects of the Navy's activities on marine mammals, which are presented in this section.

Other potential impacts to marine mammals from training and testing activities in the MITT Study Area were analyzed in the 2019 MITT DSEIS/OEIS, in consultation with NMFS as a cooperating agency, and determined to be unlikely to result in marine mammal take. These include incidental take from vessel strike and serious injury or mortality from explosives. Therefore, the Navy has not requested authorization for take of marine mammals incidental to other components of their proposed Specified Activities, and we agree that incidental take is unlikely to occur from those components. In this proposed rule, NMFS analyzes the potential effects on marine mammals from the activity components that may cause the take of marine mammals: Exposure to acoustic or explosive stressors including non-impulsive (sonar and other transducers) and impulsive (explosives) stressors.

For the purpose of MMPA incidental take authorizations, NMFS' effects assessments serve four primary purposes: (1) To prescribe the permissible methods of taking (*i.e.,* Level B harassment (behavioral harassment and temporary threshold shift (TTS)), Level A harassment (permanent threshold shift (PTS) and non-auditory injury), serious injury, or mortality, including identification of the number and types of take that could occur by harassment, serious injury, or mortality, and to prescribe other means of effecting the least practicable adverse impact on the species or stocks and their habitat (*i.e.,* mitigation measures); (2) to determine whether the specified activities would have a negligible impact on the affected species or stocks of marine mammals (based on whether it is likely that the activities would adversely affect the species or stocks through effects on annual rates of recruitment or survival); (3) to determine whether the specified activities would have an unmitigable adverse impact on the availability of the species or stocks for subsistence uses (however, there are no subsistence communities that would be affected in the MITT Study Area, so this determination is inapplicable to this rulemaking); and (4) to prescribe requirements pertaining to monitoring and reporting.

In this section, NMFS provides a description of the ways marine mammals may be generally affected by these activities in the form of mortality, physical trauma, sensory impairment (permanent and temporary threshold shifts and acoustic masking), physiological responses (particular stress responses), behavioral disturbance, or habitat effects. Explosives, which have the potential to result in incidental take from serious injury and/or mortality, will be discussed in more detail in the *Estimated Take of Marine Mammals* section. The *Estimated Take of Marine Mammals* section also discusses how the potential effects on marine mammals from non-impulsive and impulsive sources relate to the MMPA definitions of Level A and Level B Harassment, and quantifies those effects that rise to the level of a take. The *Preliminary Analysis and Negligible Impact Determination* section assesses whether the proposed authorized take would have a negligible impact on the affected species.

Potential Effects of Underwater Sound

Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can possibly result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Götz *et al.,* 2009, Southall *et al.,* 2019a). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. Note that, in the following discussion, we refer in many cases to a review article concerning studies of noise-induced hearing loss conducted from 1996–2015 (*i.e.,* Finneran, 2015). For study-specific citations, please see that work. We first describe general manifestations of acoustic effects before providing discussion specific to the Navy's activities.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would

be audible (potentially perceived) to the animal, but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We also describe more severe effects (*i.e.,* certain non-auditory physical or physiological effects). Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Tal *et al.,* 2015).

Acoustic Sources

Direct Physiological Effects

Non-impulsive sources of sound can cause direct physiological effects including noise-induced loss of hearing sensitivity (or ''threshold shift''), nitrogen decompression, acoustically-induced bubble growth, and injury due to sound-induced acoustic resonance. Only noise-induced hearing loss is anticipated to occur due to the Navy's activities. Acoustically-induced (or mediated) bubble growth and other pressure-related physiological impacts are addressed briefly below, but are not expected to result from the Navy's activities. Separately, an animal's behavioral reaction to an acoustic exposure might lead to physiological effects that might ultimately lead to injury or death, which is discussed later in the *Stranding* subsection.

Hearing Loss—Threshold Shift

Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift, which is the loss of hearing sensitivity at certain frequency ranges after cessation of sound (Finneran, 2015). Threshold shift can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). TTS can last from minutes or hours to days (*i.e.,* there is recovery back to baseline/pre-exposure levels), can occur within a specific frequency range (*i.e.,* an animal might only have a temporary loss of hearing sensitivity within a limited frequency band of its auditory range), and can be of varying amounts (*e.g.,* an animal's hearing sensitivity might be reduced by only 6 dB or reduced by 30 dB). While there is no simple functional relationship between TTS and PTS or other auditory injury (*e.g.,* neural degeneration), as TTS increases, the likelihood that additional exposure sound pressure level (SPL) or duration will result in PTS or other injury also increases (see also the 2019 MITT DSEIS/OEIS for additional discussion). Exposure thresholds for the occurrence of PTS or other auditory injury can therefore be defined based on a specific amount of TTS; that is, although an exposure has been shown to produce only TTS, we assume that any additional exposure may result in some PTS or other injury. The specific upper limit of TTS is based on experimental data showing amounts of TTS that have not resulted in PTS or injury. In other words, we do not need to know the exact functional relationship between TTS and PTS or other injury, we only need to know the upper limit for TTS before some PTS or injury is possible. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). PTS is permanent (*i.e.,* there is incomplete recovery back to baseline/pre-exposure levels), but also can occur in a specific frequency range and amount as mentioned above for TTS. In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward, 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

The following physiological mechanisms are thought to play a role in inducing auditory threshold shift: effects to sensory hair cells in the inner ear that reduce their sensitivity; modification of the chemical environment within the sensory cells; residual muscular activity in the middle ear; displacement of certain inner ear membranes; increased blood flow; and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.,* 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all can affect the amount of associated threshold shift and the frequency range in which it occurs. Generally, the amount of threshold shift, and the time needed to recover from the effect, increase as amplitude and duration of sound exposure increases. Human non-impulsive noise exposure guidelines are based on the assumption that exposures of equal energy (the same sound exposure level (SEL)) produce equal amounts of hearing impairment regardless of how the sound energy is distributed in time (NIOSH, 1998). Previous marine mammal TTS studies have also generally supported this equal energy relationship (Southall *et al.,* 2007). However, some more recent studies concluded that for all noise exposure situations the equal energy relationship may not be the best indicator to predict TTS onset levels (Mooney *et al.,* 2009a and 2009b; Kastak *et al.,* 2007). These studies highlight the inherent complexity of predicting TTS onset in marine mammals, as well as the importance of considering exposure duration when assessing potential impacts. Generally, with sound exposures of equal energy, those that were quieter (lower SPL) with longer duration were found to induce TTS onset at lower levels than those of louder (higher SPL) and shorter duration. Less threshold shift will occur from intermittent sounds than from a continuous exposure with the same energy (some recovery can occur between intermittent exposures) (Kryter *et al.,* 1966; Ward, 1997; Mooney *et al.,* 2009a, 2009b; Finneran *et al.,* 2010). For example, one short but loud (higher SPL) sound exposure may induce the same impairment as one longer but softer (lower SPL) sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, very prolonged or

repeated exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold can cause PTS, at least in terrestrial mammals (Kryter, 1985; Lonsbury-Martin *et al.,* 1987). PTS is considered auditory injury (Southall *et al.,* 2007). Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007).

The NMFS 2016 Acoustic Technical Guidance (revised in 2018) (NMFS 2016, 2018), which was used in the assessment of effects for this rule, compiled, interpreted, and synthesized the best available scientific information for noise-induced hearing effects for marine mammals to derive updated thresholds for assessing the impacts of noise on marine mammal hearing. More recently, 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). They only 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.

Many studies have examined noise-induced hearing loss in marine mammals (see Finneran (2015) and Southall *et al.* (2019a) for summaries), however for cetaceans, published data on the onset of TTS are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise, and for pinnipeds in water, measurements of TTS are limited to harbor seals, elephant seals, and California sea lions. These studies examine hearing thresholds measured in marine mammals before and after exposure to intense sounds. The difference between the pre-exposure and post-exposure thresholds can then be used to determine the amount of threshold shift at various post-exposure times. NMFS has reviewed the available studies, which are summarized below (see also the 2019 MITT DSEIS/OEIS which includes additional discussion on TTS studies related to sonar and other transducers):

- The method used to test hearing may affect the resulting amount of measured TTS, with neurophysiological measures producing larger amounts of TTS compared to psychophysical measures (Finneran *et al.,* 2007; Finneran, 2015).
- The amount of TTS varies with the hearing test frequency. As the exposure SPL increases, the frequency at which the maximum TTS occurs also increases (Kastelein *et al.,* 2014b). For high-level exposures, the maximum TTS typically occurs one-half to one octave above the exposure frequency (Finneran *et al.,* 2007; Mooney *et al.,* 2009a; Nachtigall *et al.,* 2004; Popov *et al.,* 2011; Popov *et al.,* 2013; Schlundt *et al.,* 2000). The overall spread of TTS from tonal exposures can therefore extend over a large frequency range (*i.e.,* narrowband exposures can produce broadband (greater than one octave) TTS).
- The amount of TTS increases with exposure SPL and duration and is correlated with SEL, especially if the range of exposure durations is relatively small (Kastak *et al.,* 2007; Kastelein *et al.,* 2014b; Popov *et al.,* 2014). As the exposure duration increases, however, the relationship between TTS and SEL begins to break down. Specifically, duration has a more significant effect on TTS than would be predicted on the basis of SEL alone (Finneran *et al.,* 2010a; Kastak *et al.,* 2005; Mooney *et al.,* 2009a). This means if two exposures have the same SEL but different durations, the exposure with the longer duration (thus lower SPL) will tend to produce more TTS than the exposure with the higher SPL and shorter duration. In most acoustic impact assessments, the scenarios of interest involve shorter duration exposures than the marine mammal experimental data from which impact thresholds are derived; therefore, use of SEL tends to over-estimate the amount of TTS. Despite this, SEL continues to be used in many situations because it is relatively simple, more accurate than SPL alone, and lends itself easily to scenarios involving multiple exposures with different SPL.
- The amount of TTS depends on the exposure frequency. Sounds at low frequencies, well below the region of best sensitivity, are less hazardous than those at higher frequencies, near the region of best sensitivity (Finneran and Schlundt, 2013). The onset of TTS—defined as the exposure level necessary to produce 6 dB of TTS (*i.e.,* clearly above the typical variation in threshold measurements)—also varies with exposure frequency. At low frequencies, onset-TTS exposure levels are higher compared to those in the region of best sensitivity.
- TTS can accumulate across multiple exposures, but the resulting TTS will be less than the TTS from a single, continuous exposure with the same SEL (Finneran *et al.,* 2010a; Kastelein *et al.,* 2014b; Kastelein *et al.,* 2015b; Mooney *et al.,* 2009b). This means that TTS predictions based on the total, cumulative SEL will overestimate the amount of TTS from intermittent exposures such as sonars and impulsive sources.
- The amount of observed TTS tends to decrease with increasing time following the exposure; however, the relationship is not monotonic (*i.e.,* increasing exposure does not always increase TTS). The time required for complete recovery of hearing depends on the magnitude of the initial shift; for relatively small shifts recovery may be complete in a few minutes, while large shifts (*e.g.,* approximately 40 dB) may require several days for recovery. Under many circumstances TTS recovers linearly with the logarithm of time (Finneran *et al.,* 2010a, 2010b; Finneran and Schlundt, 2013; Kastelein *et al.,* 2012a; Kastelein *et al.,* 2012b; Kastelein *et al.,* 2013a; Kastelein *et al.,* 2014b; Kastelein *et al.,* 2014c; Popov *et al.,* 2011; Popov *et al.,* 2013; Popov *et al.,* 2014). This means that for each doubling of recovery time, the amount of TTS will decrease by the same amount (*e.g.,* 6 dB recovery per doubling of time).

Nachtigall *et al.* (2018) and Finneran (2018) describe the measurements of hearing sensitivity of multiple odontocete species (bottlenose dolphin, harbor porpoise, beluga, and false killer whale) when a relatively loud sound was preceded by a warning sound. These captive animals were shown to reduce hearing sensitivity when warned of an impending intense sound. Based on these experimental observations of captive animals, the authors suggest that wild animals may dampen their hearing during prolonged exposures or if conditioned to anticipate intense sounds. Finneran recommends further investigation of the mechanisms of hearing sensitivity reduction in order to understand the implications for interpretation of existing TTS data obtained from captive animals, notably for considering TTS due to short duration, unpredictable exposures.

Marine mammal hearing plays a critical role in communication with conspecifics and in interpretation of

environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious similar to those discussed in auditory masking, below. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts if it were in the same frequency band as the necessary vocalizations and of a severity that impeded communication. The fact that animals exposed to high levels of sound that would be expected to result in this physiological response would also be expected to have behavioral responses of a comparatively more severe or sustained nature is potentially more significant than simple existence of a TTS. However, it is important to note that TTS could occur due to longer exposures to sound at lower levels so that a behavioral response may not be elicited. Depending on the degree and frequency range, the effects of PTS on an animal could also range in severity, although it is considered generally more serious than TTS because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without some cost to the animal.

Acoustically-Induced Bubble Formation Due to Sonars and Other Pressure-Related Impacts

One theoretical cause of injury to marine mammals is rectified diffusion (Crum and Mao, 1996), the process of increasing the size of a bubble by exposing it to a sound field. This process could be facilitated if the environment in which the ensonified bubbles exist is supersaturated with gas. Repetitive diving by marine mammals can cause the blood and some tissues to accumulate gas to a greater degree than is supported by the surrounding environmental pressure (Ridgway and Howard, 1979). The deeper and longer dives of some marine mammals (for example, beaked whales) are theoretically predicted to induce greater supersaturation (Houser *et al.,* 2001b). If rectified diffusion were possible in marine mammals exposed to high-level sound, conditions of tissue supersaturation could theoretically speed the rate and increase the size of bubble growth. Subsequent effects due to tissue trauma and emboli would presumably mirror those observed in humans suffering from decompression sickness.

It is unlikely that the short duration (in combination with the source levels) of sonar pings would be long enough to drive bubble growth to any substantial size, if such a phenomenon occurs. However, an alternative but related hypothesis has also been suggested: stable bubbles could be destabilized by high-level sound exposures such that bubble growth then occurs through static diffusion of gas out of the tissues. In such a scenario the marine mammal would need to be in a gas-supersaturated state for a long enough period of time for bubbles to become of a problematic size. Recent research with *ex vivo* supersaturated bovine tissues suggested that, for a 37 kHz signal, a sound exposure of approximately 215 dB referenced to (re) 1 μPa would be required before microbubbles became destabilized and grew (Crum *et al.,* 2005). Assuming spherical spreading loss and a nominal sonar source level of 235 dB re 1 μPa at 1 m, a whale would need to be within 10 m (33 ft) of the sonar dome to be exposed to such sound levels. Furthermore, tissues in the study were supersaturated by exposing them to pressures of 400–700 kilopascals for periods of hours and then releasing them to ambient pressures. Assuming the equilibration of gases with the tissues occurred when the tissues were exposed to the high pressures, levels of supersaturation in the tissues could have been as high as 400–700 percent. These levels of tissue supersaturation are substantially higher than model predictions for marine mammals (Houser *et al.,* 2001; Saunders *et al.,* 2008). It is improbable that this mechanism is responsible for stranding events or traumas associated with beaked whale strandings because both the degree of supersaturation and exposure levels observed to cause microbubble destabilization are unlikely to occur, either alone or in concert.

Yet another hypothesis (decompression sickness) has speculated that rapid ascent to the surface following exposure to a startling sound might produce tissue gas saturation sufficient for the evolution of nitrogen bubbles (Jepson *et al.,* 2003; Fernandez *et al.,* 2005; Fernández *et al.,* 2012). In this scenario, the rate of ascent would need to be sufficiently rapid to compromise behavioral or physiological protections against nitrogen bubble formation. Alternatively, Tyack *et al.* (2006) studied the deep diving behavior of beaked whales and concluded that: ''Using current models of breath-hold diving, we infer that their natural diving behavior is inconsistent with known problems of acute nitrogen supersaturation and embolism.'' Collectively, these hypotheses can be referred to as ''hypotheses of acoustically mediated bubble growth.''

Although theoretical predictions suggest the possibility for acoustically mediated bubble growth, there is considerable disagreement among scientists as to its likelihood (Piantadosi and Thalmann, 2004; Evans and Miller, 2003; Cox *et al.,* 2006; Rommel *et al.,* 2006). Crum and Mao (1996) hypothesized that received levels would have to exceed 190 dB in order for there to be the possibility of significant bubble growth due to supersaturation of gases in the blood (*i.e.,* rectified diffusion). Work conducted by Crum *et al.* (2005) demonstrated the possibility of rectified diffusion for short duration signals, but at SELs and tissue saturation levels that are highly improbable to occur in diving marine mammals. To date, energy levels (ELs) predicted to cause in vivo bubble formation within diving cetaceans have not been evaluated (NOAA, 2002b). Jepson *et al.* (2003, 2005) and Fernandez *et al.* (2004, 2005, 2012) concluded that in vivo bubble formation, which may be exacerbated by deep, long-duration, repetitive dives may explain why beaked whales appear to be relatively vulnerable to MF/HF sonar exposures. It has also been argued that traumas from some beaked whale strandings are consistent with gas emboli and bubble-induced tissue separations (Jepson *et al.,* 2003); however, there is no conclusive evidence of this (Rommel *et al.,* 2006).

As described in additional detail in the Nitrogen Decompression subsection of the 2019 MITT DSEIS/OEIS, marine mammals generally are thought to deal with nitrogen loads in their blood and other tissues, caused by gas exchange from the lungs under conditions of high ambient pressure during diving, through anatomical, behavioral, and physiological adaptations (Hooker *et al.,* 2012). Although not a direct injury, variations in marine mammal diving behavior or avoidance responses have been hypothesized to result in nitrogen off-gassing in super-saturated tissues, possibly to the point of deleterious

vascular and tissue bubble formation (Hooker *et al.,* 2012; Jepson *et al.,* 2003; Saunders *et al.,* 2008) with resulting symptoms similar to decompression sickness, however the process is still not well understood.

In 2009, Hooker *et al.* tested two mathematical models to predict blood and tissue tension N2 (P_{N2}) using field data from three beaked whale species: northern bottlenose whales, Cuvier's beaked whales, and Blainville's beaked whales. The researchers aimed to determine if physiology (body mass, diving lung volume, and dive response) or dive behavior (dive depth and duration, changes in ascent rate, and diel behavior) would lead to differences in P_{N2} levels and thereby decompression sickness risk between species. In their study, they compared results for previously published time depth recorder data (Hooker and Baird, 1999; Baird *et al.,* 2006, 2008) from Cuvier's beaked whale, Blainville's beaked whale, and northern bottlenose whale. They reported that diving lung volume and extent of the dive response had a large effect on end-dive P_{N2}. Also, results showed that dive profiles had a larger influence on end-dive P_{N2} than body mass differences between species. Despite diel changes (*i.e.,* variation that occurs regularly every day or most days) in dive behavior, P_{N2} levels showed no consistent trend. Model output suggested that all three species live with tissue P_{N2} levels that would cause a significant proportion of decompression sickness cases in terrestrial mammals. The authors concluded that the dive behavior of Cuvier's beaked whale was different from both Blainville's beaked whale, and northern bottlenose whale, and resulted in higher predicted tissue and blood N2 levels (Hooker *et al.,* 2009). They also suggested that the prevalence of Cuvier's beaked whales stranding after naval sonar exercises could be explained by either a higher abundance of this species in the affected areas or by possible species differences in behavior and/or physiology related to MF active sonar (Hooker *et al.,* 2009).

Bernaldo de Quiros *et al.* (2012) showed that, among stranded whales, deep diving species of whales had higher abundances of gas bubbles compared to shallow diving species. Kvadsheim *et al.* (2012) estimated blood and tissue P_{N2} levels in species representing shallow, intermediate, and deep diving cetaceans following behavioral responses to sonar and their comparisons found that deep diving species had higher end-dive blood and tissue N_2 levels, indicating a higher risk of developing gas bubble emboli compared with shallow diving species. Fahlmann *et al.* (2014) evaluated dive data recorded from sperm, killer, long-finned pilot, Blainville's beaked and Cuvier's beaked whales before and during exposure to low-frequency (1–2 kHz), as defined by the authors, and mid-frequency (2–7 kHz) active sonar in an attempt to determine if either differences in dive behavior or physiological responses to sonar are plausible risk factors for bubble formation. The authors suggested that CO_2 may initiate bubble formation and growth, while elevated levels of N_2 may be important for continued bubble growth. The authors also suggest that if CO_2 plays an important role in bubble formation, a cetacean escaping a sound source may experience increased metabolic rate, CO_2 production, and alteration in cardiac output, which could increase risk of gas bubble emboli. However, as discussed in Kvadsheim *et al.* (2012), the actual observed behavioral responses to sonar from the species in their study (sperm, killer, long-finned pilot, Blainville's beaked, and Cuvier's beaked whales) did not imply any significantly increased risk of decompression sickness due to high levels of N_2. Therefore, further information is needed to understand the relationship between exposure to stimuli, behavioral response (discussed in more detail below), elevated N_2 levels, and gas bubble emboli in marine mammals. The hypotheses for gas bubble formation related to beaked whale strandings is that beaked whales potentially have strong avoidance responses to MF active sonars because they sound similar to their main predator, the killer whale (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Baird *et al.,* 2008; Hooker *et al.,* 2009). Further investigation is needed to assess the potential validity of these hypotheses.

To summarize, while there are several hypotheses, there is little data directly connecting intense, anthropogenic underwater sounds with non-auditory physical effects in marine mammals. The available data do not support identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in these ways. In addition, such effects, if they occur at all, would be expected to be limited to situations where marine mammals were exposed to high powered sounds at very close range over a prolonged period of time, which is not expected to occur based on the speed of the vessels operating sonar in combination with the speed and behavior of marine mammals in the vicinity of sonar.

Injury Due to Sonar-Induced Acoustic Resonance

An object exposed to its resonant frequency will tend to amplify its vibration at that frequency, a phenomenon called acoustic resonance. Acoustic resonance has been proposed as a potential mechanism by which a sonar or sources with similar operating characteristics could damage tissues of marine mammals. In 2002, NMFS convened a panel of government and private scientists to investigate the potential for acoustic resonance to occur in marine mammals (National Oceanic and Atmospheric Administration, 2002). They modeled and evaluated the likelihood that Navy mid-frequency sonar (2–10 kHz) caused resonance effects in beaked whales that eventually led to their stranding. The workshop participants concluded that resonance in air-filled structures was not likely to have played a primary role in the Bahamas stranding in 2000. They listed several reasons supporting this finding including (among others): Tissue displacements at resonance are estimated to be too small to cause tissue damage; tissue-lined air spaces most susceptible to resonance are too large in marine mammals to have resonant frequencies in the ranges used by mid-frequency or low-frequency sonar; lung resonant frequencies increase with depth, and tissue displacements decrease with depth so if resonance is more likely to be caused at depth it is also less likely to have an affect there; and lung tissue damage has not been observed in any mass, multi-species stranding of beaked whales. The frequency at which resonance was predicted to occur in the animals' lungs was 50 Hz, well below the frequencies used by the mid-frequency sonar systems associated with the Bahamas event. The workshop participants focused on the March 2000 stranding of beaked whales in the Bahamas as high-quality data were available, but the workshop report notes that the results apply to other sonar-related stranding events. For the reasons given by the 2002 workshop participants, we do not anticipate injury due to sonar-induced acoustic resonance from the Navy's proposed activities.

Physiological Stress

There is growing interest in monitoring and assessing the impacts of stress responses to sound in marine animals. Classic stress responses begin when an animal's central nervous

system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg, 2000; Sapolsky *et al.,* 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: Behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses.

According to Moberg (2000), in the case of many stressors, an animal's first and sometimes most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical ''fight or flight'' response which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with ''stress.'' These responses have a relatively short duration and may or may not have significant long-term effect on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine systems or sympathetic nervous systems; the system that has received the most study has been the hypothalmus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, virtually all neuro-endocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier and Rivest, 1991), altered metabolism (Elasser *et al.,* 2000), reduced immune competence (Blecha, 2000), and behavioral disturbance (Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.,* 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic functions, which impairs those functions that experience the diversion. For example, when a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When a stress response diverts energy from a fetus, an animal's reproductive success and its fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called ''distress'' (Seyle, 1950) or ''allostatic loading'' (McEwen and Wingfield, 2003). This pathological state of distress will last until the animal replenishes its energetic reserves sufficiently to restore normal function. Note that these examples involved a long-term (days or weeks) stress response exposure to stimuli.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments in both laboratory and free-ranging animals (for examples see, Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005; Reneerkens *et al.,* 2002; Thompson and Hamer, 2000). However, it should be noted (and as is described in additional detail in the 2019 MITT DSEIS/OEIS) that our understanding of the functions of various stress hormones (for example, cortisol), is based largely upon observations of the stress response in terrestrial mammals. Atkinson *et al.,* 2015 note that the endocrine response of marine mammals to stress may not be the same as that of terrestrial mammals because of the selective pressures marine mammals faced during their evolution in an ocean environment. For example, due to the necessity of breath-holding while diving and foraging at depth, the physiological role of epinephrine and norepinephrine (the catecholamines) in marine mammals might be different than in other mammals.

As described in the 2019 MITT DSEIS/OEIS, marine mammals naturally experience stressors within their environment and as part of their life histories. Changing weather and ocean conditions, exposure to disease and naturally occurring toxins, lack of prey availability, and interactions with predators all contribute to the stress a marine mammal experiences (Atkinson *et al.,* 2015). Breeding cycles, periods of fasting, and social interactions with members of the same species are also stressors, although they are natural components of an animal's life history. Anthropogenic activities have the potential to provide additional stressors beyond those that occur naturally (Fair *et al.,* 2014; Meissner *et al.,* 2015; Rolland *et al.,* 2012). Anthropogenic stressors potentially include such things as fishery interactions, pollution, tourism, and ocean noise.

Acoustically induced stress in marine mammals is not well understood. There are ongoing efforts to improve our understanding of how stressors impact marine mammal populations (see Navy funded examples here: *e.g.,* King *et al.,* 2015; New *et al.,* 2013a; New *et al.,* 2013b; Pirotta *et al.,* 2015a), however little data exist on the consequences of sound-induced stress response (acute or chronic). Factors potentially affecting a marine mammal's response to a stressor include the individual's life history stage, sex, age, reproductive status, overall physiological and behavioral plasticity, and whether they are naïve or experienced with the sound (*e.g.,* prior experience with a stressor may result in a reduced response due to habituation (Finneran and Branstetter, 2013; St. Aubin and Dierauf, 2001a)). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

Other research has also investigated the impact from vessels (both whale-watching and general vessel traffic noise), and demonstrated impacts do occur (Bain, 2002; Erbe, 2002; Lusseau, 2006; Williams *et al.,* 2006; Williams *et al.,* 2009; Noren *et al.,* 2009; Read *et al.,* 2014; Rolland *et al.,* 2012; Skarke *et al.,* 2014; Williams *et al.,* 2013; Williams *et al.,* 2014a; Williams *et al.,* 2014b; Pirotta *et al.,* 2015). This body of research has

generally investigated impacts associated with the presence of chronic stressors, which differ significantly from the proposed Navy training and testing vessel activities in the MITT Study Area. For example, in an analysis of energy costs to killer whales, Williams *et al.* (2009) suggested that whale-watching in Canada's Johnstone Strait resulted in lost feeding opportunities due to vessel disturbance, which could carry higher costs than other measures of behavioral change might suggest. Ayres *et al.* (2012) reported on research in the Salish Sea (Washington state) involving the measurement of southern resident killer whale fecal hormones to assess two potential threats to the species recovery: Lack of prey (salmon) and impacts to behavior from vessel traffic. Ayres *et al.* (2012) suggested that the lack of prey overshadowed any population-level physiological impacts on southern resident killer whales from vessel traffic. In a conceptual model developed by the Population Consequences of Acoustic Disturbance (PCAD) working group, serum hormones were identified as possible indicators of behavioral effects that are translated into altered rates of reproduction and mortality (NRC, 2005). The Office of Naval Research hosted a workshop (Effects of Stress on Marine Mammals Exposed to Sound) in 2009 that focused on this topic (ONR, 2009). Ultimately, the PCAD working group issued a report (Cochrem, 2014) that summarized information compiled from 239 papers or book chapters relating to stress in marine mammals and concluded that stress responses can last from minutes to hours and, while we typically focus on adverse stress responses, stress response is part of a natural process to help animals adjust to changes in their environment and can also be either neutral or beneficial.

Most sound-induced stress response studies in marine mammals have focused on acute responses to sound either by measuring catecholamines or by measuring heart rate as an assumed proxy for an acute stress response. As described in the 2019 MITT DSEIS/OEIS, belugas demonstrated no catecholamine response to the playback of oil drilling sounds (Thomas *et al.,* 1990) but showed a small but statistically significant increase in catecholamines following exposure to impulsive sounds produced from a seismic water gun (Romano *et al.,* 2004). A bottlenose dolphin exposed to the same seismic water gun signals did not demonstrate a catecholamine response, but did demonstrate a statistically significant elevation in aldosterone (Romano *et al.,* 2004), albeit the increase was within the normal daily variation observed in this species (St. Aubin *et al.,* 1996). Increases in heart rate were observed in bottlenose dolphins to which known calls of other dolphins were played, although no increase in heart rate was observed when background tank noise was played back (Miksis *et al.,* 2001). Unfortunately, in this study, it cannot be determined whether the increase in heart rate was due to stress or an anticipation of being reunited with the dolphin to which the vocalization belonged. Similarly, a young beluga's heart rate was observed to increase during exposure to noise, with increases dependent upon the frequency band of noise and duration of exposure, and with a sharp decrease to normal or below normal levels upon cessation of the exposure (Lyamin *et al.,* 2011). Spectral analysis of heart rate variability corroborated direct measures of heart rate (Bakhchina *et al.,* 2017). This response might have been in part due to the conditions during testing, the young age of the animal, and the novelty of the exposure; a year later the exposure was repeated at a slightly higher received level and there was no heart rate response, indicating the beluga whale may have acclimated to the noise exposure. Kvadsheim *et al.* (2010) measured the heart rate of captive hooded seals during exposure to sonar signals and found an increase in the heart rate of the seals during exposure periods versus control periods when the animals were at the surface. When the animals dove, the normal dive-related bradycardia (decrease in heart rate) was not impacted by the sonar exposure. Similarly, Thompson *et al.* (1998) observed a rapid but short-lived decrease in heart rates in harbor and grey seals exposed to seismic air guns (cited in Gordon *et al.,* 2003). Williams *et al.* (2017) recently monitored the heart rates of narwhals released from capture and found that a profound dive bradycardia persisted, even though exercise effort increased dramatically as part of their escape response following release. Thus, although some limited evidence suggests that tachycardia might occur as part of the acute stress response of animals that are at the surface, the dive bradycardia persists during diving and might be enhanced in response to an acute stressor.

Despite the limited amount of data available on sound-induced stress responses for marine mammals exposed to anthropogenic sounds, studies of other marine animals and terrestrial animals would also lead us to expect that some marine mammals experience physiological stress responses and, perhaps, physiological responses that would be classified as ''distress'' upon exposure to high- frequency, mid-frequency, and low-frequency sounds. For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans *(e.g.,* elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiological stress responses of endangered Sonoran pronghorn to military overflights. However, take due to aircraft noise is not anticipated as a result of the Navy's activities. Smith *et al.* (2004a, 2004b) identified noise-induced physiological transient stress responses in hearing-specialist fish (*i.e.,* goldfish) that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Auditory Masking

Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, or navigation) (Richardson *et al.,* 1995; Erbe and Farmer, 2000; Tyack, 2000; Erbe *et al.,* 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. As described in detail in the 2019 MITT DSEIS/OEIS, the ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age, or TTS hearing loss), and existing ambient noise and propagation conditions. Masking these acoustic signals can disturb the behavior

of individual animals, groups of animals, or entire populations. Masking can lead to behavioral changes including vocal changes (*e.g.,* Lombard effect, increasing amplitude, or changing frequency), cessation of foraging, and leaving an area, to both signalers and receivers, in an attempt to compensate for noise levels (Erbe *et al.,* 2016). In humans, significant masking of tonal signals occurs as a result of exposure to noise in a narrow band of similar frequencies. As the sound level increases, though, the detection of frequencies above those of the masking stimulus decreases also. This principle is expected to apply to marine mammals as well because of common biomechanical cochlear properties across taxa.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which only occurs during the sound exposure. Because masking (without resulting in threshold shift) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

Richardson *et al.* (1995b) argued that the maximum radius of influence of an industrial noise (including broadband low-frequency sound transmission) on a marine mammal is the distance from the source to the point at which the noise can barely be heard. This range is determined by either the hearing sensitivity (including critical ratios, or the lowest signal-to-noise ratio in which animals can detect a signal, Finneran and Branstetter, 2013; Johnson *et al.,* 1989; Southall *et al.,* 2000) of the animal or the background noise level present. Industrial masking is most likely to affect some species' ability to detect communication calls and natural sounds (*i.e.,* surf noise, prey noise, etc.; Richardson *et al.,* 1995).

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009; Matthews *et al.,* 2016) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2009; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

The echolocation calls of toothed whales are subject to masking by high-frequency sound. Human data indicate low-frequency sound can mask high-frequency sounds (*i.e.,* upward masking). Studies on captive odontocetes by Au *et al.* (1974, 1985, 1993) indicate that some species may use various processes to reduce masking effects (*e.g.,* adjustments in echolocation call intensity or frequency as a function of background noise conditions). There is also evidence that the directional hearing abilities of odontocetes are useful in reducing masking at the high-frequencies these cetaceans use to echolocate, but not at the low-to-moderate frequencies they use to communicate (Zaitseva *et al.,* 1980). A study by Nachtigall and Supin (2008) showed that false killer whales adjust their hearing to compensate for ambient sounds and the intensity of returning echolocation signals.

Impacts on signal detection, measured by masked detection thresholds, are not the only important factors to address when considering the potential effects of masking. As marine mammals use sound to recognize conspecifics, prey, predators, or other biologically significant sources (Branstetter *et al.,* 2016), it is also important to understand the impacts of masked recognition thresholds (often called ''informational masking''). Branstetter *et al.,* 2016 measured masked recognition thresholds for whistle-like sounds of bottlenose dolphins and observed that they are approximately 4 dB above detection thresholds (energetic masking) for the same signals. Reduced ability to recognize a conspecific call or the acoustic signature of a predator could have severe negative impacts. Branstetter *et al.,* 2016 observed that if ''quality communication'' is set at 90 percent recognition the output of communication space models (which are based on 50 percent detection) would likely result in a significant decrease in communication range.

As marine mammals use sound to recognize predators (Allen *et al.,* 2014; Cummings and Thompson, 1971; Curé *et al.,* 2015; Fish and Vania, 1971), the presence of masking noise may also prevent marine mammals from responding to acoustic cues produced by their predators, particularly if it occurs in the same frequency band. For example, harbor seals that reside in the coastal waters off British Columbia are frequently targeted by mammal-eating killer whales. The seals acoustically discriminate between the calls of mammal-eating and fish-eating killer whales (Deecke *et al.,* 2002), a capability that should increase survivorship while reducing the energy required to attend to all killer whale calls. Similarly, sperm whales (Curé *et al.,* 2016; Isojunno *et al.,* 2016), long-finned pilot whales (Visser *et al.,* 2016), and humpback whales (Curé *et al.,* 2015) changed their behavior in response to killer whale vocalization playbacks; these findings indicate that some recognition of predator cues could be missed if the killer whale vocalizations were masked. The potential effects of masked predator acoustic cues depends on the duration of the masking noise and the likelihood of a marine mammal encountering a predator during the time that detection and recognition of predator cues are impeded.

Redundancy and context can also facilitate detection of weak signals. These phenomena may help marine mammals detect weak sounds in the presence of natural or manmade noise. Most masking studies in marine mammals present the test signal and the masking noise from the same direction. The dominant background noise may be highly directional if it comes from a particular anthropogenic source such as a ship or industrial site. Directional hearing may significantly reduce the masking effects of these sounds by improving the effective signal-to-noise ratio.

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most

of the increase from distant commercial shipping (Hildebrand, 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from commercial vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

Impaired Communication

In addition to making it more difficult for animals to perceive and recognize acoustic cues in their environment, anthropogenic sound presents separate challenges for animals that are vocalizing. When they vocalize, animals are aware of environmental conditions that affect the ''active space'' (or communication space) of their vocalizations, which is the maximum area within which their vocalizations can be detected before it drops to the level of ambient noise (Brenowitz, 2004; Brumm *et al.,* 2004; Lohr *et al.,* 2003). Animals are also aware of environmental conditions that affect whether listeners can discriminate and recognize their vocalizations from other sounds, which is more important than simply detecting that a vocalization is occurring (Brenowitz, 1982; Brumm *et al.,* 2004; Dooling, 2004, Marten and Marler, 1977; Patricelli *et al.,* 2006). Most species that vocalize have evolved with an ability to make adjustments to their vocalizations to increase the signal-to-noise ratio, active space, and recognizability/distinguishability of their vocalizations in the face of temporary changes in background noise (Brumm *et al.,* 2004; Patricelli *et al.,* 2006). Vocalizing animals can make adjustments to vocalization characteristics such as the frequency structure, amplitude, temporal structure, and temporal delivery (repetition rate), or ceasing to vocalize.

Many animals will combine several of these strategies to compensate for high levels of background noise. Anthropogenic sounds that reduce the signal-to-noise ratio of animal vocalizations, increase the masked auditory thresholds of animals listening for such vocalizations, or reduce the active space of an animal's vocalizations impair communication between animals. Most animals that vocalize have evolved strategies to compensate for the effects of short-term or temporary increases in background or ambient noise on their songs or calls. Although the fitness consequences of these vocal adjustments are not directly known in all instances, like most other trade-offs animals must make, some of these strategies probably come at a cost (Patricelli *et al.,* 2006). Shifting songs and calls to higher frequencies may also impose energetic costs (Lambrechts, 1996). For example in birds, vocalizing more loudly in noisy environments may have energetic costs that decrease the net benefits of vocal adjustment and alter a bird's energy budget (Brumm, 2004; Wood and Yezerinac, 2006).

Marine mammals are also known to make vocal changes in response to anthropogenic noise. In cetaceans, vocalization changes have been reported from exposure to anthropogenic noise sources such as sonar, vessel noise, and seismic surveying (see the following for examples: Gordon *et al.,* 2003; Di Iorio and Clark, 2010; Hatch *et al.,* 2012; Holt *et al.,* 2008; Holt *et al.,* 2011; Lesage *et al.,* 1999; McDonald *et al.,* 2009; Parks *et al.,* 2007, Risch *et al.,* 2012, Rolland *et al.,* 2012), as well as changes in the natural acoustic environment (Dunlop *et al.,* 2014). Vocal changes can be temporary, or can be persistent. For example, model simulation suggests that the increase in starting frequency for the North Atlantic right whale upcall over the last 50 years resulted in increased detection ranges between right whales. The frequency shift, coupled with an increase in call intensity by 20 dB, led to a call detectability range of less than 3 km to over 9 km (Tennessen and Parks, 2016). Holt *et al.* (2008) measured killer whale call source levels and background noise levels in the one to 40 kHz band and reported that the whales increased their call source levels by one dB SPL for every one dB SPL increase in background noise level. Similarly, another study on St. Lawrence River belugas reported a similar rate of increase in vocalization activity in response to passing vessels (Scheifele *et al.,* 2005). Di Iorio and Clark (2010) showed that blue whale calling rates vary in association with seismic sparker survey activity, with whales calling more on days with surveys than on days without surveys. They suggested that the whales called more during seismic survey periods as a way to compensate for the elevated noise conditions.

In some cases, these vocal changes may have fitness consequences, such as an increase in metabolic rates and oxygen consumption, as observed in bottlenose dolphins when increasing their call amplitude (Holt *et al.,* 2015). A switch from vocal communication to physical, surface-generated sounds such as pectoral fin slapping or breaching was observed for humpback whales in the presence of increasing natural background noise levels, indicating that adaptations to masking may also move beyond vocal modifications (Dunlop *et al.,* 2010).

While these changes all represent possible tactics by the sound-producing animal to reduce the impact of masking, the receiving animal can also reduce masking by using active listening strategies such as orienting to the sound source, moving to a quieter location, or reducing self-noise from hydrodynamic flow by remaining still. The temporal structure of noise (*e.g.,* amplitude modulation) may also provide a considerable release from masking through comodulation masking release (a reduction of masking that occurs when broadband noise, with a frequency spectrum wider than an animal's auditory filter bandwidth at the frequency of interest, is amplitude modulated) (Branstetter and Finneran, 2008; Branstetter *et al.,* 2013). Signal type (*e.g.,* whistles, burst-pulse, sonar clicks) and spectral characteristics (*e.g.,* frequency modulated with harmonics) may further influence masked detection thresholds (Branstetter *et al.,* 2016; Cunningham *et al.,* 2014).

Masking Due to Sonar and Other Transducers

The functional hearing ranges of mysticetes, odontocetes, and pinnipeds underwater overlap the frequencies of the sonar sources used in the Navy's low-frequency active sonar (LFAS)/mid-frequency active sonar (MFAS)/high-frequency active sonar (HFAS) training and testing exercises. Additionally, almost all species' vocal repertoires span across the frequencies of these sonar sources used by the Navy. The closer the characteristics of the masking signal to the signal of interest, the more likely masking is to occur. Masking by low-frequency or mid-frequency active sonar (LFAS and MFAS) with relatively low-duty cycles is not anticipated (or would be of very short duration) for most cetaceans as sonar signals occur over a relatively short duration and narrow bandwidth (overlapping with only a small portion of the hearing range). LFAS could overlap in frequency with mysticete vocalizations, however LFAS and MFAS does not overlap with vocalizations for most marine mammal species. For example, in the presence of LFAS, humpback whales were observed to increase the length of their songs (Fristrup *et al.,* 2003; Miller *et al.,* 2000), potentially due to the overlap in frequencies between the whale song and the LFAS. While dolphin whistles and MFAS are similar in frequency, masking is not anticipated (or would be of very short duration) due to the low-duty cycle of most sonars.

As described in the 2019 MITT DSEIS/OEIS, newer high-duty cycle or continuous active sonars have more potential to mask vocalizations. These sonars transmit more frequently (greater than 80 percent duty cycle) than

traditional sonars, but at a substantially lower source level. HFAS, such as pingers that operate at higher repetition rates (*e.g.,* 2–10 kHz with harmonics up to 19 kHz, 76 to 77 pings per minute) (Culik *et al.,* 2001), also operate at lower source levels and have a faster attenuation rates due to the higher frequencies used. These lower source levels limit the range of impacts, however compared to traditional sonar systems, individuals close to the source are likely to experience masking at longer time scales. The frequency range at which high-duty cycle systems operate overlaps the vocalization frequency of many mid-frequency cetaceans. Continuous noise at the same frequency of communicative vocalizations may cause disruptions to communication, social interactions, acoustically mediated cooperative behaviors, and important environmental cues. There is also the potential for the mid-frequency sonar signals to mask important environmental cues (*e.g.,* predator or conspecific acoustic cues), possibly affecting survivorship for targeted animals. While there are currently no available studies of the impacts of high-duty cycle sonars on marine mammals, masking due to these systems is likely analogous to masking produced by other continuous sources (*e.g.,* vessel noise and low-frequency cetaceans), and would likely have similar short-term consequences, though longer in duration due to the duration of the masking noise. These may include changes to vocalization amplitude and frequency (Brumm and Slabbekoorn, 2005; Hotchkin and Parks, 2013) and behavioral impacts such as avoidance of the area and interruptions to foraging or other essential behaviors (Gordon *et al.,* 2003). Long-term consequences could include changes to vocal behavior and vocalization structure (Foote *et al.,* 2004; Parks *et al.,* 2007), abandonment of habitat if masking occurs frequently enough to significantly impair communication (Brumm and Slabbekoorn, 2005), a potential decrease in survivorship if predator vocalizations are masked (Brumm and Slabbekoorn, 2005), and a potential decrease in recruitment if masking interferes with reproductive activities or mother-calf communication (Gordon *et al.,* 2003).

Masking Due to Vessel Noise

Masking is more likely to occur in the presence of broadband, relatively continuous noise sources such as vessels. Several studies have shown decreases in marine mammal communication space and changes in behavior as a result of the presence of vessel noise. For example, right whales were observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007) as well as increasing the amplitude (intensity) of their calls (Parks, 2009; Parks *et al.,* 2011). Clark *et al.* (2009) also observed that right whales communication space decreased by up to 84 percent in the presence of vessels (Clark *et al.,* 2009). Cholewiak *et al.* (2018) also observed loss in communication space in Stellwagen National Marine Sanctuary for North Atlantic right whales, fin whales, and humpback whales with increased ambient noise and shipping noise. Although humpback whales off Australia did not change the frequency or duration of their vocalizations in the presence of ship noise, their source levels were lower than expected based on source level changes to wind noise, potentially indicating some signal masking (Dunlop, 2016). Multiple delphinid species have also been shown to increase the minimum or maximum frequencies of their whistles in the presence of anthropogenic noise and reduced communication space (for examples see: Holt *et al.,* 2008; Holt *et al.,* 2011; Gervaise *et al.,* 2012; Williams *et al.,* 2013; Hermannsen *et al.,* 2014; Papale *et al.,* 2015; Liu *et al.,* 2017).

Behavioral Response/Disturbance

Behavioral responses to sound are highly variable and context-specific. Many different variables can influence an animal's perception of and response to (nature and magnitude) an acoustic event. An animal's prior experience with a sound or sound source affects whether it is less likely (habituation) or more likely (sensitization) to respond to certain sounds in the future (animals can also be innately predisposed to respond to certain sounds in certain ways) (Southall *et al.,* 2007). Related to the sound itself, the perceived nearness of the sound, bearing of the sound (approaching vs. retreating), the similarity of a sound to biologically relevant sounds in the animal's environment (*i.e.,* calls of predators, prey, or conspecifics), and familiarity of the sound may affect the way an animal responds to the sound (Southall *et al.,* 2007, DeRuiter *et al.,* 2013). Individuals (of different age, gender, reproductive status, etc.) among most populations will have variable hearing capabilities, and differing behavioral sensitivities to sounds that will be affected by prior conditioning, experience, and current activities of those individuals. Often, specific acoustic features of the sound and contextual variables (*i.e.,* proximity, duration, or recurrence of the sound or the current behavior that the marine mammal is engaged in or its prior experience), as well as entirely separate factors such as the physical presence of a nearby vessel, may be more relevant to the animal's response than the received level alone. For example, Goldbogen *et al.* (2013) demonstrated that individual behavioral state was critically important in determining response of blue whales to sonar, noting that some individuals engaged in deep (≤50 m) feeding behavior had greater dive responses than those in shallow feeding or non-feeding conditions. Some blue whales in the Goldbogen *et al.* (2013) study that were engaged in shallow feeding behavior demonstrated no clear changes in diving or movement even when received levels (RLs) were high (~160 dB re 1μPa) for exposures to 3–4 kHz sonar signals, while others showed a clear response at exposures at lower received levels of sonar and pseudorandom noise.

Studies by DeRuiter *et al.* (2012) indicate that variability of responses to acoustic stimuli depends not only on the species receiving the sound and the sound source, but also on the social, behavioral, or environmental contexts of exposure. Another study by DeRuiter *et al.* (2013) examined behavioral responses of Cuvier's beaked whales to MF sonar and found that whales responded strongly at low received levels (RL of 89–127 dB re 1μPa) by ceasing normal fluking and echolocation, swimming rapidly away, and extending both dive duration and subsequent non-foraging intervals when the sound source was 3.4—9.5 km away. Importantly, this study also showed that whales exposed to a similar range of received levels (78–106 dB re 1μPa) from distant sonar exercises (118 km away) did not elicit such responses, suggesting that context may moderate reactions.

Ellison *et al.* (2012) outlined an approach to assessing the effects of sound on marine mammals that incorporates contextual-based factors. The authors recommend considering not just the received level of sound, but also the activity the animal is engaged in at the time the sound is received, the nature and novelty of the sound (*i.e.,* is this a new sound from the animal's perspective), and the distance between the sound source and the animal. They submit that this ''exposure context,'' as described, greatly influences the type of behavioral response exhibited by the animal. Forney *et al.* (2017) also point out that an apparent lack of response (*e.g.,* no displacement or avoidance of a sound source) may not necessarily mean

there is no cost to the individual or population, as some resources or habitats may be of such high value that animals may choose to stay, even when experiencing stress or hearing loss. Forney *et al.* (2017) recommend considering both the costs of remaining in an area of noise exposure such as TTS, PTS, or masking, which could lead to an increased risk of predation or other threats or a decreased capability to forage, and the costs of displacement, including potential increased risk of vessel strike, increased risks of predation or competition for resources, or decreased habitat suitable for foraging, resting, or socializing. This sort of contextual information is challenging to predict with accuracy for ongoing activities that occur over large spatial and temporal expanses. However, distance is one contextual factor for which data exist to quantitatively inform a take estimate, and the method for predicting Level B harassment in this rule does consider distance to the source. Other factors are often considered qualitatively in the analysis of the likely consequences of sound exposure, where supporting information is available.

Friedlaender *et al.* (2016) provided the first integration of direct measures of prey distribution and density variables incorporated into across-individual analyses of behavior responses of blue whales to sonar, and demonstrated a five-fold increase in the ability to quantify variability in blue whale diving behavior. These results illustrate that responses evaluated without such measurements for foraging animals may be misleading, which again illustrates the context-dependent nature of the probability of response.

Exposure of marine mammals to sound sources can result in, but is not limited to, no response or any of the following observable responses: Increased alertness; orientation or attraction to a sound source; vocal modifications; cessation of feeding; cessation of social interaction; alteration of movement or diving behavior; habitat abandonment (temporary or permanent); and, in severe cases, panic, flight, stampede, or stranding, potentially resulting in death (Southall *et al.,* 2007). A review of marine mammal responses to anthropogenic sound was first conducted by Richardson (1995). More recent reviews (Nowacek *et al.,* 2007; DeRuiter *et al.,* 2012 and 2013; Ellison *et al.,* 2012; Gomez *et al.,* 2016) address studies conducted since 1995 and focused on observations where the received sound level of the exposed marine mammal(s) was known or could be estimated. Gomez *et al.* (2016) conducted a review of the literature considering the contextual information of exposure in addition to received level and found that higher received levels were not always associated with more severe behavioral responses and vice versa. Southall *et al.* (2016) states that results demonstrate that some individuals of different species display clear yet varied responses, some of which have negative implications, while others appear to tolerate high levels, and that responses may not be fully predictable with simple acoustic exposure metrics (*e.g.,* received sound level). Rather, the authors state that differences among species and individuals along with contextual aspects of exposure (*e.g.,* behavioral state) appear to affect response probability. The following subsections provide examples of behavioral responses that provide an idea of the variability in behavioral responses that would be expected given the differential sensitivities of marine mammal species to sound and the wide range of potential acoustic sources to which a marine mammal may be exposed. Behavioral responses that could occur for a given sound exposure should be determined from the literature that is available for each species, or extrapolated from closely related species when no information exists, along with contextual factors.

Flight Response

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, being a component of marine mammal strandings associated with sonar activities (Evans and England, 2001). If marine mammals respond to Navy vessels that are transmitting active sonar in the same way that they might respond to a predator, their probability of flight responses should increase when they perceive that Navy vessels are approaching them directly, because a direct approach may convey detection and intent to capture (Burger and Gochfeld, 1981, 1990; Cooper, 1997, 1998). There are limited data on flight response for marine mammals; however, there are examples of this response in species on land. For instance, the probability of flight responses in Dall's sheep *Ovis dalli dalli* (Frid, 2001), hauled-out ringed seals *Phoca hispida* (Born *et al.,* 1999), Pacific brant (*Branta bernicl nigricans*), and Canada geese (*B. canadensis*) increased as a helicopter or fixed-wing aircraft more directly approached groups of these animals (Ward *et al.,* 1999). Bald eagles (*Haliaeetus leucocephalus*) perched on trees alongside a river were also more likely to flee from a paddle raft when their perches were closer to the river or were closer to the ground (Steidl and Anthony, 1996).

Response to Predator

Evidence suggests that at least some marine mammals have the ability to acoustically identify potential predators. For example, harbor seals that reside in the coastal waters off British Columbia are frequently targeted by certain groups of killer whales, but not others. The seals discriminate between the calls of threatening and non-threatening killer whales (Deecke *et al.,* 2002), a capability that should increase survivorship while reducing the energy required for attending to and responding to all killer whale calls. The occurrence of masking or hearing impairment provides a means by which marine mammals may be prevented from responding to the acoustic cues produced by their predators. Whether or not this is a possibility depends on the duration of the masking/hearing impairment and the likelihood of encountering a predator during the time that predator cues are impeded.

Alteration of Diving or Movement

Changes in dive behavior can vary widely. They may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Ng and Leung, 2003; Nowacek *et al.;* 2004; Goldbogen *et al.,* 2013a, 2013b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. Variations in dive behavior may also expose an animal to potentially harmful conditions (*e.g.,* increasing the chance of ship-strike) or may serve as an avoidance response that enhances survivorship. The impact of a variation in diving resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Nowacek *et al.* (2004) reported disruptions of dive behaviors in foraging North Atlantic right whales when exposed to an alerting stimulus, an action, they noted, that could lead to an increased likelihood of ship strike. However, the whales did not respond to playbacks of either right whale social sounds or vessel noise, highlighting the importance of the sound characteristics in producing a behavioral reaction. Conversely, Indo-Pacific humpback dolphins have been observed to dive for longer periods of time in areas where vessels were present and/or approaching (Ng and Leung, 2003). In both of these studies, the influence of the sound exposure cannot be decoupled from the physical presence of a surface vessel, thus complicating interpretations of the relative contribution of each stimulus to the response. Indeed, the presence of surface vessels, their approach, and speed of approach, seemed to be significant factors in the response of the Indo-Pacific humpback dolphins (Ng and Leung, 2003). Low frequency signals of the Acoustic Thermometry of Ocean Climate (ATOC) sound source were not found to affect dive times of humpback whales in Hawaiian waters (Frankel and Clark, 2000) or to overtly affect elephant seal dives (Costa *et al.,* 2003). They did, however, produce subtle effects that varied in direction and degree among the individual seals, illustrating the equivocal nature of behavioral effects and consequent difficulty in defining and predicting them. Lastly, as noted previously, DeRuiter *et al.* (2013) noted that distance from a sound source may moderate marine mammal reactions in their study of Cuvier's beaked whales, which showed the whales swimming rapidly and silently away when a sonar signal was 3.4–9.5 km away while showing no such reaction to the same signal when the signal was 118 km away even though the received levels were similar.

Foraging

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators *(e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.;* 2004; Madsen *et al.,* 2006a; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Noise from seismic surveys was not found to impact the feeding behavior in western grey whales off the coast of Russia (Yazvenko *et al.,* 2007). Visual tracking, passive acoustic monitoring, and movement recording tags were used to quantify sperm whale behavior prior to, during, and following exposure to air gun arrays at received levels in the range 140–160 dB at distances of 7–13 km, following a phase-in of sound intensity and full array exposures at 1–13 km (Madsen *et al.,* 2006a; Miller *et al.,* 2009). Sperm whales did not exhibit horizontal avoidance behavior at the surface. However, foraging behavior may have been affected. The sperm whales exhibited 19 percent less vocal (buzz) rate during full exposure relative to post exposure, and the whale that was approached most closely had an extended resting period and did not resume foraging until the air guns had ceased firing. The remaining whales continued to execute foraging dives throughout exposure; however, swimming movements during foraging dives were six percent lower during exposure than control periods (Miller *et al.,* 2009). These data raise concerns that air gun surveys may impact foraging behavior in sperm whales, although more data are required to understand whether the differences were due to exposure or natural variation in sperm whale behavior (Miller *et al.,* 2009).

Balaenopterid whales exposed to moderate low-frequency signals similar to the ATOC sound source demonstrated no variation in foraging activity (Croll *et al.,* 2001), whereas five out of six North Atlantic right whales exposed to an acoustic alarm interrupted their foraging dives (Nowacek *et al.,* 2004). Although the received SPLs were similar in the latter two studies, the frequency, duration, and temporal pattern of signal presentation were different. These factors, as well as differences in species sensitivity, are likely contributing factors to the differential response. Blue whales exposed to mid-frequency sonar in the Southern California Bight were less likely to produce low frequency calls usually associated with feeding behavior (Melcón *et al.,* 2012). However, Melco´n *et al.* (2012) were unable to determine if suppression of low frequency calls reflected a change in their feeding performance or abandonment of foraging behavior and indicated that implications of the documented responses are unknown. Further, it is not known whether the lower rates of calling actually indicated a reduction in feeding behavior or social contact since the study used data from remotely deployed, passive acoustic monitoring buoys. In contrast, blue whales increased their likelihood of calling when ship noise was present, and decreased their likelihood of calling in the presence of explosive noise, although this result was not statistically significant (Melcón *et al.,* 2012). Additionally, the likelihood of an animal calling decreased with the increased received level of mid-frequency sonar, beginning at a SPL of approximately 110–120 dB re 1 μPa (Melco´n *et al.,* 2012). Results from the 2010–2011 field season of a behavioral response study in Southern California waters indicated that, in some cases and at low received levels, tagged blue whales responded to mid-frequency sonar but that those responses were mild and there was a quick return to their baseline activity (Southall *et al.,* 2011; Southall *et al.,* 2012b, Southall *et al.,* 2019b). Information on or estimates of the energetic requirements of the individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal will help better inform a determination of whether foraging disruptions incur fitness consequences. Surface feeding blue whales did not show a change in behavior in response to mid-frequency simulated and real sonar sources with received levels between 90 and 179 dB re 1 μPa, but deep feeding and non-feeding whales showed temporary reactions including cessation of feeding, reduced initiation of deep foraging dives, generalized avoidance responses, and changes to dive behavior (DeRuiter *et al.,* 2017; Goldbogen *et al.,* 2013b; Sivle *et al.,* 2015). Goldbogen *et al.* (2013b) indicate that disruption of feeding and displacement could impact individual fitness and health. However, for this to be true, we would have to assume that an individual whale could not compensate for this lost feeding opportunity by either immediately feeding at another location, by feeding shortly after cessation of acoustic exposure, or by feeding at a later time. There is no indication this is the case, particularly since unconsumed prey would likely still be available in the environment in most cases following the cessation of acoustic exposure.

Similarly, while the rates of foraging lunges decrease in humpback whales due to sonar exposure, there was variability in the response across individuals, with one animal ceasing to forage completely and another animal starting to forage during the exposure (Sivle *et al.,* 2016). In addition, almost half of the animals that avoided were foraging before the exposure but the others were not; the animals that avoided while not feeding responded at a slightly lower received level and greater distance than those that were feeding (Wensveen *et al.,* 2017). These findings indicate that the behavioral state of the animal plays a role in the type and severity of a behavioral response. In fact, when the prey field was mapped and used as a covariate in similar models looking for a response in the same blue whales, the response in deep-feeding behavior by blue whales was even more apparent, reinforcing the need for contextual variables to be included when assessing behavioral responses (Friedlaender *et al.,* 2016).

Breathing

Respiration naturally varies with different behaviors and variations in respiration rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Mean exhalation rates of gray whales at rest and while diving were found to be unaffected by seismic surveys conducted adjacent to the whale feeding grounds (Gailey *et al.,* 2007). Studies with captive harbor porpoises showed increased respiration rates upon introduction of acoustic alarms (Kastelein *et al.,* 2001; Kastelein *et al.,* 2006a) and emissions for underwater data transmission (Kastelein *et al.,* 2005). However, exposure of the same acoustic alarm to a striped dolphin under the same conditions did not elicit a response (Kastelein *et al.,* 2006a), again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure.

Social Relationships

Social interactions between mammals can be affected by noise via the disruption of communication signals or by the displacement of individuals. Disruption of social relationships therefore depends on the disruption of other behaviors (*e.g.,* avoidance, masking, etc.). Sperm whales responded to military sonar, apparently from a submarine, by dispersing from social aggregations, moving away from the sound source, remaining relatively silent, and becoming difficult to approach (Watkins *et al.,* 1985). In contrast, sperm whales in the Mediterranean that were exposed to submarine sonar continued calling (J. Gordon pers. comm. cited in Richardson *et al.,* 1995). Long-finned pilot whales exposed to three types of disturbance—playbacks of killer whale sounds, naval sonar exposure, and tagging—resulted in increased group sizes (Visser *et al.,* 2016). In response to sonar, pilot whales also spent more time at the surface with other members of the group (Visser *et al.,* 2016). However, social disruptions must be considered in context of the relationships that are affected. While some disruptions may not have deleterious effects, others, such as long-term or repeated disruptions of mother/calf pairs or interruption of mating behaviors, have the potential to affect the growth and survival or reproductive effort/success of individuals.

Vocalizations (Also See Auditory Masking Section)

Vocal changes in response to anthropogenic noise can occur across the repertoire of sound production modes used by marine mammals, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior may result in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect an increased vigilance or a startle response. For example, in the presence of potentially masking signals (low-frequency active sonar), humpback whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003). A similar compensatory effect for the presence of low-frequency vessel noise has been suggested for right whales; right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007; Roland *et al.,* 2012). Killer whales off the northwestern coast of the United States have been observed to increase the duration of primary calls once a threshold in observing vessel density (*e.g.,* whale watching) was reached, which has been suggested as a response to increased masking noise produced by the vessels (Foote *et al.,* 2004; NOAA, 2014b). In contrast, both sperm and pilot whales potentially ceased sound production during the Heard Island feasibility test (Bowles *et al.,* 1994), although it cannot be absolutely determined whether the inability to acoustically detect the animals was due to the cessation of sound production or the displacement of animals from the area.

Cerchio *et al.* (2014) used passive acoustic monitoring to document the presence of singing humpback whales off the coast of northern Angola and to opportunistically test for the effect of seismic survey activity on the number of singing whales. Two recording units were deployed between March and December 2008 in the offshore environment; numbers of singers were counted every hour. Generalized Additive Mixed Models were used to assess the effect of survey day (seasonality), hour (diel variation), moon phase, and received levels of noise (measured from a single pulse during each ten-minute sampled period) on singer number. The number of singers significantly decreased with increasing received level of noise, suggesting that humpback whale communication was disrupted to some extent by the survey activity.

Castellote *et al.* (2012) reported acoustic and behavioral changes by fin whales in response to shipping and air gun noise. Acoustic features of fin whale song notes recorded in the Mediterranean Sea and northeast Atlantic Ocean were compared for areas with different shipping noise levels and traffic intensities and during an air gun survey. During the first 72 hours of the survey, a steady decrease in song received levels and bearings to singers indicated that whales moved away from the acoustic source and out of a Navy study area. This displacement persisted for a time period well beyond the 10-day duration of air gun activity, providing evidence that fin whales may avoid an area for an extended period in the presence of increased noise. The authors hypothesize that fin whale acoustic communication is modified to compensate for increased background noise and that a sensitization process may play a role in the observed temporary displacement.

Seismic pulses at average received levels of 131 dB re 1 micropascal squared per second (μPa2–s) caused blue whales to increase call production (Di Iorio and Clark, 2010). In contrast, McDonald *et al.* (1995) tracked a blue whale with seafloor seismometers and reported that it stopped vocalizing and changed its travel direction at a range of 10 km from the seismic vessel (estimated received level 143 dB re 1 μPa peak-to-peak). Blackwell *et al.* (2013) found that bowhead whale call rates dropped significantly at onset of

air gun use at sites with a median distance of 41–45 km from the survey. Blackwell *et al.* (2015) expanded this analysis to show that whales actually increased calling rates as soon as air gun signals were detectable before ultimately decreasing calling rates at higher received levels (*i.e.,* 10-minute cumulative sound exposure level (cSEL) of ~127 dB). Overall, these results suggest that bowhead whales may adjust their vocal output in an effort to compensate for noise before ceasing vocalization effort and ultimately deflecting from the acoustic source (Blackwell *et al.,* 2013, 2015). Captive bottlenose dolphins sometimes vocalized after an exposure to impulse sound from a seismic water gun (Finneran *et al.,* 2010a). These studies demonstrate that even low levels of noise received far from the noise source can induce changes in vocalization and/or behavioral responses.

Avoidance

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors. Richardson *et al.* (1995) noted that avoidance reactions are the most obvious manifestations of disturbance in marine mammals. Avoidance is qualitatively different from the flight response, but also differs in the magnitude of the response (*i.e.,* directed movement, rate of travel, etc.). Oftentimes avoidance is temporary, and animals return to the area once the noise has ceased. Acute avoidance responses have been observed in captive porpoises and pinnipeds exposed to a number of different sound sources (Kastelein *et al.,* 2001; Finneran *et al.,* 2003; Kastelein *et al.,* 2006a; Kastelein *et al.,* 2006b). Short-term avoidance of seismic surveys, low frequency emissions, and acoustic deterrents have also been noted in wild populations of odontocetes (Bowles *et al.,* 1994; Goold, 1996; 1998; Stone *et al.,* 2000; Morton and Symonds, 2002) and to some extent in mysticetes (Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006). Longer term or repetitive/chronic displacement for some dolphin groups and for manatees has been suggested to be due to the presence of chronic vessel noise (Haviland-Howell *et al.,* 2007; Miksis-Olds *et al.,* 2007). Gray whales have been reported deflecting from customary migratory paths in order to avoid noise from air gun surveys (Malme *et al.,* 1984). Humpback whales showed avoidance behavior in the presence of an active air gun array during observational studies and controlled exposure experiments in western Australia (McCauley *et al.,* 2000a).

Forney *et al.* (2017) detailed the potential effects of noise on marine mammal populations with high site fidelity, including displacement and auditory masking, noting that a lack of observed response does not imply absence of fitness costs and that apparent tolerance of disturbance may have population-level impacts that are less obvious and difficult to document. Avoidance of overlap between disturbing noise and areas and/or times of particular importance for sensitive species may be critical to avoiding population-level impacts because (particularly for animals with high site fidelity) there may be a strong motivation to remain in the area despite negative impacts. Forney *et al.* (2017) stated that, for these animals, remaining in a disturbed area may reflect a lack of alternatives rather than a lack of effects. The authors discuss several case studies, including western Pacific gray whales, which are a small population of mysticetes believed to be adversely affected by oil and gas development off Sakhalin Island, Russia (Weller *et al.,* 2002; Reeves *et al.,* 2005). Western gray whales display a high degree of interannual site fidelity to the area for foraging purposes, and observations in the area during air gun surveys has shown the potential for harm caused by displacement from such an important area (Weller *et al.,* 2006; Johnson *et al.,* 2007). Forney *et al.* (2017) also discuss beaked whales, noting that anthropogenic effects in areas where they are resident could cause severe biological consequences, in part because displacement may adversely affect foraging rates, reproduction, or health, while an overriding instinct to remain could lead to more severe acute effects.

In 1998, the Navy conducted a Low Frequency Sonar Scientific Research Program (LFS SRP) specifically to study behavioral responses of several species of marine mammals to exposure to LF sound, including one phase that focused on the behavior of gray whales to low frequency sound signals. The objective of this phase of the LFS SRP was to determine whether migrating gray whales respond more strongly to received levels, sound gradient, or distance from the source, and to compare whale avoidance responses to an LF source in the center of the migration corridor versus in the offshore portion of the migration corridor. A single source was used to broadcast LFA sonar sounds at received levels of 170–178 dB re 1μPa. The Navy reported that the whales showed some avoidance responses when the source was moored one mile (1.8 km) offshore, and located within the migration path, but the whales returned to their migration path when they were a few kilometers beyond the source. When the source was moored two miles (3.7 km) offshore, responses were much less even when the source level was increased to achieve the same received levels in the middle of the migration corridor as whales received when the source was located within the migration corridor (Clark *et al.,* 1999). In addition, the researchers noted that the offshore whales did not seem to avoid the louder offshore source.

Also during the LFS SRP, researchers sighted numerous odontocete and pinniped species in the vicinity of the sound exposure tests with LFA sonar. The MF and HF hearing specialists present in California and Hawaii showed no immediately obvious responses or changes in sighting rates as a function of source conditions. Consequently, the researchers concluded that none of these species had any obvious behavioral reaction to LFA sonar signals at received levels similar to those that produced only minor short-term behavioral responses in the baleen whales (*i.e.,* LF hearing specialists). Thus, for odontocetes, the chances of injury and/or significant behavioral responses to LFA sonar would be low given the MF/HF specialists' observed lack of response to LFA sounds during the LFS SRP and due to the MF/HF frequencies to which these animals are adapted to hear (Clark and Southall, 2009).

Maybaum (1993) conducted sound playback experiments to assess the effects of MFAS on humpback whales in Hawaiian waters. Specifically, she exposed focal pods to sounds of a 3.3-kHz sonar pulse, a sonar frequency sweep from 3.1 to 3.6 kHz, and a control (blank) tape while monitoring behavior, movement, and underwater vocalizations. The two types of sonar signals differed in their effects on the humpback whales, but both resulted in avoidance behavior. The whales responded to the pulse by increasing their distance from the sound source and responded to the frequency sweep by increasing their swimming speeds and track linearity. In the Caribbean, sperm whales avoided exposure to mid-frequency submarine sonar pulses, in the range of 1000 Hz to 10,000 Hz (IWC, 2005).

Kvadsheim *et al.* (2007) conducted a controlled exposure experiment in which killer whales fitted with D-tags were exposed to mid-frequency active sonar (Source A: A 1.0 second upsweep 209 dB @1–2 kHz every 10 seconds for 10 minutes; Source B: With a 1.0 second upsweep 197 dB @6–7 kHz every 10 seconds for 10 minutes). When exposed to Source A, a tagged whale and the group it was traveling with did not appear to avoid the source. When exposed to Source B, the tagged whales along with other whales that had been carousel feeding, where killer whales cooperatively herd fish schools into a tight ball towards the surface and feed on the fish which have been stunned by tailslaps, and subsurface feeding (Simila, 1997) ceased feeding during the approach of the sonar and moved rapidly away from the source. When exposed to Source B, Kvadsheim *et al.* (2007) reported that a tagged killer whale seemed to try to avoid further exposure to the sound field by the following behaviors: Immediately swimming away (horizontally) from the source of the sound; engaging in a series of erratic and frequently deep dives that seemed to take it below the sound field; or swimming away while engaged in a series of erratic and frequently deep dives. Although the sample sizes in this study are too small to support statistical analysis, the behavioral responses of the killer whales were consistent with the results of other studies.

Southall *et al.* (2007) reviewed the available literature on marine mammal hearing and physiological and behavioral responses to human-made sound with the goal of proposing exposure criteria for certain effects. This peer-reviewed compilation of literature is very valuable, though Southall *et al.* (2007) note that not all data are equal, some have poor statistical power, insufficient controls, and/or limited information on received levels, background noise, and other potentially important contextual variables. Such data were reviewed and sometimes used for qualitative illustration, but no quantitative criteria were recommended for behavioral responses. All of the studies considered, however, contain an estimate of the received sound level when the animal exhibited the indicated response.

In the Southall *et al.* (2007) publication, for the purposes of analyzing responses of marine mammals to anthropogenic sound and developing criteria, the authors differentiate between single pulse sounds, multiple pulse sounds, and non-pulse sounds. LFAS/MFAS/HFAS are considered non-pulse sounds. Southall *et al.* (2007) summarize the studies associated with low-frequency, mid-frequency, and high-frequency cetacean and pinniped responses to non-pulse sounds, based strictly on received level, in Appendix C of their article (referenced and summarized in the following paragraphs).

The studies that address responses of low-frequency cetaceans to non-pulse sounds include data gathered in the field and related to several types of sound sources (of varying similarity to MFAS/HFAS) including: Vessel noise, drilling and machinery playback, low-frequency M-sequences (sine wave with multiple phase reversals) playback, tactical low-frequency active sonar playback, drill ships, Acoustic Thermometry of Ocean Climate (ATOC) source, and non-pulse playbacks. These studies generally indicate no (or very limited) responses to received levels in the 90 to 120 dB re: 1 μPa range and an increasing likelihood of avoidance and other behavioral effects in the 120 to 160 dB re: 1 μPa range. As mentioned earlier, though, contextual variables play a very important role in the reported responses and the severity of effects are not linear when compared to received level. Also, few of the laboratory or field datasets had common conditions, behavioral contexts, or sound sources, so it is not surprising that responses differ.

The studies that address responses of mid-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to MFAS/HFAS) including: Pingers, drilling playbacks, ship and ice-breaking noise, vessel noise, Acoustic Harassment Devices (AHDs), Acoustic Deterrent Devices (ADDs), MFAS, and non-pulse bands and tones. Southall *et al.* (2007) were unable to come to a clear conclusion regarding the results of these studies. In some cases, animals in the field showed significant responses to received levels between 90 and 120 dB re: 1 μPa, while in other cases these responses were not seen in the 120 to 150 dB re: 1 μPa range. The disparity in results was likely due to contextual variation and the differences between the results in the field and laboratory data (animals typically responded at lower levels in the field).

The studies that address responses of high-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to MFAS/HFAS) including: pingers, AHDs, and various laboratory non-pulse sounds. All of these data were collected from harbor porpoises. Southall *et al.* (2007) concluded that the existing data indicate that harbor porpoises are likely sensitive to a wide range of anthropogenic sounds at low received levels (~ 90 to 120 dB re: 1 μPa), at least for initial exposures. All recorded exposures above 140 dB re: 1 μPa induced profound and sustained avoidance behavior in wild harbor porpoises (Southall *et al.,* 2007). Rapid habituation was noted in some but not all studies. There are no data to indicate whether other high frequency cetaceans are as sensitive to anthropogenic sound as harbor porpoises.

The studies that address the responses of pinnipeds in water to non-impulsive sounds include data gathered both in the field and the laboratory and related to several different sound sources including: AHDs, ATOC, various non-pulse sounds used in underwater data communication, underwater drilling, and construction noise. Few studies exist with enough information to include them in the analysis. The limited data suggested that exposures to non-pulse sounds between 90 and 140 dB re: 1 μPa generally do not result in strong behavioral responses in pinnipeds in water, but no data exist at higher received levels.

In 2007, the first in a series of behavioral response studies (BRS) on deep diving odontocetes conducted by NMFS, Navy, and other scientists showed one Blainville's beaked whale responding to an MFAS playback. Tyack *et al.* (2011) indicates that the playback began when the tagged beaked whale was vocalizing at depth (at the deepest part of a typical feeding dive), following a previous control with no sound exposure. The whale appeared to stop clicking significantly earlier than usual, when exposed to MF signals in the 130–140 dB (rms) received level range. After a few more minutes of the playback, when the received level reached a maximum of 140–150 dB, the whale ascended on the slow side of normal ascent rates with a longer than normal ascent, at which point the exposure was terminated. The results are from a single experiment and a greater sample size is needed before robust and definitive conclusions can be drawn. Tyack *et al.* (2011) also indicates that Blainville's beaked whales appear to be sensitive to noise at levels well below expected TTS (~160 dB re1μPa). This sensitivity was manifested by an adaptive movement away from a sound source. This response was observed irrespective of whether the signal transmitted was within the band width of MFAS, which suggests that beaked whales may not

respond to the specific sound signatures. Instead, they may be sensitive to any pulsed sound from a point source in this frequency range of the MF active sonar transmission. The response to such stimuli appears to involve the beaked whale increasing the distance between it and the sound source. Overall the results from the 2007–2008 study showed a change in diving behavior of the Blainville's beaked whale to playback of MFAS and predator sounds (Boyd *et al.,* 2008; Southall *et al.,* 2009; Tyack *et al.,* 2011).

Stimpert *et al.* (2014) tagged a Baird's beaked whale, which was subsequently exposed to simulated MFAS. Received levels of sonar on the tag increased to a maximum of 138 dB re 1μPa, which occurred during the first exposure dive. Some sonar received levels could not be measured due to flow noise and surface noise on the tag.

Reaction to mid-frequency sounds included premature cessation of clicking and termination of a foraging dive, and a slower ascent rate to the surface. Results from a similar behavioral response study in southern California waters have been presented for the 2010–2011 field season (Southall *et al.,* 2011; DeRuiter *et al.,* 2013b). DeRuiter *et al.* (2013b) presented results from two Cuvier's beaked whales that were tagged and exposed to simulated MFAS during the 2010 and 2011 field seasons of the southern California behavioral response study. The 2011 whale was also incidentally exposed to MFAS from a distant naval exercise. Received levels from the MFAS signals from the controlled and incidental exposures were calculated as 84–144 and 78–106 dB re 1 μPa rms, respectively. Both whales showed responses to the controlled exposures, ranging from initial orientation changes to avoidance responses characterized by energetic fluking and swimming away from the source. However, the authors did not detect similar responses to incidental exposure to distant naval sonar exercises at comparable received levels, indicating that context of the exposures (*e.g.,* source proximity, controlled source ramp-up) may have been a significant factor. Specifically, this result suggests that caution is needed when using marine mammal response data collected from smaller, nearer sound sources to predict at what received levels animals may respond to larger sound sources that are significantly farther away—as the distance of the source appears to be an important contextual variable and animals may be less responsive to sources at notably greater distances. Cuvier's beaked whale responses suggested particular sensitivity to sound exposure as consistent with results for Blainville's beaked whale. Similarly, beaked whales exposed to sonar during British training exercises stopped foraging (DSTL, 2007), and preliminary results of controlled playback of sonar may indicate feeding/foraging disruption of killer whales and sperm whales (Miller *et al.,* 2011).

In the 2007–2008 Bahamas study, playback sounds of a potential predator—a killer whale—resulted in a similar but more pronounced reaction, which included longer inter-dive intervals and a sustained straight-line departure of more than 20 km from the area (Boyd *et al.,* 2008; Southall *et al.,* 2009; Tyack *et al.,* 2011). The authors noted, however, that the magnified reaction to the predator sounds could represent a cumulative effect of exposure to the two sound types since killer whale playback began approximately two hours after MF source playback. Pilot whales and killer whales off Norway also exhibited horizontal avoidance of a transducer with outputs in the mid-frequency range (signals in the 1–2 kHz and 6–7 kHz ranges) (Miller *et al.,* 2011). Additionally, separation of a calf from its group during exposure to MFAS playback was observed on one occasion (Miller *et al.,* 2011, 2012). Miller *et al.* (2012) noted that this single observed mother-calf separation was unusual for several reasons, including the fact that the experiment was conducted in an unusually narrow fjord roughly one km wide and that the sonar exposure was started unusually close to the pod including the calf. Both of these factors could have contributed to calf separation. In contrast, preliminary analyses suggest that none of the pilot whales or false killer whales in the Bahamas showed an avoidance response to controlled exposure playbacks (Southall *et al.,* 2009).

In the 2010 BRS study, researchers again used controlled exposure experiments to carefully measure behavioral responses of individual animals to sound exposures of MF active sonar and pseudo-random noise. For each sound type, some exposures were conducted when animals were in a surface feeding (approximately 164 ft (50 m) or less) and/or socializing behavioral state and others while animals were in a deep feeding (greater than 164 ft (50 m)) and/or traveling mode. The researchers conducted the largest number of controlled exposure experiments on blue whales (n = 19) and of these, 11 controlled exposure experiments involved exposure to the MF active sonar sound type. For the majority of controlled exposure experiment transmissions of either sound type, they noted few obvious behavioral responses detected either by the visual observers or on initial inspection of the tag data. The researchers observed that throughout the controlled exposure experiment transmissions, up to the highest received sound level (absolute RMS value approximately 160 dB re: 1μPa with signal-to-noise ratio values over 60 dB), two blue whales continued surface feeding behavior and remained at a range of around 3,820 ft (1,000 m) from the sound source (Southall *et al.,* 2011). In contrast, another blue whale (later in the day and greater than 11.5 mi (18.5 km; 10 NM) from the first controlled exposure experiment location) exposed to the same stimulus (MFA) while engaged in a deep feeding/travel state exhibited a different response. In that case, the blue whale responded almost immediately following the start of sound transmissions when received sounds were just above ambient background levels (Southall *et al.,* 2011). The authors note that this kind of temporary avoidance behavior was not evident in any of the nine controlled exposure experiments involving blue whales engaged in surface feeding or social behaviors, but was observed in three of the ten controlled exposure experiments for blue whales in deep feeding/travel behavioral modes (one involving MFA sonar; two involving pseudo-random noise) (Southall *et al.,* 2011). The results of this study, as well as the results of the DeRuiter *et al.* (2013) study of Cuvier's beaked whales discussed above, further illustrate the importance of behavioral context in understanding and predicting behavioral responses.

Through analysis of the behavioral response studies, a preliminary overarching effect of greater sensitivity to all anthropogenic exposures was seen in beaked whales compared to the other odontocetes studied (Southall *et al.,* 2009). Therefore, recent studies have focused specifically on beaked whale responses to active sonar transmissions or controlled exposure playback of simulated sonar on various military ranges (Defence Science and Technology Laboratory, 2007; Claridge and Durban, 2009; Moretti *et al.,* 2009; McCarthy *et al.,* 2011; Miller *et al.,* 2012; Southall *et al.,* 2011, 2012a, 2012b, 2013, 2014; Tyack *et al.,* 2011). In the Bahamas, Blainville's beaked whales located on the instrumented range will move off-range during sonar use and return only after the sonar transmissions have stopped, sometimes

taking several days to do so (Claridge and Durban 2009; Moretti *et al.,* 2009; McCarthy *et al.,* 2011; Tyack *et al.,* 2011). Moretti *et al.* (2014) used recordings from seafloor-mounted hydrophones at the Atlantic Undersea Test and Evaluation Center (AUTEC) to analyze the probability of Blainsville's beaked whale dives before, during, and after Navy sonar exercises. Southall *et al.* (2016) indicates that results from Tyack *et al.* (2011), Miller *et al.* (2015), Stimpert *et al.* (2014), and DeRuiter *et al.* (2013) beaked whale studies demonstrate clear, strong, and pronounced but varied behavioral changes including avoidance with associated energetic swimming and cessation of individual foraging dives at quite low received levels (~100 to 135 dB re 1Pa) for exposures to simulated or active MF military sonars (1 to 8 kHz) with sound sources approximately 2 to 5 km away. Similar responses by beaked whales to sonar have been documented by Stimpert *et al.,* 2014, Falcone *et al.,* 2017, DiMarzio *et al.,* 2018, and Joyce *et al.,* 2019. However, there are a number of variables influencing response or non-response include source distance (close vs. far), received sound levels, and other contextual variables such as other sound sources *(e.g.,* vessels, etc.) (Manzano-Roth *et al.,* 2016, Falcone *et al.,* 2017, Harris *et al.,* 2018). Wensveen *et al.* (2019) found northern bottlenose whales to avoid sonar out to distances of 28 km, but these distances are well in line with those observed on Navy ranges (Manzano-Roth *et al.,* 2016; Joyce *et al.,* 2019) where the animals return once the sonar has ceased. Furthermore, beaked whales have also shown response to other non-sonar anthropogenic sounds such as commercial shipping and echosounders (Soto *et al.,* 2006, Pirotta *et al.,* 2012, Cholewiak *et al.,* 2017). Pirotta *et al.* (2012) documented broadband ship noise causing a significant change in beaked whale behavior up to at least 5.2 kilometers away from the vessel. Even though beaked whales appear to be sensitive to anthropogenic sounds, the level of response at the population level does not appear to be significant based on over a decade of research at two heavily used Navy training areas in the Pacific (Falcone *et al.,* 2012, Schorr *et al.,* 2014, DiMarzio *et al.,* 2018, Schorr *et al.,* 2019). With the exception of seasonal patterns, DiMarzio *et al.* (2018) did not detect any changes in annual Cuvier's beaked whale abundance estimates in Southern California derived from passive acoustic echolocation detections over nine years (2010–2018). Similar results for Blainville's beaked whales abundance estimates over several years was documented in Hawaii (Henderson *et al.,* 2016;, DiMarzio *et al.,* 2018). Visually, there have been documented repeated sightings in southern California of the same individual Cuvier's beaked whales over 10 years, sightings of mother-calf pairs, and recently sightings of the same mothers with their second calf (Falcone *et al.,* 2012; Schorr *et al.,* 2014; Schorr *et al.,* 2019; Schorr, unpublished data).

Baleen whales have shown a variety of responses to impulse sound sources, including avoidance, reduced surface intervals, altered swimming behavior, and changes in vocalization rates (Richardson *et al.,* 1995; Gordon *et al.,* 2003; Southall, 2007). While most bowhead whales did not show active avoidance until within 8 km of seismic vessels (Richardson *et al.,* 1995), some whales avoided vessels by more than 20 km at received levels as low as 120 dB re 1 μPa rms. Additionally, Malme *et al.* (1988) observed clear changes in diving and respiration patterns in bowheads at ranges up to 73 km from seismic vessels, with received levels as low as 125 dB re 1 μPa.

Gray whales migrating along the U.S. west coast showed avoidance responses to seismic vessels by 10 percent of animals at 164 dB re 1 μPa, and by 90 percent of animals at 190 dB re 1 μPa, with similar results for whales in the Bering Sea (Malme, 1986; 1988). In contrast, noise from seismic surveys was not found to impact feeding behavior or exhalation rates while resting or diving in western gray whales off the coast of Russia (Yazvenko *et al.,* 2007; Gailey *et al.,* 2007).

Humpback whales showed avoidance behavior at ranges of five to eight km from a seismic array during observational studies and controlled exposure experiments in western Australia (McCauley, 1998; Todd *et al.,* 1996). Todd *et al.* (1996) found no clear short-term behavioral responses by foraging humpbacks to explosions associated with construction operations in Newfoundland, but did see a trend of increased rates of net entanglement and a shift to a higher incidence of net entanglement closer to the noise source.

The strongest baleen whale response in any behavioral response study was observed in a minke whale in the 3S2 study, which responded at 146 dB re 1 μPa by strongly avoiding the sound source (Kvadsheim *et al.,* 2017; Sivle *et al.,* 2015). Although the minke whale increased its swim speed, directional movement, and respiration rate, none of these were greater than rates observed in baseline behavior, and its dive behavior remained similar to baseline dives. A minke whale tagged in the Southern California behavioral response study also responded by increasing its directional movement, but maintained its speed and dive patterns, and so did not demonstrate as strong of a response (Kvadsheim *et al.,* 2017). In addition, the 3S2 minke whale demonstrated some of the same avoidance behavior during the controlled ship approach with no sonar, indicating at least some of the response was to the vessel (Kvadsheim *et al.,* 2017). Martin *et al.* (2015) found that the density of calling minke whales was reduced during periods of Navy training involving sonar relative to the periods before training, and increased again in the days after training was completed. The responses of individual whales could not be assessed, so in this case it is unknown whether the decrease in calling animals indicated that the animals left the range, or simply ceased calling. Similarly, minke whale detections made using Marine Acoustic Recording Instruments off Jacksonville, FL, were reduced or ceased altogether during periods of sonar use (Simeone *et al.,* 2015; U.S. Department of the Navy, 2013b), especially with an increased ping rate (Charif *et al.,* 2015).

Orientation

A shift in an animal's resting state or an attentional change via an orienting response represent behaviors that would be considered mild disruptions if occurring alone. As previously mentioned, the responses may co-occur with other behaviors; for instance, an animal may initially orient toward a sound source, and then move away from it. Thus, any orienting response should be considered in context of other reactions that may occur.

Continued Pre-Disturbance Behavior and Habituation

Under some circumstances, some of the individual marine mammals that are exposed to active sonar transmissions will continue their normal behavioral activities. In other circumstances, individual animals will respond to sonar transmissions at lower received levels and move to avoid additional exposure or exposures at higher received levels (Richardson *et al.,* 1995).

It is difficult to distinguish between animals that continue their pre-disturbance behavior without stress responses, animals that continue their behavior but experience stress responses (that is, animals that cope with disturbance), and animals that habituate to disturbance (that is, they may have experienced low-level stress responses initially, but those responses abated

over time). Watkins (1986) reviewed data on the behavioral reactions of fin, humpback, right, and minke whales that were exposed to continuous, broadband low-frequency shipping and industrial noise in Cape Cod Bay. He concluded that underwater sound was the primary cause of behavioral reactions in these species of whales and that the whales responded behaviorally to acoustic stimuli within their respective hearing ranges. Watkins also noted that whales showed the strongest behavioral reactions to sounds in the 15 Hz to 28 kHz range, although negative reactions (avoidance, interruptions in vocalizations, etc.) were generally associated with sounds that were either unexpected, too loud, suddenly louder or different, or perceived as being associated with a potential threat (such as an approaching ship on a collision course). In particular, whales seemed to react negatively when they were within 100 m of the source or when received levels increased suddenly in excess of 12 dB relative to ambient sounds. At other times, the whales ignored the source of the signal and all four species habituated to these sounds. Nevertheless, Watkins concluded that whales ignored most sounds in the background of ambient noise, including sounds from distant human activities even though these sounds may have had considerable energies at frequencies well within the whales' range of hearing. Further, he noted that of the whales observed, fin whales were the most sensitive of the four species, followed by humpback whales; right whales were the least likely to be disturbed and generally did not react to low-amplitude engine noise. By the end of his period of study, Watkins (1986) concluded that fin and humpback whales had generally habituated to the continuous and broad-band noise of Cape Cod Bay while right whales did not appear to change their response. As mentioned above, animals that habituate to a particular disturbance may have experienced low-level stress responses initially, but those responses abated over time. In most cases, this likely means a lessened immediate potential effect from a disturbance. However, there is cause for concern where the habituation occurs in a potentially more harmful situation. For example, animals may become more vulnerable to vessel strikes once they habituate to vessel traffic (Swingle *et al.,* 1993; Wiley *et al.,* 1995).

Aicken *et al.* (2005) monitored the behavioral responses of marine mammals to a new low-frequency active sonar system used by the British Navy (the United States Navy considers this to be a mid-frequency source as it operates at frequencies greater than 1,000 Hz). During those trials, fin whales, sperm whales, Sowerby's beaked whales, long-finned pilot whales, Atlantic white-sided dolphins, and common bottlenose dolphins were observed and their vocalizations were recorded. These monitoring studies detected no evidence of behavioral responses that the investigators could attribute to exposure to the low-frequency active sonar during these trials.

Explosive Sources

Underwater explosive detonations send a shock wave and sound energy through the water and can release gaseous by-products, create an oscillating bubble, or cause a plume of water to shoot up from the water surface. The shock wave and accompanying noise are of most concern to marine animals. Depending on the intensity of the shock wave and size, location, and depth of the animal, an animal can be injured, killed, suffer non-lethal physical effects, experience hearing related effects with or without behavioral responses, or exhibit temporary behavioral responses or tolerance from hearing the blast sound. Generally, exposures to higher levels of impulse and pressure levels would result in greater impacts to an individual animal.

Injuries resulting from a shock wave take place at boundaries between tissues of different densities. Different velocities are imparted to tissues of different densities, and this can lead to their physical disruption. Blast effects are greatest at the gas-liquid interface (Landsberg, 2000). Gas-containing organs, particularly the lungs and gastrointestinal tract, are especially susceptible (Goertner, 1982; Hill, 1978; Yelverton *et al.,* 1973). Intestinal walls can bruise or rupture, with subsequent hemorrhage and escape of gut contents into the body cavity. Less severe gastrointestinal tract injuries include contusions, petechiae (small red or purple spots caused by bleeding in the skin), and slight hemorrhaging (Yelverton *et al.,* 1973).

Because the ears are the most sensitive to pressure, they are the organs most sensitive to injury (Ketten, 2000). Sound-related damage associated with sound energy from detonations can be theoretically distinct from injury from the shock wave, particularly farther from the explosion. If a noise is audible to an animal, it has the potential to damage the animal's hearing by causing decreased sensitivity (Ketten, 1995). Lethal impacts are those that result in immediate death or serious debilitation in or near an intense source and are not, technically, pure acoustic trauma (Ketten, 1995). Sublethal impacts include hearing loss, which is caused by exposures to perceptible sounds. Severe damage (from the shock wave) to the ears includes tympanic membrane rupture, fracture of the ossicles, damage to the cochlea, hemorrhage, and cerebrospinal fluid leakage into the middle ear. Moderate injury implies partial hearing loss due to tympanic membrane rupture and blood in the middle ear. Permanent hearing loss also can occur when the hair cells are damaged by one very loud event, as well as by prolonged exposure to a loud noise or chronic exposure to noise. The level of impact from blasts depends on both an animal's location and, at outer zones, on its sensitivity to the residual noise (Ketten, 1995).

Further Potential Effects of Behavioral Disturbance on Marine Mammal Fitness

The different ways that marine mammals respond to sound are sometimes indicators of the ultimate effect that exposure to a given stimulus will have on the well-being (survival, reproduction, etc.) of an animal. There are few quantitative marine mammal data relating the exposure of marine mammals to sound to effects on reproduction or survival, though data exists for terrestrial species to which we can draw comparisons for marine mammals. Several authors have reported that disturbance stimuli may cause animals to abandon nesting and foraging sites (Sutherland and Crockford, 1993); may cause animals to increase their activity levels and suffer premature deaths or reduced reproductive success when their energy expenditures exceed their energy budgets (Daan *et al.,* 1996; Feare, 1976; Mullner *et al.,* 2004); or may cause animals to experience higher predation rates when they adopt risk-prone foraging or migratory strategies (Frid and Dill, 2002). Each of these studies addressed the consequences of animals shifting from one behavioral state (*e.g.,* resting or foraging) to another behavioral state (*e.g.,* avoidance or escape behavior) because of human disturbance or disturbance stimuli.

One consequence of behavioral avoidance results in the altered energetic expenditure of marine mammals because energy is required to move and avoid surface vessels or the sound field associated with active sonar (Frid and Dill, 2002). Most animals can avoid that energetic cost by swimming away at slow speeds or speeds that

minimize the cost of transport (Miksis-Olds, 2006), as has been demonstrated in Florida manatees (Miksis-Olds, 2006).

Those energetic costs increase, however, when animals shift from a resting state, which is designed to conserve an animal's energy, to an active state that consumes energy the animal would have conserved had it not been disturbed. Marine mammals that have been disturbed by anthropogenic noise and vessel approaches are commonly reported to shift from resting to active behavioral states, which would imply that they incur an energy cost.

Morete *et al.,* (2007) reported that undisturbed humpback whale cows that were accompanied by their calves were frequently observed resting while their calves circled them (milling). When vessels approached, the amount of time cows and calves spent resting and milling, respectively, declined significantly. These results are similar to those reported by Scheidat *et al.* (2004) for the humpback whales they observed off the coast of Ecuador.

Constantine and Brunton (2001) reported that bottlenose dolphins in the Bay of Islands, New Zealand engaged in resting behavior just 5 percent of the time when vessels were within 300 m, compared with 83 percent of the time when vessels were not present. However, Heenehan *et al.* (2016) report that results of a study of the response of Hawaiian spinner dolphins to human disturbance suggest that the key factor is not the sheer presence or magnitude of human activities, but rather the directed interactions and dolphin-focused activities that elicit responses from dolphins at rest. This information again illustrates the importance of context in regard to whether an animal will respond to a stimulus. Miksis-Olds (2006) and Miksis-Olds *et al.* (2005) reported that Florida manatees in Sarasota Bay, Florida, reduced the amount of time they spent milling and increased the amount of time they spent feeding when background noise levels increased. Although the acute costs of these changes in behavior are not likely to exceed an animal's ability to compensate, the chronic costs of these behavioral shifts are uncertain.

Attention is the cognitive process of selectively concentrating on one aspect of an animal's environment while ignoring other things (Posner, 1994). Because animals (including humans) have limited cognitive resources, there is a limit to how much sensory information they can process at any time. The phenomenon called ''attentional capture'' occurs when a stimulus (usually a stimulus that an animal is not concentrating on or attending to) ''captures'' an animal's attention. This shift in attention can occur consciously or subconsciously (for example, when an animal hears sounds that it associates with the approach of a predator) and the shift in attention can be sudden (Dukas, 2002; van Rij, 2007). Once a stimulus has captured an animal's attention, the animal can respond by ignoring the stimulus, assuming a ''watch and wait'' posture, or treat the stimulus as a disturbance and respond accordingly, which includes scanning for the source of the stimulus or ''vigilance'' (Cowlishaw *et al.,* 2004).

Vigilance is normally an adaptive behavior that helps animals determine the presence or absence of predators, assess their distance from conspecifics, or to attend cues from prey (Bednekoff and Lima, 1998; Treves, 2000). Despite those benefits, however, vigilance has a cost of time; when animals focus their attention on specific environmental cues, they are not attending to other activities such as foraging or resting. These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (Saino, 1994; Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). Animals will spend more time being vigilant, which may translate to less time foraging or resting, when disturbance stimuli approach them more directly, remain at closer distances, have a greater group size (*e.g.,* multiple surface vessels), or when they co-occur with times that an animal perceives increased risk *(e.g.,* when they are giving birth or accompanied by a calf). Most of the published literature, however, suggests that direct approaches will increase the amount of time animals will dedicate to being vigilant. An example of this concept with terrestrial species involved bighorn sheep and Dall's sheep, which dedicated more time being vigilant, and less time resting or foraging, when aircraft made direct approaches over them (Frid, 2001; Stockwell *et al.,* 1991). Vigilance has also been documented in pinnipeds at haul out sites where resting may be disturbed when seals become alerted and/or flush into the water due to a variety of disturbances, which may be anthropogenic (noise and/or visual stimuli) or due to other natural causes such as other pinnipeds (Richardson *et al.,* 1995; Southall *et al.,* 2007; VanBlaricom, 2010; and Lozano and Hente, 2014).

Chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). For example, Madsen (1994) reported that pink-footed geese (*Anser brachyrhynchus*) in undisturbed habitat gained body mass and had about a 46 percent reproductive success rate compared with geese in disturbed habitat (being consistently scared off the fields on which they were foraging) which did not gain mass and had a 17 percent reproductive success rate. Similar reductions in reproductive success have been reported for mule deer (*Odocoileus hemionus*) disturbed by all-terrain vehicles (Yarmoloy *et al.,* 1988), caribou (*Rangifer tarandus caribou*) disturbed by seismic exploration blasts (Bradshaw *et al.,* 1998), and caribou disturbed by low-elevation military jet fights (Luick *et al.,* 1996, Harrington and Veitch, 1992). Similarly, a study of elk (*Cervus elaphus*) that were disturbed experimentally by pedestrians concluded that the ratio of young to mothers was inversely related to disturbance rate (Phillips and Alldredge, 2000). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period in open-air, open-water enclosures in San Diego Bay did not cause any sleep deprivation or stress effects such as changes in cortisol or epinephrine levels.

The primary mechanism by which increased vigilance and disturbance appear to affect the fitness of individual animals is by disrupting an animal's time budget and, as a result, reducing the time they might spend foraging and resting (which increases an animal's activity rate and energy demand while decreasing their caloric intake/energy). An example of this concept with terrestrial species involved a study of grizzly bears (*Ursus horribilis*) that reported that bears disturbed by hikers reduced their energy intake by an average of 12 kilocalories/min (50.2 × 103 kiloJoules/min), and spent energy fleeing or acting aggressively toward hikers (White *et al.,* 1999).

Lusseau and Bejder (2007) present data from three long-term studies illustrating the connections between disturbance from whale-watching boats and population-level effects in cetaceans. In Sharks Bay Australia, the abundance of bottlenose dolphins was compared within adjacent control and tourism sites over three consecutive 4.5-year periods of increasing tourism levels. Between the second and third

time periods, in which tourism doubled, dolphin abundance decreased by 15 percent in the tourism area and did not change significantly in the control area. In Fiordland, New Zealand, two populations (Milford and Doubtful Sounds) of bottlenose dolphins with tourism levels that differed by a factor of seven were observed and significant increases in travelling time and decreases in resting time were documented for both. Consistent short-term avoidance strategies were observed in response to tour boats until a threshold of disturbance was reached (average 68 minutes between interactions), after which the response switched to a longer-term habitat displacement strategy. For one population, tourism only occurred in a part of the home range. However, tourism occurred throughout the home range of the Doubtful Sound population and once boat traffic increased beyond the 68-minute threshold (resulting in abandonment of their home range/preferred habitat), reproductive success drastically decreased (increased stillbirths) and abundance decreased significantly (from 67 to 56 individuals in a short period). Last, in a study of northern resident killer whales off Vancouver Island, exposure to boat traffic was shown to reduce foraging opportunities and increase traveling time. A simple bioenergetics model was applied to show that the reduced foraging opportunities equated to a decreased energy intake of 18 percent, while the increased traveling incurred an increased energy output of 3–4 percent, which suggests that a management action based on avoiding interference with foraging might be particularly effective.

On a related note, many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hr cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant for fitness if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). It is important to note the difference between behavioral reactions lasting or recurring over multiple days and anthropogenic activities lasting or recurring over multiple days. For example, just because at-sea exercises last for multiple days does not necessarily mean that individual animals will be either exposed to those activity-related stressors (*i.e.,* sonar) for multiple days or further, exposed in a manner that would result in sustained multi-day substantive behavioral responses. Stone (2015a) reported data from at-sea observations during 1,196 airgun surveys from 1994 to 2010. When large arrays of airguns (considered to be 500 in^3 or more) were firing, lateral displacement, more localized avoidance, or other changes in behavior were evident for most odontocetes. However, significant responses to large arrays were found only for the minke whale and fin whale. Behavioral responses observed included changes in swimming or surfacing behavior, with indications that cetaceans remained near the water surface at these times. Cetaceans were recorded as feeding less often when large arrays were active. Behavioral observations of gray whales during an air gun survey monitored whale movements and respirations pre-, during-, and post-seismic survey (Gailey *et al.,* 2016). Behavioral state and water depth were the best 'natural' predictors of whale movements and respiration and, after considering natural variation, none of the response variables were significantly associated with survey or vessel sounds.

In order to understand how the effects of activities may or may not impact species and stocks of marine mammals, it is necessary to understand not only what the likely disturbances are going to be, but how those disturbances may affect the reproductive success and survivorship of individuals, and then how those impacts to individuals translate to population-level effects. Following on the earlier work of a committee of the U.S. National Research Council (NRC, 2005), New *et al.* (2014), in an effort termed the Potential Consequences of Disturbance (PCoD), outline an updated conceptual model of the relationships linking disturbance to changes in behavior and physiology, health, vital rates, and population dynamics. In this framework, behavioral and physiological changes can have direct (acute) effects on vital rates, such as when changes in habitat use or increased stress levels raise the probability of mother-calf separation or predation; they can have indirect and long-term (chronic) effects on vital rates, such as when changes in time/energy budgets or increased disease susceptibility affect health, which then affects vital rates; or they can have no effect to vital rates (New *et al.,* 2014). In addition to outlining this general framework and compiling the relevant literature that supports it, the authors chose four example species for which extensive long-term monitoring data exist (southern elephant seals, North Atlantic right whales, Ziphidae beaked whales, and bottlenose dolphins) and developed state-space energetic models that can be used to effectively forecast longer-term, population-level impacts from behavioral changes. While these are very specific models with very specific data requirements that cannot yet be applied broadly to project-specific risk assessments for the majority of species, they are a critical first step towards being able to quantify the likelihood of a population level effect.

Stranding and Mortality

The definition for a stranding under title IV of the MMPA is that (A) a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance (see MMPA section 410(3)). This definition is useful for considering stranding events even when they occur beyond lands and waters under the jurisdiction of the United States.

Marine mammal strandings have been linked to a variety of causes, such as illness from exposure to infectious agents, biotoxins, or parasites; starvation; unusual oceanographic or weather events; or anthropogenic causes including fishery interaction, ship strike, entrainment, entrapment, sound exposure, or combinations of these stressors sustained concurrently or in series. Historically, the cause or causes of most strandings have remained unknown (Geraci *et al.,* 1976; Eaton, 1979, Odell *et al.,* 1980; Best, 1982), but the development of trained, professional stranding response networks and improved analyses have led to a greater understanding of marine mammal stranding causes (Simeone and Moore 2017).

Numerous studies suggest that the physiology, behavior, habitat, social relationships, age, or condition of cetaceans may cause them to strand or might predispose them to strand when

exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos, 2000; Creel, 2005; DeVries *et al.,* 2003; Fair and Becker, 2000; Foley *et al.,* 2001; Moberg, 2000; Relyea, 2005a; 2005b, Romero, 2004; Sih *et al.,* 2004).

Historically, stranding reporting and response efforts have been inconsistent, although significant improvements have occurred over the last 25 years. Reporting forms for basic (''Level A'') information, rehabilitation disposition, and human interaction have been standardized nationally (available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/level-data-collection-marine-mammal-stranding-events*). However, data collected beyond basic information varies by region (and may vary from case to case), and are not standardized across the United States. Logistical conditions such as weather, time, location, and decomposition state may also affect the ability of the stranding network to thoroughly examine a specimen (Carretta *et al.,* 2016b; Moore *et al.,* 2013). While the investigation of stranded animals provides insight into the types of threats marine mammal populations face, full investigations are only possible and conducted on a small fraction of the total number of strandings that occur, limiting our understanding of the causes of strandings (Carretta *et al.,* 2016a). Additionally, and due to the variability in effort and data collected, the ability to interpret long-term trends in stranded marine mammals is complicated.

In the United States between 2001 and 2009, there were approximately 9,895 cetacean strandings and 24,225 pinniped strandings (34,120 total). From 2006–2017 there were 19,430 cetacean strandings and 55,833 pinniped stranding (75,263 total) (P. Onens, NMFS, pers comm. 2019). Several mass strandings (strandings that involve two or more individuals of the same species, excluding a single mother-calf pair) that have occurred over the past two decades have been associated with anthropogenic activities that introduced sound into the marine environment such as naval operations and seismic surveys. An in-depth discussion of strandings is in the Navy's Technical Report on Marine Mammal Strandings Associated with U.S. Navy Sonar Activities (U.S. Navy Marine Mammal Program & Space and Naval Warfare Systems Command Center Pacific, 2017).

Worldwide, there have been several efforts to identify relationships between cetacean mass stranding events and military active sonar (Cox *et al.,* 2006, Hildebrand, 2004; IWC, 2005; Taylor *et al.,* 2004). For example, based on a review of mass stranding events around the world consisting of two or more individuals of Cuvier's beaked whales, records from the International Whaling Commission (IWC) (2005) show that a quarter (9 of 41) were associated with concurrent naval patrol, explosion, maneuvers, or MFAS. D'Amico *et al.* (2009) reviewed beaked whale stranding data compiled primarily from the published literature, which provides an incomplete record of stranding events, as many are not written up for publication, along with unpublished information from some regions of the world.

Most of the stranding events reviewed by the IWC involved beaked whales. A mass stranding of Cuvier's beaked whales in the eastern Mediterranean Sea occurred in 1996 (Frantzis, 1998), and mass stranding events involving Gervais' beaked whales, Blainville's beaked whales, and Cuvier's beaked whales occurred off the coast of the Canary Islands in the late 1980s (Simmonds and Lopez-Jurado, 1991). The stranding events that occurred in the Canary Islands and Kyparissiakos Gulf in the late 1990s and the Bahamas in 2000 have been the most intensively-studied mass stranding events and have been associated with naval maneuvers involving the use of tactical sonar. Other cetacean species with naval sonar implicated in stranding events include harbor porpoise (*Phocoena phocoena*) (Norman *et al.,* 2004, Wright *et al.,* 2013) and common dolphin (*Delphinus delphis*) (Jepson and Deaville 2009).

Strandings Associated With Impulsive Sound

Silver Strand

During a Navy training event on March 4, 2011 at the Silver Strand Training Complex in San Diego, California, three or possibly four dolphins were killed in an explosion. During an underwater detonation training event, a pod of 100 to 150 long-beaked common dolphins were observed moving towards the 700-yd (640.1 m) exclusion zone around the explosive charge, monitored by personnel in a safety boat and participants in a dive boat. Approximately five minutes remained on a time-delay fuse connected to a single 8.76 lb (3.97 kg) explosive charge (C–4 and detonation cord). Although the dive boat was placed between the pod and the explosive in an effort to guide the dolphins away from the area, that effort was unsuccessful and three long-beaked common dolphins near the explosion died. In addition to the three dolphins found dead on March 4, the remains of a fourth dolphin were discovered on March 7, 2011 near Oceanside, California (3 days later and approximately 68 km north of the detonation), which might also have been related to this event. Association of the fourth stranding with the training event is uncertain because dolphins strand on a regular basis in the San Diego area. Details such as the dolphins' depth and distance from the explosive at the time of the detonation could not be estimated from the 250 yd (228.6 m) standoff point of the observers in the dive boat or the safety boat.

These dolphin mortalities are the only known occurrence of a U.S. Navy training or testing event involving impulsive energy (underwater detonation) that caused mortality or injury to a marine mammal. Despite this being a rare occurrence, the Navy has reviewed training requirements, safety procedures, and possible mitigation measures and implemented changes to reduce the potential for this to occur in the future. Discussions of procedures associated with underwater explosives training and other training events are presented in the *Proposed Mitigation Measures* section.

Kyle of Durness, Scotland

On July 22, 2011 a mass stranding event involving long-finned pilot whales occurred at Kyle of Durness, Scotland. An investigation by Brownlow *et al.* (2015) considered unexploded ordnance detonation activities at a Ministry of Defense bombing range, conducted by the Royal Navy prior to and during the strandings, as a plausible contributing factor in the mass stranding event. While Brownlow *et al.* (2015) concluded that the serial detonations of underwater ordnance were an influential factor in the mass stranding event (along with the presence of a potentially compromised animal and navigational error in a topographically complex region) they also suggest that mitigation measures—which included observations from a zodiac only and by personnel not experienced in marine mammal observation, among other deficiencies—were likely insufficient to assess if cetaceans were in the vicinity of the detonations. The authors also cite information from the Ministry of Defense indicating ''an extraordinarily

high level of activity'' (*i.e.,* frequency and intensity of underwater explosions) on the range in the days leading up to the stranding.

Gulf of California, Mexico

One stranding event was contemporaneous with and reasonably associated spatially with the use of seismic air guns. This event occurred in the Gulf of California, coincident with seismic reflection profiling by the R/V Maurice Ewing operated by Columbia University's Lamont-Doherty Earth Observatory and involved two Cuvier's beaked whales (Hildebrand, 2004). The vessel had been firing an array of 20 air guns with a total volume of 8,500 in^3 (Hildebrand, 2004; Taylor *et al.,* 2004).

Strandings Associated With Active Sonar

Over the past 21 years, there have been five stranding events coincident with U.S. Navy MF active sonar use in which exposure to sonar is believed to have been a contributing factor: Greece (1996); the Bahamas (2000); Madeira (2000); Canary Islands (2002); and Spain (2006) (Cox *et al.,* 2006; Fernandez, 2006; U.S. Navy Marine Mammal Program & Space and Naval Warfare Systems Command Center Pacific, 2017). These five mass strandings have resulted in about 40 known cetacean deaths consisting mostly of beaked whales and with close linkages to mid-frequency active sonar activity. In these circumstances, exposure to non-impulsive acoustic energy was considered a potential indirect cause of death of the marine mammals (Cox *et al.,* 2006). Only one of these stranding events, the Bahamas (2000), was associated with exercises conducted by the U.S. Navy. Additionally, in 2004, during the Rim of the Pacific (RIMPAC) exercises, between 150 and 200 usually pelagic melon-headed whales occupied the shallow waters of Hanalei Bay, Kauai, Hawaii for over 28 hours. NMFS determined that MFAS was a plausible, if not likely, contributing factor in what may have been a confluence of events that led to the Hanalei Bay stranding. A number of other stranding events coincident with the operation of MFAS, including the death of beaked whales or other species (minke whales, dwarf sperm whales, pilot whales), have been reported; however, the majority have not been investigated to the degree necessary to determine the cause of the stranding. Most recently, the Independent Scientific Review Panel investigating potential contributing factors to a 2008 mass stranding of melon-headed whales in Antsohihy, Madagascar released its final report suggesting that the stranding was likely initially triggered by an industry seismic survey. This report suggests that the operation of a commercial high-powered 12 kHz multi-beam echosounder during an industry seismic survey was a plausible and likely initial trigger that caused a large group of melon-headed whales to leave their typical habitat and then ultimately strand as a result of secondary factors such as malnourishment and dehydration. The report indicates that the risk of this particular convergence of factors and ultimate outcome is likely very low, but recommends that the potential be considered in environmental planning. Because of the association between tactical mid-frequency active sonar use and a small number of marine mammal strandings, the Navy and NMFS have been considering and addressing the potential for strandings in association with Navy activities for years. In addition to the proposed mitigation measures intended to more broadly minimize impacts to marine mammals, the Navy will abide by the Notification and Reporting Plan, which sets out notification, reporting, and other requirements when dead, injured, or stranded marine mammals are detected in certain circumstances.

Greece (1996)

Twelve Cuvier's beaked whales stranded atypically (in both time and space) along a 38.2-km strand of the Kyparissiakos Gulf coast on May 12 and 13, 1996 (Frantzis, 1998). From May 11 through May 15, the North Atlantic Treaty Organization (NATO) research vessel Alliance was conducting sonar tests with signals of 600 Hz and 3 kHz and source levels of 228 and 226 dB re: 1μPa, respectively (D'Amico and Verboom, 1998; D'Spain *et al.,* 2006). The timing and location of the testing encompassed the time and location of the strandings (Frantzis, 1998).

Necropsies of eight of the animals were performed but were limited to basic external examination and sampling of stomach contents, blood, and skin. No ears or organs were collected, and no histological samples were preserved. No apparent abnormalities or wounds were found. Examination of photos of the animals, taken soon after their death, revealed that the eyes of at least four of the individuals were bleeding. Photos were taken soon after their death (Frantzis, 2004). Stomach contents contained the flesh of cephalopods, indicating that feeding had recently taken place (Frantzis, 1998).

All available information regarding the conditions associated with this stranding event were compiled, and many potential causes were examined including major pollution events, prominent tectonic activity, unusual physical or meteorological events, magnetic anomalies, epizootics, and conventional military activities (International Council for the Exploration of the Sea, 2005a). However, none of these potential causes coincided in time or space with the mass stranding, or could explain its characteristics (International Council for the Exploration of the Sea, 2005a). The robust condition of the animals, plus the recent stomach contents, is inconsistent with pathogenic causes. In addition, environmental causes can be ruled out as there were no unusual environmental circumstances or events before or during this time period and within the general proximity (Frantzis, 2004).

Because of the rarity of this mass stranding of Cuvier's beaked whales in the Kyparissiakos Gulf (first one in historical records), the probability for the two events (the military exercises and the strandings) to coincide in time and location, while being independent of each other, was thought to be extremely low (Frantzis, 1998). However, because full necropsies had not been conducted, and no abnormalities were noted, the cause of the strandings could not be precisely determined (Cox *et al.,* 2006). A Bioacoustics Panel convened by NATO concluded that the evidence available did not allow them to accept or reject sonar exposures as a causal agent in these stranding events. The analysis of this stranding event provided support for, but no clear evidence for, the cause-and-effect relationship of tactical sonar training activities and beaked whale strandings (Cox *et al.,* 2006).

Bahamas (2000)

NMFS and the Navy prepared a joint report addressing the multi-species stranding in the Bahamas in 2000, which took place within 24 hrs of U.S. Navy ships using MFAS as they passed through the Northeast and Northwest Providence Channels on March 15–16, 2000. The ships, which operated both AN/SQS–53C and AN/SQS–56, moved through the channel while emitting sonar pings approximately every 24 seconds. Of the 17 cetaceans that stranded over a 36-hour period (Cuvier's beaked whales, Blainville's beaked whales, minke whales, and a spotted dolphin), seven animals died on the beach (five Cuvier's beaked whales, one Blainville's beaked whale, and the spotted dolphin), while the other 10 were returned to the water alive (though their ultimate fate is unknown). As

discussed in the Bahamas report (DOC/DON, 2001), there is no likely association between the minke whale and spotted dolphin strandings and the operation of MFAS.

Necropsies were performed on five of the stranded beaked whales. All five necropsied beaked whales were in good body condition, showing no signs of infection, disease, ship strike, blunt trauma, or fishery related injuries, and three still had food remains in their stomachs. Auditory structural damage was discovered in four of the whales, specifically bloody effusions or hemorrhaging around the ears. Bilateral intracochlear and unilateral temporal region subarachnoid hemorrhage, with blood clots in the lateral ventricles, were found in two of the whales. Three of the whales had small hemorrhages in their acoustic fats (located along the jaw and in the melon).

A comprehensive investigation was conducted and all possible causes of the stranding event were considered, whether they seemed likely at the outset or not. Based on the way in which the strandings coincided with ongoing naval activity involving tactical MFAS use, in terms of both time and geography, the nature of the physiological effects experienced by the dead animals, and the absence of any other acoustic sources, the investigation team concluded that MFAS aboard U.S. Navy ships that were in use during the active sonar exercise in question were the most plausible source of this acoustic or impulse trauma to beaked whales. This sound source was active in a complex environment that included the presence of a surface duct, unusual and steep bathymetry, a constricted channel with limited egress, intensive use of multiple, active sonar units over an extended period of time, and the presence of beaked whales that appear to be sensitive to the frequencies produced by these active sonars. The investigation team concluded that the cause of this stranding event was the confluence of the Navy MFAS and these contributory factors working together, and further recommended that the Navy avoid operating MFAS in situations where these five factors would be likely to occur. This report does not conclude that all five of these factors must be present for a stranding to occur, nor that beaked whales are the only species that could potentially be affected by the confluence of the other factors. Based on this, NMFS believes that the operation of MFAS in situations where surface ducts exist, or in marine environments defined by steep bathymetry and/or constricted channels may increase the likelihood of producing a sound field with the potential to cause cetaceans (especially beaked whales) to strand, and therefore, suggests the need for increased vigilance while operating MFAS in these areas, especially when beaked whales (or potentially other deep divers) are likely present.

Madeira, Portugal (2000)

From May 10–14, 2000, three Cuvier's beaked whales were found atypically stranded on two islands in the Madeira archipelago, Portugal (Cox *et al.,* 2006). A fourth animal was reported floating in the Madeiran waters by fisherman but did not come ashore (Woods Hole Oceanographic Institution, 2005). Joint NATO amphibious training peacekeeping exercises involving participants from 17 countries and 80 warships, took place in Portugal during May 2–15, 2000.

The bodies of the three stranded whales were examined post mortem (Woods Hole Oceanographic Institution, 2005), though only one of the stranded whales was fresh enough (24 hours after stranding) to be necropsied (Cox *et al.,* 2006). Results from the necropsy revealed evidence of hemorrhage and congestion in the right lung and both kidneys (Cox *et al.,* 2006). There was also evidence of intercochlear and intracranial hemorrhage similar to that which was observed in the whales that stranded in the Bahamas event (Cox *et al.,* 2006). There were no signs of blunt trauma, and no major fractures (Woods Hole Oceanographic Institution, 2005). The cranial sinuses and airways were found to be clear with little or no fluid deposition, which may indicate good preservation of tissues (Woods Hole Oceanographic Institution, 2005). Several observations on the Madeira stranded beaked whales, such as the pattern of injury to the auditory system, are the same as those observed in the Bahamas strandings. Blood in and around the eyes, kidney lesions, pleural hemorrhages, and congestion in the lungs are particularly consistent with the pathologies from the whales stranded in the Bahamas, and are consistent with stress and pressure related trauma. The similarities in pathology and stranding patterns between these two events suggest that a similar pressure event may have precipitated or contributed to the strandings at both sites (Woods Hole Oceanographic Institution, 2005).

Even though no definitive causal link can be made between the stranding event and naval exercises, certain conditions may have existed in the exercise area that, in their aggregate, may have contributed to the marine mammal strandings (Freitas, 2004): Exercises were conducted in areas of at least 547 fathoms (1,000 m) depth near a shoreline where there is a rapid change in bathymetry on the order of 547 to 3,281 fathoms (1,000 to 6,000 m) occurring across a relatively short horizontal distance (Freitas, 2004); multiple ships were operating around Madeira, though it is not known if MFAS was used, and the specifics of the sound sources used are unknown (Cox *et al.,* 2006, Freitas, 2004); and exercises took place in an area surrounded by landmasses separated by less than 35 nmi (65 km) and at least 10 NM (19 km) in length, or in an embayment. Exercises involving multiple ships employing MFAS near land may produce sound directed towards a channel or embayment that may cut off the lines of egress for marine mammals (Freitas, 2004).

Canary Islands, Spain (2002)

The southeastern area within the Canary Islands is well known for aggregations of beaked whales due to its ocean depths of greater than 547 fathoms (1,000 m) within a few hundred meters of the coastline (Fernandez *et al.,* 2005). On September 24, 2002, 14 beaked whales were found stranded on Fuerteventura and Lanzarote Islands in the Canary Islands (International Council for Exploration of the Sea, 2005a). Seven whales died, while the remaining seven live whales were returned to deeper waters (Fernandez *et al.,* 2005). Four beaked whales were found stranded dead over the next three days either on the coast or floating offshore. These strandings occurred within near proximity of an international naval exercise that utilized MFAS and involved numerous surface warships and several submarines. Strandings began about four hours after the onset of MFAS activity (International Council for Exploration of the Sea, 2005a; Fernandez *et al.,* 2005).

Eight Cuvier's beaked whales, one Blainville's beaked whale, and one Gervais' beaked whale were necropsied, 6 of them within 12 hours of stranding (Fernandez *et al.,* 2005). No pathogenic bacteria were isolated from the carcasses (Jepson *et al.,* 2003). The animals displayed severe vascular congestion and hemorrhage especially around the tissues in the jaw, ears, brain, and kidneys, displaying marked disseminated microvascular hemorrhages associated with widespread fat emboli (Jepson *et al.,* 2003; International Council for Exploration of the Sea, 2005a). Several organs contained intravascular bubbles, although definitive evidence of gas embolism in vivo is difficult to

determine after death (Jepson *et al.,* 2003). The livers of the necropsied animals were the most consistently affected organ, which contained macroscopic gas-filled cavities and had variable degrees of fibrotic encapsulation. In some animals, cavitary lesions had extensively replaced the normal tissue (Jepson *et al.,* 2003). Stomachs contained a large amount of fresh and undigested contents, suggesting a rapid onset of disease and death (Fernandez *et al.,* 2005). Head and neck lymph nodes were enlarged and congested, and parasites were found in the kidneys of all animals (Fernandez *et al.,* 2005).

The association of NATO MFAS use close in space and time to the beaked whale strandings, and the similarity between this stranding event and previous beaked whale mass strandings coincident with sonar use, suggests that a similar scenario and causative mechanism of stranding may be shared between the events. Beaked whales stranded in this event demonstrated brain and auditory system injuries, hemorrhages, and congestion in multiple organs, similar to the pathological findings of the Bahamas and Madeira stranding events. In addition, the necropsy results of Canary Islands stranding event lead to the hypothesis that the presence of disseminated and widespread gas bubbles and fat emboli were indicative of nitrogen bubble formation, similar to what might be expected in decompression sickness (Jepson *et al.,* 2003; Fernández *et al.,* 2005).

Hanalei Bay (2004)

On July 3 and 4, 2004, approximately 150 to 200 melon-headed whales occupied the shallow waters of Hanalei Bay, Kauai, Hawaii for over 28 hrs. Attendees of a canoe blessing observed the animals entering the Bay in a single wave formation at 7 a.m. on July 3, 2004. The animals were observed moving back into the shore from the mouth of the Bay at 9 a.m. The usually pelagic animals milled in the shallow bay and were returned to deeper water with human assistance beginning at 9:30 a.m. on July 4, 2004, and were out of sight by 10:30 a.m.

Only one animal, a calf, was known to have died following this event. The animal was noted alive and alone in the Bay on the afternoon of July 4, 2004, and was found dead in the Bay the morning of July 5, 2004. A full necropsy, magnetic resonance imaging, and computerized tomography examination were performed on the calf to determine the manner and cause of death. The combination of imaging, necropsy and histological analyses found no evidence of infectious, internal traumatic, congenital, or toxic factors. Cause of death could not be definitively determined, but it is likely that maternal separation, poor nutritional condition, and dehydration contributed to the final demise of the animal. Although it is not known when the calf was separated from its mother, the animals' movement into the Bay and subsequent milling and re-grouping may have contributed to the separation or lack of nursing, especially if the maternal bond was weak or this was an inexperienced mother with her first calf.

Environmental factors, abiotic and biotic, were analyzed for any anomalous occurrences that would have contributed to the animals entering and remaining in Hanalei Bay. The Bay's bathymetry is similar to many other sites within the Hawaiian Island chain and dissimilar to sites that have been associated with mass strandings in other parts of the U.S. The weather conditions appeared to be normal for that time of year with no fronts or other significant features noted. There was no evidence of unusual distribution, occurrence of predator or prey species, or unusual harmful algal blooms, although Mobley *et al.* (2007) suggested that the full moon cycle that occurred at that time may have influenced a run of squid into the Bay. Weather patterns and bathymetry that have been associated with mass strandings elsewhere were not found to occur in this instance.

The Hanalei event was spatially and temporally correlated with RIMPAC. Official sonar training and tracking exercises in the Pacific Missile Range Facility (PMRF) warning area did not commence until approximately 8 a.m. on July 3 and were thus ruled out as a possible trigger for the initial movement into the Bay. However, six naval surface vessels transiting to the operational area on July 2 intermittently transmitted active sonar (for approximately nine hours total from 1:15 p.m. to 12:30 a.m.) as they approached from the south. The potential for these transmissions to have triggered the whales' movement into Hanalei Bay was investigated. Analyses with the information available indicated that animals to the south and east of Kaua'i could have detected active sonar transmissions on July 2, and reached Hanalei Bay on or before 7 a.m. on July 3. However, data limitations regarding the position of the whales prior to their arrival in the Bay, the magnitude of sonar exposure, behavioral responses of melon-headed whales to acoustic stimuli, and other possible relevant factors preclude a conclusive finding regarding the role of sonar in triggering this event. Propagation modeling suggests that transmissions from sonar use during the July 3 exercise in the PMRF warning area may have been detectable at the mouth of the Bay. If the animals responded negatively to these signals, it may have contributed to their continued presence in the Bay. The U.S. Navy ceased all active sonar transmissions during exercises in this range on the afternoon of July 3. Subsequent to the cessation of sonar use, the animals were herded out of the Bay.

While causation of this stranding event may never be unequivocally determined, NMFS consider the active sonar transmissions of July 2–3, 2004, a plausible, if not likely, contributing factor in what may have been a confluence of events. This conclusion is based on the following: (1) The evidently anomalous nature of the stranding; (2) its close spatiotemporal correlation with wide-scale, sustained use of sonar systems previously associated with stranding of deep-diving marine mammals; (3) the directed movement of two groups of transmitting vessels toward the southeast and southwest coast of Kauai; (4) the results of acoustic propagation modeling and an analysis of possible animal transit times to the Bay; and (5) the absence of any other compelling causative explanation. The initiation and persistence of this event may have resulted from an interaction of biological and physical factors. The biological factors may have included the presence of an apparently uncommon, deep-diving cetacean species (and possibly an offshore, non-resident group), social interactions among the animals before or after they entered the Bay, and/or unknown predator or prey conditions. The physical factors may have included the presence of nearby deep water, multiple vessels transiting in a directed manner while transmitting active sonar over a sustained period, the presence of surface sound ducting conditions, and/or intermittent and random human interactions while the animals were in the Bay.

A separate event involving melon-headed whales and rough-toothed dolphins took place over the same period of time in the Northern Mariana Islands (Jefferson *et al.,* 2006), which is several thousand miles from Hawaii. Some 500 to 700 melon-headed whales came into Sasanhaya Bay on July 4, 2004, near the island of Rota and then left of their own accord after 5.5 hours; no known active sonar transmissions occurred in the vicinity of that event. The Rota incident led to scientific debate regarding what, if any,

relationship the event had to the simultaneous events in Hawaii and whether they might be related by some common factor (*e.g.,* there was a full moon on July 2, 2004, as well as during other melon-headed whale strandings and nearshore aggregations (Brownell *et al.,* 2009; Lignon *et al.,* 2007; Mobley *et al.,* 2007). Brownell *et al.* (2009) compared the two incidents, along with one other stranding incident at Nuka Hiva in French Polynesia and normal resting behaviors observed at Palmyra Island, in regard to physical features in the areas, melon-headed whale behavior, and lunar cycles. Brownell *et al.,* (2009) concluded that the rapid entry of the whales into Hanalei Bay, their movement into very shallow water far from the 100-m contour, their milling behavior (typical pre-stranding behavior), and their reluctance to leave the bay constituted an unusual event that was not similar to the events that occurred at Rota (but was similar to the events at Palmyra), which appear to be similar to observations of melon-headed whales resting normally at Palmyra Island. Additionally, there was no correlation between lunar cycle and the types of behaviors observed in the Brownell *et al.* (2009) examples.

Spain (2006)

The Spanish Cetacean Society reported an atypical mass stranding of four beaked whales that occurred January 26, 2006, on the southeast coast of Spain, near Mojácar (Gulf of Vera) in the Western Mediterranean Sea. According to the report, two of the whales were discovered the evening of January 26 and were found to be still alive. Two other whales were discovered during the day on January 27, but had already died. The first three animals were located near the town of Mojácar and the fourth animal was found dead, a few kilometers north of the first three animals. From January 25–26, 2006, Standing NATO Response Force Maritime Group Two (five of seven ships including one U.S. ship under NATO Operational Control) had conducted active sonar training against a Spanish submarine within 50 NM (93 km) of the stranding site.

Veterinary pathologists necropsied the two male and two female Cuvier's beaked whales. According to the pathologists, the most likely primary cause of this type of beaked whale mass stranding event was anthropogenic acoustic activities, most probably anti-submarine MFAS used during the military naval exercises. However, no positive acoustic link was established as a direct cause of the stranding. Even though no causal link can be made between the stranding event and naval exercises, certain conditions may have existed in the exercise area that, in their aggregate, may have contributed to the marine mammal strandings (Freitas, 2004). Exercises were conducted in areas of at least 547 fathoms (1,000 m) depth near a shoreline where there is a rapid change in bathymetry on the order of 547 to 3,281 fathoms (1,000 to 6,000 m) occurring across a relatively short horizontal distance (Freitas, 2004). Multiple ships (in this instance, five) were operating MFAS in the same area over extended periods of time (in this case, 20 hours) in close proximity; and exercises took place in an area surrounded by landmasses, or in an embayment. Exercises involving multiple ships employing MFAS near land may have produced sound directed towards a channel or embayment that may have cut off the lines of egress for the affected marine mammals (Freitas, 2004).

Behaviorally Mediated Responses to MFAS That May Lead to Stranding

Although the confluence of Navy MFAS with the other contributory factors noted in the 2001 NMFS/Navy joint report was identified as the cause of the 2000 Bahamas stranding event, the specific mechanisms that led to that stranding (or the others) are not understood, and there is uncertainty regarding the ordering of effects that led to the stranding. It is unclear whether beaked whales were directly injured by sound (*e.g.,* acoustically mediated bubble growth, as addressed above) prior to stranding or whether a behavioral response to sound occurred that ultimately caused the beaked whales to be injured and strand.

Although causal relationships between beaked whale stranding events and active sonar remain unknown, several authors have hypothesized that stranding events involving these species in the Bahamas and Canary Islands may have been triggered when the whales changed their dive behavior in a startled response to exposure to active sonar or to further avoid exposure (Cox *et al.,* 2006; Rommel *et al.,* 2006). These authors proposed three mechanisms by which the behavioral responses of beaked whales upon being exposed to active sonar might result in a stranding event. These include the following: Gas bubble formation caused by excessively fast surfacing; remaining at the surface too long when tissues are supersaturated with nitrogen; or diving prematurely when extended time at the surface is necessary to eliminate excess nitrogen. More specifically, beaked whales that occur in deep waters that are in close proximity to shallow waters (for example, the ''canyon areas'' that are cited in the Bahamas stranding event; see D'Spain and D'Amico, 2006), may respond to active sonar by swimming into shallow waters to avoid further exposures and strand if they were not able to swim back to deeper waters. Second, beaked whales exposed to active sonar might alter their dive behavior. Changes in their dive behavior might cause them to remain at the surface or at depth for extended periods of time which could lead to hypoxia directly by increasing their oxygen demands or indirectly by increasing their energy expenditures (to remain at depth) and increase their oxygen demands as a result. If beaked whales are at depth when they detect a ping from an active sonar transmission and change their dive profile, this could lead to the formation of significant gas bubbles, which could damage multiple organs or interfere with normal physiological function (Cox *et al.,* 2006; Rommel *et al.,* 2006; Zimmer and Tyack, 2007). Baird *et al.* (2005) found that slow ascent rates from deep dives and long periods of time spent within 50 m of the surface were typical for both Cuvier's and Blainville's beaked whales, the two species involved in mass strandings related to naval sonar. These two behavioral mechanisms may be necessary to purge excessive dissolved nitrogen concentrated in their tissues during their frequent long dives (Baird *et al.,* 2005). Baird *et al.* (2005) further suggests that abnormally rapid ascents or premature dives in response to high-intensity sonar could indirectly result in physical harm to the beaked whales, through the mechanisms described above (gas bubble formation or non-elimination of excess nitrogen). Because many species of marine mammals make repetitive and prolonged dives to great depths, it has long been assumed that marine mammals have evolved physiological mechanisms to protect against the effects of rapid and repeated decompressions. Although several investigators have identified physiological adaptations that may protect marine mammals against nitrogen gas supersaturation (alveolar collapse and elective circulation; Kooyman *et al.,* 1972; Ridgway and Howard, 1979), Ridgway and Howard (1979) reported that bottlenose dolphins that were trained to dive repeatedly had muscle tissues that were substantially supersaturated with nitrogen gas. Houser *et al.* (2001) used these data to model the accumulation of nitrogen gas within the muscle tissue of other marine mammal species and concluded that

cetaceans that dive deep and have slow ascent or descent speeds would have tissues that are more supersaturated with nitrogen gas than other marine mammals. Based on these data, Cox *et al.* (2006) hypothesized that a critical dive sequence might make beaked whales more prone to stranding in response to acoustic exposures. The sequence began with (1) very deep (to depths as deep as 2 km) and long (as long as 90 minutes) foraging dives; (2) relatively slow, controlled ascents; and (3) a series of ''bounce'' dives between 100 and 400 m in depth (also see Zimmer and Tyack, 2007). They concluded that acoustic exposures that disrupted any part of this dive sequence (for example, causing beaked whales to spend more time at surface without the bounce dives that are necessary to recover from the deep dive) could produce excessive levels of nitrogen supersaturation in their tissues, leading to gas bubble and emboli formation that produces pathologies similar to decompression sickness.

Zimmer and Tyack (2007) modeled nitrogen tension and bubble growth in several tissue compartments for several hypothetical dive profiles and concluded that repetitive shallow dives (defined as a dive where depth does not exceed the depth of alveolar collapse, approximately 72 m for Cuvier's beaked whale), perhaps as a consequence of an extended avoidance reaction to sonar sound, could pose a risk for decompression sickness and that this risk should increase with the duration of the response. Their models also suggested that unrealistically rapid rates of ascent from normal dive behaviors are unlikely to result in supersaturation to the extent that bubble formation would be expected. Tyack *et al.* (2006) suggested that emboli observed in animals exposed to mid-frequency range sonar (Jepson *et al.,* 2003; Fernandez *et al.,* 2005; Fernández *et al.,* 2012) could stem from a behavioral response that involves repeated dives shallower than the depth of lung collapse. Given that nitrogen gas accumulation is a passive process (*i.e.,* nitrogen is metabolically inert), a bottlenose dolphin was trained to repetitively dive a profile predicted to elevate nitrogen saturation to the point that nitrogen bubble formation was predicted to occur. However, inspection of the vascular system of the dolphin via ultrasound did not demonstrate the formation of asymptomatic nitrogen gas bubbles (Houser *et al.,* 2007). Baird *et al.* (2008), in a beaked whale tagging study off Hawaii, showed that deep dives are equally common during day or night, but ''bounce dives'' are typically a daytime behavior, possibly associated with visual predator avoidance. This may indicate that ''bounce dives'' are associated with something other than behavioral regulation of dissolved nitrogen levels, which would be necessary day and night.

If marine mammals respond to a Navy vessel that is transmitting active sonar in the same way that they might respond to a predator, their probability of flight responses could increase when they perceive that Navy vessels are approaching them directly, because a direct approach may convey detection and intent to capture (Burger and Gochfeld, 1981, 1990; Cooper, 1997, 1998). The probability of flight responses could also increase as received levels of active sonar increase (and the ship is, therefore, closer) and as ship speeds increase (that is, as approach speeds increase). For example, the probability of flight responses in Dall's sheep (*Ovis dalli dalli*) (Frid 2001a, b), ringed seals (*Phoca hispida*) (Born *et al.,* 1999), Pacific brant (*Branta bernic nigricans*) and Canada geese (*B. canadensis*) increased as a helicopter or fixed-wing aircraft approached groups of these animals more directly (Ward *et al.,* 1999). Bald eagles (*Haliaeetus leucocephalus*) perched on trees alongside a river were also more likely to flee from a paddle raft when their perches were closer to the river or were closer to the ground (Steidl and Anthony, 1996).

Despite the many theories involving bubble formation (both as a direct cause of injury, see *Acoustically-Induced Bubble Formation Due to Sonars and Other Pressure-related Injury* section and an indirect cause of stranding). Southall *et al.* (2007) summarizes that there is either scientific disagreement or a lack of information regarding each of the following important points: (1) Received acoustical exposure conditions for animals involved in stranding events; (2) pathological interpretation of observed lesions in stranded marine mammals; (3) acoustic exposure conditions required to induce such physical trauma directly; (4) whether noise exposure may cause behavioral reactions (such as atypical diving behavior) that secondarily cause bubble formation and tissue damage; and (5) the extent the post mortem artifacts introduced by decomposition before sampling, handling, freezing, or necropsy procedures affect interpretation of observed lesions.

Strandings in the MITT Study Area

Although records of marine mammal strandings exist as far back as 1878 in Guam, reporting of marine mammal strandings across the Mariana Islands has likely only become consistent in recent years. A variety of marine mammals have historically stranded in the MITT Study Area and have been documented by sources such as the Department of Lands and Natural Resources Division of Fish and Wildlife and by the Department of Agriculture, Division of Aquatic and Wildlife Resources. Species that have stranded include pygmy and dwarf sperm whales, false killer whales, melon-headed whales, striped dolphins, sperm whales, and beaked whales.

The stranding of a pygmy sperm whale in 1997 (Trianni and Tenorio, 2012) is the only other confirmed occurrence of this species in the MITT Study Area. There have been four known dwarf sperm whale strandings in the Mariana Islands (Trianni and Tenorio, 2012; Uyeyama, 2014). Three false killer whale strandings occurred in 2000, 2003, and 2007 (Trianni and Tenorio, 2012; Uyeyama, 2014). There was a live stranding of a melon-headed whale on the beach at Inarajan Bay, Guam in 1980 (Donaldson, 1983; Kami, 1982), and four individuals at Orote in 2009 (Uyeyama, 2014). Two striped dolphins stranding have occurred, one recorded in July1985 (Eldredge, 1991, 2003) and a second in 1993 off Saipan (Trianni and Tenorio, 2012). Six sperm whale stranding have occurred between 1962 to 2018. Through January 2019, nine beaked whales stranding events were reported in the Mariana Islands (Guam and Saipan), with the first recorded stranding in 2007. All identified beaked whales were Cuvier's beaked whales. Stranding events consisted of 1–3 animals. A tenth event, and most recent stranding (live) event of a Cuvier's beaked whale, occurred in November 2019 on Rota (Commonwealth of the Northern Mariana Islands). A review of Navy records indicates that sonar use occurred within 72 hours or 80 NM of three of these stranding events (2011, 2015, and 2016) (C. Johnson, Navy, *pers. comm.* 2019).

Potential Effects of Vessel Strike

Vessel collisions with marine mammals, also referred to as vessel strikes or ship strikes, can result in death or serious injury of the animal. Wounds resulting from ship strike may include massive trauma, hemorrhaging, broken bones, or propeller lacerations (Knowlton and Kraus, 2001). An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or an animal just below the surface could be cut by a vessel's propeller. Superficial strikes

may not kill or result in the death of the animal. Lethal interactions are typically associated with large whales, which are occasionally found draped across the bulbous bow of large commercial ships upon arrival in port. Although smaller cetaceans are more maneuverable in relation to large vessels than are large whales, they may also be susceptible to strike. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007; Conn and Silber, 2013). Impact forces increase with speed, as does the probability of a strike at a given distance (Silber *et al.,* 2010; Gende *et al.,* 2011).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (*e.g.,* the sperm whale). In addition, some baleen whales seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.,* 2004). These species are primarily large, slow moving whales. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC, 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike occurs and, if so, whether it results in injury, serious injury, or mortality (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Jensen and Silber, 2003; Pace and Silber, 2005; Vanderlaan and Taggart, 2007; Conn and Silber 2013). In assessing records in which vessel speed was known, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 13 kn.

Jensen and Silber (2003) detailed 292 records of known or probable ship strikes of all large whale species from 1975 to 2002. Of these, vessel speed at the time of collision was reported for 58 cases. Of these 58 cases, 39 (or 67 percent) resulted in serious injury or death (19 of those resulted in serious injury as determined by blood in the water, propeller gashes or severed tailstock, and fractured skull, jaw, vertebrae, hemorrhaging, massive bruising or other injuries noted during necropsy and 20 resulted in death). Operating speeds of vessels that struck various species of large whales ranged from 2 to 51 kn. The majority (79 percent) of these strikes occurred at speeds of 13 kn or greater. The average speed that resulted in serious injury or death was 18.6 kn. Pace and Silber (2005) found that the probability of death or serious injury increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious injury or death increased from 45 to 75 percent as vessel speed increased from 10 to 14 kn, and exceeded 90 percent at 17 kn. Higher speeds during collisions result in greater force of impact and also appear to increase the chance of severe injuries or death. While modeling studies have suggested that hydrodynamic forces pulling whales toward the vessel hull increase with increasing speed (Clyne, 1999; Knowlton *et al.,* 1995), this is inconsistent with Silber *et al.* (2010), which demonstrated that there is no such relationship (*i.e.,* hydrodynamic forces are independent of speed).

In a separate study, Vanderlaan and Taggart (2007) analyzed the probability of lethal mortality of large whales at a given speed, showing that the greatest rate of change in the probability of a lethal injury to a large whale as a function of vessel speed occurs between 8.6 and 15 kn. The chances of a lethal injury decline from approximately 80 percent at 15 kn to approximately 20 percent at 8.6 kn. At speeds below 11.8 kn, the chances of lethal injury drop below 50 percent, while the probability asymptotically increases toward 100 percent above 15 kn.

The Jensen and Silber (2003) report notes that the Large Whale Ship Strike Database represents a minimum number of collisions, because the vast majority probably goes undetected or unreported. In contrast, Navy personnel are likely to detect any strike that does occur because of the required personnel training and lookouts (as described in the *Proposed Mitigation Measures* section), and they are required to report all ship strikes involving marine mammals.

In the MITT Study Area, NMFS has no documented vessel strikes of marine mammals by the Navy. This, however, precludes the use of the quantitative approach to assess the likelihood of vessel strikes used in the 2018 and 2019 incidental take rulemakings for Navy activities in the AFTT and HSTT Study Areas, which starts with the number of Navy strikes that have occurred in the study area in question. Based on this lack of strikes and other factors described below, which the Navy presented and NMFS agrees are appropriate factors to consider in assessing the likelihood of ship strike, the Navy does not anticipate vessel strikes and has not requested authorization to take marine mammals by serious injury or mortality within the MITT Study Area during training and testing activities. NMFS agrees with the Navy's decision based on the analysis and other factors described below. Table 8 summarizes the factors considered in determining the risk of vessel strikes on large whales in the MITT Study Area, along with the associated qualitative scores for each, which are described below. For species with definite seasonal occurrence (*e.g.,* winter), the approach assigns a value of +1 for a ''yes'' and +0.5 for a ''no'' answer to account for the possibility that a species could be there. In the other columns, the approach assigns a value of +1 for a ''yes'' and −1 for a ''no'' answer. Justification for inclusion of a vessel strike request was based on whether a final evaluation score was greater than zero (similar to the analysis in the HSTT rule). None of the final evaluation scores for large whales were greater than zero. Regardless of the scoring system the Navy presented, NMFS concurs that the factors considered are appropriate and that they support a determination that vessel strike is not likely to occur.

TABLE 8—WEIGHT OF EVIDENCE APPROACH FOR DETERMINING THE RISK OF VESSEL STRIKE ON LARGE WHALES IN THE MITT STUDY AREA

Species	Year-round presence? (yes =1/ no = 0.5)	High Density (>0.001/km^2)? (yes =1/no = −1)	Stranding record? (yes = 1/no = −1)	Ship strike record? (yes =1/no = −1)	Final evaluation	Justification for including vessel strike request (final evaluation >0)
Blue whale	no (0.5)	no (−1)	no (−1)	no (−1)	−2.5	Did not request vessel strike.
Fin whale	no (0.5)	no (−1)	no (−1)	no (−1)	−2.5	Did not request vessel strike.
Humpback whale	no (0.5)	no (−1)	no (−1)	no (−1)	−2.5	Did not request vessel strike.
Sei whale	no (0.5)	no (−1)	no (−1)	no (−1)	−2.5	Did not request vessel strike.

TABLE 8—WEIGHT OF EVIDENCE APPROACH FOR DETERMINING THE RISK OF VESSEL STRIKE ON LARGE WHALES IN THE MITT STUDY AREA—Continued

Species	Year-round presence? (yes =1/ no = 0.5)	High Density (>0.001/km^2)? (yes =1/no = −1)	Stranding record? (yes = 1/no = −1)	Ship strike record? (yes =1/no = −1)	Final evaluation	Justification for including vessel strike request (final evaluation >0)
Sperm whale	yes (1)	no (−1)	yes (1)*	no (−1)	0	Did not request vessel strike.

* Six sperm whale strandings 1962 to 2018.

Additionally, the Navy has fewer vessel transits than commercial entities and other Federal agencies in the MITT Study Area. For example, over the five-year period between 2014 and 2018, there were a total of 8,984 civilian commercial and Federal agency vessel transits (excluding Navy) through Apra Harbor (Table 9). This represents 86 percent of all vessel transits. The remaining 14 percent were Navy vessel transits (total of 1,497 transits). Other Federal agency vessels include NOAA research vessels, U.S. Coast Guard vessels, and Department of Defense (other than Navy) vessels account for approximately 5 percent of these total transits. The most frequent ship types arriving at the Jose D. Leon Guerrero Commercial Port were container ships (27 percent), long-line fishing vessels (22 percent), tankers (12 percent), and break bulk ships (10 percent) (Port of Guam, unpublished data). These statistics do not account for civilian recreational boats, tour boats, or personal watercraft (*i.e., jet skis*). The Navy transits are about five times less than commercial shipping transits alone. Overall, the percentage of Navy vessel traffic relative to the commercial and other Federal agency shipping traffic is much smaller (14 percent), and therefore represents a correspondingly smaller threat of potential ship strikes when compared to other vessel use.

TABLE 9—COMMERCIAL AND NAVY SHIP TRANSITS THROUGH APRA HARBOR GUAM 2014–2018

Year	Commercial and other federal agency vessel transits	U.S. Navy vessel transits	Total annual transits
2014	1,735	339	2,074
2015	1,654	328	1,982
2016	1,534	293	1,827
2017	2,068	264	2,332
2018	1,993	273	2,266
5-yr Total	8,984 (86 percent)	1,497 (14 percent)	10,481
5-yr Average	1,797 (86 percent)	299 (14 percent)	2,096

Outside of the vessel traffic as described above, major commercial shipping vessels use shipping lanes for transporting goods between Hawaii, the continental United States, and Asia. Typically, these are great circle routes based on the most direct path between major commercial ports. There are no standard commercial routes between Guam and the United States. There are also commercial shipping routes from Asia and Japan to the equatorial Pacific and Australia that pass through larger portions of the Guam and CNMI Economic Exclusive Zones (EEZ) as well as the MITT Study Area. Across all warfare areas and activities, 493 days of Navy at-sea time would occur annually in MITT, three times less than in the HSTT Study Area.

In addition, large Navy vessels (greater than 18 m in length) within the offshore areas of range complexes and testing ranges operate differently from commercial vessels in ways that may reduce potential whale collisions. Surface ships operated by or for the Navy have multiple personnel assigned to stand watch at all times, when a ship or surfaced submarine is moving through the water (underway). A primary duty of personnel standing watch on surface ships is to detect and report all objects and disturbances sighted in the water that may indicate a threat to the vessel and its crew, such as debris, a periscope, surfaced submarine, or surface disturbance. Per vessel safety requirements, personnel standing watch also report any marine mammals sighted in the path of the vessel as a standard collision avoidance procedure. All vessels proceed at a safe speed so they can take proper and effective action to avoid a collision with any sighted object or disturbance, and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

Between 2007 and 2009, the Navy developed and distributed additional training, mitigation, and reporting tools to Navy operators to improve marine mammal protection and to ensure compliance with LOA requirements. In 2009, the Navy implemented Marine Species Awareness Training designed to improve effectiveness of visual observation for marine resources, including marine mammals. For over a decade, the Navy has implemented the Protective Measures Assessment Protocol software tool, which provides operators with notification of the required mitigation and a visual display of the planned training or testing activity location overlaid with relevant environmental data.

Based on all of these considerations, NMFS has preliminarily determined that the Navy's decision not to request take authorization for vessel strike of large whales is supported by multiple factors, including the lack of ship strike reports in regional NMFS stranding records (1962–2018) for the Mariana Islands (including no strikes by Navy vessels in the MITT Study Area), the relatively low density of large marine mammals in the Mariana Islands, and the seasonal nature of several species (blue whales, humpback whales, fin whales, and sei whales). In addition, there are relatively small numbers of

Navy vessels across a large expanse of offshore waters in the MITT Study Area, and the procedural mitigation measures that would be in place further minimize potential vessel strike.

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.), the following are additional reasons that vessel strike of dolphins and small whales is 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 densities are lower. Based on this information, NMFS concurs with the Navy's assessment that vessel strike is not likely to occur for either large whales or smaller marine mammals.

Marine Mammal Habitat

The Navy's proposed training and testing activities could potentially affect marine mammal habitat through the introduction of impacts to the prey species of marine mammals, acoustic habitat (sound in the water column), water quality, and important habitat for marine mammals. Each of these potential effects was considered in the 2019 MITT DSEIS/OEIS and was determined by the Navy to have no effect on marine mammal habitat. Based on the information below and the supporting information included in the 2019 MITT DSEIS/OEIS, NMFS has determined that the proposed training and training activities would not have adverse or long-term impacts on marine mammal habitat.

Effects to Prey

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.,* 1999; Fay, 2009). The most likely effects on fishes exposed to loud, intermittent, low-frequency sounds are behavioral responses (*i.e.,* flight or avoidance). Short duration, sharp sounds (such as pile driving or air guns) can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to acoustic sources depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fishes, like other vertebrates, have a variety of different sensory systems to glean information from ocean around them (Astrup and Mohl, 1993; Astrup, 1999; Braun and Grande, 2008; Carroll *et al.,* 2017; Hawkins and Johnstone, 1978; Ladich and Popper, 2004; Ladich and Schulz-Mirbach, 2016; Mann, 2016; Nedwell *et al.,* 2004; Popper *et al.,* 2003; Popper *et al.,* 2005). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008) (terrestrial vertebrates generally only detect pressure). Most marine fishes primarily detect particle motion using the inner ear and lateral line system, while some fishes possess additional morphological adaptations or specializations that can enhance their sensitivity to sound pressure, such as a gas-filled swim bladder (Braun and Grande, 2008; Popper and Fay, 2011).

Hearing capabilities vary considerably between different fish species with data only available for just over 100 species out of the 34,000 marine and freshwater fish species (Eschmeyer and Fong, 2016). In order to better understand acoustic impacts on fishes, fish hearing groups are defined by species that possess a similar continuum of anatomical features which result in varying degrees of hearing sensitivity (Popper and Hastings, 2009a). There are four hearing groups defined for all fish species (modified from Popper *et al.,* 2014) within this analysis and they include: Fishes without a swim bladder *(e.g.,* flatfish, sharks, rays, etc.); fishes with a swim bladder not involved in hearing (*e.g.,* salmon, cod, pollock, etc.); fishes with a swim bladder involved in hearing (*e.g.,* sardines, anchovy, herring, etc.); and fishes with a swim bladder involved in hearing and high-frequency hearing (*e.g.,* shad and menhaden). Most marine mammal fish prey species would not be likely to perceive or hear Navy mid- or high-frequency sonars. While hearing studies have not been done on sardines and northern anchovies, it would not be unexpected for them to have hearing similarities to Pacific herring (up to 2–5 kHz) (Mann *et al.,* 2005). Currently, less data are available to estimate the range of best sensitivity for fishes without a swim bladder.

In terms of physiology, multiple scientific studies have documented a lack of mortality or physiological effects to fish from exposure to low- and mid-frequency sonar and other sounds (Halvorsen *et al.,* 2012; Jørgensen *et al.,* 2005; Juanes *et al.,* 2017; Kane *et al.,* 2010; Kvadsheim and Sevaldsen, 2005; Popper *et al.,* 2007; Popper *et al.,* 2016; Watwood *et al.,* 2016). Techer *et al.* (2017) exposed carp in floating cages for up to 30 days to low-power 23 and 46 kHz source without any significant physiological response. Other studies have documented either a lack of TTS in species whose hearing range cannot perceive Navy sonar, or for those species that could perceive sonar-like signals, any TTS experienced would be recoverable (Halvorsen *et al.,* 2012; Ladich and Fay, 2013; Popper and Hastings, 2009a, 2009b; Popper *et al.,* 2014; Smith, 2016). Only fishes that have specializations that enable them to hear sounds above about 2,500 Hz (2.5 kHz) such as herring (Halvorsen *et al.,* 2012; Mann *et al.,* 2005; Mann, 2016; Popper *et al.,* 2014) would have the potential to receive TTS or exhibit behavioral responses from exposure to mid-frequency sonar. In addition, any sonar induced TTS to fish whose hearing range could perceive sonar would only occur in the narrow spectrum of the source (*e.g.,* 3.5 kHz) compared to the fish's total hearing range (*e.g.,* 0.01 kHz to 5 kHz). Overall, Navy sonar sources are much narrower in terms of source frequency compared to a given fish species full hearing range (Halvorsen *et al.,* 2012; Jørgensen *et al.,* 2005; Juanes *et al.,* 2017; Kane *et al.,* 2010; Kvadsheim & Sevaldsen, 2005; Popper *et al.,* 2007; Popper and Hawkins, 2016; Watwood *et al.,* 2016).

In terms of behavioral responses, Juanes *et al.* (2017) discuss the potential for negative impacts from anthropogenic soundscapes on fish, but the author's focus was on broader based sounds such as ship and boat noise sources. Watwood *et al.* (2016) also documented no behavioral responses by reef fish after exposure to mid-frequency active sonar. Doksaeter *et al.* (2009; 2012)

reported no behavioral responses to mid-frequency naval sonar by Atlantic herring; specifically, no escape reactions (vertically or horizontally) were observed in free swimming herring exposed to mid-frequency sonar transmissions. Based on these results (Doksaeter *et al.,* 2009; Doksaeter *et al.,* 2012; Sivle *et al.,* 2012), Sivle *et al.* (2014) created a model in order to report on the possible population-level effects on Atlantic herring from active naval sonar. The authors concluded that the use of naval sonar poses little risk to populations of herring regardless of season, even when the herring populations are aggregated and directly exposed to sonar. Finally, Bruintjes *et al.* (2016) commented that fish exposed to any short-term noise within their hearing range might initially startle, but would quickly return to normal behavior.

Occasional behavioral reactions to intermittent explosions and impulsive sound sources are unlikely to cause long-term consequences for individual fish or populations. Fish that experience hearing loss as a result of exposure to explosions and impulsive sound sources may have a reduced ability to detect relevant sounds such as predators, prey, or social vocalizations. However, PTS has not been known to occur in fishes and any hearing loss in fish may be as temporary as the timeframe required to repair or replace the sensory cells that were damaged or destroyed (Popper *et al.,* 2005; Popper *et al.,* 2014; Smith *et al.,* 2006). It is not known if damage to auditory nerve fibers could occur, and if so, whether fibers would recover during this process. It is also possible for fish to be injured or killed by an explosion in the immediate vicinity of the surface from dropped or fired ordnance, or near the bottom from shallow water bottom-placed underwater mine warfare detonations. Physical effects from pressure waves generated by underwater sounds (*e.g.,* underwater explosions) could potentially affect fish within proximity of training or testing activities. The shock wave from an underwater explosion is lethal to fish at close range, causing massive organ and tissue damage and internal bleeding (Keevin and Hempen, 1997). At greater distance from the detonation point, the extent of mortality or injury depends on a number of factors including fish size, body shape, orientation, and species (Keevin and Hempen, 1997; Wright, 1982). At the same distance from the source, larger fish are generally less susceptible to death or injury, elongated forms that are round in cross-section are less at risk than deep-bodied forms, and fish oriented sideways to the blast suffer the greatest impact (Edds-Walton and Finneran, 2006; O'Keeffe, 1984; O'Keeffe and Young, 1984; Wiley e*t al.,* 1981; Yelverton *et al.,* 1975). Species with gas-filled organs are more susceptible to injury and mortality than those without them (Gaspin, 1975; Gaspin *et al.,* 1976; Goertner *et al.,* 1994). Barotrauma injuries have been documented during controlled exposure to impact pile driving (an impulsive noise source, as are explosives and air guns) (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

Fish not killed or driven from a location by an explosion might change their behavior, feeding pattern, or distribution. Changes in behavior of fish have been observed as a result of sound produced by explosives, with effect intensified in areas of hard substrate (Wright, 1982). However, Navy explosive use avoids hard substrate to the best extent practical during underwater detonations, or deep-water surface detonations (distance from bottom). Stunning from pressure waves could also temporarily immobilize fish, making them more susceptible to predation. The abundances of various fish (and invertebrates) near the detonation point for explosives could be altered for a few hours before animals from surrounding areas repopulate the area. However, these populations would likely be replenished as waters near the detonation point are mixed with adjacent waters. Repeated exposure of individual fish to sounds from underwater explosions is not likely and are expected to be short-term and localized. Long-term consequences for fish populations would not be expected. Several studies have demonstrated that air gun sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017).

For fishes exposed to Navy sonar, there would be limited sonar use spread out in time and space across large offshore areas such that only small areas are actually ensonified (10's of miles) compared to the total life history distribution of fish prey species. There would be no probability for mortality or physical injury from sonar, and for most species, no or little potential for hearing or behavioral effects, except to a few select fishes with hearing specializations (*e.g.,* herring) that could perceive mid-frequency sonar. Training and testing exercises involving explosions are dispersed in space and time; therefore, repeated exposure of individual fishes are unlikely. Mortality and injury effects to fishes from explosives would be localized around the area of a given in-water explosion, but only if individual fish and the explosive (and immediate pressure field) were co-located at the same time. Fishes deeper in the water column or on the bottom would not be affected by water surface explosions. Repeated exposure of individual fish to sound and energy from underwater explosions is not likely given fish movement patterns, especially schooling prey species. Most acoustic effects, if any, are expected to be short-term and localized. Long-term consequences for fish populations including key prey species within the MITT Study Area would not be expected.

Invertebrates appear to be able to detect sounds (Pumphrey, 1950; Frings and Frings, 1967) and are most sensitive to low-frequency sounds (Packard *et al.,* 1990; Budelmann and Williamson, 1994; Lovell *et al.,* 2005; Mooney *et al.,* 2010). Data on response of invertebrates such as squid, another marine mammal prey species, to anthropogenic sound is more limited (de Soto, 2016; Sole *et al.,* 2017b). Data suggest that cephalopods are capable of sensing the particle motion of sounds and detect low frequencies up to 1–1.5 kHz, depending on the species, and so are likely to detect air gun noise (Kaifu *et al.,* 2008; Hu *et al.,* 2009; Mooney *et al.,* 2010; Samson *et al.,* 2014). Sole *et al.* (2017b) reported physiological injuries to cuttlefish in cages placed at-sea when exposed during a controlled exposure experiment to low-frequency sources (315 Hz, 139 to 142 dB re 1 μPa^2 and 400 Hz, 139 to 141 dB re 1 μPa^2). Fewtrell and McCauley (2012) reported squids maintained in cages displayed startle responses and behavioral changes when exposed to seismic air gun sonar (136–162 re 1 $\mu Pa^2 \cdot s$). However, the sources Sole *et al.* (2017a) and Fewtrell and McCauley (2012) used are not similar and were much lower than typical Navy sources within the MITT Study Area. Nor do the studies address the issue of individual displacement outside of a zone of impact when exposed to sound. Cephalopods have a specialized sensory organ inside the head called a statocyst that may help an animal determine its position in space (orientation) and maintain balance (Budelmann, 1992). Packard *et al.* (1990) showed that cephalopods were sensitive to particle motion, not sound pressure, and Mooney *et al.* (2010) demonstrated that squid statocysts act as an accelerometer through which

particle motion of the sound field can be detected. Auditory injuries (lesions occurring on the statocyst sensory hair cells) have been reported upon controlled exposure to low-frequency sounds, suggesting that cephalopods are particularly sensitive to low-frequency sound (Andre *et al.,* 2011; Sole *et al.,* 2013). Behavioral responses, such as inking and jetting, have also been reported upon exposure to low-frequency sound (McCauley *et al.,* 2000b; Samson *et al.,* 2014). Squids, like most fish species, are likely more sensitive to low frequency sounds, and may not perceive mid- and high-frequency sonars such as Navy sonars. Cumulatively for squid as a prey species, individual and population impacts from exposure to Navy sonar and explosives, like fish, are not likely to be significant, and explosive impacts would be short-term and localized.

Explosions could kill or injure nearby marine invertebrates. Vessels also have the potential to impact marine invertebrates by disturbing the water column or sediments, or directly striking organisms (Bishop, 2008). The propeller wash (water displaced by propellers used for propulsion) from vessel movement and water displaced from vessel hulls can potentially disturb marine invertebrates in the water column and is a likely cause of zooplankton mortality (Bickel *et al.,* 2011). The localized and short-term exposure to explosions or vessels could displace, injure, or kill zooplankton, invertebrate eggs or larvae, and macro-invertebrates. However, mortality or long-term consequences for a few animals is unlikely to have measurable effects on overall populations. Long-term consequences to marine invertebrate populations would not be expected as a result of exposure to sounds or vessels in the MITT Study Area.

Vessels and in-water devices do not normally collide with adult fish, most of which can detect and avoid them. Exposure of fishes to vessel strike stressors is limited to those fish groups that are large, slow-moving, and may occur near the surface, such as ocean sunfish, whale sharks, basking sharks, and manta rays. These species are distributed widely in offshore portions of the MITT Study Area. Any isolated cases of a Navy vessel striking an individual could injure that individual, impacting the fitness of an individual fish. Vessel strikes would not pose a risk to most of the other marine fish groups, because many fish can detect and avoid vessel movements, making strikes rare and allowing the fish to return to their normal behavior after the ship or device passes. As a vessel approaches a fish, they could have a detectable behavioral or physiological response (*e.g.,* swimming away and increased heart rate) as the passing vessel displaces them. However, such reactions are not expected to have lasting effects on the survival, growth, recruitment, or reproduction of these marine fish groups at the population level and therefore would not have an impact on marine mammals species as prey items.

In addition to fish, prey sources such as marine invertebrates could potentially be impacted by sound stressors as a result of the proposed activities. However, most marine invertebrates' ability to sense sounds is very limited. In most cases, marine invertebrates would not respond to impulsive and non-impulsive sounds, although they may detect and briefly respond to nearby low-frequency sounds. These short-term responses would likely be inconsequential to invertebrate populations. Impacts to benthic communities from impulsive sound generated by active acoustic sound sources are not well documented. (*e.g.,* Andriguetto-Filho *et al.,* 2005; Payne *et al.,* 2007; 2008; Boudreau *et al.,* 2009). There are no published data that indicate whether temporary or permanent threshold shifts, auditory masking, or behavioral effects occur in benthic invertebrates (Hawkins *et al.,* 2014) and some studies showed no short-term or long-term effects of air gun exposure (*e.g.,* Andriguetto-Filho *et al.,* 2005; Payne *et al.,* 2007; 2008; Boudreau *et al.,* 2009). Exposure to air gun signals was found to significantly increase mortality in scallops, in addition to causing significant changes in behavioral patterns during exposure (Day *et al.,* 2017). However, the authors state that the observed levels of mortality were not beyond naturally occurring rates. Explosions and pile driving could potentially kill or injure nearby marine invertebrates; however, mortality or long-term consequences for a few animals is unlikely to have measurable effects on overall populations.

Vessels also have the potential to impact marine invertebrates by disturbing the water column or sediments, or directly striking organisms (Bishop, 2008). The propeller wash from vessel movement and water displaced from vessel hulls can potentially disturb marine invertebrates in the water column and is a likely cause of zooplankton mortality (Bickel *et al.,* 2011). The localized and short-term exposure to explosions or vessels could displace, injure, or kill zooplankton, invertebrate eggs or larvae, and macro-invertebrates. However, mortality or long-term consequences for a few animals is unlikely to have measurable effects on overall populations.

There is little information concerning potential impacts of noise on zooplankton populations. However, one recent study (McCauley *et al.,* 2017) investigated zooplankton abundance, diversity, and mortality before and after exposure to air gun noise, finding that the exposure resulted in significant depletion for more than half the taxa present and that there were two to three times more dead zooplankton after air gun exposure compared with controls for all taxa. The majority of taxa present were copepods and cladocerans; for these taxa, the range within which effects on abundance were detected was up to approximately 1.2 km. In order to have significant impacts on *r*-selected species such as plankton, the spatial or temporal scale of impact must be large in comparison with the ecosystem concerned (McCauley *et al.,* 2017). Therefore, the large scale of effect observed here is of concern—particularly where repeated noise exposure is expected—and further study is warranted.

Overall, the combined impacts of sound exposure, explosions, vessel strikes, and military expended materials resulting from the proposed activities would not be expected to have measurable effects on populations of marine mammal prey species. Prey species exposed to sound might move away from the sound source, experience TTS, experience masking of biologically relevant sounds, or show no obvious direct effects. Mortality from decompression injuries is possible in close proximity to a sound, but only limited data on mortality in response to air gun noise exposure are available (Hawkins *et al.,* 2014). The most likely impacts for most prey species in a given area would be temporary avoidance of the area. Surveys using towed air gun arrays move through an area relatively quickly, limiting exposure to multiple impulsive sounds. In all cases, sound levels would return to ambient once a survey ends and the noise source is shut down and, when exposure to sound ends, behavioral and/or physiological responses are expected to end relatively quickly (McCauley *et al.,* 2000b). The duration of fish avoidance of a given area after survey effort stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. While the potential for disruption of spawning aggregations or schools of important prey species can be meaningful on a local scale, the mobile

and temporary nature of most surveys and the likelihood of temporary avoidance behavior suggest that impacts would be minor. Long-term consequences to marine invertebrate populations would not be expected as a result of exposure to sounds or vessels in the MITT Study Area. Military expended materials resulting from training and testing activities could potentially result in minor long-term changes to benthic habitat. Military expended materials may be colonized over time by benthic organisms that prefer hard substrate and would provide structure that could attract some species of fish or invertebrates.

Acoustic Habitat

Acoustic habitat is the soundscape which encompasses all of the sound present in a particular location and time, as a whole when considered from the perspective of the animals experiencing it. Animals produce sound for, or listen for sounds produced by, conspecifics (communication during feeding, mating, and other social activities), other animals (finding prey or avoiding predators), and the physical environment (finding suitable habitats, navigating). Together, sounds made by animals and the geophysical environment (*e.g.,* produced by earthquakes, lightning, wind, rain, waves) make up the natural contributions to the total acoustics of a place. These acoustic conditions, termed acoustic habitat, are one attribute of an animal's total habitat.

Soundscapes are also defined by, and acoustic habitat influenced by, the total contribution of anthropogenic sound. This may include incidental emissions from sources such as vessel traffic or may be intentionally introduced to the marine environment for data acquisition purposes (as in the use of air gun arrays) or for Navy training and testing purposes (as in the use of sonar and explosives and other acoustic sources). Anthropogenic noise varies widely in its frequency, content, duration, and loudness and these characteristics greatly influence the potential habitat-mediated effects to marine mammals (please also see the previous discussion on ''Masking''), which may range from local effects for brief periods of time to chronic effects over large areas and for long durations. Depending on the extent of effects to habitat, animals may alter their communications signals (thereby potentially expending additional energy) or miss acoustic cues (either conspecific or adventitious). Problems arising from a failure to detect cues are more likely to occur when noise stimuli are chronic and overlap with biologically relevant cues used for communication, orientation, and predator/prey detection (Francis and Barber, 2013). For more detail on these concepts see, *e.g.,* Barber *et al.,* 2009; Pijanowski *et al.,* 2011; Francis and Barber, 2013; Lillis *et al.,* 2014.

The term ''listening area'' refers to the region of ocean over which sources of sound can be detected by an animal at the center of the space. Loss of communication space concerns the area over which a specific animal signal, used to communicate with conspecifics in biologically important contexts (*e.g.,* foraging, mating), can be heard, in noisier relative to quieter conditions (Clark *et al.,* 2009). Lost listening area concerns the more generalized contraction of the range over which animals would be able to detect a variety of signals of biological importance, including eavesdropping on predators and prey (Barber *et al.,* 2009). Such metrics do not, in and of themselves, document fitness consequences for the marine animals that live in chronically noisy environments. Long-term population-level consequences mediated through changes in the ultimate survival and reproductive success of individuals are difficult to study, and particularly so underwater. However, it is increasingly well documented that aquatic species rely on qualities of natural acoustic habitats, with researchers quantifying reduced detection of important ecological cues (*e.g.,* Francis and Barber, 2013; Slabbekoorn *et al.,* 2010) as well as survivorship consequences in several species (*e.g.,* Simpson *et al.,* 2014; Nedelec *et al.,* 2015).

Sound produced from training and testing activities in the MITT Study Area is temporary and transitory. The sounds produced during training and testing activities can be widely dispersed or concentrated in small areas for varying periods. Any anthropogenic noise attributed to training and testing activities in the MITT Study Area would be temporary and the affected area would be expected to immediately return to the original state when these activities cease.

Water Quality

The 2019 MITT DSEIS/OEIS analyzed the potential effects on water quality from military expended materials. Training and testing activities may introduce water quality constituents into the water column. Based on the analysis of the 2019 MITT DSEIS/OEIS, military expended materials (*e.g.,* undetonated explosive materials) would be released in quantities and at rates that would not result in a violation of any water quality standard or criteria. High-order explosions consume most of the explosive material, creating typical combustion products. For example, in the case of Royal Demolition Explosive, 98 percent of the products are common seawater constituents and the remainder is rapidly diluted below threshold effect level. Explosion by-products associated with high order detonations present no secondary stressors to marine mammals through sediment or water. However, low order detonations and unexploded ordnance present elevated likelihood of impacts on marine mammals.

Indirect effects of explosives and unexploded ordnance to marine mammals via sediment is possible in the immediate vicinity of the ordnance. Degradation products of Royal Demolition Explosive are not toxic to marine organisms at realistic exposure levels (Rosen and Lotufo, 2010). Relatively low solubility of most explosives and their degradation products means that concentrations of these contaminants in the marine environment are relatively low and readily diluted. Furthermore, while explosives and their degradation products were detectable in marine sediment approximately 6–12 in (0.15–0.3 m) away from degrading ordnance, the concentrations of these compounds were not statistically distinguishable from background beyond 3–6 ft (1–2 m) from the degrading ordnance. Taken together, it is possible that marine mammals could be exposed to degrading explosives, but it would be within a very small radius of the explosive (1–6 ft (0.3–2 m)).

Equipment used by the Navy within the MITT Study Area, including ships and other marine vessels, aircraft, and other equipment, are also potential sources of by-products. All equipment is properly maintained in accordance with applicable Navy and legal requirements. All such operating equipment meets Federal water quality standards, where applicable.

Estimated Take of Marine Mammals

This section indicates the number of takes that NMFS is proposing to authorize, which are based on the maximum amount of take that NMFS anticipates is reasonably expected to occur. 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 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.

Takes would be in the form of harassment only. 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 and 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.

Generally speaking, for acoustic impacts NMFS estimates the amount and type of harassment by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be taken by Level B harassment (in this case, as defined in the military readiness definition of Level B harassment included above) or incur some degree of temporary or permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day or event; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) the number of days of activities or events.

Acoustic Thresholds

Using the best available science, NMFS, in coordination with the Navy, has established acoustic thresholds that identify the most appropriate received level of underwater sound above which marine mammals exposed to these sound sources could be reasonably expected to experience a disruption in behavior patterns to a point where they are abandoned or significantly altered, or to incur TTS (equated to Level B harassment) or PTS of some degree (equated to Level A harassment). Thresholds have also been developed to identify the pressure levels above which animals may incur non-auditory injury from exposure to pressure waves from explosive detonation.

Despite the quickly evolving science, there are still challenges in quantifying expected behavioral responses that qualify as 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 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.

Hearing Impairment (TTS/PTS and Tissues Damage and Mortality)

Non-Impulsive and Impulsive

NMFS' Acoustic Technical Guidance (NMFS, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The Acoustic Technical Guidance also identifies criteria to predict TTS, which is not considered injury and falls into the Level B harassment category. The Navy's planned activity includes the use of non-impulsive (sonar) and impulsive (explosives) sources.

These thresholds (Tables 10 and 11) were developed by compiling and synthesizing the best available science and soliciting input multiple times from both the public and peer reviewers. The references, analysis, and methodology used in the development of the thresholds are described in Acoustic Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 10—ACOUSTIC THRESHOLDS IDENTIFYING THE ONSET OF TTS AND PTS FOR NON-IMPULSIVE SOUND SOURCES BY FUNCTIONAL HEARING GROUPS

Functional hearing group	Non-impulsive	
	TTS threshold SEL (weighted)	PTS threshold SEL (weighted)
Low-Frequency Cetaceans	179	199
Mid-Frequency Cetaceans	178	198
High-Frequency Cetaceans	153	173
Phocid Pinnipeds (Underwater)	181	201
Otarid Pinnipeds (Underwater)	199	219

Note: SEL thresholds in dB re 1 $\mu Pa^2 s$.

Based on the best available science, the Navy (in coordination with NMFS) used the acoustic and pressure thresholds indicated in Table 11 to predict the onset of TTS, PTS, tissue damage, and mortality for explosives (impulsive) and other impulsive sound sources.

TABLE 11—ONSET OF TTS, PTS, TISSUE DAMAGE, AND MORTALITY THRESHOLDS FOR MARINE MAMMALS FOR EXPLOSIVES AND OTHER IMPULSIVE SOURCES

Functional hearing group	Species	Onset TTS	Onset PTS	Mean onset slight GI tract injury	Mean onset slight lung injury	Mean onset mortality
Low-frequency cetaceans	All mysticetes	168 dB SEL (weighted) or 213 dB Peak SPL.	183 dB SEL (weighted) or 219 dB Peak SPL.	237 dB Peak SPL	Equation 1	Equation 2.
Mid-frequency cetaceans	Most delphinids, medium and large toothed whales.	170 dB SEL (weighted) or 224 dB Peak SPL.	185 dB SEL (weighted) or 230 dB Peak SPL.	237 dB Peak SPL.		
High-frequency cetaceans	Porpoises and Kogia spp.	140 dB SEL (weighted) or 196 dB Peak SPL.	155 dB SEL (weighted) or 202 dB Peak SPL.	237 dB Peak SPL.		
Phocidae	Harbor seal, Hawaiian monk seal, Northern elephant seal.	170 dB SEL (weighted) or 212 dB Peak SPL.	185 dB SEL (weighted) or 218 dB Peak SPL.	237 dB Peak SPL.		
Otariidae	California sea lion, Guadalupe fur seal, Northern fur seal.	188 dB SEL (weighted) or 226 dB Peak SPL.	203 dB SEL (weighted) or 232 dB Peak SPL.	237 dB Peak SPL.		

Notes: Equation 1: $47.5M^{1/3}(1+[D_{Rm}/10.1])^{1/6}$ Pa-sec. Equation 2: $103M^{1/3}(1+[D_{\leq Rm}/10.1])^{1/6}$ Pa-sec. M = mass of the animals in kg; D_{Rm} = depth of the receiver (animal) in meters; SPL = sound pressure level.

The criteria used to assess the onset of TTS and PTS due to exposure to sonars (non-impulsive, see Table 10 above) are discussed further in the Navy's rulemaking/LOA application (see Hearing Loss from Sonar and Other Transducers in Chapter 6, Section 6.4.2.1, Methods for Analyzing Impacts from Sonars and Other Transducers). Refer to the Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III) report (U.S. Department of the Navy, 2017c) for detailed information on how the criteria and thresholds were derived. Non-auditory injury (*i.e.,* other than PTS) and mortality from sonar and other transducers is so unlikely as to be discountable under normal conditions for the reasons explained under the *Potential Effects of Specified Activities on Marine Mammals and Their Habitat* section—*Acoustically Mediated Bubble Growth and other Pressure-related Injury* and is therefore not considered further in this analysis.

Behavioral Harassment

Though significantly driven by received level, the onset of Level B harassment by behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Ellison *et al.,* 2011; Southall *et al.,* 2007). Based on what the available science indicates and the practical need to use thresholds based on a factor, or factors, that are both predictable and measurable for most activities, NMFS uses generalized acoustic thresholds based primarily on received level (and distance in some cases) to estimate the onset of Level B behavioral harassment.

Sonar

As noted above, the Navy coordinated with NMFS to develop, and propose for use in this rule, Level B behavioral harassment thresholds specific to their military readiness activities utilizing active sonar. These behavioral response thresholds are used to estimate the number of animals that may exhibit a behavioral response that rises to the level of a take when exposed to sonar and other transducers. The way the criteria were derived is discussed in detail in the *Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III)* report (U.S. Department of the Navy, 2017c). Developing the Level B harassment behavioral criteria involved multiple steps. All peer-reviewed published behavioral response studies conducted both in the field and on captive animals were examined in order to understand the breadth of behavioral responses of marine mammals to sonar and other transducers. NMFS has carefully reviewed the Navy's Level B behavioral thresholds and establishment of cutoff distances for the species, and agrees that it is the best available science and is the appropriate method to use at this time for determining impacts to marine mammals from sonar and other transducers and for calculating take and to support the determinations made in this proposed rule.

As discussed above, marine mammal responses to sound (some of which are considered disturbances that rise to the level of a take) are highly variable and context specific, *i.e.,* they are affected by differences in acoustic conditions; differences between species and populations; differences in gender, age, reproductive status, or social behavior; or other prior experience of the individuals. This means that there is support for considering alternative approaches for estimating Level B behavioral harassment. Although the statutory definition of Level B harassment for military readiness activities means that a natural behavior pattern of a marine mammal is significantly altered or abandoned, the current state of science for determining those thresholds is somewhat unsettled.

In its analysis of impacts associated with sonar acoustic sources (which was coordinated with NMFS), the Navy used an updated conservative approach that likely overestimates the number of takes by Level B harassment due to behavioral disturbance and response. Many of the behavioral responses identified using the Navy's quantitative analysis are most likely to be of moderate severity as described in the Southall *et al.* (2007) behavioral response severity scale. These ''moderate'' severity responses were considered significant if they were sustained for the duration of the exposure or longer. Within the Navy's quantitative analysis, many reactions are predicted from exposure to sound that may exceed an animal's Level B behavioral harassment threshold for only a single exposure (a few seconds) to several minutes, and it is likely that some of the resulting estimated behavioral responses that are counted as Level B harassment would not constitute ''significantly altering or abandoning natural behavioral patterns.'' The Navy and NMFS have used the best available science to address the challenging differentiation between significant and non-significant behavioral reactions (*i.e.,* whether the behavior has been abandoned or significantly altered such that it qualifies as harassment), but have erred on the cautious side where uncertainty

exists (*e.g.,* counting these lower duration reactions as take), which likely results in some degree of overestimation of Level B behavioral harassment. We consider application of this Level B behavioral harassment threshold, therefore, as identifying the maximum number of instances in which marine mammals could be reasonably expected to experience a disruption in behavior patterns to a point where they are abandoned or significantly altered (*i.e.,* Level B harassment). Because this is the most appropriate method for estimating Level B harassment given the best available science and uncertainty on the topic, it is these numbers of Level B harassment by behavioral disturbance that are analyzed in the *Preliminary Analysis and Negligible Impact Determination* section and would be authorized.

In the Navy's acoustic impact analyses during Phase II (previous phase of Navy testing and training, 2013–2018, see also Navy's *Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis Technical Report,* 2012), the likelihood of Level B behavioral harassment in response to sonar and other transducers was based on a probabilistic function (termed a behavioral response function—BRF), that related the likelihood (*i.e.,* probability) of a behavioral response (at the level of a Level B harassment) to the received SPL. The BRF was used to estimate the percentage of an exposed population that is likely to exhibit Level B harassment due to altered behaviors or behavioral disturbance at a given received SPL. This BRF relied on the assumption that sound poses a negligible risk to marine mammals if they are exposed to SPL below a certain ''basement'' value. Above the basement exposure SPL, the probability of a response increased with increasing SPL. Two BRFs were used in Navy acoustic impact analyses: BRF1 for mysticetes and BRF2 for other species. BRFs were not used for beaked whales during Phase II analyses. Instead, a step function at an SPL of 140 dB re 1 μPa was used for beaked whales as the threshold to predict Level B harassment by behavioral disturbance.

Developing the Level B behavioral harassment criteria for Phase III (the current phase of Navy training and testing activities) involved multiple steps: All available behavioral response studies conducted both in the field and on captive animals were examined to understand the breadth of behavioral responses of marine mammals to sonar and other transducers (See also Navy's *Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III) Technical Report,* 2017). Six behavioral response field studies with observations of 14 different marine mammal species reactions to sonar or sonar-like signals and 6 captive animal behavioral studies with observations of 8 different species reactions to sonar or sonar-like signals were used to provide a robust data set for the derivation of the Navy's Phase III marine mammal behavioral response criteria. All behavioral response research that has been published since the derivation of the Navy's Phase III criteria (c.a. December 2016) has been examined and is consistent with the current behavioral response functions. Marine mammal species were placed into behavioral criteria groups based on their known or suspected behavioral sensitivities to sound. In most cases these divisions were driven by taxonomic classifications (*e.g.,* mysticetes, pinnipeds). The data from the behavioral studies were analyzed by looking for significant responses, or lack thereof, for each experimental session.

The Navy used cutoff distances beyond which the potential of significant behavioral responses (and therefore Level B harassment) is considered to be unlikely (see Table 12 below). This was determined by examining all available published field observations of behavioral reactions to sonar or sonar-like signals that included the distance between the sound source and the marine mammal. The longest distance, rounded up to the nearest 5-km increment, was chosen as the cutoff distance for each behavioral criteria group (*i.e.* odontocetes, mysticetes, and beaked whales). For animals within the cutoff distance, a behavioral response function based on a received SPL as presented in Chapter 3, Section 3.1.0 of the Navy's rulemaking/LOA application was used to predict the probability of a potential significant behavioral response. For training and testing events that contain multiple platforms or tactical sonar sources that exceed 215 dB re 1 μPa @1 m, this cutoff distance is substantially increased (*i.e.,* doubled) from values derived from the literature. The use of multiple platforms and intense sound sources are factors that probably increase responsiveness in marine mammals overall (however, we note that helicopter dipping sonars were considered in the intense sound source group, despite lower source levels, because of data indicating that marine mammals are sometimes more responsive to the less predictable employment of this source). There are currently few behavioral observations under these circumstances; therefore, the Navy conservatively predicted significant behavioral responses that would rise to Level B harassment at farther ranges as shown in Table 12, versus less intense events.

TABLE 12—CUTOFF DISTANCES FOR MODERATE SOURCE LEVEL, SINGLE PLATFORM TRAINING AND TESTING EVENTS AND FOR ALL OTHER EVENTS WITH MULTIPLE PLATFORMS OR SONAR WITH SOURCE LEVELS AT OR EXCEEDING 215 dB RE 1 μPa @1 m

Criteria group	Moderate SL/ single platform cutoff distance	High SL/multi-platform cutoff distance
Odontocetes	10 km	20 km.
Mysticetes	10 km	20 km.
Beaked Whales	25 km	50 km.

Note: dB re 1 μPa @1 m: Decibels referenced to 1 micropascal at 1 meter; km: Kilometer; SL: Source level.

The range to received sound levels in 6-dB steps from five representative sonar bins and the percentage of animals that may be taken by Level B harassment under each behavioral response function are shown in Table 13 through Table 17. Cells are shaded if the mean range value for the specified received level exceeds the distance cutoff range for a particular hearing group and therefore are not included in the estimated take. See Chapter 6, Section 6.4.2.1.1 (Methods for Analyzing Impacts from Sonars and Other Transducers) of the Navy's rulemaking/LOA application for further details on the derivation and use of the behavioral response functions,

thresholds, and the cutoff distances to identify takes by Level B harassment, which were coordinated with NMFS. Table 13 illustrates the maximum likely percentage of exposed individuals taken at the indicated received level and associated range (in which marine mammals would be reasonably expected to experience a disruption in behavior patterns to a point where they are abandoned or significantly altered) for LFAS. As noted previously, NMFS carefully reviewed, and contributed to, the Navy's proposed Level B behavioral harassment thresholds and cutoff distances for the species, and agrees that these methods represent the best available science at this time for determining impacts to marine mammals from sonar and other transducers.

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Table 13. Ranges to estimated Level B behavioral harassment takes for sonar bin LF4 over a representative range of environments within the MITT Study Area.

Received Level (dB re 1 µPa)	Average Range (m) with Minimum and Maximum Values in Parenthesis	Probability of Level B Behavioral Harassment for Sonar Bin LF4		
		Odontocetes	Mysticetes	Beaked Whales
196	1 (1–1)	100%	100%	100%
190	3 (3–3)	100%	98%	100%
184	6 (6–6)	99%	88%	100%
178	12 (12–12)	97%	59%	100%
172	25 (25–25)	91%	30%	99%
166	51 (50–55)	78%	20%	97%
160	130 (130–160)	58%	18%	93%
154	272 (270–300)	40%	17%	83%
148	560 (550–675)	29%	16%	66%
142	1,048 (1,025–1,525)	25%	13%	45%
136	2,213 (1,525–4,525)	23%	9%	28%
130	4,550 (2,275–24,025)	20%	5%	18%
124	16,903 (4,025–66,275)	17%	2%	14%
118	43,256 (7,025–87,775)	12%	1%	12%
112	60,155 (7,775–100,000*)	6%	0%	11%
106	80,689 (8,775–100,000*)	3%	0%	11%
100	92,352 (9,025–100,000*)	1%	0%	8%

Notes: dB re 1 µPa = decibels referenced to 1 micropascal, m = meters
* Indicates maximum range to which acoustic model was run, a distance of approximately 100 kilometers from the sound source. Cells are shaded if the mean range value for the specified received level exceeds the distance cutoff range for a particular hearing group. Any impacts within the cutoff range for a criteria group are included in the estimated impacts. Cut-off ranges in this table are for activities with high source levels and/or multiple platforms (see Table 6.4-1 from the Navy's rule making/LOA application for behavioral cut-off distances).

Table 14. Ranges to estimated Level B behavioral harassment takes for sonar bin MF1 over a representative range of environments within the MITT Study Area.

Table 14. Ranges to estimated Level B behavioral harassment takes for sonar bin MF1 over a representative range of environments within the MITT Study Area.

Received Level (dB re 1 µPs)	Average Range (m) with Minimum and Maximum Values in Parenthesis	Probability of Level B Behavioral Harassment for Sonar Bin MF1		
		Odontocetes	Mysticetes	Beaked Whales
196	106 (100–110)	100%	100%	100%
190	240 (240–250)	100%	98%	100%
184	501 (490–525)	99%	88%	100%
178	1,019 (975–1,025)	97%	59%	100%
172	3,275 (2,025–5,275)	91%	30%	99%
166	7,506 (2,525–11,025)	78%	20%	97%
160	15,261 (4,775–20,775)	58%	18%	93%
154	27,759 (5,525–36,525)	40%	17%	83%
148	43,166 (7,525–65,275)	29%	16%	66%
142	58,781 (8,525–73,525)	25%	13%	45%
136	71,561 (11,275–90,775)	23%	9%	28%
130	83,711 (13,025–100,000*)	20%	5%	18%
124	88,500 (23,525–100,000*)	17%	2%	14%
118	90,601 (27,025–100,000*)	12%	1%	12%
112	92,750 (27,025–100,000*)	6%	0%	11%
106	94,469 (27,025–100,000*)	3%	0%	11%
100	95,838 (27,025–100,000*)	1%	0%	8%

Notes: dB re 1 µPa = decibels referenced to 1 micropascal, m = meters
* Indicates maximum range to which acoustic model was run, a distance of approximately 100 kilometers from the sound source. Cells are shaded if the mean range value for the specified received level exceeds the distance cutoff range for a particular hearing group. Any impacts within the cutoff range for a criteria group are included in the estimated impacts. Cut-off ranges in this table are for activities with high source levels and/or multiple platforms (see Table 6.4-1 of the Navy's rulemaking/LOA application for behavioral cut-off distances).

Table 15. Ranges to estimated Level B behavioral harassment takes for sonar bin MF4 over a representative range of environments within the MITT Study Area.

Received Level (dB re 1 µPa)	Average Range (m) with Minimum and Maximum Values in Parenthesis	Probability of Level B Behavioral Harassment for Sonar Bin MF4		
		Odontocetes	Mysticetes	Beaked Whales
196	8 (8–8)	100%	100%	100%
190	17 (17–17)	100%	98%	100%
184	35 (35–35)	99%	88%	100%
178	70 (65–70)	97%	59%	100%
172	141 (140–150)	91%	30%	99%
166	354 (330–420)	78%	20%	97%
160	773 (725–1,275)	58%	18%	93%
154	1,489 (1,025–3,275)	40%	17%	83%
148	3,106 (1,775–6,775)	29%	16%	66%
142	8,982 (3,025–18,775)	25%	13%	45%
136	15,659 (3,775–31,025)	23%	9%	28%
130	25,228 (4,775–65,775)	20%	5%	18%
124	41,778 (5,525–73,275)	17%	2%	14%
118	51,832 (6,025–89,775)	12%	1%	12%
112	62,390 (6,025–100,000*)	6%	0%	11%
106	69,235 (6,775–100,000*)	3%	0%	11%
100	73,656 (7,025–100,000*)	1%	0%	8%

Notes: dB re 1 µPa = decibels referenced to 1 micropascal, m = meters
*Indicates maximum range to which acoustic model was run, a distance of approximately 100 kilometers from the sound source.
Cells are shaded if the mean range value for the specified received level exceeds the distance cutoff range for a particular hearing group. Any impacts within the cutoff range for a criteria group are included in the estimated impacts. Cut-off ranges in this table are for activities with high source levels and/or multiple platforms (see Table 6.4-1 of the Navy's rulemaking/LOA application for behavioral cut-off distances).

Table 16. Ranges to estimated Level B behavioral harassment takes for sonar bin MF5 over a representative range of environments within the MITT Study Area.

Received Level (dB re 1 μPa)	Average Range (m) with Minimum and Maximum Values in Parenthesis	Probability of Level B Behavioral Harassment for Sonar Bin MF5		
		Odontocetes	Mysticetes	Beaked Whales
196	0 (0–0)	100%	100%	100%
190	1 (0–3)	100%	98%	100%
184	4 (0–7)	99%	88%	100%
178	14 (0–15)	97%	59%	100%
172	29 (0–30)	91%	30%	99%
166	58 (0–60)	78%	20%	97%
160	125 (0–150)	58%	18%	93%
154	284 (160–525)	40%	17%	83%
148	607 (450–1,025)	29%	16%	66%
142	1,213 (875–4,025)	25%	13%	45%
136	2,695 (1,275–7,025)	23%	9%	28%
130	6,301 (2,025–12,525)	20%	5%	18%
124	10,145 (3,025–19,525)	17%	2%	14%
118	14,359 (3,525–27,025)	12%	1%	12%
112	19,194 (3,525–37,275)	6%	0%	11%
106	24,153 (4,025–48,025)	3%	0%	11%
100	29,325 (5,025–57,775)	1%	0%	8%

Notes: dB re 1 μPa = decibels referenced to 1 micropascal, m= meters
Cells are shaded if the mean range value for the specified received level exceeds the distance cutoff range for a particular hearing group. Any impacts within the cutoff range for a criteria group are included in the estimated impacts. Cut-off ranges in this table are for activities with high source levels and/or multiple platforms (see Table 6.4-1 of the Navy's rulemaking/LOA application for behavioral cut-off distances).

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Table 17 identifies the maximum likely percentage of exposed individuals taken at the indicated received level and associated range for HFAS.

TABLE 17—RANGES TO ESTIMATED LEVEL B BEHAVIORAL HARASSMENT TAKES FOR SONAR BIN HF4 OVER A REPRESENTATIVE RANGE OF ENVIRONMENTS WITHIN THE MITT STUDY AREA

Received level (dB re 1 μPa)	Average range (m) with minimum and maximum values in parenthesis	Probability of level B behavioral harassment for sonar Bin HF4		
		Odontocetes (%)	Mysticetes (%)	Beaked whales (%)
196	3 (2–4)	100	100	100
190	8 (6–10)	100	98	100
184	16 (12–20)	99	88	100
178	32 (24–40)	97	59	100
172	63 (45–80)	91	30	99
166	120 (75–160)	78	20	97
160	225 (120–310)	58	18	93
154	392 (180–550)	40	17	83
148	642 (280–1,275)	29	16	66
142	916 (420–1,775)	25	13	45
136	1,359 (625–2,525)	23	9	28
130	1,821 (950–3,275)	20	5	18
124	2,567 (1,275–5,025)	17	2	14
118	3,457 (1,775–6,025)	12	1	12
112	4,269 (2,275–7,025)	6	0	11
106	5,300 (3,025–8,025)	3	0	11
100	6,254 (3,775–9,275)	1	0	8

Notes: dB re 1 μPa = decibels referenced to 1 micropascal, m = meters.

Explosives

Phase III explosive criteria for Level B behavioral harassment thresholds for marine mammals is the hearing groups' TTS threshold minus 5 dB (see Table 18 below and Table 11 for the TTS thresholds for explosives) for events that contain multiple impulses from explosives underwater. This was the same approach as taken in Phase II for explosive analysis. See the *Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III)* report (U.S. Department of the Navy, 2017c) for detailed information on how the criteria and thresholds were derived. NMFS continues to concur that this approach represents the best available science for determining impacts to marine mammals from explosives.

TABLE 18—LEVEL B BEHAVIORAL HARASSMENT THRESHOLDS FOR EXPLOSIVES FOR MARINE MAMMALS

Medium	Functional hearing group	SEL (weighted)
Underwater	LF	163
Underwater	MF	165
Underwater	HF	135

Note: Weighted SEL thresholds in dB re 1 μPa^{2}s underwater.

Navy's Acoustic Effects Model

The Navy's Acoustic Effects Model calculates sound energy propagation from sonar and other transducers and explosives during naval activities and the sound received by animat dosimeters. Animat dosimeters are virtual representations of marine mammals distributed in the area around the modeled naval activity and each dosimeter records its individual sound ''dose.'' The model bases the distribution of animats over the MITT Study Area on the density values in the *Navy Marine Species Density Database* and distributes animats in the water column proportional to the known time that species spend at varying depths.

The model accounts for environmental variability of sound propagation in both distance and depth when computing the received sound level received by the animats. The model conducts a statistical analysis based on multiple model runs to compute the estimated effects on animals. The number of animats that exceed the thresholds for effects is tallied to provide an estimate of the number of marine mammals that could be affected.

Assumptions in the Navy model intentionally err on the side of overestimation when there are unknowns. Naval activities are modeled as though they would occur regardless of proximity to marine mammals, meaning that no mitigation is considered (*i.e.,* no power down or shut down modeled) and without any avoidance of the activity by the animal. The final step of the quantitative analysis of acoustic effects is to consider the implementation of mitigation and the possibility that marine mammals would avoid continued or repeated sound exposures. For more information on this process, see the discussion in the *Take Requests* subsection below. Many explosions from ordnance such as bombs and missiles actually occur upon impact with above-water targets. However, for this analysis, sources such as these were modeled as exploding underwater. This overestimates the amount of explosive and acoustic energy entering the water.

The model estimates the impacts caused by individual training and testing exercises. During any individual modeled event, impacts to individual animats are considered over 24-hour periods. The animats do not represent actual animals, but rather they represent a distribution of animals based on density and abundance data, which allows for a statistical analysis of the number of instances that marine mammals may be exposed to sound levels resulting in an effect. Therefore, the model estimates the number of instances in which an effect threshold was exceeded over the course of a year, but does not estimate the number of individual marine mammals that may be impacted over a year (*i.e.,* some marine mammals could be impacted several times, while others would not experience any impact). A detailed

explanation of the Navy's Acoustic Effects Model is provided in the technical report *Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing report* (U.S. Department of the Navy, 2018).

Range to Effects

The following section provides range to effects for sonar and other active acoustic sources as well as explosives to specific acoustic thresholds determined using the Navy Acoustic Effects Model. Marine mammals exposed within these ranges for the shown duration are predicted to experience the associated effect. Range to effects is important information in not only predicting acoustic impacts, but also in verifying the accuracy of model results against real-world situations and determining adequate mitigation ranges to avoid higher level effects, especially physiological effects to marine mammals.

Sonar

The range to received sound levels in 6-dB steps from five representative sonar bins and the percentage of the total number of animals that may exhibit a significant behavioral response (and therefore Level B harassment) under each behavioral response function are shown in Table 13 through Table 17 above, respectively. See Chapter 6, Section 6.4.2.1 (Methods for Analyzing Impacts from Sonars and Other Transducers) of the Navy's rulemaking/LOA application for additional details on the derivation and use of the behavioral response functions, thresholds, and the cutoff distances that are used to identify Level B behavioral harassment.

The ranges to PTS for five representative sonar systems for an exposure of 30 seconds is shown in Table 19 relative to the marine mammal's functional hearing group. This period (30 seconds) was chosen based on examining the maximum amount of time a marine mammal would realistically be exposed to levels that could cause the onset of PTS based on platform (*e.g.,* ship) speed and a nominal animal swim speed of approximately 1.5 m per second. The ranges provided in the table include the average range to PTS, as well as the range from the minimum to the maximum distance at which PTS is possible for each hearing group.

TABLE 19—RANGE TO PERMANENT THRESHOLD SHIFT (METERS) FOR FIVE REPRESENTATIVE SONAR SYSTEMS

Hearing group	Approximate range in meters for PTS from 30 second exposure [1]				
	Sonar bin HF4	Sonar bin LF4	Sonar bin MF1	Sonar bin MF4	Sonar bin MF5
High-frequency cetaceans	29 (22–35)	0 (0–0)	181 (180–190)	30 (30–30)	9 (8–10)
Low-frequency cetaceans	0 (0–0)	0 (0–0)	65 (65–65)	15 (15–15)	0 (0–0)
Mid-frequency cetaceans	1 (0–1)	0 (0–0)	16 (16–16)	3 (3–3)	0 (0–0)

[1] PTS ranges extend from the sonar or other active acoustic sound source to the indicated distance. The average range to PTS is provided as well as the range from the estimated minimum to the maximum range to PTS in parenthesis.

The tables below illustrate the range to TTS for 1, 30, 60, and 120 seconds from five representative sonar systems (see Table 20 through Table 24).

TABLE 20—RANGES TO TEMPORARY THRESHOLD SHIFT (METERS) FOR SONAR BIN LF4 OVER A REPRESENTATIVE RANGE OF ENVIRONMENTS WITHIN THE MITT STUDY AREA

Hearing group	Approximate TTS ranges (meters) [1]			
	Sonar Bin LF4			
	1 second	30 seconds	60 seconds	120 seconds
High-frequency cetaceans	0 (0–0)	0 (0–0)	0 (0–0)	0 (0–0)
Low-frequency cetaceans	3 (3–3)	4 (4–4)	6 (6–6)	9 (9–9)
Mid-frequency cetaceans	0 (0–0)	0 (0–0)	0 (0–0)	0 (0–0)

[1] Ranges to TTS represent the model predictions in different areas and seasons within the MITT Study Area. The zone in which animals are expected to suffer TTS extend from onset-PTS to the distance indicated. The average range to TTS is provided as well as the range from the estimated minimum to the maximum range to TTS in parentheses.

TABLE 21—RANGES TO TEMPORARY THRESHOLD SHIFT (METERS) FOR SONAR BIN MF1 OVER A REPRESENTATIVE RANGE OF ENVIRONMENTS WITHIN THE MITT STUDY AREA

Hearing group	Approximate TTS ranges (meters) [1]			
	Sonar Bin MF1			
	1 second	30 seconds	60 seconds	120 seconds
High-frequency cetaceans	3,181 (2,025–5,025)	3,181 (2,025–5,025)	5,298 (2,275–7,775)	6,436 (2,525–9,775)
Low-frequency cetaceans	898 (850–1,025)	898 (850–1,025)	1,271 (1,025–1,525)	1,867 (1,275–3,025)
Mid-frequency cetaceans	210 (200–210)	210 (200–210)	302 (300–310)	377 (370–390)

[1] Ranges to TTS represent the model predictions in different areas and seasons within the MITT Study Area. The zone in which animals are expected to suffer TTS extend from onset-PTS to the distance indicated. The average range to TTS is provided as well as the range from the estimated minimum to the maximum range to TTS in parentheses.

Note: Ranges for 1-second and 30-second periods are identical for Bin MF1 because this system nominally pings every 50 seconds; therefore, these periods encompass only a single ping.

TABLE 22—RANGES TO TEMPORARY THRESHOLD SHIFT (METERS) FOR SONAR BIN MF4 OVER A REPRESENTATIVE RANGE OF ENVIRONMENTS WITHIN THE MITT STUDY AREA

Hearing group	Approximate TTS ranges (meters) [1]			
	Sonar Bin MF4			
	1 second	30 seconds	60 seconds	120 seconds
High-frequency cetaceans	232 (220–260)	454 (420–600)	601 (575–875)	878 (800–1,525)
Low-frequency cetaceans	85 (85–90)	161 (160–170)	229 (220–250)	352 (330–410)
Mid-frequency cetaceans	22 (22–22)	35 (35–35)	50 (45–50)	70 (70–70)

[1] Ranges to TTS represent the model predictions in different areas and seasons within the MITT Study Area. The zone in which animals are expected to suffer TTS extend from onset-PTS to the distance indicated. The average range to TTS is provided as well as the range from the estimated minimum to the maximum range to TTS in parentheses.

TABLE 23— RANGES TO TEMPORARY THRESHOLD SHIFT (METERS) FOR SONAR BIN MF5 OVER A REPRESENTATIVE RANGE OF ENVIRONMENTS WITHIN THE MITT STUDY AREA.

Hearing group	Approximate TTS ranges (meters) [1]			
	Sonar Bin MF5			
	1 second	30 seconds	60 seconds	120 seconds
High-frequency cetaceans	114 (110–130)	114 (110–130)	168 (150–200)	249 (210–290)
Low-frequency cetaceans	11 (10–12)	11 (10–12)	16 (16–17)	23 (23–24)
Mid-frequency cetaceans	5 (0–9)	5 (0–9)	12 (11–13)	18 (17–18)

[1] Ranges to TTS represent the model predictions in different areas and seasons within the MITT Study Area. The zone in which animals are expected to suffer TTS extend from onset-PTS to the distance indicated. The average range to TTS is provided as well as the range from the estimated minimum to the maximum range to TTS in parentheses.

TABLE 24—RANGES TO TEMPORARY THRESHOLD SHIFT (METERS) FOR SONAR BIN HF4 OVER A REPRESENTATIVE RANGE OF ENVIRONMENTS WITHIN THE MITT STUDY AREA

Hearing group	Approximate TTS ranges (meters) [1]			
	Sonar Bin HF4			
	1 second	30 seconds	60 seconds	120 seconds
High-frequency cetaceans	155 (110–210)	259 (180–350)	344 (240–480)	445 (300–600)
Low-frequency cetaceans	1 (0–2)	2 (1–3)	4 (3–5)	7 (5–8)
Mid-frequency cetaceans	10 (7–12)	17 (12–21)	24 (17–30)	33 (25–40)

[1] Ranges to TTS represent the model predictions in different areas and seasons within the MITT Study Area. The zone in which animals are expected to suffer TTS extend from onset-PTS to the distance indicated. The average range to TTS is provided as well as the range from the estimated minimum to the maximum range to TTS in parentheses.

Explosives

The following section provides the range (distance) over which specific physiological or behavioral effects are expected to occur based on the explosive criteria (see Chapter 6, Section 6.5.2.1.1 of the Navy's rulemaking/LOA application and the *Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III)* report (U.S. Department of the Navy, 2017c)) and the explosive propagation calculations from the Navy Acoustic Effects Model (see Chapter 6, Section 6.5.2.1.3, Navy Acoustic Effects Model of the Navy's rulemaking/LOA application). The range to effects are shown for a range of explosive bins, from E1 (up to 0.25 lb net explosive weight) to E12 (up to 1,000 lb net explosive weight) (Tables 25 through 29). Ranges are determined by modeling the distance that noise from an explosion would need to propagate to reach exposure level thresholds specific to a hearing group that would cause behavioral response (to the degree of Level B behavioral harassment), TTS, PTS, and non-auditory injury. Ranges are provided for a representative source depth and cluster size for each bin. For events with multiple explosions, sound from successive explosions can be expected to accumulate and increase the range to the onset of an impact based on SEL thresholds. Ranges to non-auditory injury and mortality are shown in Tables 28 and 29, respectively. NMFS has reviewed the range distance to effect data provided by the Navy and concurs with the analysis. Range to effects is important information in not only predicting impacts from explosives, but also in verifying the accuracy of model results against real-world situations and determining adequate mitigation ranges to avoid higher level effects, especially physiological effects to marine mammals. For additional information on how ranges to impacts from explosions were estimated, see the technical report *Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing* (U.S. Navy, 2018).

Table 25 shows the minimum, average, and maximum ranges to onset of auditory and likely behavioral effects that rise to the level of Level B harassment for high-frequency cetaceans based on the developed thresholds.

TABLE 25—SEL-BASED RANGES (METERS) TO ONSET PTS, ONSET TTS, AND LEVEL B BEHAVIORAL HARASSMENT FOR HIGH-FREQUENCY CETACEANS

Range to effects for explosives bin: High-frequency cetaceans [1]					
Bin	Source depth (m)	Cluster size	PTS	TTS	Behavioral
E1	0.1	1	353 (340–370)	1,303 (1,275–1,775)	2,139 (2,025–4,275)
	.....	18	1,031 (1,025–1,275)	3,409 (2,525–8,025)	4,208 (3,025–11,525)
E2	0.1	1	431 (410–700)	1,691 (1,525–2,775)	2,550 (2,025–4,525)
	.....	5	819 (775–1,275)	2,896 (2,275–6,775)	3,627 (2,525–10,275)
E3	0.1	1	649 (625–700)	2,439 (2,025–4,525)	3,329 (2,525–7,525)
	.....	12	1,682 (1,525–2,275)	4,196 (3,025–11,525)	5,388 (4,525–16,275)
	18.25	1	720 (675–775)	4,214 (2,275–6,275)	7,126 (3,525–8,775)
	.....	12	1,798 (1,525–2,775)	10,872 (4,525–13,775)	14,553 (5,525–17,775)
E4	10	2	1,365 (1,025–2,775)	7,097 (4,275–10,025)	9,939 (5,025–15,275)
	60	2	1,056 (875–2,275)	3,746 (2,775–5,775)	5,262 (3,025–7,775)
E5	0.1	20	2,926 (1,525–6,275)	6,741 (4,525–16,025)	9,161 (4,775–20,025)
	30	20	4,199 (3,025–6,275)	13,783 (8,775–17,775)	17,360 (10,525–22,775)
E6	0.1	1	1,031 (1,025–1,275)	3,693 (2,025–8,025)	4,659 (3,025–12,775)
	30	1	1,268 (1,025–1,275)	7,277 (3,775–8,775)	10,688 (5,275–12,525)
E7	28	1	1,711 (1,525–2,025)	8,732 (4,275–11,775)	12,575 (4,275–16,025)
E8	0.1	1	1,790 (1,775–3,025)	4,581 (4,025–10,775)	6,028 (4,525–15,775)
	45.75	1	1,842 (1,525–2,025)	9,040 (4,525–12,775)	12,729 (5,025–18,525)
E9	0.1	1	2,343 (2,275–4,525)	5,212 (4,025–13,275)	7,573 (5,025–17,025)
E10	0.1	1	2,758 (2,275–5,025)	6,209 (4,275–16,525)	8,578 (5,275–19,775)
E11	45.75	1	3,005 (2,525–3,775)	11,648 (5,025–18,775)	14,912 (6,525–24,775)
	91.4	1	3,234 (2,525–4,525)	5,772 (4,775–11,775)	7,197 (5,775–14,025)
E12	0.1	1	3,172 (3,025–6,525)	7,058 (5,025–17,025)	9,262 (6,025–21,775)
	.....	4	4,209 (3,775–10,025)	9,817 (6,275–22,025)	12,432 (7,525–27,775)

[1] Average distance (m) to PTS, TTS, and behavioral thresholds are depicted above the minimum and maximum distances which are in parentheses. Values depict the range produced by SEL hearing threshold criteria levels.

Table 26 shows the minimum, average, and maximum ranges to onset of auditory and likely behavioral effects that rise to the level of Level B harassment for mid-frequency cetaceans based on the developed thresholds.

TABLE 26—SEL-BASED RANGES (METERS) TO ONSET PTS, ONSET TTS, AND LEVEL B BEHAVIORAL HARASSMENT FOR MID-FREQUENCY CETACEANS

Range to effects for explosives bin: Mid-frequency cetaceans [1]					
Bin	Source depth (m)	Cluster size	PTS	TTS	Behavioral
E1	0.1	1	25 (25–25)	116 (110–120)	199 (190–210)
	.....	18	94 (90–100)	415 (390–440)	646 (525–700)
E2	0.1	1	30 (30–35)	146 (140–170)	248 (230–370)
	.....	5	63 (60–70)	301 (280–410)	481 (430–675)
E3	0.1	1	50 (50–50)	233 (220–250)	381 (360–400)
	.....	12	155 (150–160)	642 (525–700)	977 (700–1,025)
	18.25	1	40 (40–40)	202 (190–220)	332 (320–350)
	.....	12	126 (120–130)	729 (675–775)	1,025 (1,025–1,025)
E4	10	2	76 (70–90)	464 (410–550)	783 (650–975)
	60	2	60 (60–60)	347 (310–675)	575 (525–900)
E5	0.1	20	290 (280–300)	1,001 (750–1,275)	1,613 (925–3,275)
	30	20	297 (240–420)	1,608 (1,275–2,775)	2,307 (2,025–2,775)
E6	0.1	1	98 (95–100)	430 (400–450)	669 (550–725)
	30	1	78 (75–80)	389 (370–410)	619 (600–650)
E7	28	1	110 (110–110)	527 (500–575)	1,025 (1,025–1,025)
E8	0.1	1	162 (150–170)	665 (550–700)	982 (725–1,025)
	45.75	1	127 (120–130)	611 (600–625)	985 (950–1,025)
E9	0.1	1	215 (210–220)	866 (625–1,000)	1,218 (800–1,525)
E10	0.1	1	270 (250–280)	985 (700–1,275)	1,506 (875–2,525)
E11	45.75	1	241 (230–250)	1,059 (1,000–1,275)	1,874 (1,525–2,025)
	91.4	1	237 (230–270)	1,123 (900–2,025)	1,731 (1,275–2,775)
E12	0.1	1	332 (320–370)	1,196 (825–1,525)	1,766 (1,025–3,525)
	.....	4	572 (500–600)	1,932 (1,025–4,025)	2,708 (1,275–6,775)

[1] Average distance (m) to PTS, TTS, and behavioral thresholds are depicted above the minimum and maximum distances which are in parentheses. Values depict the range produced by SEL hearing threshold criteria levels.

Table 27 shows the minimum, average, and maximum ranges to onset of auditory and likely behavioral effects that rise to the level of Level B harassment for low-frequency cetaceans based on the developed thresholds.

TABLE 27—SEL-BASED RANGES (METERS) TO ONSET PTS, ONSET TTS, AND LEVEL B BEHAVIORAL HARASSMENT FOR LOW-FREQUENCY CETACEANS

Range to effects for explosives bin: Low-frequency cetaceans [1]					
Bin	Source depth (m)	Cluster size	PTS	TTS	Behavioral
E1	0.1	1	51 (50–55)	231 (200–250)	378 (280–410)
		18	183 (170–190)	691 (450–775)	934 (575–1,275)
E2	0.1	1	66 (65–70)	291 (220–320)	463 (330–500)
		5	134 (110–140)	543 (370–600)	769 (490–950)
E3	0.1	1	113 (110–120)	477 (330–525)	689 (440–825)
		12	327 (250–370)	952 (600–1,525)	1,240 (775–4,025)
	18.25	1	200 (200–200)	955 (925–1,000)	1,534 (1,275–1,775)
		12	625 (600–625)	5,517 (2,275–7,775)	10,299 (3,775–13,025)
E4	10	2	429 (370–600)	2,108 (1,775–2,775)	4,663 (3,025–6,025)
	60	2	367 (340–470)	1,595 (1,025–2,025)	2,468 (1,525–4,275)
E5	0.1	20	702 (380–1,275)	1,667 (850–11,025)	2,998 (1,025–19,775)
	30	20	1,794 (1,275–2,775)	8,341 (3,775–11,525)	13,946 (4,025–22,275)
E6	0.1	1	250 (190–410)	882 (480–1,775)	1,089 (625–6,525)
	30	1	495 (490–500)	2,315 (2,025–2,525)	5,446 (3,275–6,025)
E7	28	1	794 (775–900)	4,892 (2,775–6,275)	9,008 (3,775–12,525)
E8	0.1	1	415 (270–725)	1,193 (625–4,275)	1,818 (825–8,525)
	45.75	1	952 (900–975)	6,294 (3,025–9,525)	12,263 (4,275–20,025)
E9	0.1	1	573 (320–1,025)	1,516 (725–7,275)	2,411 (950–14,275)
E10	0.1	1	715 (370–1,525)	2,088 (825–28,275)	4,378 (1,025–32,275)
E11	45.75	1	1,881 (1,525–2,275)	12,425 (4,275–27,275)	23,054 (7,025–65,275)
	91.4	1	1,634 (1,275–2,525)	5,686 (3,775–11,275)	11,618 (5,525–64,275)
E12	0.1	1	790 (420–2,775)	2,698 (925–25,275)	6,032 (1,025–31,275)
		4	1,196 (575–6,025)	6,876 (1,525–31,275)	13,073 (3,775–64,275)

[1] Average distance (m) to PTS, TTS, and behavioral thresholds are depicted above the minimum and maximum distances which are in parentheses. Values depict the range produced by SEL hearing threshold criteria levels.

Table 28 shows the minimum, average, and maximum ranges due to varying propagation conditions to non-auditory injury as a function of animal mass and explosive bin (*i.e.,* net explosive weight). Ranges to gastrointestinal tract injury typically exceed ranges to slight lung injury; therefore, the maximum range to effect is not mass-dependent. Animals within these water volumes would be expected to receive minor injuries at the outer ranges, increasing to more substantial injuries, and finally mortality as an animal approaches the detonation point.

TABLE 28—RANGES [1] TO 50 PERCENT NON-AUDITORY INJURY RISK FOR ALL MARINE MAMMAL HEARING GROUPS

Bin	Range (m) (min-max)
E1	12 (11–13)
E2	16 (15–16)
E3	25 (25–25)
E4	30 (30–35)
E5	40 (40–65)
E6	52 (50–60)
E7	120 (120–120)
E8	98 (90–150)
E9	123 (120–270)
E10	155 (150–430)
E11	418 (410–420)
E12	195 (180–675)

[1] Distances in meters (m). Average distance is shown with the minimum and maximum distances due to varying propagation environments in parentheses.

Note: All ranges to non-auditory injury within this table are driven by gastrointestinal tract injury thresholds regardless of animal mass.

Ranges to mortality, based on animal mass, are shown in Table 29 below.

TABLE 29—RANGES [1] TO 50 PERCENT MORTALITY RISK FOR ALL MARINE MAMMAL HEARING GROUPS AS A FUNCTION OF ANIMAL MASS

Bin	Range to mortality (meters) for various animal mass intervals (kg) [1]					
	10	250	1,000	5,000	25,000	72,000
E1	3 (3–3)	1 (0–2)	0 (0–0)	0 (0–0)	0 (0–0)	0 (0–0)
E2	4 (3–4)	2 (1–3)	1 (0–1)	0 (0–0)	0 (0–0)	0 (0–0)
E3	9 (7–10)	4 (2–8)	2 (1–2)	1 (0–1)	0 (0–0)	0 (0–0)
E4	13 (12–15)	7 (4–12)	3 (3–4)	2 (1–3)	1 (1–1)	1 (0–1)
E5	13 (12–30)	7 (4–25)	3 (2–7)	2 (1–5)	1 (1–2)	1 (0–2)
E6	16 (15–25)	9 (5–23)	4 (3–8)	3 (2–6)	1 (1–2)	1 (1–2)
E7	55 (55–55)	26 (18–40)	13 (11–15)	9 (7–10)	4 (4–4)	3 (2–3)
E8	42 (25–65)	22 (9–50)	11 (6–19)	8 (4–13)	4 (2–6)	3 (1–5)
E9	33 (30–35)	20 (13–30)	10 (9–12)	7 (5–9)	4 (3–4)	3 (2–3)

TABLE 29—RANGES [1] TO 50 PERCENT MORTALITY RISK FOR ALL MARINE MAMMAL HEARING GROUPS AS A FUNCTION OF ANIMAL MASS—Continued

Bin	Range to mortality (meters) for various animal mass intervals (kg) [1]					
	10	250	1,000	5,000	25,000	72,000
E10	55 (40–170)	24 (16–35)	13 (11–15)	9 (7–11)	5 (4–5)	4 (3–4)
E11	206 (200–210)	98 (55–170)	44 (35–50)	30 (25–35)	16 (14–18)	12 (10–15)
E12	86 (50–270)	35 (20–210)	16 (13–19)	11 (9–13)	6 (5–6)	5 (4–5)

[1] Average distance (m) to mortality is depicted above the minimum and maximum distances, which are in parentheses.

Marine Mammal Density

A quantitative analysis of impacts on a species or stock requires data on their abundance and distribution that may be affected by anthropogenic activities in the potentially impacted area. The most appropriate metric for this type of analysis is density, which is the number of animals present per unit area. Marine species density estimation requires a significant amount of effort to both collect and analyze data to produce a reasonable estimate. Unlike surveys for terrestrial wildlife, many marine species spend much of their time submerged, and are not easily observed. In order to collect enough sighting data to make reasonable density estimates, multiple observations are required, often in areas that are not easily accessible (*e.g.,* far offshore). Ideally, marine mammal species sighting data would be collected for the specific area and time period *(e.g.,* season) of interest and density estimates derived accordingly. However, in many places, poor weather conditions and high sea states prohibit the completion of comprehensive visual surveys.

For most cetacean species, abundance is estimated using line-transect surveys or mark-recapture studies (*e.g.,* Barlow, 2010; Barlow and Forney, 2007; Calambokidis *et al.,* 2008). The result provides one single density estimate value for each species across broad geographic areas. This is the general approach applied in estimating cetacean abundance in NMFS' Stock Assessment Reports (SARs). Although the single value provides a good average estimate of abundance (total number of individuals) for a specified area, it does not provide information on the species distribution or concentrations within that area, and it does not estimate density for other timeframes or seasons that were not surveyed. More recently, spatial habitat modeling developed by NMFS' Southwest Fisheries Science Center has been used to estimate cetacean densities (Barlow *et al.,* 2009; Becker *et al.,* 2010, 2012a, b, c, 2014, 2016; Ferguson *et al.,* 2006a; Forney *et al.,* 2012, 2015; Redfern *et al.,* 2006). These models estimate cetacean density as a continuous function of habitat variables (*e.g.,* sea surface temperature, seafloor depth, etc.) and thus allow predictions of cetacean densities on finer spatial scales than traditional line-transect or mark recapture analyses and for areas that have not been surveyed. Within the geographic area that was modeled, densities can be predicted wherever these habitat variables can be measured or estimated.

Ideally, density data would be available for all species throughout the study area year-round, in order to best estimate the impacts of Navy activities on marine species. However, in many places, ship availability, lack of funding, inclement weather conditions, and high sea states prevent the completion of comprehensive year-round surveys. Even with surveys that are completed, poor conditions may result in lower sighting rates for species that would typically be sighted with greater frequency under favorable conditions. Lower sighting rates preclude having an acceptably low uncertainty in the density estimates. A high level of uncertainty, indicating a low level of confidence in the density estimate, is typical for species that are rare or difficult to sight. In areas where survey data are limited or non-existent, known or inferred associations between marine habitat features and the likely presence of specific species are sometimes used to predict densities in the absence of actual animal sightings. Consequently, there is no single source of density data for every area, species, and season because of the fiscal costs, resources, and effort involved in providing enough survey coverage to sufficiently estimate density.

To characterize marine species density for large oceanic regions, the Navy reviews, critically assesses, and prioritizes existing density estimates from multiple sources, requiring the development of a systematic method for selecting the most appropriate density estimate for each combination of species, area, and season. The selection and compilation of the best available marine species density data resulted in the Navy Marine Species Density Database (NMSDD). NMFS vetted all cetacean densities by the Navy prior to use in the Navy's acoustic analysis for the current MITT rulemaking process.

In the MITT Study Area there is a paucity of line-transect survey data, and little is known about the stock structure of the majority of marine mammal species in the region. The Navy conducted the first comprehensive marine mammal survey of waters off Guam and the Commonwealth of the Northern Mariana Islands in 2007, and data from this survey were used to derive line-transect abundance estimates for 12 cetacean species (Fulling *et al.,* 2011). There has not been a subsequent systematic survey of the MITT Study Area at this scale, so these data still provide the best available density estimates for this region.

In the absence of study-area-specific density data, line-transect estimates derived for Hawaiian waters were used to provide conservative density estimates for the MITT Study Area. For Phase II, these estimates were based on systematic surveys conducted by NMFS' Southwest Fisheries Science Center (SWFSC) within the Exclusive Economic Zone of the Hawaiian Islands in 2002 (Barlow, 2006). New survey data collected within the Exclusive Economic Zone of the Hawaiian Islands (2010) and Palmyra Atoll/Kingman Reef (2011–2012) allowed NMFS' Pacific Islands Fisheries Science Center (PIFSC) to update the line-transect density estimates that included new sea-state-specific estimates of trackline detection probability (Bradford *et al.,* 2017) and represent improvements to the estimates used for Phase II. In addition, an updated density estimate for minke whale was available for Phase III based on line-transect analyses of acoustic data collected from a towed hydrophone during the 2007 systematic survey (Norris *et al.,* 2017). Finally, a habitat model was developed for sperm whale based on acoustic data collected during the 2007 survey, and provided spatially explicit density predictions at a10 km × 10 km (100 square km) spatial resolution (Yack *et al.,* 2016).

To characterize the marine species density for large areas, including the MITT Study Area, the Navy compiled data from several sources. The Navy developed a protocol to select the best available data sources based on species, area, and time (season). The resulting Geographic Information System database, used in the NMSDD, includes seasonal density values for every marine mammal species present within the MITT Study Area. This database is described in the technical report titled *U.S. Navy Marine Species Density Database Phase III for the Mariana Islands Training and Testing Study Area* (U.S. Department of the Navy, 2018), hereafter referred to as the Density Technical Report.

A variety of density data and density models are needed in order to develop a density database that encompasses the entirety of the MITT Study Area. Because this data is collected using different methods with varying amounts of accuracy and uncertainty, the Navy has developed a hierarchy to ensure the most accurate data is used when available. The Density Technical Report describes these models in detail and provides detailed explanations of the models applied to each species density estimate. The list below describes models in order of preference.

1. Spatial density models are preferred and used when available because they provide an estimate with the least amount of uncertainty by deriving estimates for divided segments of the sampling area. These models (see Becker e*t al.,* 2016; Forney *et al.,* 2015) predict spatial variability of animal presence as a function of habitat variables (*e.g.,* sea surface temperature, seafloor depth, etc.). This model is developed for areas, species, and, when available, specific timeframes (months or seasons) with sufficient survey data; therefore, this model cannot be used for species with low numbers of sightings.

2. Stratified design-based density estimates use line-transect survey data with the sampling area divided (stratified) into sub-regions, and a density is predicted for each sub-region (see Barlow, 2016; Becker *et al.,* 2016; Bradford *et al.,* 2017; Campbell *et al.,* 2014; Jefferson *et al.,* 2014). While geographically stratified density estimates provide a better indication of a species' distribution within the study area, the uncertainty is typically high because each sub-region estimate is based on a smaller stratified segment of the overall survey effort.

3. Design-based density estimations use line-transect survey data from land and aerial surveys designed to cover a specific geographic area (see Carretta *et al.,* 2015). These estimates use the same survey data as stratified design-based estimates, but are not segmented into sub-regions and instead provide one estimate for a large surveyed area. Although relative environmental suitability (RES) models provide estimates for areas of the oceans that have not been surveyed using information on species occurrence and inferred habitat associations and have been used in past density databases, these models were not used in the current quantitative analysis.

The Navy describes some of the challenges of interpreting the results of the quantitative analysis summarized above and described in the Density Technical Report: ''It is important to consider that even the best estimate of marine species density is really a model representation of the values of concentration where these animals might occur. Each model is limited to the variables and assumptions considered by the original data source provider. No mathematical model representation of any biological population is perfect, and with regards to marine mammal biodiversity, any single model method will not completely explain the actual distribution and abundance of marine mammal species. It is expected that there would be anomalies in the results that need to be evaluated, with independent information for each case, to support if we might accept or reject a model or portions of the model (U.S. Department of the Navy, 2017a).''

NMFS coordinated with the Navy in the development of its take estimates and concurs that the Navy's approach for density appropriately utilizes the best available science. Later, in the *Preliminary Analysis and Negligible Impact Determination* section, we assess how the estimated take numbers compare to abundance in order to better understand the potential number of individuals impacted, and the rationale for which abundance estimate is used is included there.

Take Requests

The 2019 MITT DSEIS/OEIS considered all training and testing activities proposed to occur in the MITT Study Area that have the potential to result in the MMPA defined take of marine mammals. The Navy determined that the two stressors below could result in the incidental taking of marine mammals. NMFS has reviewed the Navy's data and analysis and determined that it is complete and accurate and agrees that the following stressors have the potential to result in takes by harassment of marine mammals from the Navy's planned activities.

- Acoustics (sonar and other transducers);
- Explosives (explosive shock wave and sound, assumed to encompass the risk due to fragmentation).

The quantitative analysis process used for the 2019 MITT DSEIS/OEIS and the Navy's take request in the rulemaking/LOA application to estimate potential exposures to marine mammals resulting from acoustic and explosive stressors is detailed in the technical report titled *Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing* (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 Navy's rulemaking/LOA application and 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 extent to which the mitigation areas reduce impacts on the affected species is addressed separately in the *Preliminary Analysis and Negligible Impact Determination* section.

The Navy assessed the effectiveness of its procedural mitigation measures on a per-scenario basis for four factors: (1) Species sightability, (2) a Lookout's ability to observe the range to PTS (for sonar and other transducers) and range to mortality (for explosives), (3) the portion of time when mitigation could potentially be conducted during periods of reduced daytime visibility (to include inclement weather and high sea-state) and the portion of time when mitigation

could potentially be conducted at night, and (4) the ability for sound sources to be positively controlled (*e.g.,* powered down).

During training and testing activities, there is typically at least one, if not numerous, support personnel involved in the activity (*e.g.,* range support personnel aboard a torpedo retrieval boat or support aircraft). In addition to the Lookout posted for the purpose of mitigation, these additional personnel observe and disseminate marine species sighting information amongst the units participating in the activity whenever possible as they conduct their primary mission responsibilities. However, as a conservative approach to assigning mitigation effectiveness factors, the Navy elected to only account for the minimum number of required Lookouts used for each activity; therefore, the mitigation effectiveness factors may underestimate the likelihood that some marine mammals may be detected during activities that are supported by additional personnel who may also be observing the mitigation zone.

The Navy used the equations in the below sections to calculate the reduction in model-estimated mortality impacts due to implementing procedural mitigation.

Equation 1:

$$\text{Mitigation Effectiveness} = \text{Species Sightability} \times \text{Visibility} \times \text{Observation Area} \times \text{Positive Control}$$

Species Sightability is the ability to detect marine mammals and is dependent on the animal's presence at the surface and the characteristics of the animal that influence its sightability. The Navy considered applicable data from the best available science to numerically approximate the sightability of marine mammals and determined the standard ''detection probability'' referred to as g(0) is most appropriate. Also, Visibility = 1 − sum of individual visibility reduction factors; Observation Area = portion of impact range that can be continuously observed during an event; and Positive Control = positive control factor of all sound sources involving mitigation. For further details on these mitigation effectiveness factors please refer to the technical report titled *Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing* (U.S. Department of the Navy, 2018).

To quantify the number of marine mammals predicted to be sighted by Lookouts in the injury zone during implementation of procedural mitigation for sonar and other transducers, the species sightability is multiplied by the mitigation effectiveness scores and number of model-estimated PTS impacts, as shown in the equation below:

Equation 2:

$$\text{Number of Animals Sighted by Lookouts} = \text{Mitigation Effectiveness} \times \text{Model-Estimated Impacts}$$

The marine mammals sighted by Lookouts in the injury zone during implementation of mitigation, as calculated by the equation above, would avoid being exposed to these higher level impacts. To quantify the number of marine mammals predicted to be sighted by Lookouts in the mortality zone during implementation of procedural mitigation during events using explosives, the species sightability is multiplied by the mitigation effectiveness scores and number of model-estimated mortality impacts, as shown in equation 1 above. The marine mammals predicted to be sighted in the mortality zone by Lookouts during implementation of procedural mitigation, as calculated by the above equation 2, are predicted to avoid exposure in these ranges. The Navy corrects the category of predicted impact for the number of animals sighted within the mitigation zone, but does not modify the total number of animals predicted to experience impacts from the scenario. For example, the number of animals sighted (*i.e.,* number of animals that will avoid mortality) is first subtracted from the model-predicted mortality impacts, and then added to the model-predicted injurious impacts.

The NAEMO (animal movement) model overestimates the number of marine mammals that would be exposed to sound sources that could cause PTS because the model does not consider horizontal movement of animats, including avoidance of high intensity sound exposures. Therefore, the potential for animal avoidance is considered separately. At close ranges and high sound levels, avoidance of the area immediately around the sound source is one of the assumed behavioral responses for marine mammals. Animal avoidance refers to the movement out of the immediate injury zone for subsequent exposures, not wide-scale area avoidance. Various researchers have demonstrated that cetaceans can perceive the location and movement of a sound source (*e.g.,* vessel, seismic source, etc.) relative to their own location and react with responsive movement away from the source, often at distances of 1 km or more (Au & Perryman,1982; Jansen *et al.,* 2010; Richardson *et al.,* 1995; Tyack *et al.,* 2011; Watkins, 1986; Würsig *et al.,* 1998) A marine mammal's ability to avoid a sound source and reduce its cumulative sound energy exposure would reduce risk of both PTS and TTS. However, the quantitative analysis conservatively only considers the potential to reduce some instances of PTS by accounting for marine mammals swimming away to avoid repeated high-level sound exposures. All reductions in PTS impacts from likely avoidance behaviors are instead considered TTS impacts.

NMFS coordinated with the Navy in the development of this quantitative method to address the effects of procedural mitigation on acoustic and explosive exposures and takes, and NMFS independently reviewed and concurs with the Navy that it is appropriate to incorporate the quantitative assessment of mitigation into the take estimates based on the best available science. For additional information on the quantitative analysis process and mitigation measures, refer to the technical report titled *Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing* (U.S. Department of the Navy, 2018) and Chapter 6 (Take Estimates for Marine Mammals) and Chapter 11 (Mitigation Measures) of the Navy's rulemaking/LOA application.

As a general matter, NMFS does not prescribe the methods for estimating take for any applicant, but we review and ensure that applicants use the best available science, and methodologies that are logical and technically sound. Applicants may use different methods of calculating take (especially when using models) and still get to a result that is representative of the best available science and that allows for a rigorous and accurate evaluation of the effects on the affected populations. There are multiple pieces of the Navy take estimation methods—propagation models, animat movement models, and behavioral thresholds, for example. NMFS evaluates the acceptability of these pieces as they evolve and are used in different rules and impact analyses. Some of the pieces of the Navy's take estimation process have been used in Navy incidental take rules since 2009 and undergone multiple public comment processes, all of them have undergone extensive internal Navy review, and all of them have undergone comprehensive review by NMFS, which has sometimes resulted in modifications to methods or models.

The Navy uses rigorous review processes (verification, validation, and accreditation processes, peer and public review) to ensure the data and methodology it uses represent the best available science. For instance, the NAEMO model is the result of a NMFS-led Center for Independent Experts (CIE) review of the components used in earlier models. The acoustic propagation component of the NAEMO model (CASS/GRAB) is accredited by the Oceanographic and Atmospheric Master Library (OAML), and many of the environmental variables used in the NAEMO model come from approved OAML databases and are based on in-situ data collection. The animal density components of the NAEMO model are base products of the NMSDD, which includes animal density components that have been validated and reviewed by a variety of scientists from NMFS Science Centers and academic institutions. Several components of the model, for example the Duke University habitat-based density models, have been published in peer reviewed literature. Others like the Atlantic Marine Assessment Program for Protected Species, which was conducted by NMFS Science Centers, have undergone quality assurance and quality control (QA/QC) processes. Finally the NAEMO model simulation components underwent QA/QC review and validation for model parts such as the scenario builder, acoustic builder, scenario simulator, etc., conducted by qualified statisticians and modelers to ensure accuracy. Other models and methodologies have gone through similar review processes.

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 Navy's rulemaking/LOA application. 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 requested for authorization are the maximum number of instances in which marine mammals are reasonably expected to be taken.

For training and testing activities, Table 30 summarizes the Navy's take estimate and request and the annual and maximum amount and type of Level A harassment and Level B harassment for the seven-year period that NMFS concurs is reasonably expected to occur by species. Note that take by Level B harassment includes both behavioral disruption and TTS. Tables 6.4–13 through 6.4–38 in Section 6 of the Navy's rulemaking/LOA application provide 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 30—ANNUAL AND SEVEN-YEAR TOTAL SPECIES-SPECIFIC TAKE ESTIMATES PROPOSED FOR AUTHORIZATION FROM ACOUSTIC AND EXPLOSIVE SOUND SOURCE EFFECTS FOR ALL TRAINING AND TESTING ACTIVITIES IN THE MITT STUDY AREA

Species	Annual		7-Year Total [1]	
	Level B	Level A	Level B	Level A
Mysticetes				
Blue whale *	24	0	169	0
Bryde's whale	298	0	2,078	0
Fin whale *	25	0	173	0
Humpback whale *	479	0	3,348	0
Minke whale	95	0	665	0
Omura's whale	29	0	199	0

TABLE 30—ANNUAL AND SEVEN-YEAR TOTAL SPECIES-SPECIFIC TAKE ESTIMATES PROPOSED FOR AUTHORIZATION FROM ACOUSTIC AND EXPLOSIVE SOUND SOURCE EFFECTS FOR ALL TRAINING AND TESTING ACTIVITIES IN THE MITT STUDY AREA—Continued

Species	Annual		7-Year Total [1]	
	Level B	Level A	Level B	Level A
Sei whale *	155	0	1,083	0
Odontocetes				
Blainville's beaked whale	1,718	0	12,033	0
Bottlenose dolphin	137	0	961	0
Cuvier's beaked whale	646	0	4,529	0
Dwarf sperm whale	8,499	50	59,459	341
False killer whale	762	0	5,331	0
Fraser's dolphin	13,278	1	92,931	8
Ginkgo-toothed beaked whale	3,726	0	26,088	0
Killer whale	44	0	309	0
Longman's beaked whale	6,066	0	42,487	0
Melon-headed whale	2,815	0	19,691	0
Pantropical spotted dolphin	14,896	1	104,242	7
Pygmy killer whale	104	0	726	0
Pygmy sperm whale	3,410	19	23,853	136
Risso's dolphin	3,170	0	22,179	0
Rough-toothed dolphin	197	0	1,379	0
Short-finned pilot whale	1,163	0	8,140	0
Sperm whale *	203	0	1,420	0
Spinner dolphin	1,414	1	9,896	4
Striped dolphin	4,007	0	28,038	0

*ESA-listed species within the MITT Study Area

[1]The 7-year totals may be less than the annual totals times seven, given that not all activities occur every year, some activities occur multiple times within a year, and some activities only occur a few times over the course of a 7-year period.

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 stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for 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.

In *Conservation Council for Hawaii* v. *National Marine Fisheries Service,* 97 F. Supp.3d 1210, 1229 (D. Haw. 2015), the Court stated that NMFS ''appear[s] to think [it] satisfies] the statutory 'least practicable adverse impact' requirement with a 'negligible impact' finding.'' More recently, expressing similar concerns in a challenge to a U.S. Navy Surveillance Towed Array Sensor System Low Frequency Active Sonar (SURTASS LFA) incidental take rule (77 FR 50290), the Ninth Circuit Court of Appeals in *Natural Resources Defense Council (NRDC)* v. *Pritzker,* 828 F.3d 1125, 1134 (9th Cir. 2016), stated, ''[c]ompliance with the 'negligible impact' requirement does not mean there [is] compliance with the 'least practicable adverse impact' standard.'' As the Ninth Circuit noted in its opinion, however, the Court was interpreting the statute without the benefit of NMFS' formal interpretation. We state here explicitly that NMFS is in full agreement that the ''negligible impact'' and ''least practicable adverse impact'' requirements are distinct, even though both statutory standards refer to species and stocks. With that in mind, we provide further explanation of our interpretation of least practicable adverse impact, and explain what distinguishes it from the negligible impact standard. This discussion is consistent with previous rules we have issued, such as the Navy's HSTT rule (83 FR 66846; December 27, 2018) and Atlantic Fleet Training and Testing rule (83 FR 57076; November 14, 2018).

Before NMFS can issue incidental take regulations under section 101(a)(5)(A) of the MMPA, it must make a finding that the total taking will have a ''negligible impact'' on the affected ''species or stocks'' of marine mammals. NMFS' and U.S. Fish and Wildlife Service's implementing regulations for section 101(a)(5) both define ''negligible impact'' as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103 and 50 CFR 18.27(c)). Recruitment (*i.e.,* reproduction) and survival rates are used to determine population growth rates [1] and, therefore are considered in evaluating population level impacts.

As stated in the preamble to the proposed rule for the MMPA incidental take implementing regulations, not every population-level impact violates the negligible impact requirement. The negligible impact standard does not require a finding that the anticipated take will have ''no effect'' on population numbers or growth rates: ''The statutory standard does not require that the same recovery rate be maintained, rather that no significant effect on annual rates of recruitment or survival occurs. [T]he key factor is the significance of the level of impact on rates of recruitment or survival.'' (54 FR 40338, 40341–42; September 29, 1989).

[1] A growth rate can be positive, negative, or flat.

While some level of impact on population numbers or growth rates of a species or stock may occur and still satisfy the negligible impact requirement—even without consideration of mitigation—the least practicable adverse impact provision separately requires NMFS to prescribe means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance,'' 50 CFR 216.102(b), which are typically identified as mitigation measures.[2]

The negligible impact and least practicable adverse impact standards in the MMPA both call for evaluation at the level of the ''species or stock.'' The MMPA does not define the term ''species.'' However, Merriam-Webster Dictionary defines ''species'' to include ''related organisms or *populations* potentially capable of interbreeding.'' See *www.merriam-webster.com/dictionary/species* (emphasis added). Section 3(11) of the MMPA defines ''stock'' as a group of marine mammals of the same species or smaller taxa in a common spatial arrangement that interbreed when mature. The definition of ''population'' is a group of interbreeding organisms that represents the level of organization at which speciation begins. *www.merriam-webster.com/dictionary/population.* The definition of ''population'' is strikingly similar to the MMPA's definition of ''stock,'' with both definitions involving groups of individuals that belong to the same species and that are located in a manner that allows for interbreeding. In fact under MMPA section 3(11), the term ''stock'' in the MMPA is interchangeable with the statutory term ''population stock.'' Both the negligible impact standard and the least practicable adverse impact standard call for evaluation at the level of the species or stock, and the terms ''species'' and ''stock'' both relate to populations; therefore, it is appropriate to view both the negligible impact standard and the least practicable adverse impact standard as having a population-level focus.

This interpretation is consistent with Congress' statutory findings for enacting the MMPA, nearly all of which are most applicable at the species or stock (*i.e.,* population) level. *See* MMPA section 2 (finding that it is species and population stocks that are or may be in danger of extinction or depletion; that it is species and population stocks that should not diminish beyond being significant functioning elements of their ecosystems; and that it is species and population stocks that should not be permitted to diminish below their optimum sustainable population level). Annual rates of recruitment (*i.e.,* reproduction) and survival are the key biological metrics used in the evaluation of population-level impacts, and accordingly these same metrics are also used in the evaluation of population level impacts for the least practicable adverse impact standard.

Recognizing this common focus of the least practicable adverse impact and negligible impact provisions on the ''species or stock'' does not mean we conflate the two standards; despite some common statutory language, we recognize the two provisions are different and have different functions. First, a negligible impact finding is required before NMFS can issue an incidental take authorization. Although it is acceptable to use the mitigation measures to reach a negligible impact finding (*see* 50 CFR 216.104(c)), no amount of mitigation can enable NMFS to issue an incidental take authorization for an activity that still would not meet the negligible impact standard. Moreover, even where NMFS can reach a negligible impact finding—which we emphasize does allow for the possibility of some ''negligible'' population-level impact—the agency must still prescribe measures that will affect the least practicable amount of adverse impact upon the affected species or stock.

Section 101(a)(5)(A)(i)(II) requires NMFS to issue, in conjunction with its authorization, binding—and enforceable—restrictions (in the form of regulations) setting forth how the activity must be conducted, thus ensuring the activity has the ''least practicable adverse impact'' on the affected species or stocks. In situations where mitigation is specifically needed to reach a negligible impact determination, section 101(a)(5)(A)(i)(II) also provides a mechanism for ensuring compliance with the ''negligible impact'' requirement. Finally, the least practicable adverse impact standard also requires consideration of measures for marine mammal habitat, with particular attention to rookeries, mating grounds, and other areas of similar significance, and for subsistence impacts, whereas the negligible impact standard is concerned solely with conclusions about the impact of an activity on annual rates of recruitment and survival.[3] In *NRDC* v. *Pritzker,* the Court stated, ''[t]he statute is properly read to mean that even if population levels are not threatened *significantly,* still the agency must adopt mitigation measures aimed at protecting *marine mammals* to the greatest extent practicable in light of military readiness needs.'' *Pritzker* at 1134 (emphases added). This statement is consistent with our understanding stated above that even when the effects of an action satisfy the negligible impact standard (*i.e.,* in the Court's words, ''population levels are not threatened significantly''), still the agency must prescribe mitigation under the least practicable adverse impact standard. However, as the statute indicates, the focus of both standards is ultimately the impact on the affected ''species or stock,'' and not solely focused on or directed at the impact on individual marine mammals.

We have carefully reviewed and considered the Ninth Circuit's opinion in *NRDC* v. *Pritzker* in its entirety. While the Court's reference to ''marine mammals'' rather than ''marine mammal species or stocks'' in the italicized language above might be construed as a holding that the least practicable adverse impact standard applies at the individual ''marine mammal'' level, *i.e.,* that NMFS must require mitigation to minimize impacts to each individual marine mammal unless impracticable, we believe such an interpretation reflects an incomplete appreciation of the Court's holding. In our view, the opinion as a whole turned on the Court's determination that NMFS had not given separate and independent meaning to the least practicable adverse impact standard apart from the negligible impact standard, and further, that the Court's use of the term ''marine mammals'' was not addressing the question of whether the standard applies to individual animals as opposed to the species or stock as a whole. We recognize that while consideration of mitigation can play a role in a negligible impact determination, consideration of mitigation measures extends beyond that analysis. In evaluating what mitigation measures are appropriate, NMFS considers the potential impacts of the Specified Activities, the availability of measures to minimize those potential impacts, and the practicability of implementing those measures, as we describe below.

[2] For purposes of this discussion, we omit reference to the language in the standard for least practicable adverse impact that says we also must mitigate for subsistence impacts because they are not at issue in this rule.

[3] Outside of the military readiness context, mitigation may also be appropriate to ensure compliance with the ''small numbers'' language in MMPA sections 101(a)(5)(A) and (D).

Implementation of Least Practicable Adverse Impact Standard

Given the *NRDC* v. *Pritzker* decision, we discuss here how we determine whether a measure or set of measures meets the ''least practicable adverse impact'' standard. Our separate analysis of whether the take anticipated to result from Navy's activities meets the ''negligible impact'' standard appears in the *Preliminary Analysis and Negligible Impact Determination* section below.

Our evaluation of potential mitigation measures includes consideration of two primary factors:

(1) The manner in which, and the degree to which, implementation of the potential measure(s) is expected to reduce adverse impacts to marine mammal species or stocks, their habitat, and their availability for subsistence uses (where relevant). This analysis considers such things as the nature of the potential adverse impact (such as likelihood, scope, and range), the likelihood that the measure will be effective if implemented, and the likelihood of successful implementation; and

(2) The practicability of the measures for applicant implementation. Practicability of implementation may consider such things as cost, impact on activities, and, in the case of a military readiness activity, specifically considers personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

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. 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 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. We discuss consideration of these factors in greater detail below.

1. *Reduction of adverse impacts to marine mammal species or stocks and their habitat.*[4] The emphasis given to a measure's ability to reduce the impacts on a species or stock considers the degree, likelihood, and context of the anticipated reduction of impacts to individuals (and how many individuals) as well as the status of the species or stock.

The ultimate impact on any individual from a disturbance event (which informs the likelihood of adverse species- or stock-level effects) is dependent on the circumstances and associated contextual factors, such as duration of exposure to stressors. Though any proposed mitigation needs to be evaluated in the context of the specific activity and the species or stocks affected, measures with the following types of effects have greater value in reducing the likelihood or severity of adverse species- or stock-level impacts: Avoiding or minimizing injury or mortality; limiting interruption of known feeding, breeding, mother/young, or resting behaviors; minimizing the abandonment of important habitat (temporally and spatially); minimizing the number of individuals subjected to these types of disruptions; and limiting degradation of habitat. Mitigating these types of effects is intended to reduce the likelihood that the activity will result in energetic or other types of impacts that are more likely to result in reduced reproductive success or survivorship. It is also important to consider the degree of impacts that are expected in the absence of mitigation in order to assess the added value of any potential measures. Finally, because the least practicable adverse impact standard gives NMFS discretion to weigh a variety of factors when determining appropriate mitigation measures and because the focus of the standard is on reducing impacts at the species or stock level, the least practicable adverse impact standard does not compel mitigation for every kind of take, or

[4] We recognize the least practicable adverse impact standard requires consideration of measures that will address minimizing impacts on the availability of the species or stocks for subsistence uses where relevant. Because subsistence uses are not implicated for this action, we do not discuss them. However, a similar framework would apply for evaluating those measures, taking into account the MMPA's directive that we make a finding of no unmitigable adverse impact on the availability of the species or stocks for taking for subsistence, and the relevant implementing regulations.

every individual taken, if that mitigation is unlikely to meaningfully contribute to the reduction of adverse impacts on the species or stock and its habitat, even when practicable for implementation by the applicant.

The status of the species or stock is also relevant in evaluating the appropriateness of potential mitigation measures in the context of least practicable adverse impact. The following are examples of factors that may (either alone, or in combination) result in greater emphasis on the importance of a mitigation measure in reducing impacts on a species or stock: the stock is known to be decreasing or status is unknown, but believed to be declining; the known annual mortality (from any source) is approaching or exceeding the potential biological removal (PBR) level (as defined in MMPA section 3(20)); the affected species or stock is a small, resident population; or the stock is involved in a UME or has other known vulnerabilities, such as recovering from an oil spill.

Habitat mitigation, particularly as it relates to rookeries, mating grounds, and areas of similar significance, is also relevant to achieving the standard and can include measures such as reducing impacts of the activity on known prey utilized in the activity area or reducing impacts on physical habitat. As with species- or stock-related mitigation, the emphasis given to a measure's ability to reduce impacts on a species or stock's habitat considers the degree, likelihood, and context of the anticipated reduction of impacts to habitat. Because habitat value is informed by marine mammal presence and use, in some cases there may be overlap in measures for the species or stock and for use of habitat.

We consider available information indicating the likelihood of any measure to accomplish its objective. If evidence shows that a measure has not typically been effective nor successful, then either that measure should be modified or the potential value of the measure to reduce effects should be lowered.

2. *Practicability.* Factors considered may include cost, impact on activities, and, in the case of a military readiness activity, will include personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity (see MMPA section 101(a)(5)(A)(ii)).

Assessment of Mitigation Measures for the MITT Study Area

NMFS has fully reviewed the specified activities and the mitigation measures included in the Navy's rulemaking/LOA application and the 2019 MITT DSEIS/OEIS to determine if the mitigation measures would result in the least practicable adverse impact on marine mammals and their habitat. NMFS worked with the Navy in the development of the Navy's initially proposed measures, which are informed by years of implementation and monitoring. A complete discussion of the 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*) and Appendix I (*Geographic Mitigation Assessment*) of the 2019 MITT DSEIS/OEIS. The process described in Chapter 5 (*Mitigation*) and Appendix I (*Geographic Mitigation Assessment*) of the 2019 MITT DSEIS/OEIS robustly supported NMFS' independent evaluation of whether the mitigation measures would meet the least practicable adverse impact standard. The Navy would be required to implement the mitigation measures identified in this rule for the full seven years to avoid or reduce potential impacts from acoustic and explosive stressors.

As a general matter, where an applicant proposes measures that are likely to reduce impacts to marine mammals, the fact that they are included in the application indicates that the measures are practicable, and it is not necessary for NMFS to conduct a detailed analysis of the measures the applicant proposed (rather, they are simply included). We note that in their application, the Navy added three geographic mitigation measures that are new since the 2015–2020 MITT incidental take regulations: (1) Marpi Reef Geographic Mitigation Area—to avoid potential impacts from explosives on marine mammals and report hours of MFAS–MF1 within the mitigation area, which contains a seasonal presence of humpback whales (2) Chalan Kanoa Reef Geographic Mitigation Area—to avoid potential impacts from explosives on marine mammals and report hours of MFAS–MF1 within the mitigation area, which contains a seasonal presence of humpback whales and (3) Agat Bay Nearshore Geographic Mitigation Area—to avoid potential impacts from explosives and MFAS–MF1 on spinner dolphins. However, it is still necessary for NMFS to consider whether there are additional practicable measures that would meaningfully reduce the probability or severity of impacts that could affect reproductive success or survivorship. In the case of this rule, we worked with the Navy after it submitted its 2019 rulemaking/LOA application but prior to the development of this proposed rule and the Navy also agreed to expand the geographic mitigation areas for Marpi Reef and Chalan Kanoa Reef Geographic Mitigation Areas to more fully encompass the 400 m isobaths based on the available data indicating the presence of humpback whale mother/calf pairs (seasonal breeding area), which is expected to further avoid impacts from explosives that would be more likely to affect reproduction or survival of individuals and could adversely impact the species. The Navy also agreed to the addition of the Marpi Reef and Chalan Kanoa Reef Awareness Notification Message Areas, which allow Navy personnel to inform other personnel of the presence of humpback whales, enabling them to avoid potential impacts from vessel strikes and training and testing activities as these areas contain important seasonal breeding habitat for this species.

Overall the Navy has agreed to procedural mitigation measures that would reduce the probability and/or severity of impacts expected to result from acute exposure to acoustic sources or explosives, ship strike, and impacts to marine mammal habitat. Specifically, the Navy would use a combination of delayed starts, powerdowns, and shutdowns to avoid mortality or serious injury, 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 would also implement multiple time/area restrictions that would reduce take of marine mammals in areas or at times where they are known to engage in important behaviors, such as 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 MITT Study Area are provided in Tables 31 and 32.

TABLE 31—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.
Weapons Firing Noise	30 degrees on either side of the firing line out to 70 yd.
Explosive Sonobuoys	600 yd.
Explosive Torpedoes	2,100 yd.
Explosive Medium-Caliber and Large-Caliber Projectiles.	1,000 yd (large-caliber projectiles), 600 yd. (medium-caliber projectiles during surface-to-surface activities), or 200 yd. (medium-caliber projectiles during air-to-surface activities).
Explosive Missiles and Rockets	2,000 yd (>21–500 lb net explosive weight), or 900 yd (0.6–20 lb net explosive weight).
Explosive Bombs	2,500 yd.
Sinking Exercises	2.5 NM.
Explosive Mine Countermeasure and Neutralization Activities.	600 yd.
Explosive Mine Neutralization Activities involving Navy Divers.	1,000 yd (charges using time delay fuses), or 500 yd (positive control charges).
Maritime Security Operations—Anti-Swimmer Grenades.	200 yd.
Vessel Movement	500 yd (whales) or 200 yd (other marine mammals).
Towed In-Water Devices	250 yd.
Small-, Medium-, and Large-Caliber Non-Explosive Practice Munitions.	200 yd.
Non-Explosive Missiles and Rockets	900 yd.
Non-Explosive Bombs and Mine Shapes	1,000 yd.

Notes: lb: Pounds; NM: Nautical miles; yd: Yards

TABLE 32—SUMMARY OF MITIGATION AREAS FOR MARINE MAMMALS

Geographic mitigation area name	Approximate area (km^2)	Summary of actions
Marpi Reef	*33*	*Humpback whales (seasonally) reporting MFAS–MF1; no explosives year-round.*
Chalan Kanoa Reef	*102*	*Humpback whales (seasonally) reporting MFAS–MF1; no explosives year-round.*
Agat Bay Nearshore	*5*	*No MFAS- MF1 sonar or explosive year-round.*
Marpi Reef and Chalan Kanoa Reef Notification Awareness Message Areas.	*33 and 102*	*Inform personnel to the presence of humpback whales enabling them to avoid potential impacts from vessel strikes and training and testing activities.*

The Navy assessed the practicability of the proposed measures in the context of personnel safety, practicality of implementation, and their impacts on the Navy's ability to meet their Title 10 requirements and found that the measures are supportable. As described in more detail below, NMFS has independently evaluated the measures the Navy proposed in the manner described earlier in this section (*i.e.,* in consideration of their ability to reduce adverse impacts on marine mammal species and their habitat and their practicability for implementation). We have determined that the measures will significantly and adequately reduce impacts on the affected marine mammal species and their habitat and, further, be practicable for Navy implementation. Therefore, the mitigation measures assure that Navy's activities will have the least practicable adverse impact on the species and their habitat.

The Navy also evaluated numerous measures in the 2019 MITT DSEIS/OEIS that were not included in the Navy's rulemaking/LOA application, and NMFS independently reviewed and preliminarily concurs with Navy's analysis that their inclusion was not appropriate under the least practicable adverse impact standard based on our assessment. The Navy considered these additional potential mitigation measures in two groups. First, Chapter 5 (*Mitigation)* of the 2019 MITT DSEIS/OEIS, in the *Measures Considered but Eliminated* section, includes an analysis of an array of different types of mitigation that have been recommended over the years by non-governmental organizations or the public, through scoping or public comment on environmental compliance documents. Appendix I (*Geographic Mitigation Assessment*) of the 2019 MITT DSEIS/OEIS includes an in-depth analysis of time/area restrictions that have been recommended over time or previously implemented as a result of litigation (outside of the MITT Study Area). As described in Chapter 5 (*Mitigation*) of the 2019 MITT DSEIS/OEIS, commenters sometimes recommend that the Navy reduce its overall amount of training, reduce explosive use, modify its sound sources, completely replace live training with computer simulation, or include time of day restrictions. Many of these mitigation measures could potentially reduce the number of marine mammals taken, via direct reduction of the activities or amount of sound energy put in the water. However, as described in Chapter 5 (*Mitigation*) of the 2019 MITT DSEIS/OEIS, the Navy needs to train and test in the conditions in which it fights—and these types of modifications fundamentally change the activity in a manner that would not support the purpose and need for the training and testing (*i.e.,* are entirely impracticable) and therefore are not considered further. NMFS finds the Navy's explanation for why adoption of these recommendations would unacceptably undermine the purpose of the testing and training persuasive. After independent review, NMFS finds Navy's judgment on the impacts of potential mitigation measures to personnel safety, practicality of implementation, and the effectiveness of training and testing within the MITT Study Area persuasive, and for these

reasons, NMFS finds that these measures do not meet the least practicable adverse impact standard because they are not practicable.

Second, in Chapter 5 (*Mitigation*) of the 2019 MITT DSEIS/OEIS, the Navy evaluated additional potential procedural mitigation measures, including increased mitigation zones, ramp-up measures, additional passive acoustic and visual monitoring, and decreased vessel speeds. Some of these measures have the potential to incrementally reduce take to some degree in certain circumstances, though the degree to which this would occur is typically low or uncertain. However, as described in the Navy's analysis, the measures would have significant direct negative effects on mission effectiveness and are considered impracticable (see Chapter 5 *Mitigation* of 2019 MITT DSEIS/OEIS). NMFS independently reviewed the Navy's evaluation and concurs with this assessment, which supports NMFS' preliminary findings that the impracticability of this additional mitigation would greatly outweigh any potential minor reduction in marine mammal impacts that might result; therefore, these additional mitigation measures are not warranted.

Last, Appendix I (*Geographic Mitigation Assessment*) of the 2019 MITT DSEIS/OEIS describes a comprehensive method for analyzing potential geographic mitigation that includes consideration of both a biological assessment of how the potential time/area limitation would benefit the species and its habitat (*e.g.,* is a key area of biological importance or would result in avoidance or reduction of impacts) in the context of the stressors of concern in the specific area and an operational assessment of the practicability of implementation (*e.g.,* including an assessment of the specific importance of that area for training, considering proximity to training ranges and emergency landing fields and other issues).

In its application, the Navy proposed several time/area mitigations that were not included in the 2015–2020 MITT regulations. For most of the areas that were considered in the 2019 MITT DSEIS/OEIS but not included in this rule, the Navy found that the mitigation was not warranted because the anticipated reduction of adverse impacts on marine mammal species and their habitat was not sufficient to offset the impracticability of implementation. In some cases potential benefits to marine mammals were non-existent, while in others the consequences on mission effectiveness were too great. NMFS has reviewed the Navy's analysis in Chapter 5 *Mitigation* and Appendix I *Geographic Mitigation Assessment* of the 2019 MITT DSEIS/OEIS, which considers the same factors that NMFS considers to satisfy the least practicable adverse impact standard, and concurs with the analysis and conclusions. Therefore, NMFS is not proposing to include any of the measures that the Navy ruled out in the 2019 MITT DSEIS/OEIS. Below are the mitigation measures that NMFS determined will ensure the least practicable adverse impact on all affected species and their habitat, including the specific considerations for military readiness activities. The following sections summarize the mitigation measures that would be implemented in association with the training and testing activities analyzed in this document. The mitigation measures are organized into two categories: procedural mitigation and mitigation areas.

Procedural Mitigation

Procedural mitigation is mitigation that the Navy would implement whenever and wherever an applicable training or testing activity takes place within the MITT Study Area. The Navy customizes procedural mitigation for each applicable activity category or stressor. Procedural mitigation generally involves: (1) The use of one or more trained Lookouts to diligently observe for specific biological resources (including marine mammals) within a mitigation zone, (2) requirements for Lookouts to immediately communicate sightings of specific biological resources to the appropriate watch station for information dissemination, and (3) requirements for the watch station to implement mitigation (*e.g.,* halt an activity) until certain recommencement conditions have been met. The first procedural mitigation (Table 33) is designed to aid Lookouts and other applicable Navy personnel with their observation, environmental compliance, and reporting responsibilities. The remainder of the procedural mitigation measures (Tables 34 through 50) are organized by stressor type and activity category and includes acoustic stressors (*i.e.,* active sonar, 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 physical disturbance and strike stressors (*i.e.,* vessel movement, towed in-water devices, small-, medium-, and large-caliber non-explosive practice munitions, non-explosive missiles and rockets, non-explosive bombs and mine shapes).

TABLE 33—PROCEDURAL MITIGATION FOR ENVIRONMENTAL AWARENESS AND EDUCATION

Procedural Mitigation Description
Stressor or Activity:
All training and testing activities, as applicable
Mitigation Requirements:
Appropriate Navy personnel (including civilian personnel) involved in mitigation and training or testing activity reporting under the specified activities will complete one or more modules of the U.S. Navy Afloat Environmental Compliance Training Series, as identified in their career path training plan. Modules include:
—Introduction to the U.S. Navy Afloat Environmental Compliance Training Series. The introductory module provides information on environmental laws (*e.g.,* Endangered Species Act, Marine Mammal Protection Act) and the corresponding responsibilities that are relevant to Navy training and testing activities. The material explains why environmental compliance is important in supporting the Navy's commitment to environmental stewardship.
—Marine Species Awareness Training. All bridge watch personnel, Commanding Officers, Executive Officers, maritime patrol aircraft aircrews, anti-submarine warfare and mine warfare rotary-wing aircrews, Lookouts, and equivalent civilian personnel must successfully complete the Marine Species Awareness Training prior to standing watch or serving as a Lookout. The Marine Species Awareness Training provides information on sighting cues, visual observation tools and techniques, and sighting notification procedures. Navy biologists developed Marine Species Awareness Training to improve the effectiveness of visual observations for biological resources, focusing on marine mammals and sea turtles, and including floating vegetation, jellyfish aggregations, and flocks of seabirds.
—U.S. Navy Protective Measures Assessment Protocol. This module provides the necessary instruction for accessing mitigation requirements during the event planning phase using the Protective Measures Assessment Protocol software tool.

TABLE 33—PROCEDURAL MITIGATION FOR ENVIRONMENTAL AWARENESS AND EDUCATION—Continued

Procedural Mitigation Description
—U.S. Navy Sonar Positional Reporting System and Marine Mammal Incident Reporting. This module provides instruction on the procedures and activity reporting requirements for the Sonar Positional Reporting System and marine mammal incident reporting.

Procedural Mitigation for Acoustic Stressors

Mitigation measures for acoustic stressors are provided in Tables 34 and 35.

Procedural Mitigation for Active Sonar

Procedural mitigation for active sonar is described in Table 34 below.

TABLE 34—PROCEDURAL MITIGATION FOR ACTIVE SONAR

Procedural Mitigation Description
Stressor or Activity: • Low-frequency active sonar, mid-frequency active sonar, high-frequency active sonar —For vessel-based active sonar activities, mitigation applies only to sources that are positively controlled and deployed from manned surface vessels (*e.g.,* sonar sources towed from manned surface platforms). —For aircraft-based active sonar activities, mitigation applies only to sources that are positively controlled and deployed from manned aircraft that do not operate at high altitudes (*e.g.,* rotary-wing aircraft). Mitigation does not apply to active sonar sources deployed from unmanned aircraft or aircraft operating at high altitudes (*e.g.,* maritime patrol aircraft).
Number of Lookouts and Observation Platform: • Hull-mounted sources: —1 Lookout: Platforms with space or manning restrictions while underway (at the forward part of a small boat or ship) and platforms using active sonar while moored or at anchor (including pierside). —2 Lookouts: Platforms without space or manning restrictions while underway (at the forward part of the ship). • Sources that are not hull-mounted: —1 Lookout on the ship or aircraft conducting the activity.
Mitigation Requirements: • Mitigation zones: —During the activity at 1,000 yd, Navy personnel must power down 6dB, 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. —200 yd shut down for low-frequency active sonar <200 dB, mid-frequency active sonar sources that are not hull-mounted, and high-frequency active sonar. • Prior to the initial start of the activity (*e.g.,* when maneuvering on station): —Observe the mitigation zone for marine mammals; if marine mammals are observed, relocate or delay the start of active sonar transmission. • During the activity: —Low-frequency active sonar at ≥200 dB or more, and hull-mounted mid-frequency active sonar: Navy personnel must observe the mitigation zone for marine mammals; power down active sonar transmission by 6 dB if marine mammals are observed within 1,000 yd of the sonar source; power down an additional 4 dB (for a total of 10 dB total) within 500 yd; cease transmission within 200 yd. —Low-frequency active sonar <200 dB, mid-frequency active sonar sources that are not hull-mounted, and high-frequency active sonar: Navy personnel must observe the mitigation zone for marine mammals; cease active sonar transmission if observed within 200 yd of the sonar source. • Commencement/recommencement conditions after a marine mammal sighting before or during the activity: —Navy personnel will allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing or powering up active sonar transmission) until one of the following conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the sonar source; (3) the mitigation zone has been clear from any additional sightings for 10 min. for aircraft-deployed sonar sources or 30 min for vessel-deployed sonar sources; (4) for mobile activities, the active sonar source has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting; or (5) for activities using hull-mounted sonar, the ship concludes that dolphins are deliberately closing in on the ship to ride the ship's bow wave, and are therefore out of the main transmission axis of the sonar (and there are no other marine mammal sightings within the mitigation zone).

Procedural Mitigation for Weapons Firing Noise

Procedural mitigation for weapons firing noise is described in Table 35 below.

TABLE 35—PROCEDURAL MITIGATION FOR WEAPONS FIRING NOISE

Procedural Mitigation Description
Stressor or Activity: • Weapons firing noise associated with large-caliber gunnery activities. Number of Lookouts and Observation Platform: • 1 Lookout positioned on the ship conducting the firing. • Depending on the activity, the Lookout could be the same as the one described in Procedural Mitigation for Explosive Medium- and Large-Caliber Projectiles (Table 38) or Procedural Mitigation for Small-, Medium-, and Large-Caliber Non-Explosive Practice Munitions (Table 47). Mitigation Requirements: • Mitigation Zone: —30° on either side of the firing line out to 70 yd from the muzzle of the weapon being fired. • Prior to the initial start of the activity: —Observe the mitigation zone for marine mammals; if observed, relocate or delay the start of weapons firing. • During the activity: —Observe the mitigation zone for marine mammals; if marine mammals are observed, cease weapons firing. • Commencement/recommencement conditions after a marine mammal sighting before or during the activity: —Navy personnel will allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing weapons firing) until one of the following conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the firing ship; (3) the mitigation zone has been clear from any additional sightings for 30 min; or (4) for mobile activities, the firing ship has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

Procedural Mitigation for Explosive Stressors

Mitigation measures for explosive stressors are provided in Tables 36 through 44.

Procedural Mitigation for Explosive Sonobuoys

Procedural mitigation for explosive sonobuoys is described in Table 36 below.

TABLE 36—PROCEDURAL MITIGATION FOR EXPLOSIVE SONOBUOYS

Procedural Mitigation Description
Stressor or Activity: • Explosive sonobuoys. Number of Lookouts and Observation Platform: • 1 Lookout positioned in an aircraft or on a small boat. • If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) will support observing the mitigation zone for applicable biological resources while performing their regular duties. Mitigation Requirements: • Mitigation Zone: —600 yd around an explosive sonobuoy. • Prior to the initial start of the activity (*e.g.,* during deployment of a sonobuoy pattern, which typically lasts 20–30 minutes): —Conduct passive acoustic monitoring for marine mammals; use information from detections to assist visual observations. —Visually observe the mitigation zone for marine mammals; if marine mammals are observed, relocate or delay the start of sonobuoy or source/receiver pair detonations. • During the activity: —Observe the mitigation zone for marine mammals; if marine mammals are observed, cease sonobuoy or source/receiver pair detonations. • Commencement/recommencement conditions after a marine mammal sighting before or during the activity: —Navy personnel will allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the sonobuoy; or (3) the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained. • After completion of the activity (*e.g.,* prior to maneuvering off station): —When practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, follow established incident reporting procedures. —If additional platforms are supporting this activity (*e.g.,* providing range clearance), these assets will assist in the visual observation of the area where detonations occurred.

Procedural Mitigation for Explosive Torpedoes

Procedural mitigation for explosive torpedoes is described in Table 37 below.

TABLE 37—PROCEDURAL MITIGATION FOR EXPLOSIVE TORPEDOES

Procedural Mitigation Description
Stressor or Activity: • Explosive Torpedoes. Number of Lookouts and Observation Platform: • 1 Lookout positioned in an aircraft. • If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) will support observing the mitigation zone for applicable biological resources while performing their regular duties. Mitigation Requirements: • Mitigation Zone: —2,100 yd around the intended impact location. • Prior to the start of the activity (*e.g.,* during deployment of the target): —Conduct passive acoustic monitoring for marine mammals; use information from detections to assist visual observations. —Visually observe the mitigation zone for marine mammals; if marine mammals are observed, relocate or delay the start of firing. • During the activity: —Observe the mitigation zone for marine mammals; if marine mammals are observed, cease firing. • Commencement/recommencement conditions after a marine mammal sighting before or during the activity: —Navy personnel will allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; or (3) the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained. • After completion of the activity (*e.g.,* prior to maneuvering off station): —When practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, follow established incident reporting procedures. —If additional platforms are supporting this activity (*e.g.,* providing range clearance), these assets will assist in the visual observation of the area where detonations occurred.

Procedural Mitigation for Medium- and Large-Caliber Projectiles

Procedural mitigation for medium- and large-caliber projectiles is described in Table 38 below.

TABLE 38—PROCEDURAL MITIGATION FOR EXPLOSIVE MEDIUM-CALIBER AND LARGE-CALIBER PROJECTILES

Procedural Mitigation Description
Stressor or Activity: • Gunnery activities using explosive medium-caliber and large-caliber projectiles. —Mitigation applies to activities using a surface target. Number of Lookouts and Observation Platform: • 1 Lookout on the vessel or aircraft conducting the activity. —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 (Table 35). • If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) will support observing the mitigation zone for applicable biological resources while performing their regular duties. Mitigation Requirements: • Mitigation zones: —200 yd around the intended impact location for air-to-surface activities using explosive medium-caliber projectiles. —600 yd around the intended impact location for surface-to-surface activities using explosive medium-caliber projectiles. —1,000 yd around the intended impact location for surface-to-surface activities using explosive large-caliber projectiles. • Prior to the initial start of the activity (*e.g.,* when maneuvering on station): —Observe the mitigation zone for marine mammals; if marine mammals are observed, relocate or delay the start of firing. • During the activity: —Observe the mitigation zone for marine mammals; if marine mammals are observed, cease firing. • Commencement/recommencement conditions after a marine mammal sighting before or during the activity:

TABLE 38—PROCEDURAL MITIGATION FOR EXPLOSIVE MEDIUM-CALIBER AND LARGE-CALIBER PROJECTILES—Continued

Procedural Mitigation Description
—Navy personnel will allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; (3) the mitigation zone has been clear from any additional sightings for 10 min for aircraft-based firing or 30 min for vessel-based firing; or (4) for activities using mobile targets, the intended impact location has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting. • After completion of the activity (*e.g.,* prior to maneuvering off station): —When practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, follow established incident reporting procedures. —If additional platforms are supporting this activity (*e.g.,* providing range clearance), these assets will assist in the visual observation of the area where detonations occurred.

Procedural Mitigation for Explosive Missiles and Rockets

Procedural mitigation for explosive missiles and rockets is described in Table 39 below.

TABLE 39—PROCEDURAL MITIGATION FOR EXPLOSIVE MISSILES AND ROCKETS

Procedural Mitigation Description
Stressor or Activity: • Aircraft-deployed explosive missiles and rockets. —Mitigation applies to activities using a surface target. Number of Lookouts and Observation Platform: • 1 Lookout positioned in an aircraft. • If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) will support observing the mitigation zone for applicable biological resources while performing their regular duties. Mitigation Requirements: • Mitigation zones: —900 yd around the intended impact location for missiles or rockets with 0.6–20 lb net explosive weight. —2,000 yd around the intended impact location for missiles with 21–500 lb net explosive weight. • Prior to the initial start of the activity (*e.g.,* during a fly-over of the mitigation zone): —Observe the mitigation zone for marine mammals; if marine mammals are observed, relocate or delay the start of firing. • During the activity: —Observe the mitigation zone for marine mammals; if marine mammals are observed, cease firing. • Commencement/recommencement conditions after a marine mammal sighting before or during the activity: —Navy personnel will allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; or (3) the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained. • After completion of the activity (*e.g.,* prior to maneuvering off station): —When practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, follow established incident reporting procedures. —If additional platforms are supporting this activity (*e.g.,* providing range clearance), these assets will assist in the visual observation of the area where detonations occurred.

Procedural Mitigation for Explosive Bombs

Procedural mitigation for explosive bombs is described in Table 40 below.

TABLE 40—PROCEDURAL MITIGATION FOR EXPLOSIVE BOMBS

Procedural Mitigation Description
Stressor or Activity: • Explosive bombs. Number of Lookouts and Observation Platform: • 1 Lookout positioned in the aircraft conducting the activity.

TABLE 40—PROCEDURAL MITIGATION FOR EXPLOSIVE BOMBS—Continued

Procedural Mitigation Description
• If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) will support observing the mitigation zone for applicable biological resources while performing their regular duties. Mitigation Requirements: • Mitigation zone: —2,500 yd around the intended target. • Prior to the initial start of the activity (*e.g.,* when arriving on station): —Observe the mitigation zone for marine mammals; if marine mammals are observed, relocate or delay the start of bomb deployment. • During the activity (*e.g.,* during target approach): —Observe the mitigation zone for marine mammals; if marine mammals are observed, cease bomb deployment. • Commencement/recommencement conditions after a marine mammal sighting before or during the activity: —Navy personnel will allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing bomb deployment) until one of the following conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended target; (3) the mitigation zone has been clear from any additional sightings for 10 min; or (4) for activities using mobile targets, the intended target has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting. • After completion of the activity (*e.g.,* prior to maneuvering off station): —When practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, follow established incident reporting procedures. —If additional platforms are supporting this activity (*e.g.,* providing range clearance), these assets will assist in the visual observation of the area where detonations occurred.

Procedural Mitigation for Sinking Exercises

Procedural mitigation for sinking exercises is described in Table 41 below.

TABLE 41—PROCEDURAL MITIGATION FOR SINKING EXERCISES

Procedural Mitigation Description
Stressor or Activity: • Sinking exercises. Number of Lookouts and Observation Platform: • 2 Lookouts (one positioned in an aircraft and one on a vessel). • If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) will support observing the mitigation zone for applicable biological resources while performing their regular duties. Mitigation Requirements: • Mitigation Zone: —2.5 NM around the target ship hulk. • Prior to the initial start of the activity (90 min. prior to the first firing): —Conduct aerial observations of the mitigation zone for marine mammals; if marine mammals are observed, delay the start of firing. • During the activity: —Conduct passive acoustic monitoring for marine mammals; use information from detections to assist visual observations. —Visually observe the mitigation zone for marine mammals from the vessel; if marine mammals are observed, Navy personnel must cease firing. —Immediately after any planned or unplanned breaks in weapons firing of longer than 2 hours, observe the mitigation zone for marine mammals from the aircraft and vessel; if marine mammals are observed, Navy personnel must delay recommencement of firing. • Commencement/recommencement conditions after a marine mammal sighting before or during the activity: —Navy personnel will allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the target ship hulk; or (3) the mitigation zone has been clear from any additional sightings for 30 min. • After completion of the activity (for 2 hours after sinking the vessel or until sunset, whichever comes first): —Observe the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. —If additional platforms are supporting this activity (*e.g.,* providing range clearance), these assets will assist in the visual observation of the area where detonations occurred.

Procedural Mitigation for Explosive Mine Countermeasure and Neutralization Activities

Procedural mitigation for explosive mine countermeasure and neutralization activities is described in Table 42 below.

TABLE 42—PROCEDURAL MITIGATION FOR EXPLOSIVE MINE COUNTERMEASURE AND NEUTRALIZATION ACTIVITIES

Procedural Mitigation Description
Stressor or Activity: • Explosive mine countermeasure and neutralization activities. Number of Lookouts and Observation Platform: • 1 Lookout positioned on a vessel or in an aircraft. • If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) will support observing the mitigation zone for applicable biological resources while performing their regular duties. Mitigation Requirements: • Mitigation Zone: —600 yd around the detonation site. • Prior to the initial start of the activity (*e.g.,* when maneuvering on station; typically, 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained): —Observe the mitigation zone for marine mammals; if marine mammals are observed, relocate or delay the start of detonations. • During the activity: —Observe the mitigation zone for marine mammals; if marine mammals are observed, cease detonations. • Commencement/recommencement conditions after a marine mammal sighting before or during the activity: —Navy personnel will allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to detonation site; or (3) the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min. when the activity involves aircraft that are not typically fuel constrained. • After completion of the activity (typically 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained): —Observe the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, follow established incident reporting procedures. —If additional platforms are supporting this activity (*e.g.,* providing range clearance), these assets will assist in the visual observation of the area where detonations occurred.

Procedural Mitigation for Explosive Mine Neutralization Activities Involving Navy Divers

Procedural mitigation for explosive mine neutralization activities involving Navy divers is described in Table 43 below.

TABLE 43—PROCEDURAL MITIGATION FOR EXPLOSIVE MINE NEUTRALIZATION ACTIVITIES INVOLVING NAVY DIVERS

Procedural Mitigation Description
Stressor or Activity: • Explosive mine neutralization activities involving Navy divers. Number of Lookouts and Observation Platforms: • 2 Lookouts (two small boats with one Lookout each, or one Lookout on a small boat and one in a rotary-wing aircraft) when implementing the smaller mitigation zone. • 4 Lookouts (two small boats with two Lookouts each), and a pilot or member of an aircrew will serve as an additional Lookout if aircraft are used during the activity, when implementing the larger mitigation zone. • 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. • If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) will support observing the mitigation zone for applicable biological resources while performing their regular duties. Mitigation Requirements: • Mitigation Zones: —500 yd around the detonation site during activities under positive control. —1,000 yd around the detonation site during activities using time-delay fuses. • Prior to the initial start of the activity (*e.g.,* when maneuvering on station for activities under positive control; 30 min for activities using time-delay firing devices): —Observe the mitigation zone for marine mammals; if marine mammals are observed, relocate or delay the start of detonations or fuse initiation. • During the activity: —Observe the mitigation zone for marine mammals; if marine mammals are observed, cease detonations or fuse initiation.

TABLE 43—PROCEDURAL MITIGATION FOR EXPLOSIVE MINE NEUTRALIZATION ACTIVITIES INVOLVING NAVY DIVERS—Continued

Procedural Mitigation Description
—To the maximum extent practical depending on mission requirements, safety, and environmental conditions, boats will position themselves near the mid-point of the mitigation zone radius (but outside of the detonation plume and human safety zone), will position themselves on opposite sides of the detonation location (when two boats are used), and will travel in a circular pattern around the detonation location with one Lookout observing inward toward the detonation site and the other observing outward toward the perimeter of the mitigation zone. —If used, aircraft will travel in a circular pattern around the detonation location to the maximum extent practicable. —The Navy will not set time-delay firing devices to exceed 10 min. • Commencement/recommencement conditions after a marine mammal before or during the activity: —Navy personnel will allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the detonation site; or (3) the mitigation zone has been clear from any additional sightings for 10 min during activities under positive control with aircraft that have fuel constraints, or 30 min during activities under positive control with aircraft that are not typically fuel constrained and during activities using time-delay firing devices. • After completion of an activity (for 30 min): —Observe the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, follow established incident reporting procedures. —If additional platforms are supporting this activity (*e.g.,* providing range clearance), these assets will assist in the visual observation of the area where detonations occurred.

Procedural Mitigation for Maritime Security Operations—Anti-Swimmer Grenades

Procedural mitigation for maritime security operations—anti-swimmer grenades is described in Table 44 below.

TABLE 44—PROCEDURAL MITIGATION FOR MARITIME SECURITY OPERATIONS—ANTI-SWIMMER GRENADES

Procedural Mitigation Description
Stressor or Activity: • Maritime Security Operations—Anti-Swimmer Grenades. Number of Lookouts and Observation Platform: • 1 Lookout positioned on the small boat conducting the activity. • If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) will support observing the mitigation zone for applicable biological resources while performing their regular duties. Mitigation Requirements: • Mitigation zone: —200 yd around the intended detonation location. • Prior to the initial start of the activity (*e.g.,* when maneuvering on station): —Observe the mitigation zone for marine mammals; if marine mammals are observed, relocate or delay the start of detonations. • During the activity: —Observe the mitigation zone for marine mammals; if marine mammals are observed, cease detonations. • Commencement/recommencement conditions after a marine mammal sighting before or during the activity: —Navy personnel will allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended detonation location; (3) the mitigation zone has been clear from any additional sightings for 30 min; or (4) the intended detonation location has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting. • After completion of the activity (*e.g.,* prior to maneuvering off station): —When practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe vicinity of where detonations occurred; if any injured or dead marine mammals are observed, follow established incident reporting procedures. —If additional platforms are supporting this activity (*e.g.,* providing range clearance), these assets will assist in the visual observation of the area where detonations occurred.

Procedural Mitigation for Physical Disturbance and Strike Stressors

Mitigation measures for physical disturbance and strike stressors are provided in Table 45 through Table 49.

Procedural Mitigation for Vessel Movement

Procedural mitigation for vessel movement is described in Table 45 below.

TABLE 45—PROCEDURAL MITIGATION FOR VESSEL MOVEMENT

Procedural Mitigation Description
Stressor or Activity: • Vessel movement: —The mitigation will not be applied if (1) the vessel's safety is threatened, (2) the vessel is restricted in its ability to maneuver (*e.g.,* during launching and recovery of aircraft or landing craft, during towing activities, when mooring, etc.), (3) the vessel is operated autonomously, or (4) when impractical based on mission requirements (*e.g.,* during Amphibious Assault and Amphibious Raid exercises). Number of Lookouts and Observation Platform: • 1 Lookout on the vessel that is underway. Mitigation Requirements: • Mitigation Zones: —500 yd around whales. —200 yd around other marine mammals (except bow-riding dolphins). • During the activity: —When underway, observe the mitigation zone for marine mammals; if marine mammals are observed, maneuver to maintain distance. • Additional requirements: —If a marine mammal vessel strike occurs, the Navy will follow the established incident reporting procedures.

Procedural Mitigation for Towed In-Water Devices

Procedural mitigation for towed in-water devices is described in Table 46 below.

TABLE 46—PROCEDURAL MITIGATION FOR TOWED IN-WATER DEVICES

Procedural Mitigation Description
Stressor or Activity: • Towed in-water devices: —Mitigation applies to devices that are towed from a manned surface platform or manned aircraft. —The mitigation will not be applied if the safety of the towing platform or in-water device is threatened. Number of Lookouts and Observation Platform: • 1 Lookout positioned on a manned towing platform. Mitigation Requirements: • Mitigation Zones: —250 yd. around marine mammals. • During the activity (*i.e.,* when towing an in-water device): —Observe the mitigation zone for marine mammals; if marine mammals are observed, maneuver to maintain distance.

Procedural Mitigation for Small-, Medium-, and Large-Caliber Non-Explosive Practice Munitions

Procedural mitigation for small-, medium-, and large-caliber non-explosive practice munitions is described in Table 47 below.

TABLE 47—PROCEDURAL MITIGATION FOR SMALL-, MEDIUM-, AND LARGE-CALIBER NON-EXPLOSIVE PRACTICE MUNITIONS

Procedural Mitigation Description
Stressor or Activity: • Gunnery activities using small-, medium-, and large-caliber non-explosive practice munitions —Mitigation applies to activities using a surface target. *Number of Lookouts and Observation Platform:* • 1 Lookout positioned on the platform conducting the activity. • Depending on the activity, the Lookout could be the same as the one described in Procedural Mitigation for Weapons Firing Noise (Table 35). *Mitigation Requirements:* • Mitigation Zone: —200 yd around the intended impact location. • Prior to the initial start of the activity (*e.g.*, when maneuvering on station): —Observe the mitigation zone for marine mammals; if marine mammals are observed, relocate or delay the start of firing. • During the activity: —Observe the mitigation zone for marine mammals; if marine mammals are observed, cease firing. • Commencement/recommencement conditions after a marine mammal sighting before or during the activity:

TABLE 47—PROCEDURAL MITIGATION FOR SMALL-, MEDIUM-, AND LARGE-CALIBER NON-EXPLOSIVE PRACTICE MUNITIONS—Continued

Procedural Mitigation Description
—Navy personnel will allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; (3) the mitigation zone has been clear from any additional sightings for 10 min for aircraft-based firing or 30 min for vessel-based firing; or (4) for activities using a mobile target, the intended impact location has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

Procedural Mitigation for Non-Explosive Missiles and Rockets

Procedural mitigation for non-explosive missiles and rockets is described in Table 48 below.

TABLE 48—PROCEDURAL MITIGATION FOR NON-EXPLOSIVE MISSILES AND ROCKETS

Procedural Mitigation Description
Stressor or Activity: • Aircraft-deployed non-explosive missiles and rockets. • Mitigation applies to activities using a surface target. *Number of Lookouts and Observation Platform:* • 1 Lookout positioned in an aircraft. *Mitigation Requirements:* • Mitigation Zone: —900 yd. around the intended impact location. • Prior to the initial start of the activity (*e.g.*, during a fly-over of the mitigation zone): —Observe the mitigation zone for marine mammals; if marine mammals are observed, relocate or delay the start of firing. • During the activity: —Observe the mitigation zone for marine mammals; if marine mammals are observed, cease firing. • Commencement/recommencement conditions after a marine mammal sighting prior to or during the activity: —Navy personnel will allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; or (3) the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained.

Procedural Mitigation for Non-Explosive Bombs and Mine Shapes

Procedural mitigation for non-explosive bombs and mine shapes is described in Table 49 below.

TABLE 49—PROCEDURAL MITIGATION FOR NON-EXPLOSIVE BOMBS AND MINE SHAPES

Procedural Mitigation Description
Stressor or Activity: • Non-explosive bombs. • Non-explosive mine shapes during mine laying activities. *Number of Lookouts and Observation Platform:* • 1 Lookout positioned in an aircraft. *Mitigation Requirements:* • Mitigation Zone: —1,000 yd around the intended target. • Prior to the start of the activity (*e.g.*, when arriving on station): —Observe the mitigation zone for marine mammals; if marine mammals are observed, relocate or delay start of bomb deployment or mine laying. • During the activity (*e.g.*, during approach of the target or intended minefield location): —Observe the mitigation zone for marine mammals; if marine mammals are observed, cease bomb deployment or mine laying. • Commencement/recommencement conditions after a marine mammal sighting prior to or during the activity:

TABLE 49—PROCEDURAL MITIGATION FOR NON-EXPLOSIVE BOMBS AND MINE SHAPES—Continued

Procedural Mitigation Description
—Navy personnel will allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing bomb deployment or mine laying) until one of the following conditions has been met: (1) The animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended target or minefield location; (3) the mitigation zone has been clear from any additional sightings for 10 min; or (4) for activities using mobile targets, the intended target has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

Mitigation Areas

In addition to procedural mitigation, the Navy would implement mitigation measures within mitigation areas to avoid or minimize potential impacts on marine mammals. A full technical analysis (for which the methods were summarized above) of the mitigation areas that the Navy considered for marine mammals is provided in Appendix I (*Geographic Mitigation Assessment*) of the 2019 MITT DSEIS/OEIS. The Navy took into account public comments received on the 2019 MITT DSEIS/OEIS, best available science, and the practicability of implementing additional mitigation measures and has enhanced its mitigation areas and mitigation measures, beyond the 2015–2020 regulations, to further reduce impacts to marine mammals.

NMFS also worked with the Navy after it submitted its 2019 rulemaking/LOA application but prior to the development of this proposed rule and the Navy also agreed to expand the geographic mitigation areas for Marpi Reef and Chalan Kanoa Reef Geographic Mitigation Areas to more fully encompass the 400 m isobaths based on the available data indicating the presence of humpback whale mother/calf pairs (seasonal breeding area), which is expected to further avoid impacts from explosives that would be more likely to affect reproduction or survival of individuals and could adversely impact the species. The Navy also agreed to the addition of the Marpi Reef and Chalan Kanoa Reef Awareness Notification Message Areas, which allow Navy personnel to inform other personnel of the presence of humpback whales, enabling them to avoid potential impacts from vessel strikes and training and testing activities as these areas contain important seasonal breeding habitat for this species.

Information on the mitigation measures that the Navy will implement within geographic mitigation areas is provided in Table 50 (see below). The mitigation applies year-round unless specified otherwise in the table.

NMFS conducted an independent analysis of the mitigation areas that the Navy proposed, which are described below. NMFS preliminarily concurs with the Navy's analysis, which indicates that the measures in these mitigation areas are both practicable and will reduce the likelihood or severity of adverse impacts to marine mammal species or their habitat in the manner described in the Navy's analysis and this rule. NMFS is heavily reliant on the Navy's description of operational practicability, since the Navy is best equipped to describe the degree to which a given mitigation measure affects personnel safety or mission effectiveness, and is practical to implement. The Navy considers the measures in this proposed rule to be practicable, and NMFS concurs. We further discuss the manner in which the Geographic Mitigation Areas in the proposed rule will reduce the likelihood or severity of adverse impacts to marine mammal species or their habitat in the *Preliminary Analysis and Negligible Impact Determination* section. Marpi Reef and Chalan Kanoa Reef Geographic Mitigation Areas (Both seasonal and year round):

The Navy would not use in-water explosives year-round. The Navy would also report the total hours of MF1 surface ship hull-mounted mid-frequency active sonar from December through April used in this area in its annual training and testing activity reports submitted to NMFS (Table 50).

Marpi Reef and Chalan Kanoa Reef Awareness Notification Message Areas (December–April):

The Navy would issue an annual seasonal awareness notification message to alert ships and aircraft operating in the area to the possible presence of large whales or increased concentrations of humpback whales between December and April. To maintain safety of navigation and to avoid interactions with large whales during transits, the Navy would instruct vessels to remain vigilant to the presence of large whales, that when concentrated seasonally, may become vulnerable to vessel strikes. Platforms would 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 (Table 50).

Agat Bay Nearshore Geographic Mitigation Area:

The Navy would not use in-water explosives year-round. The Navy also would not use MF1 ship hull-mounted mid-frequency active sonar year round (Table 50).

TABLE 50—GEOGRAPHIC MITIGATION AREAS FOR MARINE MAMMALS IN THE MITT STUDY AREA

Geographic Mitigation Area Description
Stressor or Activity: • MF1 Sonar. • Explosives.
Mitigation Area Requirements: • Marpi Reef: —Seasonal (December–April): The Navy will report the total hours of MF1 surface ship hull-mounted mid-frequency active sonar used in this area in its annual training and testing activity reports submitted to NMFS.

TABLE 50—GEOGRAPHIC MITIGATION AREAS FOR MARINE MAMMALS IN THE MITT STUDY AREA—Continued

Geographic Mitigation Area Description
—Year-round: Year-round prohibition on in-water explosives. Should national security present a requirement to use explosives that could potentially result in the take of marine mammals during training or testing, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with advance notification and include the information (*e.g.*, explosives usage) in its annual activity reports submitted to NMFS.
• Chalan Kanoa Reef:
—Seasonal (December–April): The Navy will report the total hours of MF1 surface ship hull-mounted mid-frequency active sonar used in this area in its annual training and testing activity reports submitted to NMFS.
—Year-round: Year-round prohibition on in-water explosives. Should national security present a requirement to use explosives that could potentially result in the take of marine mammals during training or testing, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with advance notification and include the information (*e.g.*, explosives usage) in its annual activity reports submitted to NMFS.
• Marpi Reef and Chalan Kanoa Reef Awareness Notification Message Areas:
—Seasonal (December–April): The Navy will issue an annual seasonal awareness notification message to alert ships and aircraft operating in the area to the possible presence of large whales or increased concentrations of humpback whales between December and April. To maintain safety of navigation and to avoid interactions with large whales during transits, the Navy will instruct vessels to remain vigilant to the presence of large whales, that when concentrated seasonally, may become vulnerable to vessel strikes. Platforms will use the information from the awareness notification messages to assist their visual observation of applicable mitigation zones during training and testing activities and to aid in the implementation of procedural mitigation.
• Agat Bay Nearshore:
—Year-round prohibition on use of MF1 ship hull-mounted mid-frequency active sonar and in-water explosives. Should national security present a requirement to use surface ship hull-mounted active sonar or explosives that could potentially result in the take of marine mammals during training or testing, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with advance notification and include the information (*e.g.*, sonar hours or explosives usage) in its annual activity reports submitted to NMFS.

Humpback whales have been sighted in the MITT Study Area from January through March (U.S. Department of the Navy, 2005b; Uyeyama, 2014), and male humpback songs have been recorded from December through April (Hill et al., 2017a; Klinck et al., 2016; Munger et al., 2014; Norris et al., 2014; Oleson et al., 2015). Recent scientific research by NOAA Fisheries Pacific Island Fisheries Science Center (PIFSC) indicates the shallower water around Marpi Reef and Chalan Kanoa Reef are important habitat for humpback whale breeding and calving. With the presence of humpback whale newborn calves and competitive groups, researchers were able to confirm this new breeding location (NOAA, 2018). The Navy obtained all humpback whale sighting data in the Marianas from the PIFSC (2015–2019) to determine the extent of this geographic mitigation area. Humpback whales, including mother-calf pairs, have been seasonally present in the Marpi Reef Area in shallow waters (out to the 400 m isobaths) and the area may be of biological importance to humpback whales for biologically important life processes associated with reproduction (*e.g.,* breeding, birthing, and nursing) for part of the year.

Calves are considered more sensitive and susceptible to adverse impacts from Navy stressors than adults (especially given their lesser weight and the association between weight and explosive impacts), as well as being especially reliant upon mother-calf communication for protection and guidance. Both gestation and lactation increase energy demands for mothers. Breeding activities typically involve vocalizations and complex social interactions that can include violent interactions between males. Reducing exposure of humpback whales to explosive detonations in this area and time is expected to reduce the likelihood of impacts that could affect reproduction or survival, by minimizing impacts on calves during this sensitive life stage, avoiding the additional energetic costs to mothers of avoiding the area during explosive exercises, and minimizing the chances that important breeding behaviors are interrupted to the point that reproduction is inhibited or abandoned for the year, or otherwise interfered with. Since the Navy submitted its application, it has extended both the Marpi Reef and Chalan Kanoa Reef Mitigation Areas out to the 400 m isobath to account for animals transiting to and from the more critical < 200 m areas used by humpback whales for breeding behaviors (Figures 2 and 3 below). Additional data would be needed to determine which DPS the humpbacks are assigned to.

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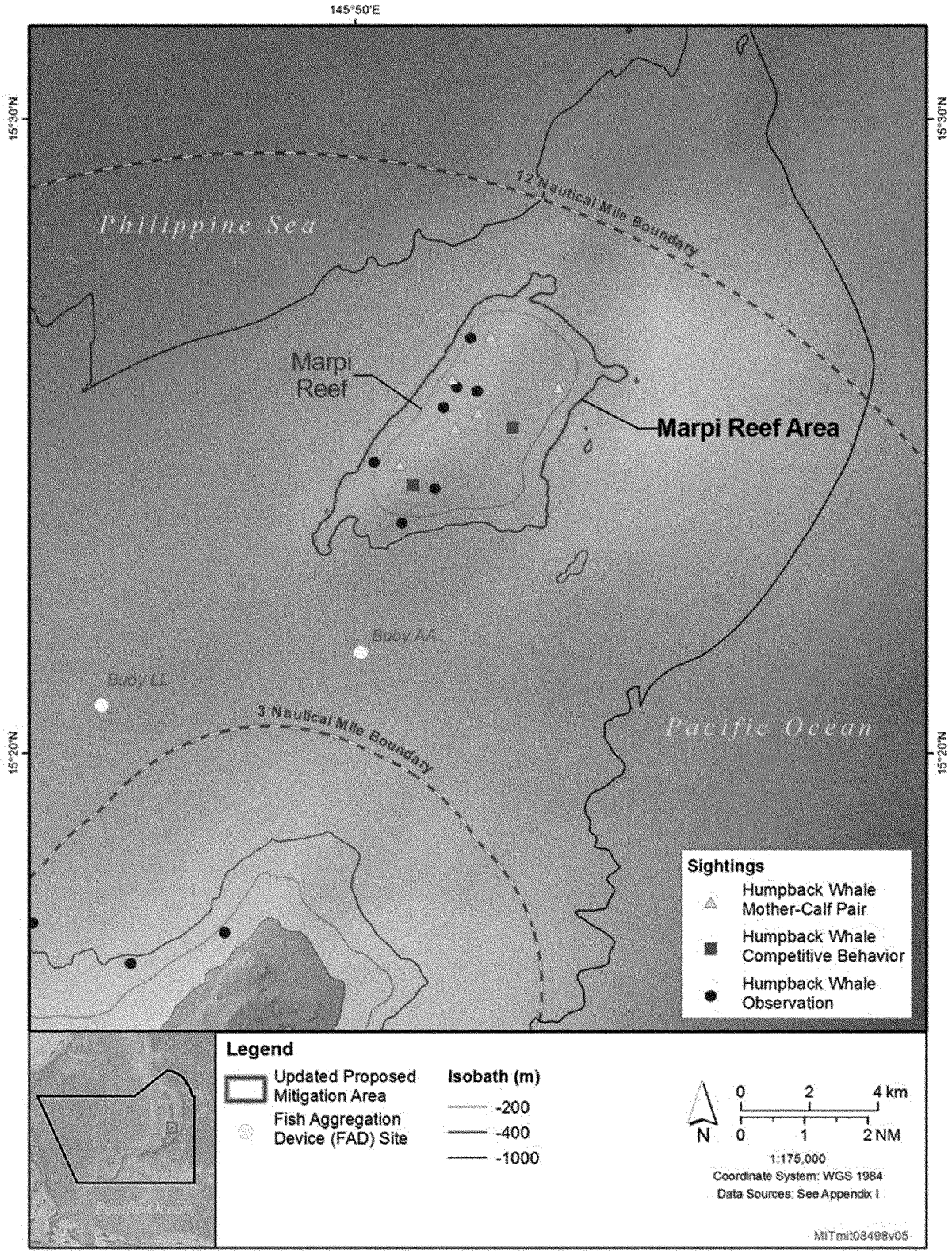

Figure 2. Proposed Marpi Reef Geographic Mitigation Area.

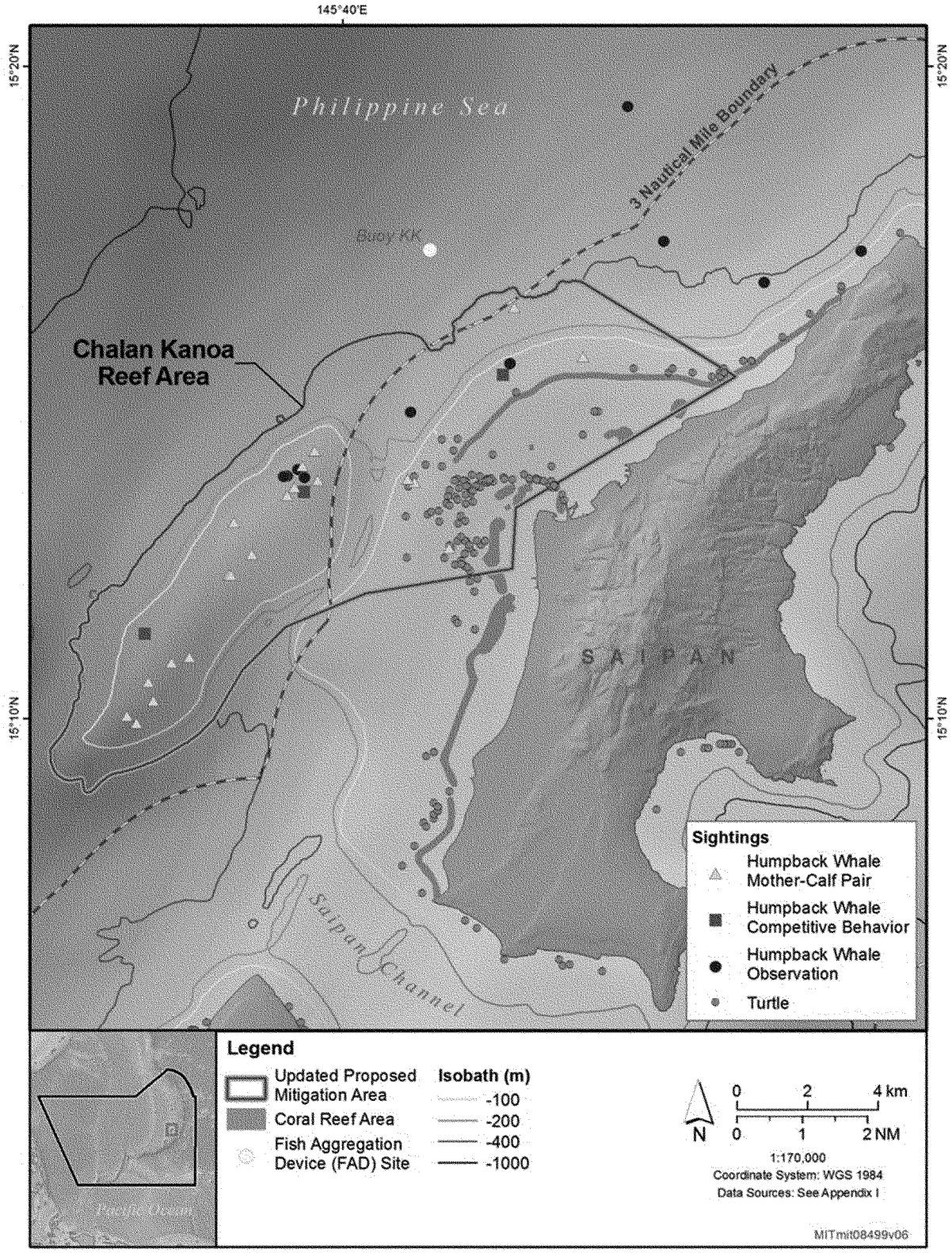

Figure 3. Proposed Chalan Kanoa Reef Geographic Mitigation Area.

Agat Bay Nearshore Geographic Mitigation Area (year-round):

The Navy would not use MF1 ship hull-mounted mid-frequency active sonar and in-water explosives year-round in the Agat Bay Nearshore Geographic Mitigation Area (Table 50 above). Spinner dolphins are known to

congregate and rest in Agat Bay. Behavioral disruptions during resting periods can adversely impact health and energetic budgets by not allowing animals to get the needed rest and/or by creating the need to travel and expend additional energy to find other suitable resting areas. Avoiding sonar and explosives in this area reduces the likelihood of impacts that would affect reproduction and survival.

The boundaries of the proposed Agat Bay Nearshore Geographic Mitigation Area were defined by Navy scientists based on spinner dolphin sightings documented during small boat surveys from 2010 through 2014. Spinner dolphins have been the most frequently encountered species during small boat reconnaissance surveys conducted in the Mariana Islands since 2010. Consistent with more intensive studies completed for the species in the Hawaiian Islands, island-associated spinner dolphins are expected to occur in shallow water resting areas (about 50 meters (m) deep or less) in the morning and throughout the middle of the day, moving into deep waters offshore during the night to feed (Heenehan et al., 2016b; Heenehan et al., 2017a; Hill et al., 2010; Norris & Dohl, 1980).

The Agat Bay Nearshore Geographic Mitigation Area encompasses the shoreline between Tipalao, Dadi Beach, and Agat on the west coast of Guam, with a boundary across the bay enclosing an area of approximately 5 km^2 in relatively shallow waters (less than 100 m) (Figure 4).

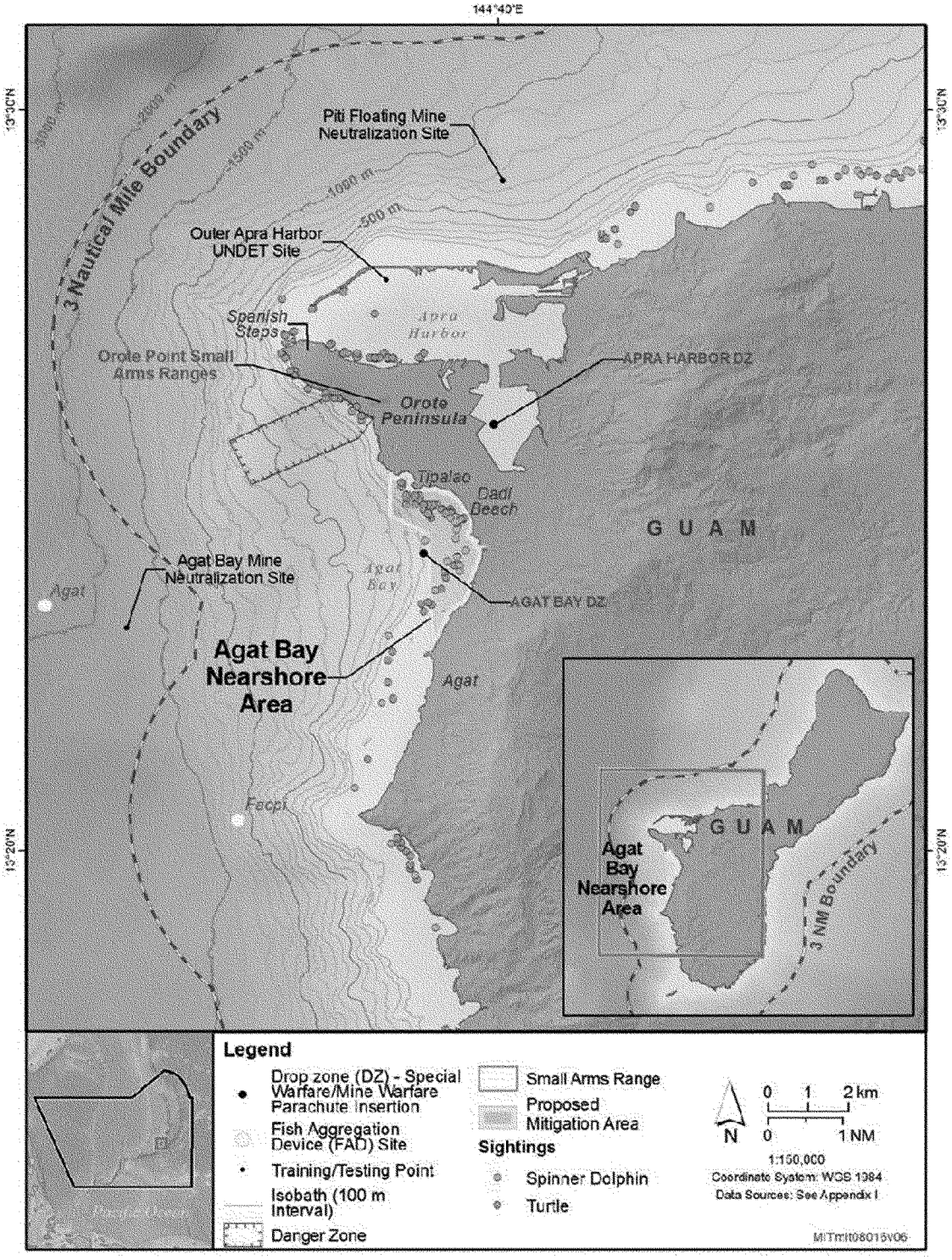

Figure 4: Proposed Agat Bay Nearshore Geographic Mitigation Area.

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Marpi Reef and Chalan Kanoa Reef Awareness Notification Message Areas (Seasonal):

The Navy would issue an annual seasonal awareness notification message to alert ships and aircraft operating in the area to the possible presence of large whales including increased concentrations of humpback whales between December and April. To maintain safety of navigation and to avoid interactions with large whales during transits, the Navy would instruct vessels to remain vigilant to the presence of large whales, that when concentrated seasonally, may become more vulnerable to vessel strikes. Platforms would 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. This restriction would further reduce any potential for vessel strike of humpback whales when they may be seasonally concentrated.

Mitigation Conclusions

NMFS has carefully evaluated the Navy's proposed mitigation measures—many of which were developed with NMFS' input during the previous phases of Navy training and testing authorizations—and considered a broad range of other measures (*i.e.,* the measures considered but eliminated in the 2019 MITT DSEIS/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 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 their habitat; the proven or likely efficacy of the measures; and the practicability of the measures for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Based on our evaluation of the Navy's proposed measures, as well as other measures considered by the Navy and NMFS, NMFS has preliminarily determined that these proposed mitigation measures are appropriate means of effecting the least practicable adverse impact on marine mammal species 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, an adaptive management component helps further ensure 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 and their habitat, NMFS will consider all public comments to help inform our final determination. 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, as appropriate, analysis of additional potential 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.

Although the Navy has been conducting research and monitoring in the MITT Study Area for over 20 years, it developed a formal marine species monitoring program in support of the MMPA and ESA authorizations in 2009. This robust program has resulted in hundreds of technical reports and publications on marine mammals that have informed Navy and NMFS analyses in environmental planning documents, rules, and Biological Opinions. The reports are made available to the public on the Navy's marine species monitoring website (*www.navymarinespeciesmonitoring.us*) and the data on the Ocean Biogeographic Information System Spatial Ecological Analysis of Megavertebrate Populations (OBIS–SEAMAP) (*http://seamap.env.duke.edu/*).

The Navy will continue collecting monitoring data to inform our understanding of the occurrence of marine mammals in the MITT Study Area; the likely exposure of marine mammals to stressors of concern in the MITT Study Area; the response of marine mammals to exposures to stressors; the consequences of a particular marine mammal response to their individual fitness and, ultimately, populations; and the effectiveness of implemented mitigation measures. Taken together, mitigation and monitoring comprise the Navy's integrated approach for reducing environmental impacts from the specified activities. The Navy's overall monitoring approach seeks to leverage and build on existing research efforts whenever possible.

As agreed upon between the Navy and NMFS, the monitoring measures presented here, as well as the mitigation measures described above, focus on the protection and management of potentially affected marine mammals. A well-designed monitoring program can provide important feedback for validating assumptions made in analyses and allow for adaptive management of marine resources. Monitoring is required under the MMPA, and details of the monitoring program for the specified activities have been developed through coordination between NMFS and the Navy through the regulatory process for previous Navy at-sea training and testing activities.

Integrated Comprehensive Monitoring Program (ICMP)

The Navy's ICMP is intended to coordinate marine species monitoring efforts across all regions and to allocate the most appropriate level and type of effort for each range complex based on a set of standardized objectives, and in acknowledgement of regional expertise and resource availability. The ICMP is designed to be flexible, scalable, and adaptable through the adaptive management and strategic planning processes to periodically assess progress and reevaluate objectives. This process includes conducting an annual adaptive management review meeting, at which the Navy and NMFS jointly consider the prior-year goals, monitoring results, and related scientific advances to determine if monitoring plan modifications are warranted to more effectively address program goals. Although the ICMP does not specify actual monitoring field work or individual projects, it does establish a matrix of goals and objectives that have been developed in coordination with NMFS. As the ICMP is implemented through the Strategic Planning Process, detailed and specific studies will be developed which support the Navy's and NMFS top-level monitoring goals. In essence, the ICMP directs that monitoring activities relating to the effects of Navy training and testing activities on marine species should be designed to contribute towards one or more of the following top-level goals:

- An increase in our understanding of the likely occurrence of marine mammals and/or ESA-listed marine species in the vicinity of the action (*i.e.,* presence, abundance, distribution, and/or density of species);

▪ An increase in our understanding of the nature, scope, or context of the likely exposure of marine mammals and/or ESA-listed species to any of the potential stressor(s) associated with the action (*e.g.,* sound, explosive detonation, or military expended materials) through better understanding of one or more of the following: (1) The action and the environment in which it occurs (*e.g.,* sound source characterization, propagation, and ambient noise levels); (2) the affected species (*e.g.,* life history or dive patterns); (3) the likely co-occurrence of marine mammals and/or ESA-listed marine species with the action (in whole or part); and/or (4) the likely biological or behavioral context of exposure to the stressor for the marine mammal and/or ESA-listed marine species (*e.g.,* age class of exposed animals or known pupping, calving or feeding areas);

▪ An increase in our understanding of how individual marine mammals or ESA-listed marine species respond (behaviorally or physiologically) to the specific stressors associated with the action (in specific contexts, where possible, *e.g.,* at what distance or received level);

▪ An increase in our understanding of how anticipated individual responses, to individual stressors or anticipated combinations of stressors, may impact either: (1) The long-term fitness and survival of an individual or (2) the population, species, or stock (*e.g.,* through effects on annual rates of recruitment or survival);

▪ An increase in our understanding of the effectiveness of mitigation and monitoring measures;

▪ A better understanding and record of the manner in which the Navy complies with the incidental take regulations and LOAs and the ESA Incidental Take Statement;

▪ An increase in the probability of detecting marine mammals (through improved technology or methods), both specifically within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general, to better achieve the above goals; and

▪ Ensuring that adverse impact of activities remains at the least practicable level.

Strategic Planning Process for Marine Species Monitoring

The Navy also developed the Strategic Planning Process for Marine Species Monitoring, which establishes the guidelines and processes necessary to develop, evaluate, and fund individual projects based on objective scientific study questions. The process uses an underlying framework designed around intermediate scientific objectives and a conceptual framework incorporating a progression of knowledge spanning occurrence, exposure, response, and consequence. The Strategic Planning Process for Marine Species Monitoring is used to set overarching intermediate scientific objectives; develop individual monitoring project concepts; identify potential species of interest at a regional scale; evaluate, prioritize and select specific monitoring projects to fund or continue supporting for a given fiscal year; execute and manage selected monitoring projects; and report and evaluate progress and results. This process addresses relative investments to different range complexes based on goals across all range complexes, and monitoring would leverage multiple techniques for data acquisition and analysis whenever possible. The Strategic Planning Process for Marine Species Monitoring is also available online (*http://www.navymarinespeciesmonitoring.us/*).

Past and Current Monitoring in the MITT Study Area

The monitoring program has undergone significant changes since the first rule was issued for the MITT Study Area in 2009, which highlights the monitoring program's evolution through the process of adaptive management. The monitoring program developed for the first cycle of environmental compliance documents (*e.g.,* U.S. Department of the Navy, 2008) utilized effort-based compliance metrics that were somewhat limiting. Through adaptive management discussions, the Navy designed and conducted monitoring studies according to scientific objectives, thereby eliminating basing requirements upon metrics of level-of-effort. Furthermore, refinements of scientific objective have continued through the latest permit cycle.

Progress has also been made on the conceptual framework categories from the Scientific Advisory Group for Navy Marine Species Monitoring (U.S. Department of the Navy, 2011c), ranging from occurrence of animals, to their exposure, response, and population consequences. The Navy continues to manage the Atlantic and Pacific program as a whole, with monitoring in each range complex taking a slightly different but complementary approach. The Navy has continued to use the approach of layering multiple simultaneous components in many of the range complexes to leverage an increase in return of the progress toward answering scientific monitoring questions. This includes, in the Marianas for example, (a) glider deployment in offshore areas, (b) analysis of existing passive acoustic monitoring datasets, (c) small boat surveys using visual, biopsy and satellite tagging and (d) seasonal, humpback whale specific surveys.

Specific monitoring under the current regulations includes:

▪ Review of the available data and analyses in the MITT Study Area 2010 through February 2018 (2019a).

▪ The continuation of annual small vessel nearshore surveys, sightings, satellite tagging, biopsy and genetic analysis, photo-identification, and opportunistic acoustic recording off Guam, Saipan, Tinian, Rota, and Aguigan in partnership with NMFS (Hill *et al.,* 2015; Hill *et al.,* 2016b; Hill *et al.,* 2017a; Hill *et al.,* 2018, Hill *et al.,* 2019b). The satellite tagging and genetic analyses have resulted in the first information discovered on the movement patterns, habitat preference, and population structure of multiple odontocete species in the MITT Study Area.

▪ Since 2015, the addition of a series of small vessel surveys in the winter season dedicated to humpback whales has provided new information relating to the occurrence, calving behavior, and population identity of this species (Hill *et al.,* 2016a; Hill *et al.,* 2017b), which had not previously been sighted during the previous small vessel surveys in the summer or winter. This work has included sighting data, photo ID matches of individuals to other areas demonstrating migration as well as re-sights within the Marianas across different years, and the collection of biopsy samples for genetic analyses of populations.

▪ The continued deployment of passive acoustic monitoring devices and analysis of acoustic data obtained using bottom-moored acoustic recording devices deployed by NMFS has provided information on the presence and seasonal occurrence of mysticetes, as well as the occurrence of cryptic odontocetes typically found offshore, including beaked whales and Kogia *spp.* (Hill *et al.,* 2015; Hill *et al.,* 2016a; Hill *et al.,* 2016b; Hill *et al.,* 2017a; Munger *et al.,* 2015; Norris *et al.,* 2017; Oleson *et al.,* 2015; Yack *et al.,* 2016).

▪ Acoustic surveys using autonomous gliders were used to characterize the occurrence of odontocetes and mysticetes in abyssal offshore waters near Guam and CNMI, including species not seen in the small vessel visual survey series such as killer whales and Risso's dolphins. Analysis of collected

data also provided new information on the seasonality of baleen whales, patterns of beaked whale occurrence and potential call variability, and identification of a new unknown marine mammal call (Klinck *et al.,* 2016b; Nieukirk *et al.,* 2016).

▪ Visual surveys were conducted from a shore-station at high elevation on the north shore of Guam to document the nearshore occurrence of marine mammals in waters where small vessel visual surveys are challenging due to regularly high sea states (Deakos and Richlen, 2015; Deakos *et al.,* 2016).

▪ Analysis of archive data that included marine mammal sightings during Guam Department of Agriculture Division of Aquatic and Wildlife Resources aerial surveys undertaken between 1963 and 2012 (Martin *et al.,* 2016).

▪ Analysis of archived acoustic towed-array data for an assessment of the abundance and density of minke whales (Norris *et al.,* 2017), abundance and density of sperm whales (Yack *et al.,* 2016), and the characterization of sei and humpback whale vocalizations (Norris *et al.,* 2014).

Numerous publications, dissertations, and conference presentations have resulted from research conducted under the Navy's marine species monitoring program (*https://www.navymarinespeciesmonitoring.us/reading-room/publications/*), resulting in a significant contribution to the body of marine mammal science. Publications on occurrence, distribution, and density have fed the modeling input, and publications on exposure and response have informed Navy and NMFS analyses of behavioral response and consideration of mitigation measures.

Furthermore, collaboration between the monitoring program and the Navy's research and development (*e.g.,* the Office of Naval Research) and demonstration-validation (*e.g.,* Living Marine Resources) programs has been strengthened, leading to research tools and products that have already transitioned to the monitoring program. These include Marine Mammal Monitoring on Ranges (M3R), controlled exposure experiment behavioral response studies (CEE BRS), acoustic sea glider surveys, and global positioning system-enabled satellite tags. Recent progress has been made with better integration of monitoring across all Navy at-sea study areas, including study areas in the Pacific and the Atlantic Oceans, and various testing ranges. Publications from the Living Marine Resources and the Office of Naval Research programs have also resulted in significant contributions to information on hearing ranges and acoustic criteria used in effects modeling, exposure, and response, as well as developing tools to assess biological significance (*e.g.,* population-level consequences).

NMFS and the Navy also consider data collected during procedural mitigations as monitoring. Data are collected by shipboard personnel on hours spent training, hours of observation, hours of sonar, and marine mammals observed within the mitigation zones when mitigations are implemented. These data are provided to NMFS in both classified and unclassified annual exercise reports, which would continue under this proposed rule.

NMFS has received multiple years' worth of annual exercise and monitoring reports addressing active sonar use and explosive detonations within the MITT Study Area and other Navy range complexes. The data and information contained in these reports have been considered in developing mitigation and monitoring measures for the training and testing activities within the MITT Study Area. The Navy's annual exercise and monitoring reports may be viewed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities* and *http://www.navymarinespeciesmonitoring.us.*

Prior to Phase I monitoring, the information on marine mammal presence and occurrence in the MIRC was largely absent and limited to anecdotal information from incidental sightings and stranding events (U.S. Department of the Navy, 2005). In 2007, the Navy funded the Mariana Islands Sea Turtle and Cetacean Survey (MISTCS) (U.S. Department of the Navy, 2007) to proactively support the baseline data feeding the MIRC EIS (U.S. Department of the Navy, 2010b). The MISTCS research effort was the first systematic marine survey in these waters. This survey provided the first empirically-based density estimates for marine mammals (Fulling *et al.,* 2011). In cooperation with NMFS, the Phase I monitoring program beginning in 2010 was designed to address basic occurrence-level questions in the MIRC, whereas monitoring the impacts of Navy training such as exposure to mid-frequency active sonar was planned for other Navy range complexes where marine mammal occurrence was already better characterized.

This emphasis on studying occurrence continued through Phase I and II monitoring in the MIRC, and combined various complementary methodologies. Small vessel visual surveys collected occurrence information, and began building the first individual identification catalog for multiple species (Hill *et al.,* 2014). During these visual surveys, biopsies were collected for genetic analysis and satellite tags were also applied, resulting in a progressively improving picture of the habitat use and population structure of various species. Deep water passive acoustic deployments, including autonomous gliders with passive acoustic recorders, added complementary information on species groups such as baleen whales and beaked whales that were rarely sighted on the vessel surveys (Klinck *et al.,* 2015; Munger *et al.,* 2014; Munger *et al.,* 2015; Nieukirk *et al.,* 2016; Norris *et al.,* 2015). Other methodologies were also explored to fill other gaps in waters generally inaccessible to the small boat surveys including a shore-station to survey waters on the windward side of Guam (Deakos *et al.,* 2016). When available, platforms of opportunity on large vessels were utilized for visual survey and tagging (Oleson and Hill, 2010b).

At the close of Phase II monitoring, establishing the fundamentals of marine mammal occurrence in the MITT Study Area has now been largely completed. The various visual and acoustic platforms have encountered nearly all of the species that are expected to occur in the MITT Study Area. The photographic catalogs have progressively grown to the point that abundance analyses may be attempted for the most commonly-encountered species. Beyond occurrence, questions related to exposure to Navy training have been addressed, such as utilizing satellite tag telemetry to evaluate overlap of habitat use with underwater detonation training sites. Also during Phase II monitoring, a pilot study to investigate reports of humpback whales occasionally occurring off Saipan has proven fruitful, yielding confirmation of this species there, photographic matches of individuals to other waters in the Pacific Ocean, as well as genetics data that provide clues as to the population identity of these animals (Hill *et al.,* 2016a; Hill *et al.,* 2017b). Importantly, the compiled data were also used to inform proposals for new mitigation areas for this proposed rule and associated consultations.

The ongoing regional species-specific study questions and results from recent efforts are publicly available on the Navy's Monitoring Program website. With basic occurrence information now well-established, the primary goal of monitoring in the MITT Study Area

under this proposed rule would be to close out these studies with final analyses. As the collection and analysis of basic occurrence data across Navy ranges (including MITT) is completed, the focus of monitoring across all Navy range complexes will progressively move toward addressing the important questions of exposure and response to mid-frequency active sonar and other Navy training, as well as the consequences of those exposures, where appropriate. The Navy's hydrophone-instrumented ranges have proven to be a powerful tool towards this end and because of the lack of such an instrumented range in the MITT Study Area, monitoring investments are expected to begin shifting to other Navy range complexes as the currently ongoing research efforts in the Mariana Islands are completed. Any future monitoring results for the MITT Study Area will continue to be published on the Navy's Monitoring Program website, as well as discussed during annual adaptive management meetings between NMFS and the Navy.

The Navy's marine species monitoring program typically supports several monitoring projects in the MITT Study Area at any given time. Additional details on the scientific objectives for each project can be found at *https://www.navymarinespeciesmonitoring.us/regions/pacific/current-projects/.* Projects can be either major multi-year efforts, or one to two-year special studies. The Navy's proposed monitoring projects going into 2020 include:

- Significant funding to NMFS' Pacific Island Fisheries Science Center (PIFSC) for spring-summer 2021 large vessel visual and acoustic survey through the Mariana Islands;
- Humpback whale visual survey at FDM;
- Continued coordination with NMFS PIFSC for small boat humpback whale surveys at other Mariana Islands (*e.g.,* Saipan);
- Analysis of previously deployed passive acoustic sensors for detection of humpback whale vocalizations at other islands (*e.g.*. Pagan);
- Funding to support long-term (weeks-months) satellite tag tracking of humpback whales (field work likely in winter 2021); and
- Funding to researchers with PIFSC for detailed necropsy support for select stranded marine mammals in Hawaii and the Mariana Islands.

Adaptive Management

The proposed regulations governing the take of marine mammals incidental to Navy training and testing activities in the MITT 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 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 would 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.*

Proposed Reporting

In order to issue incidental take authorization for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring. 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.*

Currently, there are several different reporting requirements pursuant to the regulations. All of these reporting requirements would be continued under this proposed rule for the seven-year period.

Notification of Injured, Live Stranded or Dead Marine Mammals

The Navy would consult the Notification and Reporting Plan, which sets out notification, reporting, and other requirements when injured, live stranded, or dead marine mammals are detected. The Notification and Reporting Plan is available for review at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.*

Annual MITT Monitoring Report

The Navy would submit an annual report to NMFS of the MITT monitoring describing the implementation and results from the previous calendar year. Data collection methods would be standardized across Pacific Range Complexes including the MITT, HSTT, NWTT, and GOA Study Areas to allow for comparison in different geographic locations. The draft of the annual monitoring report would be submitted either three months after the end of the calendar year or three months after the conclusion of the monitoring year, to be determined by the Adaptive Management process. Such a report would describe progress of knowledge made with respect to intermediate scientific objectives within the MITT Study Area associated with the Integrated Comprehensive Monitoring Program. Similar study questions would be treated together so that summaries can be provided for each topic area. The report need not include analyses and content that do not provide direct assessment of cumulative progress on the monitoring plan study questions. NMFS would submit comments on the draft monitoring report, if any, within three months of receipt. The report would be considered final after the Navy has addressed NMFS' comments, or three months after the submittal of the draft if NMFS does not have comments.

As an alternative, the Navy may submit a Pacific-Range Complex annual Monitoring Plan report to fulfill this requirement. Such a report describes progress of knowledge made with respect to monitoring study questions across multiple Navy ranges associated

with the ICMP. Similar study questions would be treated together so that progress on each topic is 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 would continue to allow Navy to provide a cohesive monitoring report covering multiple ranges (as per ICMP goals), rather than entirely separate reports for the HSTT, Gulf of Alaska, Mariana Islands, and the Northwest Study Areas.

Annual MITT Training Exercise Report and Testing Activity Reports

Each year, the Navy would submit one preliminary report (Quick Look Report) to NMFS detailing the status of authorized sound sources within 21 days after the anniversary of the date of issuance of the LOA. Each year, the Navy would also a submit detailed report (MITT Annual Training Exercise Report and Testing Activity Report) to NMFS within three months after the one-year anniversary of the date of issuance of the LOA. The annual report would contain information on MTEs, Sinking Exercise (SINKEX) events, and a summary of all sound sources used (total hours or quantity (per the LOA) of each bin of sonar or other non-impulsive source; total annual number of each type of explosive exercises; and total annual expended/detonated rounds (missiles, bombs, sonobuoys, etc.) for each explosive bin). The annual report will also contain cumulative sonar and explosive use quantity from previous years' reports through the current year. Additionally, if there were any changes to the sound source allowance in the reporting year, or cumulatively, the report would include a discussion of why the change was made and include analysis to support how the change did or did not affect the analysis in the MITT EIS/OEIS and MMPA final rule. The annual report would also include the details regarding specific requirements associated with specific mitigation areas. The analysis in the detailed report would be based on the accumulation of data from the current year's report and data collected from previous annual reports. The final annual/close-out report at the conclusion of the authorization period (year seven) would also serve as the comprehensive close-out report and include both the final year annual use compared to annual authorization as well as a cumulative seven-year annual use compared to seven-year authorization. Information included in the annual reports may be used to inform future adaptive management of activities within the MITT Study Area.

The Annual MITT Training Exercise Report and Testing Activity Navy report (classified or unclassified versions) could be consolidated with other exercise reports from other range complexes in the Pacific Ocean for a single Pacific Exercise Report, if desired. Specific sub-reporting in these annual reports would include:

- *Marpi Reef and Chalan Kanoa Reef Geographic Mitigation Areas:* The Navy would report the total hours of operation of MF1 surface ship hull-mounted mid-frequency active sonar used in the Marpi Reef and Chalan Kanoa Reef Geographic Mitigation Areas from December to April; and

- *Major Training Exercises Notification*

The Navy would submit an electronic report to NMFS within fifteen calendar days after the completion of any major training exercise indicating: Location of the exercise; beginning and end dates of the exercise; and type of exercise.

Other Reporting and Coordination

The Navy would continue to report and coordinate with NMFS for the following:

- Annual marine species monitoring technical review meetings that also include researchers and the Marine Mammal Commission (currently, every two years a joint Pacific-Atlantic meeting is held); and
- Annual Adaptive Management meetings that also include the Marine Mammal Commission (recently modified to occur in conjunction with the annual monitoring technical review meeting).

Preliminary Analysis and Negligible Impact Determination

General Negligible Impact Analysis

Introduction

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be taken by Level A or Level B harassment (as presented in Table 30), 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, and ambient noise levels).

In the *Estimated Take of Marine Mammals* section, we identified the subset of potential effects that would be expected to rise to the level of takes both annually and over the seven-year period covered by this proposed rule, and then identified 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. 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 species.

As explained in the *Estimated Take of Marine Mammals* section, no take by serious injury or mortality is requested or anticipated to occur.

The Specified Activities reflect representative levels of training and testing activities. The *Description of the Specified Activity* section describes annual activities. There may be some flexibility in the exact number of hours, items, or detonations that may vary from year to year, but take totals would not exceed the seven-year totals indicated in Table 30. We base our analysis and negligible impact determination on the

maximum number of takes that would be reasonably expected to occur and are proposed to be authorized, although, as stated before, the number of takes are only a part of the analysis, which includes extensive qualitative consideration of other contextual factors that influence the degree of impact of the takes on the affected individuals. To avoid repetition, we provide some general analysis immediately below that applies to all the species listed in Table 30, given that some of the anticipated effects of the Navy's training and testing activities on marine mammals are expected to be relatively similar in nature. However, below that, we break our analysis into species, or groups of species where relevant similarities exist, to provide more specific information related to the anticipated effects on individuals or where there is information about the status or structure of any species that would lead to a differing assessment of the effects on the species. Organizing our analysis by grouping species that share common traits or that will respond similarly to effects of the Navy's activities and then providing species-specific information allows us to avoid duplication while assuring that we have analyzed the effects of the specified activities on each affected species.

The Navy's harassment take request is based on its model and quantitative assessment of mitigation, which NMFS reviewed and concurs, and appropriately predicts the maximum amount of harassment that is likely to occur. The model calculates sound energy propagation from sonar, other active acoustic sources, and explosives during naval activities; the sound or impulse received by animat dosimeters representing marine mammals distributed in the area around the modeled activity; and whether the sound or impulse energy received by a marine mammal exceeds the thresholds for effects. Assumptions in the Navy model intentionally err on the side of overestimation when there are unknowns. Naval activities are modeled as though they would occur regardless of proximity to marine mammals, meaning that no mitigation is considered (*e.g.,* no power down or shut down) and without any avoidance of the activity by the animal. The final step of the quantitative analysis of acoustic effects, which occurs after the modeling, is to consider the implementation of mitigation and the possibility that marine mammals would avoid continued or repeated sound exposures. NMFS provided input to, independently reviewed, and concurred with the Navy on this process and the Navy's analysis, which is described in detail in Section 6 of the Navy's rulemaking/LOA application, was used to quantify harassment takes for this rule.

Generally speaking, the Navy and NMFS anticipate more severe effects from takes resulting from exposure to higher received levels (though this is in no way a strictly linear relationship for behavioral effects throughout species, individuals, or circumstances) and less severe effects from takes resulting from exposure to lower received levels. However, there is also growing evidence of the importance of distance in predicting marine mammal behavioral response to sound—*i.e.,* sounds of a similar level emanating from a more distant source have been shown to be less likely to evoke a response of equal magnitude (DeRuiter 2012). The estimated number of Level A and Level B harassment takes does not equate to the number of individual animals the Navy expects to harass (which is lower), but rather to the instances of take (*i.e.,* exposures above the Level A and Level B harassment threshold) that are anticipated to occur over the seven-year period. These instances may represent either brief exposures (seconds or minutes) or, in some cases, longer durations of exposure within a day. Some individuals may experience multiple instances of take (meaning over multiple days) over the course of the year, which means that the number of individuals taken is smaller than the total estimated takes. Generally speaking, the higher the number of takes as compared to the population abundance, the more repeated takes of individuals are likely, and the higher the actual percentage of individuals in the population that are likely taken at least once in a year. We look at this comparative metric to give us a relative sense of where a larger portion of a species is being taken by Navy activities, where there is a higher likelihood that the same individuals are being taken across multiple days, and where that number of days might be higher or more likely sequential. Where the number of instances of take is less than 100 percent of the abundance and there is no information to specifically suggest that a small subset of animals is being repeatedly taken over a high number of sequential days, the overall magnitude is generally considered relatively low, as it could on one extreme mean that every individual in the population will be taken on one day (a very minimal impact) or, more likely, that some are taken on one day annually, some are taken on a few not likely sequential days annually, and some are not taken at all.

In the ocean, the use of sonar and other active acoustic sources is often transient and is unlikely to repeatedly expose the same individual animals within a short period, for example within one specific exercise. However, for some individuals of some species repeated exposures across different activities could occur over the year, especially where events occur in generally the same area with more resident species. In short, for some species we expect that the total anticipated takes represent exposures of a smaller number of individuals of which some were exposed multiple times, but based on the nature of the Navy activities and the movement patterns of marine mammals, it is unlikely that individuals from most species would be taken over more than a few sequential days. This means that even where repeated takes of individuals are likely to occur, they are more likely to result from non-sequential exposures from different activities, and, even if sequential, individual animals are not predicted to be taken for more than several days in a row, at most. As described elsewhere, the nature of the majority of the exposures would be expected to be of a less severe nature and based on the numbers it is likely that any individual exposed multiple times is still only taken on a small percentage of the days of the year. The greater likelihood is that not every individual is taken, or perhaps a smaller subset is taken with a slightly higher average and larger variability of highs and lows, but still with no reason to think that any individuals would be taken a significant portion of the days of the year, much less that many of the days of disturbance would be sequential.

Physiological Stress Response

Some of the lower level physiological stress responses (*e.g.,* orientation or startle response, change in respiration, change in heart rate) discussed earlier would likely co-occur with the predicted harassments, although these responses are more difficult to detect and fewer data exist relating these responses to specific received levels of sound. Level B harassment takes, then, may have a stress-related physiological component as well; however, we would not expect the Navy's generally short-term, intermittent, and (typically in the case of sonar) transitory activities to create conditions of long-term, continuous noise leading to long-term physiological stress responses in marine

mammals that could affect reproduction or survival.

Behavioral Response

The estimates calculated using the behavioral response function do not differentiate between the different types of behavioral responses that rise to the level of Level B harassments. As described in the Navy's application, the Navy identified (with NMFS' input) the types of behaviors that would be considered a take (moderate behavioral responses as characterized in Southall *et al.* (2007) (*e.g.,* altered migration paths or dive profiles, interrupted nursing, breeding or feeding, or avoidance) that also would be expected to continue for the duration of an exposure). The Navy then compiled the available data indicating at what received levels and distances those responses have occurred, and used the indicated literature to build biphasic behavioral response curves that are used to predict how many instances of Level B behavioral harassment occur in a day. Take estimates alone do not provide information regarding the potential fitness or other biological consequences of the reactions on the affected individuals. We therefore consider the available activity-specific, environmental, and species-specific information to determine the likely nature of the modeled behavioral responses and the potential fitness consequences for affected individuals.

Use of sonar and other transducers would typically be transient and temporary. The majority of acoustic effects to individual animals from sonar and other active sound sources during testing and training activities would be primarily from ASW events. It is important to note that although ASW is one of the warfare areas of focus during MTEs, there are significant periods when active ASW sonars are not in use. Nevertheless, behavioral reactions are assumed more likely to be significant during MTEs than during other ASW activities due to the duration (*i.e.,* multiple days), scale (*i.e.,* multiple sonar platforms), and use of high-power hull-mounted sonar in the MTEs. In other words, in the range of potential behavioral effects that might expect to be part of a response that qualifies as an instance of Level B behavioral harassment (which by nature of the way it is modeled/counted, occurs within one day), the less severe end might include exposure to comparatively lower levels of a sound, at a detectably greater distance from the animal, for a few or several minutes. A less severe exposure of this nature could result in a behavioral response such as avoiding an area that an animal would otherwise have chosen to move through or feed in for some amount of time or breaking off one or a few feeding bouts. More severe effects could occur when the animal gets close enough to the source to receive a comparatively higher level, is exposed continuously to one source for a longer time, or is exposed intermittently to different sources throughout a day. Such effects might result in an animal having a more severe flight response and leaving a larger area for a day or more or potentially losing feeding opportunities for a day. However, such severe behavioral effects are expected to occur infrequently.

To help assess this, for sonar (LFAS/MFAS/HFAS) used in the MITT Study Area, the Navy provided information estimating the percentage of animals that may be taken by Level B harassment under each behavioral response function that would occur within 6-dB increments (percentages discussed below in the *Group and Species-Specific Analyses* section). As mentioned above, all else being equal, an animal's exposure to a higher received level is more likely to result in a behavioral response that is more likely to lead to adverse effects, which could more likely accumulate to impacts on reproductive success or survivorship of the animal, but other contextual factors (such as distance) are important also. The majority of Level B harassment takes are expected to be in the form of milder responses *(i.e.,* lower-level exposures that still rise to the level of take, but would likely be less severe in the range of responses that qualify as take) of a generally shorter duration. We anticipate more severe effects from takes when animals are exposed to higher received levels or at closer proximity to the source. Because species belonging to taxa that share common characteristics are likely to respond and be affected in similar ways, these discussions are presented within each species group below in the *Group and Species-Specific Analyses* section. As noted previously in this proposed rule, behavioral response is likely highly variable between species, individuals within a species, and context of the exposure. Specifically, given a range of behavioral responses that may be classified as Level B harassment, to the degree that higher received levels are expected to result in more severe behavioral responses, only a smaller percentage of the anticipated Level B harassment from Navy activities might necessarily be expected to potentially result in more severe responses (see the *Group and Species-Specific Analyses* section below for more detailed information). To fully understand the likely impacts of the predicted/proposed authorized take on an individual (*i.e.,* what is the likelihood or degree of fitness impacts), one must look closely at the available contextual information, such as the duration of likely exposures and the likely severity of the exposures (*e.g.,* whether they will occur for a longer duration over sequential days or the comparative sound level that will be received). Moore and Barlow (2013) emphasizes the importance of context (*e.g.,* behavioral state of the animals, distance from the sound source, etc.) in evaluating behavioral responses of marine mammals to acoustic sources.

Diel Cycle

Many animals perform vital functions, such as feeding, resting, traveling, and socializing on a diel cycle (24-hour cycle). Behavioral reactions to noise exposure, when taking place in a biologically important context, such as disruption of critical life functions, displacement, or avoidance of important habitat, are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Henderson *et al.* (2016) found that ongoing smaller scale events had little to no impact on foraging dives for Blainville's beaked whale, while multi-day training events may decrease foraging behavior for Blainville's beaked whale (Manzano-Roth *et al.,* 2016). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multiple-day substantive behavioral reactions and multiple-day anthropogenic activities. For example, just because an at-sea exercise lasts for multiple days does not necessarily mean that individual animals are either exposed to those exercises for multiple days or, further, exposed in a manner resulting in a sustained multiple day substantive behavioral response. Large multi-day Navy exercises such as ASW activities, typically include vessels that are continuously moving at speeds typically 10–15 kn, or higher, and likely cover large areas that are relatively far from shore (typically more than 3 NM from shore) and in waters greater than 600 ft deep. Additionally marine mammals are moving as well, which would make it unlikely that the same animal could remain in the immediate vicinity of the ship for the entire duration of the exercise. Further, the Navy does not

necessarily operate active sonar the entire time during an exercise. While it is certainly possible that these sorts of exercises could overlap with individual marine mammals multiple days in a row at levels above those anticipated to result in a take, because of the factors mentioned above, it is considered unlikely for the majority of takes. However, it is also worth noting that the Navy conducts many different types of noise-producing activities over the course of the year and it is likely that some marine mammals will be exposed to more than one and taken on multiple days, even if they are not sequential.

That said, the MITT Study Area is different than other Navy ranges where there can be a significant number of Navy surface ships with hull-mounted sonar homeported. In the MITT Study Area, there are no homeported surface ships with hull-mounted sonars permanently assigned. There is no local unit level training in the MITT Study Area for homeported ships such as the case for other ranges. Instead, Navy activities from visiting and transiting vessels are much more episodic in the MITT Study Area. Therefore, there could be long gaps between activities (*i.e.,* weeks, months) in the MITT Study Area.

Durations of Navy activities utilizing tactical sonar sources and explosives vary and are fully described in Appendix A (*Training and Testing Activity Descriptions*) of the 2019 MITT DSEIS/OEIS. Sonar used during ASW would impart the greatest amount of acoustic energy of any category of sonar and other transducers analyzed in the Navy's rulemaking/LOA application and include hull-mounted, towed, line array, sonobuoy, helicopter dipping, and torpedo sonars. Most ASW sonars are MFAS (1–10 kHz); however, some sources may use higher or lower frequencies. ASW training activities using hull mounted sonar proposed for the MITT Study Area generally last for only a few hours. Some ASW training and testing can generally last for 2–10 days, or a 10-day exercise is typical for an MTE-Large Integrated ASW (see Table 3). For these multi-day exercises there will typically be extended intervals of non-activity in between active sonar periods. Because of the need to train in a large variety of situations, the Navy does not typically conduct successive ASW exercises in the same locations. Given the average length of ASW exercises (times of sonar use) and typical vessel speed, combined with the fact that the majority of the cetaceans would not likely remain in proximity to the sound source, it is unlikely that an animal would be exposed to LFAS/MFAS/HFAS at levels or durations likely to result in a substantive response that would then be carried on for more than one day or on successive days.

Most planned explosive events are scheduled to occur over a short duration (1–8 hours); however, the explosive component of the activity only lasts for minutes (see Table 3). Although explosive exercises may sometimes be conducted in the same general areas repeatedly, because of their short duration and the fact that they are in the open ocean and animals can easily move away, it is similarly unlikely that animals would be exposed for long, continuous amounts of time, or demonstrate sustained behavioral responses. Although SINKEXs may last for up to 48 hrs (4–8 hrs, possibly 1–2 days), they are almost always completed in a single day and only one event is planned annually for the MITT training activities. They are stationary and conducted in deep, open water where fewer marine mammals would typically be expected to be encountered. They also have shutdown procedures and rigorous monitoring, *i.e.,* during the activity, the Navy conducts passive acoustic monitoring and visually observes for marine mammals 90 min prior to the first firing, during the event, and 2 hrs after sinking the vessel. All of these factors make it unlikely that individuals would be exposed to the exercise for extended periods or on consecutive days.

Assessing the Number of Individuals Taken and the Likelihood of Repeated Takes

As described previously, Navy modeling uses the best available science to predict the instances of exposure above certain acoustic thresholds, which are equated, as appropriate, to harassment takes (and further corrected to account for mitigation and avoidance). As further noted, for active acoustics it is more challenging to parse out the number of individuals taken by Level B harassment and the number of times those individuals are taken from this larger number of instances. One method that NMFS can use to help better understand the overall scope of the impacts is to compare these total instances of take against the abundance of that species (or stock if applicable). For example, if there are 100 harassment takes in a population of 100, one can assume either that every individual was exposed above acoustic thresholds in no more than one day, or that some smaller number were exposed in one day but a few of those individuals were exposed multiple days within a year. Where the instances of take exceed 100 percent of the population, multiple takes of some individuals are predicted and expected to occur within a year. Generally speaking, the higher the number of takes as compared to the population abundance, the more multiple takes of individuals are likely, and the higher the actual percentage of individuals in the population that are likely taken at least once in a year. We look at this comparative metric to give us a relative sense of where larger portions of the species are being taken by Navy activities and where there is a higher likelihood that the same individuals are being taken across multiple days and where that number of days might be higher. It also provides a relative picture of the scale of impacts to each species.

In the ocean, unlike a modeling simulation with static animals, the use of sonar and other active acoustic sources is often transient, and is unlikely to repeatedly expose the same individual animals within a short period, for example within one specific exercise. However, some repeated exposures across different activities could occur over the year with more resident species. Nonetheless, the episodic nature of Navy activities in the MITT Study Area would mean less frequent exposures as compared to some other ranges. While select offshore areas in the MITT Study Area are used more frequently for ASW and other activities, these are generally further offshore than where most island associated resident population would occur and instead would be in areas with more transitory species. In short, we expect that the total anticipated takes represent exposures of a smaller number of individuals of which some could be exposed multiple times, but based on the nature of the Navy's activities and the movement patterns of marine mammals, it is unlikely that any particular subset would be taken over more than several sequential days (with a few possible exceptions discussed in the species-specific conclusions).

When calculating the proportion of a population affected by takes (*e.g.,* the number of takes divided by population abundance), which can also be helpful in estimating the number of days over which some individuals may be taken, it is important to choose an appropriate population estimate against which to make the comparison. The SARs, where available, provide the official population estimate for a given species or stock in U.S. waters in a given year (and are typically based solely on the most recent survey data). When the stock is known to range well outside of U.S. EEZ boundaries, population

estimates based on surveys conducted only within the U.S. EEZ are known to be underestimates. For marine mammal populations in the MITT Study Area there have been no specific stocks assigned to those populations and there are no associated SARs. There is also no information on trends for any of these species. The information used to estimate take includes the best available survey abundance data to model density layers. Accordingly, in calculating the percentage of takes versus abundance for each species in order to assist in understanding both the percentage of the species affected, as well as how many days across a year individuals could be taken, we use the data most appropriate for the situation. The survey data used to calculate abundance in the MITT Study Area is described in the *Navy Marine Species Density Database Phase III for the Mariana Islands Training and Testing Study Area* (Navy 2018). Models may predict different population abundances for many reasons. The models may be based on different data sets or different temporal predictions may be made. For example, the SARs are often based on single years of NMFS surveys, whereas the models used by the Navy generally include multiple years of survey data from NMFS, the Navy, and other sources. To present a single, best estimate, the SARs often use a single season survey where they have the best spatial coverage (generally Summer). Navy models often use predictions for multiple seasons, where appropriate for the species, even when survey coverage in non-Summer seasons is limited, to characterize impacts over multiple seasons as Navy activities may occur in any season. Predictions may be made for different spatial extents. Many different, but equally valid, habitat and density modeling techniques exist and these can also be the cause of differences in population predictions.

Temporary Threshold Shift

NMFS and the Navy have estimated that all species of marine mammals may sustain some level of TTS from active sonar. As mentioned previously, in general, TTS can last from a few minutes to days, be of varying degree, and occur across various frequency bandwidths, all of which determine the severity of the impacts on the affected individual, which can range from minor to more severe. Tables 51–55 indicates the number of takes by TTS that may be incurred by different species from exposure to active sonar and explosives. The TTS sustained by an animal is primarily classified by three characteristics:

1. Frequency—Available data (of mid-frequency hearing specialists exposed to mid- or high-frequency sounds; Southall *et al.,* 2007) suggest that most TTS occurs in the frequency range of the source up to one octave higher than the source (with the maximum TTS at ½ octave above). The Navy's MF sources, which are the highest power and most numerous sources and the ones that cause the most take, utilize the 1–10 kHz frequency band, which suggests that if TTS were to be induced by any of these MF sources it would be in a frequency band somewhere between approximately 2 and 20 kHz, which is in the range of communication calls for many odontocetes, but below the range of the echolocation signals used for foraging. There are fewer hours of HF source use and the sounds would attenuate more quickly, plus they have lower source levels, but if an animal were to incur TTS from these sources, it would cover a higher frequency range (sources are between 10 and 100 kHz, which means that TTS could range up to 200 kHz), which could overlap with the range in which some odontocetes communicate or echolocate. However, HF systems are typically used less frequently and for shorter time periods than surface ship and aircraft MF systems, so TTS from these sources is unlikely. There are fewer LF sources and the majority are used in the more readily mitigated testing environment, and TTS from LF sources would most likely occur below 2 kHz, which is in the range where many mysticetes communicate and also where other non-communication auditory cues are located (waves, snapping shrimp, fish prey). Also of note, the majority of sonar sources from which TTS may be incurred occupy a narrow frequency band, which means that the TTS incurred would also be across a narrower band (*i.e.,* not affecting the majority of an animal's hearing range). This frequency provides information about the cues to which a marine mammal may be temporarily less sensitive, but not the degree or duration of sensitivity loss. TTS from explosives would be broadband.

2. Degree of the shift (*i.e.,* by how many dB the sensitivity of the hearing is reduced)—Generally, both the degree of TTS and the duration of TTS will be greater if the marine mammal is exposed to a higher level of energy (which would occur when the peak dB level is higher or the duration is longer). The threshold for the onset of TTS was discussed previously in this rule. An animal would have to approach closer to the source or remain in the vicinity of the sound source appreciably longer to increase the received SEL, which would be difficult considering the Lookouts and the nominal speed of an active sonar vessel (10–15 kn) and the relative motion between the sonar vessel and the animal. In the TTS studies discussed in the proposed rule, some using exposures of almost an hour in duration or up to 217 SEL, most of the TTS induced was 15 dB or less, though Finneran *et al.* (2007) induced 43 dB of TTS with a 64-second exposure to a 20 kHz source. However, since any hull-mounted sonar such as the SQS–53 (MFAS), emits a ping typically every 50 seconds, incurring those levels of TTS is highly unlikely. Since any hull-mounted sonar, such as the SQS–53, engaged in anti-submarine warfare training would be moving at between 10 and 15 knots and nominally pinging every 50 seconds, the vessel will have traveled a minimum distance of approximately 257 m during the time between those pings. A scenario could occur where an animal does not leave the vicinity of a ship or travels a course parallel to the ship, however, the close distances required make TTS exposure unlikely. For a Navy vessel moving at a nominal 10 knots, it is unlikely a marine mammal could maintain speed parallel to the ship and receive adequate energy over successive pings to suffer TTS.

In short, given the anticipated duration and levels of sound exposure, we would not expect marine mammals to incur more than relatively low levels of TTS (*i.e.,* single digits of sensitivity loss). To add context to this degree of TTS, individual marine mammals may regularly experience variations of 6dB differences in hearing sensitivity across time (Finneran *et al.,* 2000, 2002; Schlundt *et al.,* 2000).

3. Duration of TTS (recovery time)—In the TTS laboratory studies (as discussed in the proposed rule), some using exposures of almost an hour in duration or up to 217 SEL, almost all individuals recovered within 1 day (or less, often in minutes), although in one study (Finneran *et al.,* 2007), recovery took 4 days.

Based on the range of degree and duration of TTS reportedly induced by exposures to non-pulse sounds of energy higher than that to which free-swimming marine mammals in the field are likely to be exposed during LFAS/MFAS/HFAS training and testing exercises in the MITT Study Area, it is unlikely that marine mammals would ever sustain a TTS from MFAS that alters their sensitivity by more than 20 dB for more than a few hours—and any incident of TTS would likely be far less severe due to the short duration of the

majority of the events and the speed of a typical vessel, especially given the fact that the higher power sources resulting in TTS are predominantly intermittent, which have been shown to result in shorter durations of TTS. Also, for the same reasons discussed in the *Preliminary Analysis and Negligible Impact Determination—Diel Cycle* section, and because of the short distance within which animals would need to approach the sound source, it is unlikely that animals would be exposed to the levels necessary to induce TTS in subsequent time periods such that their recovery is impeded. Additionally, though the frequency range of TTS that marine mammals might sustain would overlap with some of the frequency ranges of their vocalization types, the frequency range of TTS from MFAS would not usually span the entire frequency range of one vocalization type, much less span all types of vocalizations or other critical auditory cues.

Tables 51–55 indicates the number of incidental takes by TTS for each species that are likely to result from the Navy's activities. As a general point, the majority of these TTS takes are the result of exposure to hull-mounted MFAS (MF narrower band sources), with fewer from explosives (broad-band lower frequency sources), and even fewer from LF or HF sonar sources (narrower band). As described above, we expect the majority of these takes to be in the form of mild (single-digit), short-term (minutes to hours), narrower band (only affecting a portion of the animal's hearing range) TTS. This means that for one to several times per year, for several minutes to maybe a few hours (high end) each, a taken individual will have slightly diminished hearing sensitivity (slightly more than natural variation, but nowhere near total deafness). More often than not, such an exposure would occur within a narrower mid- to higher frequency band that may overlap part (but not all) of a communication, echolocation, or predator range, but sometimes across a lower or broader bandwidth. The significance of TTS is also related to the auditory cues that are germane within the time period that the animal incurs the TTS—for example, if an odontocete has TTS at echolocation frequencies, but incurs it at night when it is resting and not feeding, for example, it is not impactful. In short, the expected results of any one of these small number of mild TTS occurrences could be that (1) it does not overlap signals that are pertinent to that animal in the given time period, (2) it overlaps parts of signals that are important to the animal, but not in a manner that impairs interpretation, or (3) it reduces detectability of an important signal to a small degree for a short amount of time—in which case the animal may be aware and be able to compensate (but there may be slight energetic cost), or the animal may have some reduced opportunities (*e.g.,* to detect prey) or reduced capabilities to react with maximum effectiveness (*e.g.,* to detect a predator or navigate optimally). However, given the small number of times that any individual might incur TTS, the low degree of TTS and the short anticipated duration, and the low likelihood that one of these instances would occur in a time period in which the specific TTS overlapped the entirety of a critical signal, it is unlikely that TTS of the nature expected to result from the Navy activities would result in behavioral changes or other impacts that would impact any individual's (of any hearing sensitivity) reproduction or survival.

Auditory Masking or Communication Impairment

The ultimate potential impacts of masking on an individual (if it were to occur) are similar to those discussed for TTS, but an important difference is that masking only occurs during the time of the signal, versus TTS, which continues beyond the duration of the signal. Fundamentally, masking is referred to as a chronic effect because one of the key harmful components of masking is its duration—the fact that an animal would have reduced ability to hear or interpret critical cues becomes much more likely to cause a problem the longer it is occurring. Also inherent in the concept of masking is the fact that the potential for the effect is only present during the times that the animal and the source are in close enough proximity for the effect to occur (and further, this time period would need to coincide with a time that the animal was utilizing sounds at the masked frequency). As our analysis has indicated, because of the relative movement of vessels and the species involved in this rule, we do not expect the exposures with the potential for masking to be of a long duration. In addition, masking is fundamentally more of a concern at lower frequencies, because low frequency signals propagate significantly further than higher frequencies and because they are more likely to overlap both the narrower LF calls of mysticetes, as well as many non-communication cues such as fish and invertebrate prey, and geologic sounds that inform navigation. It should be noted that the Navy is only proposing authorization for a small subset of more narrow frequency LF sources and for less than 11 hours cumulatively annually. Masking is also more of a concern from continuous sources (versus intermittent sonar signals) where there is no quiet time between pulses within which auditory signals can be detected and interpreted. For these reasons, dense aggregations of, and long exposure to, continuous LF activity are much more of a concern for masking, whereas comparatively short-term exposure to the predominantly intermittent pulses of often narrow frequency range MFAS or HFAS, or explosions are not expected to result in a meaningful amount of masking. While the Navy occasionally uses LF and more continuous sources, it is not in the contemporaneous aggregate amounts that would accrue to a masking concern. Specifically, the nature of the activities and sound sources used by the Navy do not support the likelihood of a level of masking accruing that would have the potential to affect reproductive success or survival. Additional detail is provided below.

Standard hull-mounted MFAS typically pings every 50 seconds. Some hull-mounted anti-submarine sonars can also be used in an object detection mode known as ''Kingfisher'' mode (*e.g.,* used on vessels when transiting to and from port) where pulse length is shorter but pings are much closer together in both time and space since the vessel goes slower when operating in this mode. For the majority of other sources, the pulse length is significantly shorter than hull-mounted active sonar, on the order of several microseconds to tens of milliseconds. Some of the vocalizations that many marine mammals make are less than one second long, so, for example with hull-mounted sonar, there would be a 1 in 50 chance (only if the source was in close enough proximity for the sound to exceed the signal that is being detected) that a single vocalization might be masked by a ping. However, when vocalizations (or series of vocalizations) are longer than one second, masking would not occur. Additionally, when the pulses are only several microseconds long, the majority of most animals' vocalizations would not be masked.

Most ASW sonars and countermeasures use MF frequencies and a few use LF and HF frequencies. Most of these sonar signals are limited in the temporal, frequency, and spatial domains. The duration of most individual sounds is short, lasting up to a few seconds each. A few systems operate with higher duty cycles or

nearly continuously, but they typically use lower power, which means that an animal would have to be closer, or in the vicinity for a longer time, to be masked to the same degree as by a higher level source. Nevertheless, masking could occasionally occur at closer ranges to these high-duty cycle and continuous active sonar systems, but as described previously, it would be expected to be of a short duration when the source and animal are in close proximity. While data are lacking on behavioral responses of marine mammals to continuously active sonars, mysticete species are known to be able to habituate to novel and continuous sounds (Nowacek et al., 2004), suggesting that they are likely to have similar responses to high-duty cycle sonars. Furthermore, most of these systems are hull-mounted on surface ships and ships are moving at least 10 kn and it is unlikely that the ship and the marine mammal would continue to move in the same direction and it be subjected to the same exposure due to that movement. Most ASW activities are geographically dispersed and last for only a few hours, often with intermittent sonar use even within this period. Most ASW sonars also have a narrow frequency band (typically less than one-third octave). These factors reduce the likelihood of sources causing significant masking. HF signals (above 10 kHz) attenuate more rapidly in the water due to absorption than do lower frequency signals, thus producing only a very small zone of potential masking. If masking or communication impairment were to occur briefly, it would more likely be in the frequency range of MFAS (the more powerful source), which overlaps with some odontocete vocalizations (but few mysticete vocalizations); however, it would likely not mask the entirety of any particular vocalization, communication series, or other critical auditory cue, because the signal length, frequency, and duty cycle of the MFAS/HFAS signal does not perfectly resemble the characteristics of any single marine mammal species' vocalizations.

Other sources used in Navy training and testing that are not explicitly addressed above, many of either higher frequencies (meaning that the sounds generated attenuate even closer to the source) or lower amounts of operation, are similarly not expected to result in masking. For the reasons described here, any limited masking that could potentially occur would be minor and short-term.

In conclusion, masking is more likely to occur in the presence of broadband, relatively continuous noise sources such as from vessels, however, the duration of temporal and spatial overlap with any individual animal and the spatially separated sources that the Navy uses would not be expected to result in more than short-term, low impact masking that would not affect reproduction or survival.

PTS From Sonar Acoustic Sources and Explosives and Tissue Damage From Explosives

Tables 51 through 55 indicate the number of individuals of each species for which Level A harassment in the form of PTS resulting from exposure to active sonar and/or explosives is estimated to occur. The number of individuals to potentially incur PTS annually (from sonar and explosives) for each species ranges from 0 to 50 (50 is for Dwarf sperm whale), but is more typically 0 or 1. No species have the potential to incur tissue damage from explosives.

Data suggest that many marine mammals would deliberately avoid exposing themselves to the received levels of active sonar necessary to induce injury by moving away from or at least modifying their path to avoid a close approach. Additionally, in the unlikely event that an animal approaches the sonar-emitting vessel at a close distance, NMFS has determined that the mitigation measures (*i.e.,* shutdown/powerdown zones for active sonar) would typically ensure that animals would not be exposed to injurious levels of sound. As discussed previously, the Navy utilizes both aerial (when available) and passive acoustic monitoring (during ASW exercises, passive acoustic detections are used as a cue for Lookouts' visual observations when passive acoustic assets are already participating in an activity) in addition to Lookouts on vessels to detect marine mammals for mitigation implementation. As discussed previously, the Navy utilized a post-modeling quantitative assessment to adjust the take estimates based on avoidance and the likely success of some portion of the mitigation measures. As is typical in predicting biological responses, it is challenging to predict exactly how avoidance and mitigation will affect the take of marine mammals, and therefore the Navy erred on the side of caution in choosing a method that would more likely still overestimate the take by PTS to some degree. Nonetheless, these modified Level A harassment take numbers represent the maximum number of instances in which marine mammals would be reasonably expected to incur PTS, and we have analyzed them accordingly.

If a marine mammal is able to approach a surface vessel within the distance necessary to incur PTS in spite of the mitigation measures, the likely speed of the vessel (nominally 10–15 kn) and relative motion of the vessel would make it very difficult for the animal to remain in range long enough to accumulate enough energy to result in more than a mild case of PTS. As discussed previously in relation to TTS, the likely consequences to the health of an individual that incurs PTS can range from mild to more serious dependent upon the degree of PTS and the frequency band it is in. The majority of any PTS incurred as a result of exposure to Navy sources would be expected to be in the 2–20 kHz range (resulting from the most powerful hull-mounted sonar) and could overlap a small portion of the communication frequency range of many odontocetes, whereas other marine mammal groups have communication calls at lower frequencies. Regardless of the frequency band though, the more important point in this case is that any PTS accrued as a result of exposure to Navy activities would be expected to be of a small amount (single digits). Permanent loss of some degree of hearing is a normal occurrence for older animals, and many animals are able to compensate for the shift, both in old age or at younger ages as the result of stressor exposure. While a small loss of hearing sensitivity may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, at the expected scale it would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival.

The Navy implements mitigation measures (described in the *Proposed Mitigation Measures* section) during explosive activities, including delaying detonations when a marine mammal is observed in the mitigation zone. Nearly all explosive events would occur during daylight hours to improve the sightability of marine mammals and thereby improve mitigation effectiveness. Observing for marine mammals during the explosive activities would include visual and passive acoustic detection methods (when they are available and part of the activity) before the activity begins, in order to cover the mitigation zones that can range from 200 yds (183 m) to 2,500 yds (2,286 m) depending on the source (*e.g.,* explosive sonobuoy, explosive torpedo, explosive bombs), and 2.5 NM for sinking exercise (see Tables 36–44). For

all of these reasons, the proposed mitigation measures associated with explosives are expected to be effective in preventing tissue damage to any potentially affected species, and no species are anticipated to incur tissue damage during the period of the proposed rule.

Group and Species-Specific Analyses

The maximum amount and type of incidental take of marine mammals reasonably likely to occur from exposure to sonar and other active acoustic sources and explosions and therefore proposed to be authorized during the seven-year training and testing period are shown in Table 30. The vast majority of predicted exposures (greater than 99 percent) are expected to be Level B harassment (TTS and behavioral reactions) from acoustic and explosive sources during training and testing activities at relatively low received levels.

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 some cases individuals may be taken more than one time. Below, we compare the total take numbers (including PTS, TTS, and behavioral disruption) for species to their associated abundance estimates to evaluate the magnitude of impacts across the species and to individuals. Specifically, when an abundance percentage comparison is below 100, it means that that percentage or less of the individuals 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.

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 above in this section, 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, although those sorts of impacts are not expected to result from these activities. Accordingly, in analyzing the number of takes and the likelihood of repeated and sequential takes, we consider the total takes, not just the Level B harassment takes by behavioral disruption, so that individuals potentially exposed to both threshold shift and behavioral disruption are appropriately considered. The number of Level A harassment takes by PTS are so low (and zero in most cases) compared to abundance numbers that it is considered highly unlikely that any individual would be taken at those levels more than once.

Use of sonar and other transducers would typically be transient and temporary. The majority of acoustic effects to mysticetes from sonar and other active sound sources during testing and training activities would be primarily from ASW events. It is important to note that although ASW is one of the warfare areas of focus during MTEs, there are significant periods when active ASW sonars are not in use. Nevertheless, behavioral reactions are assumed more likely to be significant during MTEs than during other ASW activities due to the duration (*i.e.,* multiple days) and scale (*i.e.,* multiple sonar platforms) of the MTEs. On the less severe end, exposure to comparatively lower levels of sound at a detectably greater distance from the animal, for a few or several minutes, could result in a behavioral response such as avoiding an area that an animal would otherwise have moved through or fed in, or breaking off one or a few feeding bouts. More severe behavioral effects could occur when an animal gets close enough to the source to receive a comparatively higher level of sound, is exposed continuously to one source for a longer time, or is exposed intermittently to different sources throughout a day. Such effects might result in an animal having a more severe flight response and leaving a larger area for a day or more, or potentially losing feeding opportunities for a day. However, such severe behavioral effects are expected to occur infrequently.

Occasional, milder behavioral reactions are unlikely to cause long-term consequences for individual animals or populations, and even if some smaller subset of the takes are in the form of a longer (several hours or a day) and more severe responses, if they are not expected to be repeated over sequential days, impacts to individual fitness are not anticipated. Nearly all studies and experts agree that infrequent exposures of a single day or less are unlikely to impact an individual's overall energy budget (Farmer *et al.,* 2018; Harris e*t al.,* 2017; King *et al.,* 2015; NAS 2017; New *et al.,* 2014; Southall *et al.,* 2007; Villegas-Amtmann *et al.,* 2015).

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), 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. In addition, similar species typically have the same hearing capabilities and behaviorally respond in the same manner.

Thus, our analysis below considers the effects of the Navy's activities on each affected species even where discussion is organized by functional hearing group and/or information is evaluated at the group level. Where there are meaningful differences between a species that would further differentiate the analysis, they are either described within the section or the discussion for those species is included as a separate subsection. Specifically below, we first give broad descriptions of the mysticete and odontocete groups and then differentiate into further groups and species as appropriate.

Mysticetes

This section builds on the broader discussion above and brings together the discussion of the different types and amounts of take that different species will incur, the applicable mitigation for species, and the status of the species to support the negligible impact determinations. We have described (above in this section) the unlikelihood of any masking having effects that would impact the reproduction or survival of any of the individual marine mammals affected by the Navy's activities. For mysticetes, there is no predicted PTS from sonar or explosives and no predicted tissue damage from explosives for any species. Much of the discussion below focuses on the behavioral effects and the mitigation measures that reduce the probability or severity of effects. Because there are species-specific factors in relation to the status of the species, at the end of the section we break out our findings on a species-specific basis.

In Table 51 below for mysticetes, we indicate for each species the Level A

and Level B harassment numbers, and a number indicating the instances of total take as a percentage of abundance in the MITT Study Area alone, as well as the MITT Study Area plus the transit corridor, which was calculated separately. While the density used to calculate take is the same for these two areas, the takes were calculated separately for the two areas for all species in this proposed rule, not just mysticetes, because the activity levels are higher in the MITT Study Area and it is helpful to understand the comparative impacts in the two areas.

TABLE 51—ANNUAL ESTIMATED TAKES BY LEVEL B HARASSMENT AND LEVEL A HARASSMENT FOR MYSTICETES AND NUMBER INDICATING THE INSTANCES OF TOTAL TAKE AS A PERCENTAGE OF SPECIES ABUNDANCE

Species	Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Abundance		Instances of total take as percentage of abundance	
	Level B harassment		Level A harassment	Total takes		MITT study area	MITT study area + transit corridor	MITT study area	MITT study area + transit corridor
	Behavioral disturbance	TTS	PTS	MITT study area	MITT study area + transit corridor				
Blue whale	4	20	0	24	24	179	200	13	12
Bryde's whale	40	258	0	296	297	1,470	1,595	20	19
Fin whale	5	20	0	25	25	215	240	12	10
Humpback whale	57	422	0	476	479	3,190	3,563	15	13
Minke whale	10	85	0	95	95	538	601	18	16
Omura's whale	4	25	0	28	28	143	160	20	18
Sei whale	19	136	0	154	155	1,040	1,094	15	14

Note: Abundance was calculated using the following formulas: Density from the Technical Report in animals/km^2 × spatial extent of the MITT Study Area transit corridor = Abundance in the transit corridor and Density from the Technical Report in animals/km^2 × spatial extent of the MITT Study Area = Abundance in the MITT Study. In addition, the total annual takes described here may be off by a digit due to rounding. This occurred here as the Level B harassment takes are broken down further into Behavioral Disturbance and TTS compared to the Level B harassment takes presented as one number in the *Estimated Take of Marine Mammals* section.

The majority of takes by harassment of mysticetes in the MITT Study Area are caused by sources from the MF1 active sonar bin (which includes hull-mounted sonar) because they are high level, narrowband sources in the 1–10 kHz range, which intersect what is estimated to be the most sensitive area of hearing for mysticetes. They also are used in a large portion of exercises (see Table 1.5–1 in the Navy's application). Most of the takes (66 percent) from the MF1 bin in the MITT Study Area would result from received levels between 154 and 172 dB SPL, while another 33 percent would result from exposure between 172 and 178 dB SPL. For the remaining active sonar bin types, the percentages are as follows: LF4 = 97 percent between 124 and 136 dB SPL, MF4 = 99 percent between 136 and 154 dB SPL, MF5 = 98 percent between 118 and 142 dB SPL, and HF4 = 98 percent between 100 and 148 dB SPL. These values may be derived from the information in Tables 6.4–8 through 6.4–12 in the Navy's rulemaking/LOA application (though they were provided directly to NMFS upon request). No blue whales or fin whales will be taken by Level B harassment or PTS as a result of exposure to explosives. For other mysticetes, exposure to explosives will result in small numbers of take: 1–6 Level B behavioral harassment takes per species, 0–3 TTS takes per species (0 for sei whales), and 0 PTS takes.

Research and observations show that if mysticetes are exposed to sonar or other active acoustic sources they may react in a number of ways depending on the characteristics of the sound source, their experience with the sound source, and whether they are migrating or on seasonal feeding or breeding grounds. Behavioral reactions may include alerting, breaking off feeding dives and surfacing, diving or swimming away, or no response at all (DOD, 2017; Nowacek, 2007; Richardson, 1995; Southall *et al.,* 2007). Overall, mysticetes have been observed to be more reactive to acoustic disturbance when a noise source is located directly on their migration route. Mysticetes disturbed while migrating could pause their migration or route around the disturbance, while males en route to breeding grounds have been shown to be less responsive to disturbances. Although some may pause temporarily, they will resume migration shortly after the exposure ends. Animals disturbed while engaged in other activities such as feeding or reproductive behaviors may be more likely to ignore or tolerate the disturbance and continue their natural behavior patterns. Alternately, adult females with calves may be more responsive to stressors. As noted in the *Potential Effects of Specified Activities on Marine Mammals and Their Habitat* section, there are multiple examples from behavioral response studies of odontocetes ceasing their feeding dives when exposed to sonar pulses at certain levels, but alternately, blue whales were less likely to show a visible response to sonar exposures at certain levels when feeding than when traveling. However, Goldbogen *et al.* (2013) indicated some horizontal displacement of deep foraging blue whales in response to simulated MFA sonar. Most Level B behavioral harassment of mysticetes is likely to be short-term and of low to sometimes moderate severity, with no anticipated effect on reproduction or survival from Level B harassment.

Richardson *et al.* (1995) noted that avoidance (temporary displacement of an individual from an area) reactions are the most obvious manifestations of disturbance in marine mammals. Avoidance is qualitatively different from the startle or flight response, but also differs in the magnitude of the response (*i.e.,* directed movement, rate of travel, etc.). Oftentimes avoidance is temporary, and animals return to the area once the noise has ceased. Some mysticetes may avoid larger activities such as a MTE as it moves through an area, although these activities do not typically use the same training locations day-after-day during multi-day activities, except periodically in instrumented ranges. Therefore, displaced animals could return quickly after the MTE finishes. Due to the limited number and geographic scope of MTEs, it is unlikely that most mysticetes would encounter an MTE more than once per year and additionally, total hull-mounted sonar hours would be limited in several areas that are important to mysticetes (described below). In the ocean, the use of Navy sonar and other active acoustic sources is transient and is unlikely to expose the same population of animals repeatedly over a short period of time, especially given the broader-scale movements of mysticetes.

The implementation of procedural mitigation and the sightability of

mysticetes (due to their large size) further reduces the potential for a significant behavioral reaction or a threshold shift to occur (*i.e.,* shutdowns are expected to be successfully implemented), which is reflected in the amount and type of incidental take that is anticipated to occur and proposed to be authorized.

As noted previously, when an animal incurs a threshold shift, it occurs in the frequency from that of the source up to one octave above. This means that the vast majority of threshold shifts caused by Navy sonar sources will typically occur in the range of 2–20 kHz (from the 1–10 kHz MF1 bin, though in a specific narrow band within this range as the sources are narrowband), and if resulting from hull-mounted sonar, will be in the range of 3.5–7 kHz. The majority of mysticete vocalizations occur in frequencies below 1 kHz, which means that TTS incurred by mysticetes will not interfere with conspecific communication. Additionally, many of the other critical sounds that serve as cues for navigation and prey (*e.g.,* waves, fish, invertebrates) occur below a few kHz, which means that detection of these signals will not be inhibited by most threshold shift either. When we look in ocean areas where the Navy has been intensively training and testing with sonar and other active acoustic sources for decades, there is no data suggesting any long-term consequences to reproduction or survival rates of mysticetes from exposure to sonar and other active acoustic sources.

All the species discussed in this section would benefit from the procedural mitigation measures described earlier in the *Proposed Mitigation Measures* section. In addition, the Navy would limit activities and employ other measures in mitigation areas that would avoid or reduce impacts to mysticetes. The Navy would implement time/area mitigation for explosives for humpback whales in the Marpi and Chalan Kanoa Reef Geographic Mitigation Areas as by prohibiting explosives year-round. The Navy would also implement the Marpi and Chalan Kona Reef Awareness Notification Message Areas that would avoid interactions with large whales that may be vulnerable to vessel strikes. This is especially important for humpback whales that are concentrated in these areas for breeding and calving.

Below we compile and summarize the information that supports our preliminary determination that the Navy's activities would not adversely affect any species through effects on annual rates of recruitment or survival for any of the affected mysticete species.

Humpback whale— Effective as of October 11, 2016, NMFS changed the status of all humpback whales from an endangered species to a specific status for each of the 14 identified distinct population segments (DPSs) (81 FR 62259). The humpback whales in the MITT Study Area are indirectly addressed in the Alaska SAR, given that the historic range of humpbacks in the ''Asia wintering area'' includes the Mariana Islands. The observed presence of humpback whales in the Mariana Islands (Hill et al., 2016a; Hill et al., 2017a; Hill et al., 2018; Klinck et al., 2016a; Munger et al., 2014; NMFS, 2018; Oleson et al., 2015; Uyeyama, 2014) are consistent with the MITT Study Area as a plausible migratory destination for humpback whales from Alaska (Muto et al., 2017a). It is likely that humpback whales in the Mariana Islands are part of the endangered Western North Pacific DPS (WNP DPS) based on the best available science (Bettridge et al., 2015; Calambokidis et al., 2008; Calambokidis et al., 2010; Carretta et al., 2017b; Hill et al., 2017b; Muto et al., 2017a; NMFS, 2016a; NOAA, 2015b; Wade et al., 2016) although the breeding range of the WNP DPS is not fully resolved. Individual photo-identification data for whales sampled off Saipan within the Mariana Archipelago in February–March 2015 to 2018, suggest that these whales belong to the WNP DPS (Hill et al., in review). Specifically, comparisons with existing WNP humpback whale photo-identification catalogs showed that 11 of 41 (27 percent) whales within the Mariana Archipelago humpback whale catalog were previously sighted in WNP breeding areas (Japan and Philippines) and/or in a WNP feeding area off Russia (Hill et al., in review). No ESA designated critical habitat has been proposed for the WNP DPS in the MITT Study Area, although critical habitat has been proposed in Alaska (84 FR 54534; October 9, 2019). There are no designated biologically important areas; however, it is known that the areas of Marpi and Chalan Kanoa Reefs (out to the 400 m isobath) are being specifically used by mother/calf pairs of humpback whales (Hill et al., 2016, 2017, 2018, *in-press*). Currently, no other areas have been identified for mother/calf pairs of humpback whales in the Mariana Islands.

The shallower water (less than 400 m) surrounding the Chalan Kanoa Reef and Marpi Reef Geographic Mitigation Areas have not been a high-use area for Navy MTEs and ASW training events as the area is considered generally unsuitable for training needs. These areas encompass water depths less than 400 m, with significant parts of the mitigation areas less than 200 m. The distance between 400 and 200 m isobaths is very small (between 0.5 and 2 nm). Most humpback whale sightings in or near the mitigation areas were within the 200 m isobath. The Navy typically conducts ASW that would also include the use of surface ship hull-mounted sonar such as MF1 in water depths greater than 200 m. Small scale and unit level ASW training is not conducted within 3 nm of land (*e.g.,* Small Joint Coordinated ASW exercise, Tracking Exercise-surface ship). MTEs almost always use established range subareas far offshore and well outside of 3 nm of land. Close to half of the Chalan Kanoa Reef Geographic Mitigation Area is 3 nm from land making this area less suitable to current Navy ASW training needs. In addition, portions of the Chalan Kanoa Reef area have established anchorages and presence of anchored vessels is not conducive for ASW training with MF1 MFAS. Similarly, water depths less than 200 m at Marpi Reef are also typically unsuited for current ASW training needs, especially for group events. As part of proposed mitigation, the Navy would not use explosives in these two Geographic Mitigation Areas. Reducing exposure of humpback whales to explosive detonations in these areas and at this time is expected to reduce the likelihood of impacts that could affect reproduction or survival, by minimizing impacts on calves during this sensitive life stage, avoiding the additional energetic costs to mothers of avoiding the area during explosive exercises, and minimizing the chances that important breeding behaviors are interrupted to the point that reproduction is inhibited or abandoned for the year, or otherwise interfered with.

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 MITT Study Area abundance and the MITT Study Area plus the transit corridor combined) is 15 and 13 percent, respectively (Table 51). Regarding the severity of those individual takes by Level B behavioral harassment, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Regarding the severity of TTS takes, they are expected to be

low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with communication or other important low-frequency cues. Therefore the associated lost opportunities and capabilities are not at a level that would impact reproduction or survival.

Given the general lack of suitability of the shallow waters of Marpi and Chalan Kanoa Reefs for Navy's activities, it is predicated that only a small portion of individuals would be taken and disturbed at a low-moderate level, with those individuals disturbed only once. There is no expected Level A harassment. 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, the total take is not expected to adversely affect this species through impacts on annual rates of recruitment or survival. No mortality or tissue damage is anticipated or proposed to be authorized. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the proposed authorized take would have a negligible impact on humpback whales.

Blue whale—Blue whales are listed as endangered under the ESA throughout their range, but there is no ESA designated critical habitat or biologically important areas identified for this species in the MITT Study Area. There are no recent sighting records for blue whales in the MITT Study Area (Fulling et al., 2011; Hill et al., 2017a; Uyeyama, 2014). Some acoustic detections from passive monitoring devices deployed at Saipan and Tinian have recorded the presence of blue whales over short periods of time (a few days) (Oleson et al., 2015). However, since blue whale calls can travel very long distances (up to 621 mi (1,000 km)), it is unknown whether the animals were within the MITT Study Area. Blue whales would be most likely to occur in the MITT Study Area during the winter and are expected to be few in number.

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 MITT Study Area abundance and the MITT Study Area plus the transit corridor combined) is 13 and 12 percent, respectively (Table 51). Regarding the severity of those individual takes by Level B behavioral harassment, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Regarding the severity of TTS takes, they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with communication or other important low-frequency cues. Therefore the associated lost opportunities and capabilities are not at a level that would impact reproduction or survival.

Given the range of blue whales and the low abundance in the MITT Study Area, this information suggests that a very small portion of individuals would be taken and disturbed at a low-moderate level, with those individuals disturbed only once. There is no expected Level A harassment. 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, the total take is not expected to adversely affect this species through impacts on annual rates of recruitment or survival. No mortality or tissue damage is anticipated or proposed to be authorized. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the proposed authorized take would have a negligible impact on blue whales.

Fin whale—Fin whales are listed as endangered under the ESA throughout their range, but there is no ESA designated critical habitat or biologically important areas identified for this species in the MITT Study Area. There are no sighting records for fin whales in the MITT Study Area (Fulling *et al.,* 2011; Hill *et al.,* 2017a; Oleson *et al.,* 2015; Uyeyama, 2014). Based on acoustic detections, fin whales are expected to be present in the MITT Study Area although few in number. Acoustic detections from passive monitoring devices deployed at Saipan and Tinian have recorded the presence of fin whales over short (a few days) periods of time (Oleson *et al.,* 2015), and fin whale vocalizations were detected in January 2010 in the Transit Corridor between Hawaii and Guam (Oleson and Hill, 2010a). 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 MITT Study Area abundance and the MITT Study Area plus the transit corridor combined) is 12 and 10 percent, respectively (Table 51). Regarding the severity of those individual takes by Level B behavioral harassment, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Regarding the severity of TTS takes, they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with communication or other important low-frequency cues. Therefore the associated lost opportunities and capabilities are not at a level that would impact reproduction or survival.

Given the low abundance of fin whales in the MITT Study Area, this information suggests that a very small portion of individuals would be taken and disturbed at a low-moderate level, with those individuals disturbed only once. There is no expected Level A harassment. 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, the total take is not expected to adversely affect this species through impacts on annual rates of recruitment or survival. No mortality or tissue damage is anticipated or proposed to be authorized. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the proposed authorized take would have a negligible impact on fin whales.

Sei whale—Sei whales are listed as endangered under the ESA throughout their range, but there is no ESA designated critical habitat or biologically important areas identified for this species in the MITT Study Area. In the 2007 survey of the Mariana Islands (Fulling *et al.,* 2011), a total of 16 sei whales were sighted in coverage of approximately 24 percent of the MITT Study Area. Sei whales were also visually detected in the Transit Corridor between the MITT Study Area and Hawaii during a NMFS survey in January 2010 (Oleson and Hill, 2010a). 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 MITT Study Area abundance and the MITT Study Area plus the transit corridor combined) is 15 and 14 percent, respectively (Table 51). Regarding the severity of those individual takes by Level B behavioral harassment, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB with a

portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Regarding the severity of TTS takes, they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with communication or other important low-frequency cues. Therefore the associated lost opportunities and capabilities are not at a level that would impact reproduction or survival.

Given the low occurrence of sei whales in the MITT Study Area, this information suggests that a very small portion of individuals would be taken and disturbed at a low-moderate level, with those individuals disturbed only once. There is no expected Level A harassment. 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, the total take is not expected to adversely affect this species through impacts on annual rates of recruitment or survival. No mortality or tissue damage is anticipated or proposed to be authorized. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the proposed authorized take would have a negligible impact on sei whales.

Bryde's whale, Minke whale, Omura's whale—These whales are not listed as endangered or threatened under the ESA. Bryde's whale are expected to be present in the MITT Study Area based on sighting records (Fulling *et al.,* 2011; Hill *et al.,* 2017a; Mobley, 2007; Oleson and Hill, 2010a; Uyeyama, 2014). Bryde's whales were detected in the Transit Corridor between the MITT Study Area and Hawaii during a NMFS survey in January 2010 (Oleson and Hill, 2010a). Bryde's whales were also encountered off Rota during a small boat non-systematic survey in August–September 2015 (Hill *et al.,* 2017a). Minke whales have not been visually detected in the MITT Study Area during any known survey efforts within approximately the last decade (Fulling *et al.,* 2011; Hill *et al.,* 2011; Hill *et al.,* 2013; Hill *et al.,* 2014; Hill *et al.,* 2015; Hill *et al.,* 2017a; Mobley, 2007; Oleson and Hill, 2010a; Tetra Tech Inc., 2014; Uyeyama, 2014). However, acoustic data collected during line-transect surveys did detect calling minke whales (Norris *et al.,* 2017). Omura's whale is thought to be present in the MITT Study Area, but no data is available to estimate abundance.

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 MITT Study Area abundance and the MITT Study Area plus the transit corridor combined) is 18–20 and 16–19 percent, respectively (Table 51). Regarding the severity of those individual takes by Level B behavioral harassment, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Regarding the severity of TTS takes, they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with communication or other important low-frequency cues. Therefore the associated lost opportunities and capabilities are not at a level that would impact reproduction or survival.

Given the low occurrence of Bryde's whales and minke whales and the low abundance of Omura's whales in the MITT Study Area, this information suggests that a small portion of individuals would be taken and disturbed at a low-moderate level, with those individuals disturbed only once. There is no expected Level A harassment. 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, the total take is not expected to adversely affect these species through impacts on annual rates of recruitment or survival. No mortality or tissue damage is anticipated or proposed to be authorized. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the proposed authorized take would have a negligible impact on Bryde's whales, minke whales, and Omura's whales.

Altogether, 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 20 percent or less for all mysticetes in the MITT Study Area and 19 percent or less in the MITT Study Area and transit corridor combined (Table 51). 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 communication or other important low-frequency cues. Therefore, the associated lost opportunities and capabilities are not at a level that would impact reproduction or survival.

Only a small portion of any mysticete population is anticipated to be impacted, and any individual whale is likely to be disturbed at a low-moderate level, with the taken individuals likely exposed on one day or perhaps over a few days for a small number of individuals, with little chance that any are taken across sequential days. This low magnitude and severity of harassment effects is unlikely to result in impacts on individual reproduction or survival, much less annual rates of recruitment or survival of any of the species. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the proposed authorized take would have a negligible impact on all of the mysticete species.

Odontocetes

This section builds on the broader discussion above and brings together the discussion of the different types and amounts of take that different species would incur, the applicable mitigation for each species, and the status of the species to support the negligible impact determinations for each species. We have previously described the unlikelihood of any masking or habitat impacts having effects that would impact the reproduction or survival of any of the individual marine mammals affected by the Navy's activities. Here, we include information that applies to all of the odontocete species, which are then further divided and discussed in more detail in the following subsections: Dwarf sperm whales and pygmy sperm whales; sperm whales; beaked whales; and dolphins and small whales. These subsections include more specific information about the groups, as well as conclusions for each species represented.

The majority of takes by harassment of odontocetes in the MITT Study Area are caused by sources from the MF1 active sonar bin (which includes hull-mounted sonar) because they are high level, typically narrowband sources at a frequency (in the 1–10 kHz range) that overlaps a more sensitive portion (though not the most sensitive) of the MF hearing range and they are used in a large portion of exercises (see Table 1.5–1 in the Navy's rulemaking/LOA

application). For odontocetes other than beaked whales (for which these percentages are indicated separately in that section), most of the takes (98 percent) from the MF1 bin in the MITT Study Area would result from received levels between 154 and 172 dB SPL. For the remaining active sonar bin types, the percentages are as follows: LF4 = 97 percent between 124 and 136 dB SPL, MF4 = 99 percent between 136 and 160 dB SPL, MF5 = 97 percent between 118 and 142 dB SPL, and HF4 = 88.6 percent between 100 and 130 dB SPL. These values may be derived from the information in Tables 6.4–8 through 6.4–12 in the Navy's rulemaking/LOA application (though they were provided directly to NMFS upon request). Based on this information, the majority of the takes by Level B behavioral harassment are expected to be low to sometimes moderate in nature, but still of a generally shorter duration.

For all odontocetes, takes from explosives (Level B behavioral harassment, TTS, or PTS) comprise a very small fraction (and low number) of those caused by exposure to active sonar. For the following odontocetes, zero takes from explosives are expected to occur: Blainville's beaked whales, Cuvier's beaked whales, bottlenose dolphins, false killer whales, killer whales, spinner dolphins, sperm whales, rough-toothed dolphins, and pygmy killer whale. For Level B behavioral disruption from explosives, 1 to 4 takes are expected to occur for all but three of the remaining odontocetes, 0 takes for spinner dolphins, and 25 and 64 takes for pygmy and dwarf sperm whales, respectively. The instances of PTS expected to occur from explosives are 0–1 per species and instances of TTS expected to occur from explosives are 0–5 per species, except for pygmy and dwarf sperm whales. Because of the lower PTS threshold for HF species, pygmy and dwarf sperm whales are expected to have 25 and 64 Level B behavioral harassment takes, 8 and 21 PTS takes, and 37 and 100 TTS takes from explosives, respectively.

Because the majority of harassment takes of odontocetes result from the sources in the MF1 bin, the vast majority of threshold shift would occur at a single frequency within the 1–10 kHz range and, therefore, the vast majority of threshold shift caused by Navy sonar sources would be at a single frequency within the range of 2–20 kHz. The frequency range within which any of the anticipated narrowband threshold shift would occur would fall directly within the range of most odontocete vocalizations (2–20kHz). For example, the most commonly used hull-mounted sonar has a frequency around 3.5 kHz, and any associated threshold shift would be expected to be at around 7 kHz. However, odontocete vocalizations typically span a much wider range than this, and alternately, threshold shift from active sonar will often be in a narrower band (reflecting the narrower band source that caused it), which means that TTS incurred by odontocetes would typically only interfere with communication within a portion of their range (if it occurred during a time when communication with conspecifics was occurring) and, as discussed earlier, it would only be expected to be of a short duration and relatively small degree. Odontocete echolocation occurs predominantly at frequencies significantly higher than 20 kHz, though there may be some small overlap at the lower part of their echolocating range for some species, which means that there is little likelihood that threshold shift, either temporary or permanent would interfere with feeding behaviors. Many of the other critical sounds that serve as cues for navigation and prey (*e.g.,* waves, fish, invertebrates) occur below a few kHz, which means that detection of these signals will not be inhibited by most threshold shift either. The low number of takes by threshold shift that might be incurred by individuals exposed to explosives would likely be lower frequency (5 kHz or less) and spanning a wider frequency range, which could slightly lower an individual's sensitivity to navigational or prey cues, or a small portion of communication calls, for several minutes to hours (if temporary) or permanently. There is no reason to think that any of the individual odontocetes taken by TTS would incur these types of takes over more than one day, or over a few days at most, and therefore they are unlikely to incur impacts on reproduction or survival. PTS takes from these sources are very low, and while spanning a wider frequency band, are still expected to be of a low degree (*i.e.,* low amount of hearing sensitivity loss) and unlikely to affect reproduction or survival.

The range of potential behavioral effects of sound exposure on marine mammals generally, and odontocetes specifically, has been discussed in detail previously. There are behavioral patterns that differentiate the likely impacts on odontocetes as compared to mysticetes. First, odontocetes echolocate to find prey, which means that they actively send out sounds to detect their prey. While there are many strategies for hunting, one common pattern, especially for deeper diving species, is many repeated deep dives within a bout, and multiple bouts within a day, to find and catch prey. As discussed above, studies demonstrate that odontocetes may cease their foraging dives in response to sound exposure. If enough foraging interruptions occur over multiple sequential days, and the individual either does not take in the necessary food, or must exert significant effort to find necessary food elsewhere, energy budget deficits can occur that could potentially result in impacts to reproductive success, such as increased cow/calf intervals (the time between successive calving). Second, while many mysticetes rely on seasonal migratory patterns that position them in a geographic location at a specific time of the year to take advantage of ephemeral large abundances of prey (*i.e.,* invertebrates or small fish, which they eat by the thousands), odontocetes forage more homogeneously on one fish or squid at a time. Therefore, if odontocetes are interrupted while feeding, it is often possible to find more prey relatively nearby.

Dwarf Sperm Whales and Pygmy Sperm Whales

In this section, we bring together the discussion of marine mammals generally and odontocetes in particular regarding the different types and amounts of take that different species will incur, the applicable mitigation for each species, and the status of the species to support the negligible impact determinations for each. We have previously described the unlikelihood of any masking or habitat impacts to any marine mammals that would rise to the level of affecting individual fitness.

In Table 52 below for dwarf sperm whales and pygmy sperm whales, we indicate the total annual numbers of take by Level A and Level B harassment, and a number indicating the instances of total take as a percentage of abundance.

TABLE 52—ANNUAL ESTIMATED TAKES BY LEVEL B HARASSMENT AND LEVEL A HARASSMENT FOR DWARF SPERM WHALES AND PYGMY SPERM WHALES AND NUMBER INDICATING THE INSTANCES OF TOTAL TAKE AS A PERCENTAGE OF SPECIES ABUNDANCE

Species	Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Abundance		Instances of total take as percentage of abundance	
	Level B harassment		Level A harassment	Total takes		MITT study area	MITT study area + transit corridor	MITT study area	MITT study area + transit corridor
	Behavioral disturbance	TTS	PTS	MITT study area	MITT study area + transit corridor				
Dwarf sperm whale	1,353	7,147	50	8,502	8,550	25,594	27,396	33	31
Pygmy sperm whale	534	2,876	20	3,412	3,430	10,431	11,169	33	31

Note: Abundance was calculated using the following formulas: Density from the Technical Report in animals/km^2 × spatial extent of the MITT Study Area transit corridor = Abundance in the transit corridor and Density from the Technical Report in animals/km^2 × spatial extent of the MITT Study Area = Abundance in the MITT Study. In addition, the total annual takes described here may be off by a digit due to rounding. This occurred here as the Level B harassment takes are broken down further into Behavioral Disturbance and TTS compared to the Level B harassment takes presented as one number in the *Estimated Take of Marine Mammals* section.

As discussed above, the majority of Level B harassment behavioral takes of odontocetes, and thereby dwarf and pygmy sperm whales, is expected to be in the form of low to occasionally moderate severity of a generally shorter duration. As mentioned earlier in this section, we anticipate more severe effects from takes when animals are exposed to higher received levels or for longer durations. Occasional milder Level B behavioral harassment, as is expected here, is unlikely to cause long-term consequences for either individual animals or populations, even if some smaller subset of the takes are in the form of a longer (several hours or a day) and more moderate response.

We note that dwarf and pygmy sperm whales, as HF-sensitive species, have a lower PTS threshold than all other groups and therefore are likely to experience larger amounts of TTS and PTS, and NMFS accordingly has evaluated and would authorize higher numbers. However, Kogia whales are still likely to avoid sound levels that would cause higher levels of TTS (greater than 20 dB) or PTS. Therefore, even though the number of TTS and PTS takes are higher than for other odontocetes, for all of the reasons described above TTS and PTS are not expected to impact reproduction or survival of any individual.

Below we compile and summarize the information that supports our preliminary determination that the Navy's activities would not adversely affect pygmy and dwarf sperm whales through effects on annual rates of recruitment or survival.

Neither pygmy sperm whales nor dwarf sperm whales are listed under the ESA. The stock structure for both pygmy and dwarf sperm whales remains uncertain in the western Pacific, and dwarf sperm whales in the MITT Study Area have not been assigned to a stock in the current SAR (Carretta *et al.,* 2017c; Carretta *et al.,* 2017d). 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. There were no species of *Kogia* sighted during the 2007 shipboard survey within the MITT Study Area (Fulling *et al.,* 2011), but three *Kogia* were observed during marine mammal monitoring for Valiant Shield 2007 about 8 NM east of Guam (Mobley, 2007). In total, during Navy-funded 2010–2016 small boat surveys in the Mariana Islands, five dwarf sperm whales have been encountered on four occasions in a median depth of approximately 750 m and at a median distance of approximately 3 km from shore (Hill *et al.,* 2017a). The stranding of a pygmy sperm whale in 1997 (Trianni and Tenorio, 2012) is the only other confirmed occurrence of this species in the MITT Study Area.

No mortality or tissue damage is anticipated or proposed to be authorized. Both pygmy and dwarf sperm whales would benefit from the procedural mitigation measures described earlier in the *Proposed Mitigation Measures* section. 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 33 percent for both dwarf and pygmy sperm whales in the MITT Study Area and 31 percent in the MITT Study Area and the transit corridor combined, which suggest that some portion of these two species would be taken on one to a few days per year (Table 52). As to 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). As to 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 dwarf or pygmy sperm whale communication or other important low-frequency cues, and the associated lost opportunities and capabilities are not at a level that would impact reproduction or survival. Some Level A harassment by PTS is anticipated annually (50 and 20 takes for Dwarf and pygmy whale, respectively, see Table 52). 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 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, let alone affect annual rates of recruitment or survival. For these reasons, in consideration of all of the effects of the Navy's activities combined, we have preliminary determined that the proposed authorized take will have a negligible impact on pygmy and dwarf sperm whales.

Sperm Whale

In this section, we bring together the discussion of marine mammals generally and odontocetes in particular to evaluate the different types and amounts of take that sperm whales would incur, the applicable mitigation, and the status of the species to support the negligible impact determination. We have previously described the unlikelihood of any masking or habitat

impacts to any marine mammals that would rise to the level of affecting individual fitness. In Table 53 below for sperm whales, we indicate the total annual numbers of take by Level A and Level B harassment, and a number indicating the instances of total take as a percentage of abundance.

TABLE 53—ANNUAL ESTIMATED TAKES BY LEVEL B HARASSMENT AND LEVEL A HARASSMENT FOR SPERM WHALES AND NUMBER INDICATING THE INSTANCES OF TOTAL TAKE AS A PERCENTAGE OF SPECIES ABUNDANCE

Species	Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Abundance		Instances of total take as percentage of abundance	
	Level B harassment		Level A harassment	Total takes		MITT study area	MITT study area + transit corridor	MITT study area	MITT study area + transit corridor
	Behavioral disturbance	TTS	PTS	MITT Study area	MITT study area + transit corridor				
Sperm whale	192	11	0	189	203	705	1,635	27	12

Note: Abundance was calculated using the following formulas: Density from the Technical Report in animals/km^2 x spatial extent of the MITT Study Area transit corridor = Abundance in the transit corridor and Density from the Technical Report in animals/km^2 × spatial extent of the MITT Study Area = Abundance in the MITT Study. In addition, the total annual takes described here may be off by a digit due to rounding. This occurred here as the Level B harassment takes are broken down further into Behavioral Disturbance and TTS compared to the Level B harassment takes presented as one number in the *Estimated Take of Marine Mammals* section.

The stock structure for sperm whales remains uncertain in the Pacific (Mesnick *et al.,* 2011; Mizroch and Rice, 2013; NMFS, 2015a), and sperm whales in the MITT Study Area have not been assigned to a stock in the current Pacific SAR (Carretta *et al.,* 2017b; Carretta *et al.,* 2017c). Sperm whales have been routinely sighted in the MITT Study Area and detected in acoustic monitoring records. Acoustic recordings in August 2013 at Pagan Island indicated the presence of sperm whales within 20 NM of the island (Tetra Tech Inc., 2014). Although it has been reported that sperm whales are generally found far offshore in deep water (Mizroch and Rice, 2013), sightings in the MITT Study Area have included animals close to shore in relatively shallow water as well as in areas near steep bathymetric relief (Fulling *et al.,* 2011; Hill *et al.,* 2017a; Uyeyama, 2014). A total of 23 sperm whale sightings and 93 acoustic encounters were made during the 2007 survey in water depths between approximately 400 and 1,000 m depth (Fulling et al., 2011; Yack et al., 2016). During the Navy-funded 2010–2016 small boat surveys in the Mariana Islands, six sperm whales were encountered on three occasions in a median depth of approximately 1,200 m and median approximate distance from shore of 12 km (Hill *et al.,* 2017a). Vocalizations classified as sperm whales were also detected on 20 occasions to the east and south of Guam by passive acoustic recorders during an underwater glider survey in 2014 (Klinck *et al.,* 2016b).

Below we compile and summarize the information that supports our preliminary determination that the Navy's activities would not adversely affect sperm whales through effects on annual rates of recruitment or survival.

The sperm whale is listed as endangered under the ESA. No mortality or Level A harassment is anticipated or proposed to be authorized. Sperm whales would benefit from the procedural mitigation measures described earlier in the *Proposed Mitigation Measures* section. 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 27 percent in the MITT Study Area and 12 percent in the MITT Study Area and transit corridor combined (Table 53), which suggests that some portion of the sperm whales in the MITT Study Area would be taken on one to a few days per year. 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 important low-frequency cues. While the narrowband/single frequency threshold shift incurred may overlap with parts of the frequency range that sperm whales use for communication, any associated lost opportunities and capabilities would not be at a level that would impact reproduction or survival. Any individual whale is likely to be disturbed at a low-moderate level, with the taken individuals likely exposed on one day. This low magnitude and severity of harassment effects is not expected to result in impacts on individual reproduction or survival. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the proposed authorized take would have a negligible impact on sperm whales.

Beaked Whales

In this section, we build on the broader odontocete discussion above (*i.e.,* that information applies to beaked whales as well), except where we offer alternative information about the received levels for beaked whale Level B behavioral harassment. We bring together the discussion of the different types and amounts of take that different species will incur, the applicable mitigation for each species, and the status of each species to support the negligible impact determination for each species.

We have previously described the unlikelihood of any masking or habitat impacts to any groups that would rise to the level of affecting individual fitness. The discussion below focuses on additional information that is specific to beaked whales (in addition to the general information on odontocetes provided above, which is relevant to these species) to support the conclusions for each species.

In Table 54 below for beaked whales, we indicate the total annual numbers of take by Level A and Level B harassment, and a number indicating the instances of total take as a percentage of abundance.

TABLE 54—ANNUAL ESTIMATED TAKES BY LEVEL B HARASSMENT AND LEVEL A HARASSMENT FOR BEAKED WHALES AND NUMBER INDICATING THE INSTANCES OF TOTAL TAKE AS A PERCENTAGE OF SPECIES ABUNDANCE

Species	Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Abundance		Instances of total take as percentage of abundance	
	Level B Harassment		Level A harassment	Total Takes		MITT study area	MITT study area + transit corridor	MITT study area	MITT study area + transit corridor
	Behavioral disturbance	TTS	PTS	MITT study area	MITT study area + transit corridor				
Blainville's beaked whale	1,691	27	0	1,698	1,719	3,083	3,376	55	51
Cuvier's beaked whale	642	4	0	534	647	1,075	2,642	50	24
Ginkgo-toothed beaked whale	3,660	65	0	3,662	3,725	6,775	7,567	54	49
Longman's beaked whale	5,959	107	0	6,056	6,066	11,148	11,253	54	54

Note: Abundance was calculated using the following formulas: Density from the Technical Report in animals/km^2 x spatial extent of the MITT Study Area transit corridor = Abundance in the transit corridor and Density from the Technical Report in animals/km^2 × spatial extent of the MITT Study Area = Abundance in the MITT Study. In addition, the total annual takes described here may be off by a digit due to rounding. This occurred here as the Level B harassment takes are broken down further into Behavioral Disturbance and TTS compared to the Level B harassment takes presented as one number in the *Estimated Take of Marine Mammals* section.

This first paragraph provides specific information that is in lieu of the parallel information provided for odontocetes as a whole. The majority of takes by harassment of beaked whales in the MITT Study Area are caused by sources from the MF1 active sonar bin (which includes hull-mounted sonar) because they are high level narrowband sources that fall within the 1–10 kHz range, which overlap a more sensitive portion (though not the most sensitive) of the MF hearing range. Also, of the sources expected to result in take, they are used in a large portion of exercises (see Table 1.5–1 in the Navy's rulemaking/LOA application). Most of the takes (96 percent) from the MF1 bin in the MITT Study Area would result from received levels between 148 and 160 dB SPL. For the remaining active sonar bin types, the percentages are as follows: LF4 = 99 percent between 124 and 136 dB SPL, MF4 = 98 percent between 130 and 148 dB SPL, MF5 = 97 percent between 100 and 142 dB SPL, and HF4 = 95 percent between 100 and 148 dB SPL. These values may be derived from the information in Tables 6.4–8 through 6.4–12 in the Navy's rulemaking/LOA application (though they were provided directly to NMFS upon request). Given the levels they are exposed to and their sensitivity, some responses would be of a lower severity, but many would likely be considered moderate.

Research has shown that beaked whales are especially sensitive to the presence of human activity (Pirotta *et al.,* 2012; Tyack *et al.,* 2011) and therefore have been assigned a lower harassment threshold, with lower received levels resulting in a higher percentage of individuals being harassed and a more distant distance cutoff (50 km for high source level, 25 km for moderate source level).

Beaked whales have been documented to exhibit avoidance of human activity or respond to vessel presence (Pirotta *et al.,* 2012). Beaked whales were observed to react negatively to survey vessels or low altitude aircraft by quick diving and other avoidance maneuvers, and none were observed to approach vessels (Wursig *et al.,* 1998). It has been speculated for some time that beaked whales might have unusual sensitivities to sonar sound due to their likelihood of stranding in conjunction with MFAS use, although few definitive causal relationships between MFAS use and strandings have been documented (see *Potential Effects of Specified Activities on Marine Mammals and their Habitat* section).

Research and observations show that if beaked whales are exposed to sonar or other active acoustic sources, they may startle, break off feeding dives, and avoid the area of the sound source to levels of 157 dB re 1 μPa, or below (McCarthy *et al.,* 2011). Acoustic monitoring during actual sonar exercises revealed some beaked whales continuing to forage at levels up to 157 dB re 1 μPa (Tyack *et al.,* 2011). Stimpert *et al.* (2014) tagged a Baird's beaked whale, which was subsequently exposed to simulated MFAS. Changes in the animal's dive behavior and locomotion were observed when received level reached 127 dB re 1 μPa. However, Manzano-Roth *et al.* (2013) found that for beaked whale dives that continued to occur during MFAS activity, differences from normal dive profiles and click rates were not detected with estimated received levels up to 137 dB re 1 μPa while the animals were at depth during their dives. In research done at the Navy's fixed tracking range in the Bahamas, animals were observed to leave the immediate area of the anti-submarine warfare training exercise (avoiding the sonar acoustic footprint at a distance where the received level was ''around 140 dB SPL, according to Tyack *et al.* (2011)), but return within a few days after the event ended (Claridge and Durban, 2009; McCarthy *et al.,* 2011; Moretti *et al.,* 2009, 2010; Tyack *et al.,* 2010, 2011). Tyack *et al.* (2011) report that, in reaction to sonar playbacks, most beaked whales stopped echolocating, made long slow ascent to the surface, and moved away from the sound. A similar behavioral response study conducted in Southern California waters during the 2010–2011 field season found that Cuvier's beaked whales exposed to MFAS displayed behavior ranging from initial orientation changes to avoidance responses characterized by energetic fluking and swimming away from the source (DeRuiter *et al.,* 2013b). However, the authors did not detect similar responses to incidental exposure to distant naval sonar exercises at comparable received levels, indicating that context of the exposures (*e.g.,* source proximity, controlled source ramp-up) may have been a significant factor. The study itself found the results inconclusive and meriting further investigation. Cuvier's beaked whale responses suggested particular sensitivity to sound exposure consistent with results for Blainville's beaked whale.

Populations of beaked whales and other odontocetes on the Bahamas and other Navy fixed ranges that have been operating for decades appear to be stable. Behavioral reactions (avoidance of the area of Navy activity) seem likely in most cases if beaked whales are exposed to anti-submarine sonar within a few tens of kilometers, especially for prolonged periods (a few hours or more) since this is one of the most sensitive marine mammal groups to anthropogenic sound of any species or group studied to date and research indicates beaked whales will leave an

area where anthropogenic sound is present (De Ruiter *et al.,* 2013; Manzano-Roth *et al.,* 2013; Moretti *et al.,* 2014; Tyack *et al.,* 2011). Research involving tagged Cuvier's beaked whales in the SOCAL Range Complex reported on by Falcone and Schorr (2012, 2014) indicates year-round prolonged use of the Navy's training and testing area by these beaked whales and has documented movements in excess of hundreds of kilometers by some of those animals. Given that some of these animals may routinely move hundreds of kilometers as part of their normal pattern, leaving an area where sonar or other anthropogenic sound is present may have little, if any, cost to such an animal. Photo identification studies in the SOCAL Range Complex, a Navy range that is utilized for training and testing, have identified approximately 100 Cuvier's beaked whale individuals with 40 percent having been seen in one or more prior years, with re-sightings up to seven years apart (Falcone and Schorr, 2014). These results indicate long-term residency by individuals in an intensively used Navy training and testing area, which may also suggest a lack of long-term consequences as a result of exposure to Navy training and testing activities. More than eight years of passive acoustic monitoring on the Navy's instrumented range west of San Clemente Island documented no significant changes in annual and monthly beaked whale echolocation clicks, with the exception of repeated fall declines likely driven by natural beaked whale life history functions (DiMarzio *et al.,* 2018). Finally, results from passive acoustic monitoring estimated that regional Cuvier's beaked whale densities were higher than indicated by the NMFS' broad scale visual surveys for the U.S. west coast (Hildebrand and McDonald, 2009).

Below we compile and summarize the information that supports our preliminary determination that the Navy's activities would not adversely affect beaked whales through effects on annual rates of recruitment or survival.

These beaked whale species are not listed as endangered or threatened species under the ESA. No mortality or Level A harassment is expected or proposed for authorization. All of the beaked whales species discussed in this section would benefit from the procedural mitigation measures described earlier in the *Proposed Mitigation Measures* section. Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances of take compared to the abundance is 50 to 55 percent in the MITT Study Area and 24 to 54 percent in the MITT Study Area and transit corridor combined (Table 54). This information suggests that up to half of the individuals of these species could be impacted, if each were taken only one day per year, though the more likely scenario is that a smaller portion than that would be taken, and a subset of them would be taken on a few 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 (*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. 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.

As mentioned earlier in the odontocete overview, we anticipate more severe effects from takes when animals are exposed to higher received levels or sequential days of impacts. Occasional instances of take by Level B behavioral harassment of a low to moderate severity are unlikely to affect reproduction or survival. Here, some small number of takes by Level B behavioral harassment could be in the form of a longer (several hours or a day) and more moderate response, and/or some small number could be taken over several days, but not at a level that would impact reproduction or survival.

This low magnitude and low to moderate severity of harassment effects is not expected to result in impacts on individual reproduction or survival. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the proposed authorized take would have a negligible impact on beaked whales.

Small Whales and Dolphins

This section builds on the broader discussion above and compiles the discussion of the different types and amounts of take that different small whale and dolphin species may incur, the applicable mitigation for dolphin and small whale species, and the status of the species to support the negligible impact determinations. We have previously described the unlikelihood of any masking or habitat impacts to any groups that would rise to the level of affecting individual fitness. The discussion below focuses on additional information that is specific to these species (in addition to the general information on odontocetes provided above, which is relevant to these species) to support the conclusions for each species.

In Table 55 below for dolphins and small whales, we indicate the total annual numbers of take by Level A and Level B harassment, and a number indicating the instances of total take as a percentage of abundance.

TABLE 55—ANNUAL ESTIMATED TAKES BY LEVEL B HARASSMENT AND LEVEL A HARASSMENT FOR DOLPHINS AND SMALL WHALES AND NUMBER INDICATING THE INSTANCES OF TOTAL TAKE AS A PERCENTAGE OF SPECIES ABUNDANCE

Species	Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Abundance		Instances of total take as percentage of abundance	
	Level B harassment		Level A harassment	Total takes		MITT study area	MITT study area + transit corridor	MITT study area	MITT study area + transit corridor
	Behavioral disturbance	TTS	PTS	MITT study area	MITT study area + transit corridor				
Bottlenose dolphin	116	21	0	132	137	753	1,075	17	13
False killer whale	641	121	0	759	762	3,979	4,218	19	18
Fraser's dolphin	11,327	1,952	1	13,261	13,280	75,420	76,476	18	17
Killer whale	36	8	0	44	44	215	253	20	17
Melon-headed whale	2,306	508	0	2,798	2,814	15,342	16,461	18	17
Pantropical spotted dolphin	12,078	2,818	1	14,820	14,897	81,013	85,755	18	17

TABLE 55—ANNUAL ESTIMATED TAKES BY LEVEL B HARASSMENT AND LEVEL A HARASSMENT FOR DOLPHINS AND SMALL WHALES AND NUMBER INDICATING THE INSTANCES OF TOTAL TAKE AS A PERCENTAGE OF SPECIES ABUNDANCE—Continued

Species	Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Abundance		Instances of total take as percentage of abundance	
	Level B harassment		Level A harassment	Total takes		MITT study area	MITT study area + transit corridor	MITT study area	MITT study area + transit corridor
	Behavioral disturbance	TTS	PTS	MITT study area	MITT study area + transit corridor				
Pygmy killer whale	87	17	0	103	104	502	527	21	20
Risso's dolphin	2,650	519	0	3,166	3,169	16,991	17,184	19	18
Rough-toothed dolphin	161	36	0	185	197	1,040	1,815	18	11
Short-finned pilot whale	987	177	0	1,150	1,164	5,700	6,583	20	18
Spinner dolphin	1,185	229	1	1,404	1,415	2,975	3,759	47	38
Striped dolphin	3,256	751	0	3,956	4,007	22,081	24,528	18	16

Note: Abundance was calculated using the following formulas: Density from the Technical Report in animals/km^2 × spatial extent of the MITT Study Area transit corridor = Abundance in the transit corridor and Density from the Technical Report in animals/km^2 × spatial extent of the MITT Study Area = Abundance in the MITT Study. In addition, the total annual takes described here may be off by a digit due to rounding. This occurred here as the Level B harassment takes are broken down further into Behavioral Disturbance and TTS compared to the Level B harassment takes presented as one number in the *Estimated Take of Marine Mammals* section.

As described above, the large majority of Level B behavioral harassment to odontocetes, and thereby dolphins and small whales, from hull-mounted sonar (MF1) in the MITT Study Area would result from received levels between 160 and 172 dB SPL. Therefore, the majority of Level B harassment takes are expected to be in the form of low to occasionally moderate responses of a generally shorter duration. As mentioned earlier in this section, we anticipate more severe effects from takes when animals are exposed to higher received levels. Occasional milder occurrences of Level B behavioral harassment are unlikely to cause long-term consequences for individual animals or populations that have any effect on reproduction or survival.

Research and observations show that if delphinids are exposed to sonar or other active acoustic sources they may react in a number of ways depending on their experience with the sound source and what activity they are engaged in at the time of the acoustic exposure. Delphinids may not react at all until the sound source is approaching within a few hundred meters to within a few kilometers depending on the environmental conditions and species. Some dolphin species (the more surface-dwelling taxa—typically those with ''dolphin'' in the common name, such as bottlenose dolphins, spotted dolphins, spinner dolphins, rough-toothed dolphins, etc., but not Risso's dolphin), especially those residing in more industrialized or busy areas, have demonstrated more tolerance for disturbance and loud sounds and many of these species are known to approach vessels to bow-ride. These species are often considered generally less sensitive to disturbance. Dolphins and small whales that reside in deeper waters and generally have fewer interactions with human activities are more likely to demonstrate more typical avoidance reactions and foraging interruptions as described above in the odontocete overview.

All the dolphin and small whale species discussed in this section would benefit from the procedural mitigation measures described earlier in the *Proposed Mitigation Measures* section. Additionally, the Agat Bay Nearshore Geographic Mitigation Area will provide protection for spinner dolphins as the Navy will not use in-water explosives or MF1 ship hull-mounted mid-frequency active sonar in this area. High use areas for spinner dolphins including Agat Bay are where animals congregate during the day to rest (Amesbury *et al.,* 2001; Eldredge, 1991). Behavioral disruptions during resting periods can adversely impact health and energetic budgets by not allowing animals to get the needed rest and/or by creating the need to travel and expend additional energy to find other suitable resting areas. Avoiding sonar and explosives in this area reduces the likelihood of impacts that would affect reproduction and survival.

Below we compile and summarize the information that supports our preliminary determination that the Navy's activities would not adversely affect dolphins and small whales through effects on annual rates of recruitment or survival.

None of the small whale and dolphin species are listed as endangered or threatened species under the ESA. No mortality or Level A harassment is anticipated or proposed to be authorized, with the exception of one Level A harassment take by PTS each for spinner dolphin, pantropical spotted dolphin, and Fraser's dolphin. No tissue damage is anticipated or proposed to be authorized for any 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 is 47 percent for spinner dolphins and 17 to 21 percent for the remaining dolphins and small whales in the MITT Study Area, which suggests that some portion of these species would be taken on one to a few days per year. Additionally, the number of estimated total instances of take compared to the abundance is 38 percent for spinner dolphins and 20 percent or less for the remaining dolphins and small whales in the MITT Study and transit corridor combined, which would also suggest that some portion of these species would be taken on one to a few days per year (Table 55). As to 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). As to 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 communication or other important low-frequency cues. The associated lost opportunities and capabilities are not at a level that would impact reproduction or survival. Any individual dolphin or small whale is likely to be disturbed at a low-moderate level, with the taken individuals likely exposed on one to a few days. This low magnitude and severity of harassment effects is not expected to result in impacts on individual reproduction or survival. Three species (spinner dolphin, Fraser's dolphin, and pantropical spotted

dolphin) could be taken by one PTS annually of likely low severity. 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, but at the expected scale the estimated Level A harassment takes by PTS for spinner dolphin, Fraser's dolphin, and pantropical spotted dolphin would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individuals, let alone affect 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 proposed authorized take would have a negligible impact on small whales and dolphins.

Altogether, only a small portion of any odontocete population is anticipated to be impacted, and any individual whale or dolphin is likely to be disturbed at a low-moderate level, with the taken individuals likely exposed on one day or a few days. This low magnitude and severity of harassment effects is unlikely to result in impacts on individual reproduction or survival, much less annual rates of recruitment or survival of any of the species. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the proposed authorized take would have a negligible impact on all of the odontocete species.

Preliminary Determination

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the Specified Activities will have a negligible impact on all affected marine mammal species.

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 would not have an unmitigable adverse impact on the availability of the species for taking for subsistence purposes.

Classifications

Endangered Species Act

There are five marine mammal species under NMFS jurisdiction that are listed as endangered or threatened under the ESA with confirmed or possible occurrence in the MITT Study Area: Blue whale, fin whale, humpback whale, sei whale, and sperm whale. There is no ESA-designated critical habitat for any species in the MITT Study Area. The Navy will consult with NMFS pursuant to section 7 of the ESA for MITT Study Area activities. NMFS will also consult internally on the issuance of the regulations and LOA under section 101(a)(5)(A) of the MMPA. NMFS' Permits and Conservation Division is currently discussing the Navy rulemaking/LOA application with NMFS' ESA Interagency Cooperation Division.

National Marine Sanctuaries Act

There are no national marine sanctuaries in the MITT Study Area. Therefore, no consultation under the National Marine Sanctuaries Act is required.

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. Accordingly, NMFS plans to adopt the Navy's EIS/OEIS for the MITT Study Area provided our independent evaluation of the document finds that it includes adequate information analyzing the effects on the human environment of issuing regulations and an LOA under the MMPA. NMFS is a cooperating agency on the 2019 MITT DEIS/OEIS and has worked extensively with the Navy in developing the document. The 2019 MITT DEIS/OEIS was made available for public comment at *http://www.MITT-eis.com,* January 2019. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the MMPA rule and LOA request.

Regulatory Flexibility Act

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The RFA requires Federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a Federal agency may certify, pursuant to 5 U.S.C. 605(b), that the action will not have a significant economic impact on a substantial number of small entities. The Navy is the sole entity that would be affected by this rulemaking, and the Navy is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Any requirements imposed by an LOA issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, would be applicable only to the Navy. NMFS does not expect the issuance of these regulations or the associated LOA to result in any impacts to small entities pursuant to the RFA. Because this action, if adopted, would directly affect the Navy and not a small entity, NMFS concludes that 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: January 9, 2020.

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 J to part 218 to read as follows:

Subpart J—Taking and Importing Marine Mammals; U.S. Navy's Mariana Islands Training and Testing (MITT)

Sec.
218.90 Specified activity and geographical region.
218.91 Effective dates.
218.92 Permissible methods of taking.

218.93 Prohibitions.
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218.95 Requirements for monitoring and reporting.
218.96 Letters of Authorization.
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218.98 [Reserved]

Subpart J—Taking and Importing Marine Mammals; U.S. Navy's Mariana Islands Training and Testing (MITT)

§ 218.90 Specified activity and geographical region.

(a) Regulations in this subpart apply only to the U.S. Navy (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)(1) The taking of marine mammals by the Navy under this subpart may be authorized in a Letter of Authorization (LOA) only if it occurs within the Mariana Islands Training and Testing (MITT) Study Area. The MITT Study Area is comprised of three components:

(i) The Mariana Islands Range Complex (MIRC);

(ii) Additional areas on the high seas; and

(iii) A transit corridor between the MIRC and the Hawaii Range Complex (HRC).

(2) The MIRC includes the waters south of Guam to north of Pagan (Commonwealth of the Northern Mariana Islands (CNMI)), and from the Pacific Ocean east of the Mariana Islands to the Philippine Sea to the west, encompassing 501,873 square nautical miles (NM^2) of open ocean. For the additional areas of the high seas, this includes the area to the north of the MIRC that is within the U.S. Exclusive Economic Zone (EEZ) of the CNMI and the areas to the west of the MIRC. The transit corridor is outside the geographic boundaries of the MIRC and represents a great circle route (*i.e.,* the shortest distance) across the high seas for Navy ships transiting between the MIRC and the HRC. Additionally, the MITT Study Area includes pierside locations in the Apra Harbor Naval Complex.

(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) Mine warfare;

(vi) Surface warfare; and

(vii) Other training activities.

(2) *Testing.* (i) Naval Air Systems Command Testing Activities;

(ii) Naval Sea System Command Testing Activities; and

(iii) Office of Naval Research Testing Activities.

§ 218.91 Effective dates.

Regulations in this subpart are effective from *[DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**]* through August 3, 2027.

§ 218.92 Permissible methods of taking.

(a) Under an LOA issued pursuant to §§ 216.106 of this chapter and 218.96, the Holder of the LOA (hereinafter ''Navy'') may incidentally, but not intentionally, take marine mammals within the area described in § 218.90(b) by Level A harassment and Level B harassment associated with the use of active sonar and other acoustic sources 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 § 218.90(c) is limited to the following species:

TABLE 1 TO § 218.92

Species	Scientific Name
Blue whale	*Balaenoptera musculus*
Bryde's whale	*Balaenoptera edeni*
Fin whale	*Balaenoptera physalus*
Humpback whale	*Megaptera novaeangliae*
Minke whale	*Balaenoptera acutorostrata*
Omura's whale	*Balaenoptera omurai*
Sei whale	*Balaenoptera borealis*
Blainville's beaked whale	*Mesoplodon densirostris*
Common bottlenose dolphin	*Tursiops truncatus*
Cuvier's beaked whale	*Ziphius cavirostris*
Dwarf sperm whale	*Kogia sima*
False killer whale	*Pseudorca crassidens*
Fraser's dolphin	*Lagenodelphis hosei*
Ginkgo-toothed beaked whale	*Mesoplodon ginkgodens*
Killer whale	*Orcinus orca*
Longman's beaked whale	*Indopacetus pacificus*
Melon-headed whale	*Peponocephala electra*
Pantropical spotted dolphin	*Stenella attenuata*
Pygmy killer whale	*Feresa attenuata*
Pygmy sperm whale	*Kogia breviceps*
Risso's dolphin	*Grampus griseus*
Rough-toothed dolphin	*Steno bredanensis*
Short-finned pilot whale	*Globicephala macrorhynchus*
Sperm whale	*Physeter macrocephalus*
Spinner dolphin	*Stenella longirostris*
Striped dolphin	*Stenella coeruleoalba*

§ 218.93 Prohibitions.

Notwithstanding incidental takings contemplated in § 218.92(a) and authorized by LOAs issued under §§ 216.106 of this chapter and 218.96, no person in connection with the activities listed in § 218.90(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 218.96;

(b) Take any marine mammal not specified in § 218.92(b);

(c) Take any marine mammal specified in § 218.92(b) in any manner other than as specified in the LOAs; or

(d) Take a marine mammal specified in § 218.92(b) if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal.

§ 218.94 Mitigation requirements.

When conducting the activities identified in § 218.90(c), the mitigation measures contained in any LOAs issued under §§ 216.106 of this chapter and 218.96 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 MITT Study Area for each applicable activity category or stressor category and includes acoustic stressors (*i.e.,* active sonar and other transducers, 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 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.* (A) 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.

(B) Prior to the start of the activity (*e.g.,* when maneuvering on station), Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of active sonar transmission.

(C) 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.

(D) 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.

(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 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) is deliberately closing in on the ship to ride the ship's bow wave, and is therefore out of the main transmission axis of the sonar (and there are no other marine mammal sightings within the mitigation zone).

(3) *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)(17)(i) of this section.

(ii) *Mitigation zone and requirements.* (A) Thirty degrees on either side of the firing line out to 70 yd from the muzzle of the weapon being fired.

(B) Prior to the start of the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of weapons firing.

(C) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease weapons firing.

(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 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 a 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.* (A) 600 yd around an explosive sonobuoy.

(B) 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 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.

(C) 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.

(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 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.

(E) 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.* (A) 2,100 yd around the intended impact location.

(B) Prior to the initial start of the activity (*e.g.,* during deployment of the target), 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.

(C) During the activity, Navy personnel must observe for marine mammals. If marine mammals are observed, Navy personnel must cease firing.

(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 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.

(E) 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)(3)(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 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 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.* (A) 2,500 yd around the intended target.

(B) Prior to the initial start of the activity (*e.g.,* when arriving on station), Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of bomb deployment.

(C) 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.

(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 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.

(E) 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.* (A) 2.5 NM around the target ship hulk.

(B) 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 marine mammals; if marine mammals are observed, Navy personnel must delay the start of firing.

(C) 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.

(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 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.

(E) 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.

(B) 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.

(B) 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 marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of detonations.

(C) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease detonations.

(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 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.

(B) 1,000 yd around the detonation site during all activities using time-delay fuses.

(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 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; if marine mammals 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 to exceed 10 min.

(E) Commencement/recommencement conditions after a marine mammal sighting before or 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, 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.* (A) 200 yd around the intended detonation location.

(B) Prior to the initial start of the activity (*e.g.,* when maneuvering on station), Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of detonations.

(C) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease detonations.

(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 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.

(E) 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) *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 and Amphibious Raid exercises).

(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).

(C) During the activity, 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.

(16) *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.* (A) 250 yd around marine mammals.

(B) 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.

(17) *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)(3)(i) of this section.

(ii) *Mitigation zone and requirements.* (A) 200 yd around the intended impact location.

(B) Prior to the start of the activity (*e.g.,* when maneuvering on station), Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(C) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease firing.

(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 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.

(18) *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.* (A) 900 yd around the intended impact location.

(B) 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 marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(C) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease firing.

(D) 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.

(19) *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.* (A) 1,000 yd around the intended target.

(B) Prior to the initial start of the activity (*e.g.,* when arriving on station), Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of bomb deployment or mine laying.

(C) 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.

(D) 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 off Saipan in MITT Study Area for sonar, explosives, and vessel strikes*—(i) *Mitigation area requirements*—(A) *Marpi Reef Geographic Mitigation Area.* (*1*) Navy personnel must not use explosives that could potentially result in takes of marine mammals during training and testing.

(*2*) The Navy will also report the total hours of MF1 surface ship hull-mounted mid-frequency active sonar from December through April used in this

area in its annual training and testing activity reports submitted to NMFS.

(*3*) Should national security require the 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.,* explosive usage) in its annual activity reports submitted to NMFS.

(B) *Chalan Kanoa Geographic Mitigation Area.* (*1*) Navy personnel must not use explosives that could potentially result in takes of marine mammals during training and testing.

(*2*) The Navy will also report the total hours of MF1 surface ship hull-mounted mid-frequency active sonar from December through April used in this area in its annual training and testing activity reports submitted to NMFS.

(*3*) Should national security require the 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.,* explosive usage) in its annual activity reports submitted to NMFS.

(C) *Marpi Reef and Chalan Kanoa Reef Awareness Notification Message Area (December–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, or increased concentrations of humpback whales.

(*2*) To maintain safety of navigation and to avoid interactions with large whales during transits, Navy personnel must instruct vessels to remain vigilant to the presence of large whale species (including humpback whales) that when concentrated seasonally, may become vulnerable to vessel strikes.

(*3*) Platforms must use the information from the awareness notification message to assist their visual observation of applicable mitigation zones during training and testing activities and to aid in the implementation of procedural mitigation.

(ii) [Reserved]

(2) *Mitigation areas for marine mammals off Guam of the MITT Study Area for sonar and explosives*—(i) *Mitigation area requirements*—(A) *Agat Bay Nearshore Geographic Mitigation Area.* (*1*) Navy personnel must not conduct MF1 surface ship hull-mounted mid-frequency active sonar year-round.

(*2*) Should national security require the use of MF1 surface ship hull-mounted mid-frequency active sonar during training and testing within the Agat Bay Nearshore Geographic 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.,* sonar hours) in its annual activity reports submitted to NMFS.

(*3*) Navy personnel must not use in-water explosives year-round.

(*4*) Should national security require the use of explosives that could potentially result in the take of marine mammals during training or testing within the Agat Bay Nearshore Geographic 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) [Reserved]

§ 218.95 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 § 218.90 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 LOA.* The Navy must conduct all monitoring and reporting required under the LOA, including abiding by the MITT 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 *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.*

(d) *Annual MITT Study Area marine species monitoring report.* The Navy must submit an annual report of the MITT 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 MITT 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 MITT, Hawaii-Southern California, Gulf of Alaska, and Northwest Study Areas.

(e) *Annual MITT Study Area training exercise report and testing activity reports.* 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 the LOA to the Director, Office of Protected Resources, NMFS. Each year, the Navy must submit a detailed report to the Director, Office of Protected Resources, NMFS, within three months after the one-year anniversary of the date of issuance of the LOA. The MITT 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 report must contain information on the total hours of operation of MFI surface ship hull-mounted mid-frequency active sonar used in the Marpi Reef and Chalan Kanoa Reef Geographic Mitigation Areas, 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 report must be based on the accumulation of data from the current year's report and data collected from previous annual reports. The annual report will also contain cumulative sonar and explosive use quantity from previous years' reports through the current year. Additionally, if there were any changes to the sound source allowance in a given year, or cumulatively, the report would include a discussion of why the change was made and include analysis to support how the change did or did not affect the analysis in the MITT EIS/OEIS and MMPA final rule. The annual report would also include the details regarding specific requirements associated with specific mitigation areas. The analysis in the detailed report would be based on the accumulation of data from the current year's report and data collected from previous reports. The final annual/close-out report at the conclusion of the authorization period (year seven) would also serve as the comprehensive close-out report and include both the final year annual use compared to annual authorization as well as a cumulative seven-year annual use compared to seven-year authorization. The detailed reports must contain information identified in paragraphs (e)(1) through (6) of this section.

(1) *MTEs.* This section of the report must contain the following information for MTEs conducted in the MITT 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 or dolphin).

(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 or dolphin).

(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 transducers and

(ii) Total annual expended/detonated ordinance (missiles, bombs, sonobuoys, etc.) for each explosive bin.

(4) *MITT 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 MITT Study Area.

(5) *Geographic information presentation.* The reports must present an annual (and seasonal, where practical) depiction of training and testing bin usage geographically across the MITT Study Area.

(6) *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 annual/close-out report.* The final (year seven) draft annual/close-out 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 three months after the submittal of the draft if NMFS does not provide comments.

§ 218.96 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to the regulations in this subpart, the Navy must apply for and obtain an LOA in accordance with § 216.106 of this chapter.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed August 3, 2027.

(c) If an LOA expires prior to August 3, 2027, 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 § 218.97(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 § 218.97.

(e) Each LOA will 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) will be published in the **Federal Register** within 30 days of a determination.

§ 218.97 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 218.96 for the activity identified in § 218.90(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 218.96 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 218.96, 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.

§ 218.98 [Reserved]

[FR Doc. 2020–00481 Filed 1–30–20; 8:45 am]

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