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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 50

[Docket No. OCC–2020–0019]

RIN 1557–AE92

FEDERAL RESERVE SYSTEM

12 CFR Part 249

[Regulations WW; Docket No. R–1717]

RIN 7100–AF90

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 329

RIN 3064–AF51

Liquidity Coverage Ratio Rule: Treatment of Certain Emergency Facilities

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

ACTION: Interim final rule; request for comment.

SUMMARY: To provide liquidity to the money market sector, small business lenders, and the broader credit markets in order to stabilize the financial system, the Board of Governors of the Federal Reserve System (Board) authorized the establishment of the Money Market Mutual Fund Liquidity Facility (MMLF) and the Paycheck Protection Program Liquidity Facility (PPPLF), pursuant to section 13(3) of the Federal Reserve Act. To facilitate use of these Federal Reserve facilities, and to ensure that the effects of their use are consistent and predictable under the Liquidity Coverage Ratio (LCR) rule, the Office of the Comptroller of the Currency, the Board, and the Federal Deposit Insurance Corporation (together, the agencies) are adopting this interim final rule to require banking organizations to neutralize the effect under the LCR rule of participating in the MMLF and the PPPLF.

DATES: The interim final rule is effective May 6, 2020. Comments on the interim final rule must be received no later than June 5, 2020.

ADDRESSES:

OCC: Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Liquidity Coverage Ratio Rule: Treatment of Emergency FRB Secured Lending Facilities'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—Regulations.gov Classic or Regulations.gov Beta: Regulations.gov Classic:* Go to *https://www.regulations.gov/.* Enter ''Docket ID OCC–2020–0019'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments. For help with submitting effective comments please click on ''View Commenter's Checklist.'' Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov,* including instructions for submitting public comments.

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- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, suite 3E–218, Washington, DC 20219.
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Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2020–0019'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website 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.

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Board: You may submit comments, identified by Docket No. R–1717; RIN 7100–AF90, by any of the following methods:

- *Agency website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include docket and RIN numbers in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684.

FDIC: You may submit comments, identified by RIN 3064–AF51, by any of the following methods:

- *Agency website: https://www.fdic.gov/regulations/laws/federal.* Follow instructions for submitting comments on the Agency website.
- *Email: Comments@FDIC.gov.* Include ''RIN 3064–AF51'' on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/RIN 3064–AF51, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivered/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW, building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT:

OCC: James Weinberger, Technical Expert, Treasury & Market Risk Policy, (202) 649–6360; or Henry Barkhausen, Counsel, or Daniel Perez, Senior Attorney, Chief Counsel's Office, (202) 649–5490, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Anna Lee Hewko, Associate Director, (202) 530–6360, Constance Horsley, Deputy Associate Director, (202) 452–5239, Kathryn Ballintine, Manager, (202) 452–2555, Kevin Littler, Lead Financial Institution Policy Analyst, (202) 475–6677, Cecily Boggs, Senior Financial Institution Policy Analyst II, (202) 530–6209, Michael Ofori-Kuragu, Senior Financial Institution Policy Analyst II, (202) 475–6623, or Christopher Powell, Senior Financial Institution Policy Analyst II, (202) 452–3442, Division of Supervision and Regulation; Benjamin McDonough, Assistant General Counsel, (202) 452–2036, Steve Bowne, Senior Counsel, (202) 452–3900, Jason Shafer, Senior Counsel, (202) 728–5811, Laura Bain, Counsel, (202) 736–5546, or Jeffery Zhang, Attorney, (202) 736–1968, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

FDIC: Bobby R. Bean, Associate Director, *bbean@fdic.gov;* Irina Leonova, Acting Chief, Capital Markets Strategies Section, *ileonova@FDIC.gov;* Eric Schatten, Senior Policy Analyst, *eschatten@fdic.gov;* Andrew Carayiannis, Senior Policy Analyst, *acarayiannis@fdic.gov; capitalmarkets@fdic.gov;* Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888; or Suzanne Dawley, Counsel, *sudawley@fdic.gov;* Gregory Feder, Counsel, *gfeder@fdic.gov;* Andrew B. Williams II, Counsel, *andwilliams@fdic.gov;* Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (800) 925–4618.

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I. Background

The containment measures adopted in response to the public health concerns have slowed economic activity in many countries, including the United States. Financial conditions have tightened markedly, sudden disruptions in financial markets have put increasing liquidity pressure on money market mutual funds, and the cost of credit has risen for most borrowers. Given these liquidity pressures, money market mutual funds have been faced with redemption requests from clients with immediate cash needs and may need to sell a significant number of assets to meet such requests, which could further increase market pressures. Small businesses also are facing severe liquidity constraints, as millions of Americans have been ordered to stay home, severely reducing their ability to engage in normal commerce, and revenue streams for many small businesses have collapsed. This has forced many small businesses to close temporarily or furlough employees. Continued access to financing will be crucial for small businesses to weather economic disruptions caused by the containment measures adopted in response to the public health concerns and, ultimately, to help restore economic activity.

In order to prevent the disruption in the money markets from destabilizing the financial system, the Board of Governors of the Federal Reserve System (Board), with the approval of the Secretary of the Treasury, authorized the Federal Reserve Bank of Boston to establish the Money Market Mutual Fund Liquidity Facility (MMLF), pursuant to section 13(3) of the Federal Reserve Act.[1] Under the MMLF, the Federal Reserve Bank of Boston extends non-recourse loans to eligible borrowers to purchase assets from money market mutual funds (MMFs). Assets purchased from MMFs are posted as collateral to the Federal Reserve Bank of Boston (MMLF collateral). Eligible borrowers under the MMLF include certain banking organizations subject to the Liquidity Coverage Ratio (LCR) rule (covered companies) issued by the Office of the Comptroller of the Currency (OCC), the Board, and the Federal Deposit Insurance Corporation (FDIC) (together, the agencies).[2] MMLF collateral generally comprises securities

[1] 12 U.S.C. 343(3).

[2] The applicability of the LCR rule is described in § __.1 of the rule. *See* 12 CFR 50.1 (OCC); 12 CFR 249.1 (Board); and 12 CFR 329.1 (FDIC).

and other assets with the same maturity date as the MMLF non-recourse loan.

In order to provide liquidity to small business lenders and the broader credit markets, and to help stabilize the financial system, the Board, with the approval of the Secretary of the Treasury, authorized each of the Federal Reserve Banks to extend credit under the Paycheck Protection Program Liquidity Facility (PPPLF), pursuant to section 13(3) of the Federal Reserve Act.[3] Under the PPPLF, each of the Federal Reserve Banks extends non-recourse loans to institutions that are eligible to make Paycheck Protection Program (PPP) covered loans,[4] including depository institutions subject to the agencies' LCR rule. Under the PPPLF, only PPP covered loans that are guaranteed by the SBA under the PPP with respect to both principal and interest and that are originated by an eligible institution may be pledged as collateral to the Federal Reserve Banks (PPPLF collateral). The maturity date of the extension of credit under the PPPLF equals the maturity date of the PPP loans pledged to secure the extension of credit.[5]

To facilitate the use of the MMLF and PPPLF, the agencies are adopting this interim final rule, which requires covered companies to neutralize the LCR effects of the advances made by each facility and the exposures securing such facility advances.

[3] 12 U.S.C. 343(3).

[4] Congress created the PPP as part of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and in recognition of the exigent circumstances faced by small businesses. PPP covered loans are fully guaranteed as to principal and accrued interest by the Small Business Administration (SBA) and also afford borrower forgiveness up to the principal amount of the PPP covered loan, if the proceeds of the PPP covered loan are used for certain expenses. Under the PPP, eligible borrowers generally include businesses with fewer than 500 employees or that are otherwise considered to be small by the SBA. The SBA reimburses PPP lenders for any amount of a PPP covered loan that is forgiven. PPP lenders are not held liable for any representations made by PPP borrowers in connection with a borrower's request for PPP covered loan forgiveness. For more information on the Paycheck Protection Program, see *https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp*.

[5] The maturity date of the PPPLF's loan will be accelerated if the underlying PPP loan goes into default and the eligible borrower sells the PPP Loan to the Small Business Administration (SBA) to realize the SBA guarantee. The maturity date of the PPPLF's loan also will be accelerated to the extent of any PPP loan forgiveness reimbursement received by the eligible borrower from the SBA.

II. The Interim Final Rule

A. LCR Treatment of MMLF and PPPLF Funding

The agencies' LCR rule requires covered companies to calculate and maintain an amount of high-quality liquid assets (HQLA) sufficient to cover their total net cash outflows over a 30-day stress period. A covered company's LCR is the ratio of its HQLA amount (LCR numerator) divided by its total net cash outflows (LCR denominator). The total net cash outflow amount is calculated as the difference between outflow and inflow amounts, which are determined by applying a standardized set of outflow and inflow rates to the cash flows of various assets and liabilities, together with off-balance sheet items, as specified in §§ __.32 and __.33 of the LCR rule.[6]

Absent the interim final rule, under the LCR rule, covered companies would be required to recognize outflows for MMLF and PPPLF loans with a remaining maturity of 30 days or less and inflows for certain assets securing the MMLF and PPPLF loans. As a result, a covered company's participation in the MMLF or PPPLF could affect its total net cash outflows, which could potentially result in an inconsistent, unpredictable, and more volatile calculation of LCR requirements across covered companies.

Under the LCR rule, secured loans from a Federal Reserve facility with a remaining maturity of 30 calendar days or less are categorized as secured funding transactions with a sovereign entity and assigned an outflow rate that varies based on the collateral securing the loan.[7] In addition, the LCR rule assigns inflow rates to collateral generally based on the asset and counterparty type.[8] As a result of the applicable inflow and outflow rates in the LCR rule, MMLF and PPPLF transactions could receive a non-neutral liquidity risk treatment. Moreover, after these loans are extended and upon their maturity, the associated inflows and outflows could unnecessarily contribute to volatility in LCRs.

[6] Section __.30 of the LCR rule also requires a covered company, as applicable, to include in its total net cash outflow amount a maturity mismatch add-on, which is calculated as the difference (if greater than zero) between the covered company's largest net cumulative maturity outflow amount for any of the 30 calendar days following the calculation date and the net day 30 cumulative maturity outflow amount. *See* 12 CFR 50.30 (OCC); 12 CFR 249.30 (Board); and 12 CFR 329.30 (FDIC).

[7] *See* 12 CFR 50.32(j)(1)(i)–(iii) (OCC); 12 CFR 249.32(j)(1)(i)–(iii) (Board); and 12 CFR 329.32(j)(1)(i)–(iii) (FDIC).

[8] *See* 12 CFR 50.33 (OCC); 12 CFR 249.33 (Board); and 12 CFR 329.33 (FDIC).

Under the terms of the MMLF and PPPLF, covered companies use the value of cash received from posted or pledged assets to repay the MMLF or PPPLF loan, respectively, and in no case is the maturity of the collateral shorter than the maturity of the advance. In addition, because the advance from the Federal Reserve Bank is non-recourse, the banking organization is not exposed to credit or market risk from the collateral securing the MMLF or PPPLF loan that could otherwise affect the banking organization's ability to settle the loan. For these reasons, the agencies believe that it is appropriate to provide predictable and consistent treatment for participation in the MMLF and PPPLF by neutralizing the effects of participation in the MMLF and the PPPLF on covered companies' LCRs. Absent this interim final rule, the agencies believe that the treatment of covered companies' transactions with the MMLF and PPPLF under the LCR rule would not be consistent across transactions or facilities and would not accurately reflect the liquidity risk associated with funding exposures through these facilities.

Specifically, the interim final rule adds a new definition to § __.3 and a new § __.34 to the LCR rule. In § __.3, the new definition ''Covered Federal Reserve Facility Funding'' means a non-recourse loan that is extended as part of the Money Market Mutual Fund Liquidity Facility or Paycheck Protection Program Liquidity Facility authorized by the Board of Governors of the Federal Reserve System pursuant to section 13(3) of the Federal Reserve Act. The new § __.34 requires Covered Federal Reserve Facility Funding and the assets securing such funding to be excluded from the calculation of a covered company's total net cash outflow amount as calculated under § __.30 of the LCR rule, notwithstanding any other section of the LCR rule. Except as described below, this new section excludes advances made by a Federal Reserve Bank under the MMLF or the PPPLF from being assigned an outflow rate under § __.32 of the LCR rule, and any collateral securing such an advance from being assigned an inflow rate under § __.33 of the LCR rule. While this treatment would neutralize the effect of the use of the facilities on a covered company's LCR for the duration of the facility, banking organizations should be mindful of the need, where applicable, to replace maturing Covered Federal Reserve Facility Funding with appropriate alternative sources in instances where exposures mature later than such funding.

This new § __.34 does not apply to the extent the covered company secures Covered Federal Reserve Facility Funding with securities, debt obligations, or other instruments issued by the covered company or its consolidated entity. When a covered company owns an instrument that it or its consolidated entity issued, the covered company will not record a payment upon the instrument's maturity. The covered company would not receive a payment from outside the consolidated covered company upon maturity or settlement of the collateral that would be available to repay the borrowing (Covered Federal Reserve Facility Funding), and, as a result, this arrangement presents liquidity risk due to the asymmetric cash flows of the covered company because the covered company would not have an inflow to offset its cash outflows.[9] It would, therefore, be inappropriate to neutralize the impact of such a funding transaction under the LCR rule. The agencies seek comment on this provision and all aspects of the interim final rule.

Question 1: The agencies invite comment on the advantages and disadvantages of neutralizing the effects of participating in the MMLF and PPPLF in the LCR rule.

Question 2: How well does the approach in the interim final rule support the objectives of the facilities?

Question 3: What are the advantages and disadvantages of extending this treatment to any other facilities created pursuant to section 13(3) of the Federal Reserve Act in which covered company exposures are pledged as collateral for non-recourse, maturity-matched advances?

Question 4: What are the advantages and disadvantages of excluding from this treatment Covered Federal Reserve Facility Funding that is secured by instruments issued by a covered company or any of its consolidated entities?

III. Administrative Law Matters

A. Administrative Procedure Act

The agencies are issuing the interim final rule without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).[10] Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [11]

The agencies believe that the public interest is best served by implementing the interim final rule immediately upon publication in the **Federal Register**. As discussed above, the containment measures adopted in response to the public health concerns have slowed economic activity in many countries, including the United States. In particular, these containment measures have acutely affected small businesses, MMFs, and financial markets generally.

Significantly tighter financial conditions and the increased cost of credit for most borrowers have severely affected small businesses. As millions of Americans have been ordered to stay home, severely reducing their ability to engage in normal commerce, revenue streams for many small businesses have collapsed. This has resulted in severe liquidity constraints at small businesses and has forced many small businesses to close temporarily or furlough employees. Continued access to financing will be crucial for small businesses to weather economic disruptions caused by the containment measures adopted in response to the public health concerns and, ultimately, to help restore economic activity.

Additionally, sudden disruptions in financial markets have put increasing liquidity pressure on MMFs. Given these pressures, MMFs have been faced with increased redemption requests from clients with immediate cash needs. The MMFs may need to sell a significant number of assets to meet these redemption requests, which could further increase market pressures.

In order to provide liquidity to banking organizations that lend to small business and the broader credit markets, and to prevent the disruption in the money markets from destabilizing the financial system, the Board, with approval of the Secretary of the Treasury, authorized each of the Federal Reserve Banks to extend credit under the PPPLF and the Federal Reserve Bank of Boston to establish the MMLF. This interim final rule will provide certainty to covered companies regarding the liquidity treatment of inflows and outflows related to these Federal Reserve lending programs. In the absence of this interim final rule, banking organizations may be restricted in their ability to use the MMLF and PPPLF due to potential effects on their LCRs. The urgent funding pressures facing small businesses and MMFs justify the adoption of this interim final rule as quickly as possible. For these reasons, the agencies find that there is good cause consistent with the public interest to issue the interim final rule without advance notice and comment.[12]

The APA also requires a 30-day delayed effective date, except for (1) substantive rules that grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.[13] For the good cause described above, the interim final rule is exempt from the APA's delayed effective date requirement.[14]

While the agencies believe that there is good cause to issue the interim final rule without advance notice and comment and with an immediate effective date, the agencies are interested in the views of the public and request comment on all aspects of the interim final rule.

B. Congressional Review Act

For purposes of Congressional Review Act (CRA), the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a ''major'' rule.[15] If a rule is deemed a ''major rule'' by the OMB, the CRA generally provides that the rule may not take effect until at least 60 days following its publication.[16]

The CRA defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[17]

For the same reasons set forth above, the agencies are adopting the interim final rule without the delayed effective date generally prescribed under the CRA. The delayed effective date

[9] The covered company would not record a payment to itself in the amount owed for the instrument issued by the covered company or its consolidated entity; this would be eliminated in the process of consolidating the covered company's financial statements.

[10] 5 U.S.C. 553.

[11] 5 U.S.C. 553(b)(B).

[12] 5 U.S.C. 553(b)(B).

[13] 5 U.S.C. 553(d).

[14] 5 U.S.C. 553(d)(1).

[15] 5 U.S.C. 801 *et seq.*

[16] 5 U.S.C. 801(a)(3).

[17] 5 U.S.C. 804(2).

required by the CRA does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.[18] In light of current market uncertainty, the agencies believe that delaying the effective date of the rule would be contrary to the public interest.

As required by the CRA, the agencies will submit the interim final rule and other appropriate reports to Congress and the Government Accountability Office for review.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number.[19] This interim final rule does not introduce any new information collections or revise any existing information collections pursuant to the PRA for the OCC or the FDIC. Therefore, no submissions will be made by the OCC or the FDIC to OMB for review. The interim final rule does, however, affect the Board's current information collection for the Complex Institution Liquidity Monitoring Report (FR 2052a; OMB No. 7100–0361). The Board has reviewed the interim final rule pursuant to authority delegated by OMB.

The Board has temporarily revised the reporting form and instructions for the FR 2052a to reflect the changes made in this interim final rule. On June 15, 1984, OMB delegated to the Board authority under the PRA to approve a temporary revision to a collection of information without providing opportunity for public comment if the Board determines that a change in an existing collection must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection or substantially interfere with the Board's ability to perform its statutory obligation.

The Board's delegated authority requires that the Board, after temporarily approving a collection, solicit public comment on a proposal to extend the temporary collection for a period not to exceed three years. Therefore, the Board is inviting comment on a proposal to extend the FR 2052a for three years, with such revisions. The Board invites public comment on the FR 2052a, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the collection of information in the interim final rule is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection in the interim final rule, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Comments must be submitted on or before July 6, 2020. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the information collection.

Approval Under OMB Delegated Authority of the Temporary Revision of, and Proposal To Extend for Three Years, With Revision, the Following Information Collection

Report title: Complex Institution Liquidity Monitoring Report.

Agency form number: FR 2052a.

OMB control number: 7100–0361.

Effective date: May 6, 2020.

Frequency: Monthly, and each business day (daily).

Affected public: Businesses or other for-profit.

Respondents: U.S. bank holding companies (BHCs), U.S. savings and loan holding companies (SLHCs), and foreign banking organizations (FBOs) with U.S. assets.

Estimated number of respondents: Monthly, 26; daily, 16.

Estimated average hours per response: Monthly, 120; daily, 220.

Estimated annual burden hours: 917,440.

General description of report: The Board uses the FR 2052a to monitor the overall liquidity profile of supervised institutions. These data provide detailed information on the liquidity risks within different business lines (*e.g.,* financing of securities positions, prime brokerage activities). In particular, these data serve as part of the Board's supervisory surveillance program in its liquidity risk management area and provide timely information on firm-specific liquidity risks during periods of stress. Analyses of systemic and idiosyncratic liquidity risk issues are then used to inform the Board's supervisory processes, including the preparation of analytical reports that detail funding vulnerabilities.

Legal authorization and confidentiality: The FR 2052a is authorized pursuant to section 5 of the Bank Holding Company Act (12 U.S.C. 1844), section 8 of the International Banking Act (12 U.S.C. 3106), section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (12 U.S.C. 5365), and section 10 of the Home Owners' Loan Act (12 U.S.C. 1467(a)) and is mandatory. Section 5(c) of the Bank Holding Company Act authorizes the Board to require BHCs to submit reports to the Board regarding their financial condition. Section 8(a) of the International Banking Act subjects FBOs to the provisions of the Bank Holding Company Act. Section 165 of the Dodd-Frank Act requires the Board to establish prudential standards for certain BHCs and FBOs, which include liquidity requirements. Section 10(g) of the Home Owners' Loan Act authorizes the Board to collect reports from SLHCs.

Financial institution information required by the FR 2052a is collected as part of the Board's supervisory process. Therefore, such information is entitled to confidential treatment under Exemption 8 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(8)). In addition, the institution information provided by each respondent would not be otherwise available to the public and its disclosure could cause substantial competitive harm. Accordingly, it is entitled to confidential treatment under the authority of exemption 4 of the FOIA (5 U.S.C. 552(b)(4)), which protects from disclosure trade secrets and commercial or financial information.

Current actions: The Board has temporarily revised the reporting form and instructions of the FR 2052a to incorporate the interim final rule. Specifically, the Board has added: (1) The sub-product value of ''Covered Federal Reserve Facility Funding'' to the product O.S.6: Exceptional Central Bank Operations and a corresponding instruction to exclude balances reported under this sub-product from the pre-existing sub-product of ''Federal Reserve Bank''; (2) a sentence to the ''General Guidance'' paragraphs under the I.U: Inflows-Unsecured and I.S: Inflows-Secured headings: ''Exclude assets that secure Covered Federal

[18] 5 U.S.C. 808.

[19] 4 U.S.C. 3501–3521.

Reserve Facility Funding''; (3) a sentence to the definition of product I.O.6: Interest and Dividends Receivable: ''Exclude interest and dividends receivable on assets securing Covered Federal Reserve Facility Funding''; (4) a sentence to the definition of product O.O.19: Interest and Dividends Payable: ''Exclude interest payable on Covered Federal Reserve Facility Funding''; and (5) a collateral class of ''L–12'' representing loans guaranteed by U.S. Government agencies.

The Board has determined that these temporary revisions to the FR 2052a must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection of information, as delaying the revisions would interfere with the Board's ability to perform its statutory duties and would cause public harm if firms were unable to take full advantage of the emergency relief provided by the MMLF in response to significant financial industry disruptions from the containment measures adopted in response to the public health concerns.

In addition, the Board proposes to extend the FR 2052a for three years with the revisions discussed above.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [20] requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.[21] The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed previously, consistent with section 553(b)(B) of the APA, the agencies have determined for good cause that general notice and opportunity for public comment is unnecessary, and therefore the agencies are not issuing a notice of proposed rulemaking. Accordingly, the agencies have concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

Nevertheless, the agencies seek comment on whether, and the extent to which, the interim final rule would have a significant economic impact on a substantial number of small entities.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[22] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of the RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.[23] For the reasons described above, the agencies find good cause exists under section 302 of the RCDRIA to publish the interim final rule with an immediate effective date.

As such, the interim final rule will be effective immediately. Nevertheless, the agencies seek comment on the RCDRIA.

F. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act [24] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the interim final rule in a simple and straightforward manner. The agencies invite comments on whether there are additional steps it could take to make the rule easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand? What else could we do to make the regulation easier to understand?

G. OCC Unfunded Mandates Reform Act of 1995 Determination

As a general matter, the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531 *et seq.,* requires the preparation of a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. However, the UMRA does not apply to final rules for which a general notice of proposed rulemaking was not published.[25] Therefore, because the OCC has found good cause to dispense with notice and comment for the interim final rule, the OCC has not prepared an economic analysis of the rule under the UMRA.

List of Subjects

12 CFR Part 50

Administrative practice and procedure, Banks, Banking, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 249

Administrative practice and procedure, Banks, Banking, Holding companies, Reporting and recordkeeping requirements.

12 CFR Part 329

Administrative practice and procedure, Banks, Banking, Reporting and recordkeeping requirements.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons stated in the preamble, the Office of the Comptroller of the Currency amends part 50 of chapter I of title 12, Code of Federal Regulations as follows:

PART 50—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 1. The authority citation for part 50 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 93a, 481, 1818, 1828, and 1462 *et seq.*

[20] 5 U.S.C. 601 *et seq.*

[21] Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $600 million or less and trust companies with total assets of $41.5 million or less. *See* 13 CFR 121.201.

[22] 12 U.S.C. 4802(a).

[23] 12 U.S.C. 4802.

[24] 12 U.S.C. 4809.

[25] See 2 U.S.C. 1532(a).

■ 2. Amend § 50.3 by adding the definition of *Covered Federal Reserve Facility Funding,* in alphabetical order, to read as follows:

§ 50.3 Definitions.

* * * * *

Covered Federal Reserve Facility Funding means a non-recourse loan that is extended as part of the Money Market Mutual Fund Liquidity Facility or Paycheck Protection Program Liquidity Facility authorized by the Board of Governors of the Federal Reserve System pursuant to section 13(3) of the Federal Reserve Act.[1]

* * * * *

■ 3. Add § 50.34 to read as follows:

§ 50.34 Cash flows related to Covered Federal Reserve Facility Funding.

(a) *Treatment of Covered Federal Reserve Facility Funding.* Notwithstanding any other section of this part and except as provided in paragraph (b) of this section, outflow amounts and inflow amounts related to Covered Federal Reserve Facility Funding and the assets securing Covered Federal Reserve Facility Funding are excluded from the calculation of a national bank's or Federal savings association's total net cash outflow amount calculated under § 50.30.

(b) *Exception.* To the extent the Covered Federal Reserve Facility Funding is secured by securities, debt obligations, or other instruments issued by the national bank or Federal savings association or one of its consolidated subsidiaries, the Covered Federal Reserve Facility Funding is not subject to paragraph (a) of this section and this outflow amount must be included in the national bank's or Federal savings association's total net cash outflow amount calculated under § 50.30.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, the Board of Governors of the Federal Reserve System amends 12 CFR chapter II as follows:

[1] The Money Market Mutual Fund Liquidity Facility was authorized on March 18, 2020, and the Paycheck Protection Program Liquidity Facility was authorized on April 6, 2020.

PART 249—LIQUIDITY RISK MEASUREMENT STANDARDS (REGULATION WW)

■ 4. The authority citation for part 249 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1467a(g)(1), 1818, 1828, 1831p–1, 1831o–1, 1844(b), 5365, 5366, 5368; 12 U.S.C. 3101 *et seq.*

■ 5. Amend § 249.3 by redesignating footnotes 1 and 2 as footnotes 2 and 3 and adding the definition of *Covered Federal Reserve Facility Funding,* in alphabetical order, to read as follows:

§ 249.3 Definitions.

* * * * *

Covered Federal Reserve Facility Funding means a non-recourse loan that is extended as part of the Money Market Mutual Fund Liquidity Facility or Paycheck Protection Program Liquidity Facility authorized by the Board pursuant to section 13(3) of the Federal Reserve Act.[1]

* * * * *

■ 6. Add § 249.34 to read as follows:

§ 249.34 Cash flows related to Covered Federal Reserve Facility Funding.

(a) *Treatment of Covered Federal Reserve Facility Funding.* Notwithstanding any other section of this part and except as provided in paragraph (b) of this section, outflow amounts and inflow amounts related to Covered Federal Reserve Facility Funding and the assets securing Covered Federal Reserve Facility Funding are excluded from the calculation of a Board-regulated institution's total net cash outflow amount calculated under § 249.30.

(b) *Exception.* To the extent the Covered Federal Reserve Facility Funding is secured by securities, debt obligations, or other instruments issued by the Board-regulated institution or one of its consolidated subsidiaries, the Covered Federal Reserve Facility Funding is not subject to paragraph (a) of this section and this outflow amount must be included in the Board-regulated institution's total net cash outflow amount calculated under § 249.30.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, chapter III of title 12 of the Code of Federal Regulations is amended as follows:

[1] The Money Market Mutual Fund Liquidity Facility was authorized on March 18, 2020, and the Paycheck Protection Program Liquidity Facility was authorized on April 6, 2020.

PART 329—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 7. The authority citation for part 329 continues to read as follows:

Authority: 12 U.S.C. 1815, 1816, 1818, 1819, 1828, 1831p–1, 5412.

■ 8. Amend § 329.3 by redesignating footnotes 1 and 2 as footnotes 2 and 3 and adding the definition of *Covered Federal Reserve Facility Funding,* in alphabetical order, to read as follows:

§ 329.3 Definitions.

* * * * *

Covered Federal Reserve Facility Funding means a non-recourse loan that is extended as part of the Money Market Mutual Fund Liquidity Facility or Paycheck Protection Program Liquidity Facility authorized by the Board of Governors of the Federal Reserve System pursuant to section 13(3) of the Federal Reserve Act.[1]

* * * * *

■ 9. Add § 329.34 to read as follows:

§ 329.34 Cash flows related to Covered Federal Reserve Facility Funding.

(a) *Treatment of Covered Federal Reserve Facility Funding.* Notwithstanding any other section of this part and except as provided in paragraph (b) of this section, outflow amounts and inflow amounts related to Covered Federal Reserve Facility Funding and the assets securing Covered Federal Reserve Facility Funding are excluded from the calculation of a FDIC-supervised institution's total net cash outflow amount calculated under § 329.30.

(b) *Exception.* To the extent the Covered Federal Reserve Facility Funding is secured by securities, debt obligations, or other instruments issued by the FDIC-supervised institution or one of its consolidated subsidiaries, the Covered Federal Reserve Facility Funding is not subject to paragraph (a) of this section and this outflow amount must be included in the FDIC-supervised institution's total net cash outflow amount calculated under § 329.30.

Brian P. Brooks,

First Deputy Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

[1] The Money Market Mutual Fund Liquidity Facility was authorized on March 18, 2020, and the Paycheck Protection Program Liquidity Facility was authorized on April 6, 2020.

Dated at Washington, DC, on or about April 30, 2020.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2020–09716 Filed 5–5–20; 8:45 am]

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0092; Product Identifier 2020–NM–001–AD; Amendment 39–19905; AD 2020–08–13]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, and Model CL–600–2D24 (Regional Jet Series 900) airplanes; and all Bombardier, Inc., Model CL–600–2C11 (Regional Jet Series 550) airplanes. This AD was prompted by reports of fractured rudder primary feel unit shafts; a subsequent investigation determined that the fractures in the shafts are consistent with fatigue damage. This AD requires replacement of the rudder primary feel unit shaft. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 10, 2020.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 10, 2020.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0092.

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–2020–0092; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7330; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2019–42, dated November 8, 2019 (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, and Model CL–600–2D24 (Regional Jet Series 900) airplanes; and all Bombardier, Inc., Model CL–600–2C11 (Regional Jet Series 550) airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0092.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, and Model CL–600–2D24 (Regional Jet Series 900) airplanes; and all Bombardier, Inc., Model CL–600–2C11 (Regional Jet Series 550) airplanes. The NPRM published in the **Federal Register** on February 18, 2020 (85 FR 8768). The NPRM was prompted by reports of fractured rudder primary feel unit shafts; a subsequent investigation determined that the fractures in the shafts are consistent with fatigue damage. The NPRM proposed to require replacement of the rudder primary feel unit shaft. The FAA is issuing this AD to address fractures of the rudder primary feel unit shaft, which could result in a loss of feel in the yaw axis and thereby impact the controllability of the airplane. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA has considered the comments received. The Air Line Pilots Association, International (ALPA) and Jacob Yepiz stated support for the NPRM.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Service Bulletin 601R–27–166, dated April 5, 2019; and Service Bulletin 670BA–27–075, dated April 5, 2019. This service information describes procedures for replacing the rudder primary feel unit shaft that has part number 600–90251–1 with a new shaft. These documents are distinct since they apply to different airplane models. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 1,002 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
18 work-hours × $85 per hour = $1,530	$158	$1,688	$1,691,376

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in our cost estimate.

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.

Regulatory Findings

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

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

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

(2) 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–08–13 Bombardier, Inc.: Amendment 39–19905; Docket No. FAA–2020–0092; Product Identifier 2020–NM–001–AD.

(a) Effective Date

This AD is effective June 10, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. airplanes, certificated in any category, as specified in paragraphs (c)(1) through (4) of this AD.

(1) Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers (S/Ns) 7003 through 7990 inclusive, and S/Ns 8000 and subsequent.

(2) Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes, S/Ns 10002 through 10347 inclusive.

(3) Model CL–600–2D15 (Regional Jet Series 705) airplanes and Model CL–600–2D24 (Regional Jet Series 900) airplanes, S/Ns 15001 through 15469 inclusive.

(4) Model CL–600–2C11 (Regional Jet Series 550) airplanes, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Reason

This AD was prompted by reports of fractured rudder primary feel unit shafts; a subsequent investigation determined that the fractures in the shafts are consistent with fatigue damage. The FAA is issuing this AD to address fractures of the rudder primary feel unit shaft, which could result in a loss of feel in the yaw axis and thereby impact the controllability of the airplane.

(f) Compliance

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

(g) Replacement

Within the compliance times specified in figure (1) to paragraph (g) of this AD: Replace all rudder primary feel unit shafts that have part number (P/N) 600–90251–1 with a new shaft, in accordance with the Accomplishment Instructions of the Bombardier Service Bulletin 601R–27–166, dated April 5, 2019; or Bombardier Service Bulletin 670BA–27–075, dated April 5, 2019; as applicable. For Model CL–600–2C11 (Regional Jet Series 550) airplanes, do the replacement in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–075, dated April 5, 2019.

Figure 1 to paragraph (g) – *Compliance Times*

Accumulated Airplane Flight Cycles	Compliance Time for the Replacement
For airplanes that have accumulated 22,000 total flight cycles or less as of the effective date of this AD.	Before the airplane reaches 30,000 total flight cycles.
For airplanes that have accumulated more than 22,000 total flight cycles, but less than 37,000 total flight cycles, as of the effective date of this AD.	Within 8,000 flight cycles from the effective date of this AD.
For airplanes that have accumulated 37,000 total flight cycles or more, but less than 40,000 total flight cycles, as of the effective date of this AD.	Before the airplane reaches 45,000 total flight cycles.
For airplanes that have accumulated 40,000 total flight cycles or more, but less than 46,500 total flight cycles, as of the effective date of this AD.	Within 5,000 flight cycles from the effective date of this AD.
For airplanes that have accumulated 46,500 total flight cycles or more as of the effective date of this AD.	Before the airplane reaches 51,500 total flight cycles.

(h) Parts Installation Prohibition

As of the effective date of this AD, no person may install a rudder primary feel unit shaft, P/N 600–90251–1, on any airplane.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2019–42, dated November 8, 2019, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0092.

(2) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7330; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 601R–27–166, dated April 5, 2019.

(ii) Bombardier Service Bulletin 670BA–27–075, dated April 5, 2019.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on April 20, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–09663 Filed 5–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–1061; Airspace Docket No. 20–AGL–06]

RIN 2120–AA66

Revocation and Amendment of Class E Airspace; Williston, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes Class E airspace at Sloulin Field International Airport, Williston, ND, due to the airport's closure. This action also amends Class E airspace at Williston Basin International Airport, Williston, ND. The action establishes Class E airspace designated as a surface area. Additionally, this action amends Class E airspace extending upward from 700 feet above the surface by adding two extensions, one to the southeast and one to the north of the airport. Further, this action adds a Class E airspace area extending upward from 1,200 feet above the surface. Lastly, this action implements an administrative correction to the Class E5 airspace legal description's text header by updating the airport's geographic coordinate to match the FAA's aeronautical database.

DATES: Effective 0901 UTC, July 16, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov//air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it revokes the Class E airspace at Sloulin Field International Airport and amends the Class E airspace at Williston Basin International Airport, Williston, ND, to ensure the safety and management of Instrument Flight Rules (IFR) operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 12449; March 3, 2020) for Docket No. FAA–2019–1061 to revoke airspace at Sloulin Field International Airport and amend Class E airspace at Williston Basin International Airport, Williston, ND. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received.

The comment was not germane to the proposed airspace action for the airports.

Class E2 and E5 airspace designations are published in paragraphs 6002 and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 revokes the Class E airspace at Sloulin Field International Airport at Williston ND, due to the airport's closure.

This action also amends Class E airspace at Williston Basin International Airport, Williston, ND. The action establishes Class E airspace, designated at a surface area. This area is designed to provide controlled airspace for terminal operations where a control tower is not in operation. This area is described as follows: That airspace extending upward from the surface within a 4.2-mile radius of the airport, and within 1.3 miles each side of the 135° bearing from the airport, extending from the 4.2-mile radius to 4.7 miles southeast of the airport, and within 1.3 miles each side of the 339° bearing from the airport, extending from the 4.2-mile radius to 4.7 miles north of the Williston Basin International Airport.

Additionally, this action amends the Class E airspace extending upward from 700 feet above the surface by adding two extensions to the current 6.7-mile radius of the airport. One to the southeast and one to the north of the airport. This area is designed to accommodate arriving IFR aircraft descend below 1,500 feet above the surface and departing IFR aircraft until reaching 1,200 feet above the surface. The area is described as follows: That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the airport, and within 3.6 miles each side of the 132° bearing from the airport, extending from the 6.7-mile radius to 11.4 miles southeast of the airport, and within 3.6 miles each side of the 340° bearing from the airport, extending from the 6.7-mile radius to 11 miles north of the Williston Basin International Airport.

Further, this action adds Class E airspace extending upward from 1,200 feet above the surface. This area is designed to accommodate IFR aircraft transitioning to/from the terminal or en route environments. The area is described as follows: That airspace extending upward from 1,200 feet above the surface within a 41-mile radius of the Williston Basin International Airport.

Lastly, this action implements an administrative correction to the Class E5 airspace legal description's text header by updating the airport's geographic coordinate to match the FAA's aeronautical database. The coordinates read: lat. 48°15′39″ N, long. 103°45′04″ W.

FAA Order 7400.11, Airspace Designations and Reporting Points, is

published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial, and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

AGL ND E2 Williston, ND [Revoked]

Williston, Sloulin Field International Airport, ND
(Lat. 48°10′41″ N, long. 103°38′32″ W)

AGL ND E2 Williston, ND [New]

Williston Basin International Airport, ND
(Lat. 48°15′39″ N, long. 103°45′04″ W)

That airspace extending upward from the surface within a 4.2-mile radius of the airport, and within 1.3 miles each side of the 135° bearing from the airport, extending from the 4.2-mile radius to 4.7 miles southeast of the airport, and within 1.3 miles each side of the 339° bearing from the airport, extending from the 4.2-mile radius to 4.7 miles north of the Williston Basin International Airport.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AGL ND E5 Williston, ND [Revoked]

Sloulin Field International Airport, ND
(Lat. 48°10′41″ N, long. 103°38′32″ W)

AGL ND E5 Williston, ND [Amended]

Williston Basin International Airport, ND
(Lat. 48°15′39″ N, long. 103°45′04″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the airport, and within 3.6 miles each side of the 132° bearing from the airport, extending from the 6.7-mile radius to 11.4 miles southeast of the airport, and within 3.6 miles each side of the 340° bearing from the airport, extending from the 6.7-mile radius to 11 miles north of the airport; and that airspace extending upward from 1,200 feet above the surface within a 41-mile radius of the Williston Basin International Airport.

Issued in Seattle, Washington, on April 29, 2020.

Shawn M. Kozica,

Group Manager, Western Service Center, Operations Support Group.

[FR Doc. 2020–09591 Filed 5–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0598; Airspace Docket No. 19–ASO–16]

RIN 2120–AA66

Amendment of the Class D and Class E Airspace; Meridian, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on January 30, 2020, amending the Class D airspace at Joe Williams NOLF, Meridian, MS; Key Field, Meridian, MS; and NAS Meridian/McCain Field, Meridian, MS; the Class E airspace area designated as an extension to Class D airspace at Key Field; and the Class E airspace extending upward from 700 feet above the surface at Key Field, Joe Williams NOLF, and NAS Meridian/McCain Field. A cardinal direction was inadvertently omitted from the Class E airspace extending upward from 700 feet above the surface at Key Field. This action corrects that omission.

DATES: Effective date 0901 UTC, May 21, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** (85 FR 5316; January 20, 2020) for FR Doc. 2020–01568 amending the Class D airspace at Joe Williams NOLF, Meridian, MS; Key Field, Meridian, MS; and NAS Meridian/McCain Field, Meridian, MS; the Class E airspace area designated as an extension to Class D airspace at Key Field; and the Class E airspace extending upward from 700 feet above the surface at Key Field, Joe Williams NOLF, and NAS Meridian/McCain Field. Subsequent to publication, the FAA identified that a cardinal direction was inadvertently omitted from the Class E airspace extending upward from 700 feet above the surface at Key Field. This action corrects that error.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11D dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be subsequently published in the Order.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, Amendment of the Class D and Class E Airspace; Meridian, MS, published in the **Federal Register** of January 30, 2020 (85 FR 5318), FR Doc. 2019–01568, is corrected as follows:

§ 71.1 [Amended]

■ On page 5318, column 3, line 12, amend to read, ''. . . miles east of the 009°. . .''

Issued in Fort Worth, Texas, on April 27, 2020.

Steven Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2020–09479 Filed 5–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 122

[Public Notice: 11103]

RIN 1400–AF13

International Traffic in Arms Regulations: Temporary Reduction in Certain Registration Fees

AGENCY: Department of State.

ACTION: Temporary reduction in certain fees.

SUMMARY: The Department of State is making a temporary change in the Tier I and Tier II and new registrant payment guidelines on the Directorate of Defense Trade Controls (DDTC) website at *www.pmddtc.state.gov.* These guidelines outline the registration fees charged to persons who engage in the United States in the business of manufacturing, exporting, or temporarily importing defense articles, furnishing defense services, or who engage in brokering activities pursuant to the International Traffic in Arms Regulations (ITAR). This temporary change is in the interest of the security and foreign policy of the United States. Further, it is consistent with the March 13, 2020 declaration by President Trump of a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak and is warranted due to the extraordinary challenges to U.S. defense trade and the health of the Defense Industrial Base as a result of the exceptional and undue hardships and risks to safety caused by the public health emergency related to COVID–19. This temporary reduction in certain fees is intended to help mitigate the economic impact of the COVID–19 public health emergency on U.S. Defense Industrial Base and takes into account the operational requirements of DDTC that the fees fund.

DATES: The temporary reduction in fees was effective May 1, 2020, and shall expire on April 30, 2021, unless modified by a subsequent notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Neal Kringel, Office of Defense Trade Controls Management, U.S. Department of State, telephone (202) 663–1282, or email *DDTCResponseTeam@state.gov.* ATTN: Temporary Fee Reduction.

SUPPLEMENTARY INFORMATION: This document serves to inform entities registered with the Directorate of Defense Trade Controls (DDTC) pursuant to ITAR §§ 122.1(a) and 129.3(a), of a temporary reduction in registration fees charged to entities in Tier I and Tier II and new registrants. (For more information on DDTC registrations, please visit the ''Conduct Business'' page then select the ''Registration'' tab and the ''Payment of Registration'' tab of the DDTC website). ITAR § 122.1(a) provides that any person who engages in the United States in the business of manufacturing or exporting or temporarily importing defense articles, or furnishing defense services, is required to register with DDTC. ITAR § 129.3(a) further provides that, with limited exceptions, any regulated person who engages in brokering activities is required to register with DDTC. ITAR § 122.3 provides that a person who is required to register must do so on an annual basis by submitting a completed Statement of Registration (form DS–2032) and payment of a fee following the payment guidelines available on the DDTC website at *www.pmddtc.state.gov.*

What is the purpose of this change?

Given the extraordinary impact of the COVID–19 pandemic on the national economy and Defense Industrial Base, DDTC is temporarily reducing registration fees for DDTC registrants in Tier I and Tier II to $500 for registrations whose original expiration date is between May 31, 2020 and April 30, 2021. Also, DDTC is reducing registration fees to $500 for new applicants who submit their registration application between May 1, 2020 and April 30, 2021. All new registrants are in Tier I in the first year. This will allow new registrants and existing registrants in Tiers I and II—including the many small to medium sized enterprises that must register under these tiers—to receive and plan for a reduced registration fee over the course of the coming year. The fee structure for Tier III entities remains unchanged at this time given the higher costs incurred by DDTC in processing the volume of licenses and other relevant submissions by entities in Tier III. Also, Tier III already has a provision for a reduced fee if the fee calculated above is greater than 3 percent of the total value of all applications. In such cases, the fee will be 3 percent of the total value of all applications or $2,750, whichever is greater. These measures were informed by consultations with U.S. industry, in particular the Defense Trade Advisory Group, as well as with DDTC's interagency partners in the Departments of Defense and Commerce. This temporary reduction in fees shall apply only through April 30, 2021, at which time fees for entities in Tiers I and II will return to the rates that were in effect on April 1, 2020, unless otherwise extended by a subsequent notification in the **Federal Register**.[1]

Temporary Fee Reduction

For reasons stated above, the State Department amends the fee payment schedule referenced in 22 CFR 122.3 and posted on the DDTC website as follows:

''DDTC is temporarily reducing registration fees for DDTC registrants in Tier I and Tier II to $500 for registrations whose original expiration date is between May 31, 2020 and April 30, 2021. Also, DDTC is reducing registration fees to $500 for new applicants who submit their registration application between May 1, 2020 and April 30, 2021. All new registrants are in Tier I in the first year. This will allow new registrants and existing registrants in Tiers I and II, the majority of which are small and medium-sized enterprises, to receive a reduced registration fee over the course of the coming year. The fee structure for Tier III entities remains unchanged at this time. We anticipate that this temporary reduction in fees for Tier I and Tier II and new registrants will save regulated industry over $20 million over the course of the coming year. The temporary reduction in fees is warranted as a result of the exceptional and undue economic hardship caused by the public health emergency caused by the COVID–19 pandemic.''

''This temporary reduction in fees shall apply only through April 30, 2021, at which time fees for entities in Tiers I and II will return to the rates that were in effect on April 1, 2020 unless otherwise extended by a subsequent notice in the **Federal Register**.''

Regulatory Findings

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and defense services is a military or foreign affairs function of the United States Government and rules implementing

[1] Proclamation 9994 of March 13, 2020, 85 FR 15337 (Mar. 18, 2020).

this function are exempt from section 553 (Rulemaking) and section 554 (Adjudications) of the Administrative Procedure Act (APA) pursuant to 5 U.S.C. 553(a)(1).

Regulatory Flexibility Act

Since the Department is of the opinion that this rulemaking is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

The Department does not believe this rulemaking is a major rule under the criteria of 5 U.S.C. 804. Based on the criteria of 5 U.S.C. 804(2), the Department does not believe this rulemaking will have an annual effect on the economy of $100,000,000 or more. The Department estimates that this rulemaking will result in the elimination of approximately $20,000,000 in registration fees that otherwise would have been collected by the Department.

Executive Orders 12372 and 13132

This rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

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, distributed impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rulemaking is a significant but not an economically significant rule, under the criteria of Executive Order 12866, and is consistent with the provisions of Executive Order 13563.

Executive Order 12988

The Department of State has reviewed this rulemaking in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rulemaking does not impose or revise any information collections subject to 44 U.S.C. Chapter 35.

Executive Order 13771

This rulemaking is not subject to the requirements of E.O. 13771 since it relates to a military or foreign affairs function of the United States.

Zachary A. Parker,

Director, Office of Directives Management, U.S. Department of State.

[FR Doc. 2020–09748 Filed 5–5–20; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9806]

RIN 1545–BK66

Definitions and Reporting Requirements for Shareholders of Passive Foreign Investment Companies; Correcting Amendment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to Treasury Decision 9806, which was published in the **Federal Register** on Wednesday, December 28, 2016. Treasury Decision 9806 contained final regulations that provided guidance on determining ownership of a passive foreign investment company (PFIC) and on certain annual reporting requirements for shareholders of PFICs to file Form 8621, ''Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.''

DATES: These final regulations are effective on and after May 6, 2020, and are applicable on or after December 28, 2016.

FOR FURTHER INFORMATION CONTACT: Martin V. Franks at (202) 317–5181 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9806) that are the subject of this correction are under sections 1291, 1298, 6038, and 6046 of the Internal Revenue Code.

Need for correction

As published December 28, 2016 (81 FR 95459), the final regulations (TD 9806; FR Doc. 2016–30712) contained errors that needs to be corrected.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

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

PART 1—INCOME TAXES

■ 1. The authority citation for part 1 is amended by removing the entry for §§ 1.1291–1T, 1.1291–9, 1.1291–9T, and 1.1298–1T and the entry for § 1.6046–1T to read in part as follows:

Authority: 26 U.S.C. 7805, unless otherwise noted.

* * * * *

Martin V. Franks,

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

[FR Doc. 2020–08113 Filed 5–5–20; 8:45 am]

BILLING CODE 4830–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1253 and 1280

[FDMS No. NARA–20–0005; NARA–2020–024]

RIN 3095–AC03

NARA Facilities, Locations, Hours, and Public Use

AGENCY: National Archives and Records Administration (NARA).

ACTION: Direct final rule.

SUMMARY: We are updating our regulation listing our facility addresses and contact information to reflect changes to this information. We are also revising our regulation on public use of NARA facilities to remove outdated procedures, update in response to organizational and technological changes, and streamline the provisions for easier reading. We are also revising both regulations for plain language purposes.

DATES: This rule is effective June 15, 2020, without further action, unless we receive actionable adverse comments by June 5, 2020. If we receive such comments, we will publish a withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by RIN 3095–AC03, by either of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the site's instructions for submitting comments.
- *Mail* (for paper, flash drive, or CD–ROM submissions. Include RIN 3095–AC03 on the submission): National Archives and Records Administration; Regulation Comments Desk, Suite 4100; 8601 Adelphi Road; College Park, MD 20740–6001.

Instructions: All submissions must include NARA's name and the regulatory information number for this rulemaking (RIN 3095–AC03). We may publish any comments we receive without changes, including any personal information you include.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov,* or by telephone at 301.837.3151.

SUPPLEMENTARY INFORMATION: We are updating addresses and contact information for Presidential libraries, records centers, and archival research facilities to reflect changes in operations, to add websites and email addresses and similar technology changes, to update URLs, and similar administrative changes. We are also updating information about public use of our facilities to better clarify provisions, including the kinds of events for which the public may request use of our spaces and the difference between removal and banning if it becomes necessary to restrict a person's use. We are streamlining and clarifying rules regarding behavior and removing outdated provisions regarding requests to use space for private events. These changes will affect all customers who do business with NARA. This rule is effective after 40 days for good cause as permitted by the Administrative Procedure Act (5 U.S.C. 553(d)(3)). We believe that a longer standard public comment period is unnecessary as this rule makes only minor changes to our agency facility regulations and does not change substantive requirements people must follow.

Regulatory Analysis

Review Under Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (September 30, 1993), and Executive Order 13563, Improving Regulation and Regulation Review, 76 FR 23821 (January 18, 2011)

The Office of Management and Budget (OMB) has reviewed this rulemaking and determined it is not ''significant'' under section 3(f) of Executive Order 12866. It is not significant because it consists of administrative and minor revisions, involves agency organization and management, does not change substantive requirements, and imposes no costs on the public.

Review Under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.)

This review requires an agency to prepare an initial regulatory flexibility analysis and publish it when the agency publishes the proposed rule. This requirement does not apply if the agency certifies that the rulemaking will not, if promulgated, have a significant economic impact on a substantial number of small entities (5 U.S.C. 603). We certify, after review and analysis, that this rulemaking will not have a significant adverse economic impact on small entities.

Review Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rulemaking does not impose additional information collection requirements on the public that are subject to the Paperwork Reduction Act. However, 36 CFR 1280 continues to include three associated information collections already approved by OMB: 3095–0024, request to use Presidential library spaces, 3095–0040, request to film, photograph, or videotape, and 3095–0043, request to use NARA spaces. Because we are removing several sections of this regulation and reorganizing the provisions to be more streamlined, we are submitting a non-substantive change request to OMB to change the regulatory section numbers referred to in the information collections accordingly.

Review Under Executive Order 13132, Federalism, 64 FR 43255 (August 4, 1999)

Review under Executive Order 13132 requires that agencies review regulations for Federalism effects on the institutional interest of states and local governments, and, if the effects are sufficiently substantial, prepare a Federal assessment to assist senior policy makers. This rulemaking will not have any effects on state and local governments within the meaning of the Executive Order. Therefore, no Federalism assessment is required.

Review Under Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, 82 FR 9339 (February 3, 2017)

Review under E.O. 13771 seeks to reduce Federal regulations that impose private expenditures in order to comply with them, and to control those costs in any such regulations. OMB has reviewed this rulemaking and determined that it is exempt from E.O. 13771 requirements. This rulemaking is exempt because it involves agency organization, management, or personnel, modifies an existing rule, and does not involve regulatory costs subject to the Executive Order.

Review Under the Unfunded Mandates Reform Act (Sec. 202, Public Law 104–4; 2 U.S.C. 1532)

Review under the Unfunded Mandates Reform Act requires that agencies determine whether any Federal mandate in the rulemaking may result in state, local, and tribal governments, in the aggregate, or the private sector, expending $100 million in any one year. NARA certifies that this rulemaking does not contain a Federal mandate that may result in such an expenditure, and this rulemaking is therefore not subject to this requirement.

List of Subjects

36 CFR Part 1253

Archives and records, Federal buildings and facilities, Presidential libraries.

36 CFR Part 1280

Archives and records, Federal buildings and facilities, Presidential libraries.

For the reasons stated in the preamble, NARA revises 36 CFR parts 1253 and 1280 as follows:

■ 1. Revise part 1253 to read as follows:

PART 1253—LOCATION OF NARA FACILITIES AND HOURS OF USE

Sec.

1253.1 National Archives Building in Washington, DC.
1253.2 National Archives at College Park.
1253.3 Presidential libraries and museums.
1253.4 Federal records centers (FRCs).
1253.5 Archival research rooms and facilities outside Washington, DC.
1253.6 Office of the Federal Register.
1253.7 Office of Government Information Services.
1253.8 The Center for Legislative Archives.
1253.9 Notification process for changes in hours.

Authority: 44 U.S.C. 2104(a).

§ 1253.1 National Archives Building in Washington, DC.

(a) *The Museum and Rotunda.* The entrance to the National Archives Museum, including the Rotunda and Charters of Freedom, is on Constitution Avenue NW, between 7th and 9th Streets. The Museum is open every day except Thanksgiving and December 25. Last admission to the Museum is 30 minutes prior to closing. Admission to the Museum is free, although you may make advance reservations online for a service charge. Information on hours and reservations is online at *https://museum.archives.gov/visit.* The phone number for Museum information is 202.357.5061.

(b) *Research.* The research entrance is located at 700 Pennsylvania Avenue NW. Research hours are online at *https://www.archives.gov/dc.* The phone number for the National Archives Building is 866.272.6272.

(c) The building's address is 700 Pennsylvania Avenue NW; Washington, DC 20408.

§ 1253.2 National Archives at College Park.

The National Archives at College Park is located at 8601 Adelphi Road; College Park, MD 20740–6001. Hours for the building (including the Research Center) are online at *https://www.archives.gov/college-park.* The phone number for the building is 301.837.2000 and for the Research Center is 800.234.8861.

§ 1253.3 Presidential libraries and museums.

(a) The Presidential library museums are open every day except Thanksgiving, December 25, and January 1.

(b) Presidential library research hours vary by library, and research rooms are not open on weekends or Federal holidays. The Barack Obama Presidential Library is not open to the public at this time.

(c) Contact information for each library and museum is online at *https://www.archives.gov/locations#presidential-libraries and listed as follows:*

(1) *Herbert Hoover Library and Museum.* Location: 210 Parkside Drive; West Branch, IA 52358. Mailing address: P.O. Box 488; West Branch, IA 52358. Email address: *hoover.library@nara.gov.* Phone number: 319.643.5301. Website: *https://hoover.archives.gov/.*

(2) *Franklin D. Roosevelt Library and Museum.* Location: 4079 Albany Post Road; Hyde Park, NY 12538–1999. Email address: *roosevelt.library@nara.gov.* Phone number: 800.FDR.VISIT or 845.486.7770. Website: *https://www.fdrlibrary.org/.*

(3) *Harry S. Truman Library and Museum.* Location: 500 W U.S. Highway 24; Independence, MO 64050–1798. Email address: *truman.library@nara.gov.* Phone number: 800.833.1225 or 816.268.8200. Website: *https://www.trumanlibrary.gov/.*

(4) *Dwight D. Eisenhower Library and Museum.* Location: 200 SE Fourth Street; Abilene, KS 67410–2900. Email address: *eisenhower.library@nara.gov.* Phone number: 877.RING.IKE or 785.263.6700. Website: *https://www.eisenhowerlibrary.gov/.*

(5) *John Fitzgerald Kennedy Library and Museum.* Location: Columbia Point; Boston, MA 02125–3398. Email address: *kennedy.library@nara.gov.* Phone number: 866.JFK.1960 or 617.514.1600. Website: *https://www.jfklibrary.org/.*

(6) *Lyndon Baines Johnson Library and Museum.* Location: 2313 Red River Street; Austin, TX 78705–5702. Email address: *johnson.library@nara.gov.* Phone number: 512.721.0200. Website: *http://www.lbjlibrary.org/.*

(7) *Richard Nixon Library and Museum.* Location: 18001 Yorba Linda Boulevard; Yorba Linda, CA 92886–3903. Phone number: 714.983.9120. Email address: *nixon@nara.gov.* Website: *https://www.nixonlibrary.gov/index.php.*

(8) *Gerald R. Ford Library and Museum.* (i) Library: Location: 1000 Beal Avenue; Ann Arbor, MI 48109–2114. Email address: *ford.library@nara.gov.* Phone number: 734.205.0555.

(ii) Museum: Location: 303 Pearl Street NW; Grand Rapids, MI 49504–5353. Email address: *ford.museum@nara.gov.* Phone number: 616.254.0400.

(iii) Website for both library and museum: *https://www.fordlibrarymuseum.gov.*

(9) *Jimmy Carter Library and Museum.* Location: 441 Freedom Parkway; Atlanta, GA 30307–1498. Email address: *carter.library@nara.gov.* Phone number: 404.865.7100. Website: *https://jimmycarterlibrary.gov/.*

(10) *Ronald Reagan Library and Museum.* Location: 40 Presidential Drive; Simi Valley, CA 93065–0699. Email address: *reagan.library@nara.gov.* Phone number: 800.410.8354 or 805.577.4000. Website: *https://www.reaganlibrary.gov/.*

(11) *George Bush Library and Museum.* Location: 1000 George Bush Drive West; College Station, TX 77845. Email address: *bush.library@nara.gov.* Phone number: 979.691.4000. Website: *https://www.bush41.org/.*

(12) *William J. Clinton Library and Museum.* Location: 1200 President Clinton Avenue; Little Rock, AR 72201. Email address: *clinton.library@nara.gov.* Phone number: 501.374.4242. Website: *https://www.clintonlibrary.gov/.*

(13) *George W. Bush Library and Museum.* Location: 2943 SMU Boulevard; Dallas, TX 75205. Email address: *gwbush.library@nara.gov.* Phone number: 214.346.1650. Website: *https://georgewbushlibrary.smu.edu/.*

(14) *Barack Obama Library.* Location: 2500 W Golf Road; Hoffman Estates, IL 60169–1114. Email address: *obama.library@nara.gov.* Phone number: 847.252.5700. Website: *https://www.obamalibrary.gov/.*

§ 1253.4 Federal records centers (FRCs).

The FRCs are storage facilities and do not operate public research rooms or have public hours. Contact information for each Federal records center is online at *https://www.archives.gov/locations#frc* and:

(a) *Atlanta Federal Records Center.* Address: 4712 Southpark Boulevard; Ellenwood, GA 30294. Phone number: 404.736.2820.

(b) *Boston Federal Records Center.* Address: Frederick C. Murphy Federal Center; 380 Trapelo Road; Waltham, MA 02452–6399. Phone number: 781.663.0130.

(c) *Chicago Federal Records Center.* Address: 7358 South Pulaski Road; Chicago, IL 60629–5898. Phone number: 773.948.9000.

(d) *Dayton Federal Records Center.* Address: 3150 Springboro Road; Moraine, OH 45439. Phone number: 937.425.0600.

(e) *Denver Federal Records Center.* Address: 17101 Huron Street; Broomfield, CO 80023–8909. Phone number: 303.604.4760.

(f) *Fort Worth Federal Records Center.* Address: 1400 John Burgess Drive; Fort Worth, TX 76140. Phone number: 817.551.2000.

(g) *Kansas City Federal Records Center.* Address: 8600 NE Underground Drive; Pillar 300–G; Kansas City, MO 64161. Phone number: 816.994.1700.

(h) *Kingsridge Federal Records Center.* Address: 8801 Kingsridge Drive; Miamisburg, OH 45458. Phone number: 937.425.0690.

(i) *Lee's Summit Federal Records Center.* Address: 200 Space Center

Drive; Lee's Summit, MO 64064–1182. Phone number: 816.268.8100.

(j) *Lenexa Federal Records Center.* Address: 17501 W 98th Street; Lenexa, KS 66219. Phone number: 913.563.7600.

(k) *National Personnel Records Center—Military Personnel Records.* Address: 1 Archives Drive; St Louis, MO 63138. Phone number: 314.801.0582.

(l) *National Personnel Records Center—Civilian Personnel Records.* Address: 1411 Boulder Boulevard; Valmeyer, IL 62295. Phone number: 618.935.3005.

(m) *Philadelphia Federal Records Center.* Address: 14700 Townsend Road; Philadelphia, PA 19154–1096. Phone number: 215.305.2000.

(n) *Pittsfield Federal Records Center.* Address: 10 Conte Drive; Pittsfield, MA 01201–8230. Phone number: 413.236.3609.

(o) *Riverside Federal Records Center.* Address: 23123 Cajalco Road; Perris, CA 92570–7298. Phone number: 951.956.2000.

(p) *San Bruno Federal Records Center.* Address: Leo J. Ryan Building; 1000 Commodore Drive; San Bruno, CA 94066–2350. Phone number: 650.238.3500.

(q) *Seattle Federal Records Center.* Address: 6125 Sand Point Way, NE; Seattle, WA 98115–7999. Phone number: 206.336.5115.

(r) *Washington National Records Center.* Address: 4205 Suitland Road; Suitland, MD 20746–8001. Phone number: 301.778.1600.

§ 1253.5 Archival research rooms and facilities outside Washington, DC.

NARA's research rooms outside Washington, DC, are closed on all Federal holidays. Hours and contact information for each NARA archival research room are online at *https://www.archives.gov/locations#research-facilities* and contact information is as follows:

(a) *The National Archives at Atlanta.* Address: 5780 Jonesboro Road; Morrow, GA 30260. Email address: *atlanta.archives@nara.gov.* Phone number: 770.968.2100.

(b) *The National Archives at Boston.* Address: Frederick C. Murphy Federal Center; 380 Trapelo Road; Waltham, MA 02452–6399. Email address: *boston.archives@nara.gov.* Phone number: 781.663.0144 or toll-free 866.406.2379.

(c) *The National Archives at Chicago.* Address: 7358 South Pulaski Road; Chicago, IL 60629–5898. Email address: *chicago.archives@nara.gov.* Phone number: 773.948.9001.

(d) *The National Archives at Denver.* Address: 17101 Huron Street; Broomfield, CO 80023–8909. Email address: *denver.archives@nara.gov.* Phone number: 303.604.4740.

(e) *The National Archives at Fort Worth.* Address: 1400 John Burgess Drive; Fort Worth, TX 76140. Email address: *ftworth.archives@nara.gov.* Phone number: 817.551.2051.

(f) *The National Archives at Kansas City.* Address: 400 West Pershing Road; Kansas City, MO 64108. Email address: *kansascity.archives@nara.gov.* Phone number: 816–268–8000.

(g) *The National Archives at New York City.* Address: Alexander Hamilton U.S. Customs House; 1 Bowling Green, Room 328; New York, NY 10004–1415. Email: *newyork.archives@nara.gov.* Phone number: 212.401.1620.

(h) *The National Archives at Philadelphia.* Address: 14700 Townsend Road; Philadelphia, PA 19154–1096. Email: *philadelphia.archives@nara.gov.* Phone number: 215.305.2044.

(i) *The National Archives at Riverside.* Address: 23123 Cajalco Road; Perris, CA 92570–7298. Email: *riverside.archives@nara.gov.* Phone number: 951.956.2000.

(j) *The National Archives at San Francisco.* Address: Leo J. Ryan Memorial Federal Building; 1000 Commodore Drive; San Bruno, CA 94066–2350. Email: *sanbruno.archives@nara.gov.* Phone number: 650.238.3501.

(k) *The National Archives at Seattle.* Address: 6125 Sand Point Way, NE; Seattle, WA 98115–7999. Email address: *seattle.archives@nara.gov.* Phone number: 206.336.5115.

(l) *The National Archives at St. Louis.* Address: 1 Archives Drive; St. Louis, MO 63138. Email address: *stl.archives@nara.gov.* Phone number: 314.801.0850.

§ 1253.6 Office of the Federal Register.

Contact information and business hours for the Office of the Federal Register are online at *https://www.archives.gov/federal-register/contact.htm* and codified in 1 CFR 2.3.

§ 1253.7 Office of Government Information Services.

The Office of Government Information Services' (OGIS) contact information and business hours are online at *https://www.archives.gov/ogis.*

§ 1253.8 The Center for Legislative Archives.

The Center for Legislative Archives' contact information and business hours are online at *https://www.archives.gov/legislative.*

§ 1253.9 Notification process for changes in hours.

(a) We follow the notification procedure in this section when proposing to change public operating hours for research rooms, exhibit areas, and museums.

(b) Proposed changes to operating hours for research rooms, exhibit areas, and museums must have a documented business need for the change.

(c) We notify people of the change in operating hours by:

(1) Posting a notice on *http://www.archives.gov;*

(2) Posting notices in areas visible to the public in the affected research room, exhibit areas, or museum;

(3) Issuing a press release, email notification, or other means normally used by that unit to notify the public of events at their location; and

(4) Including justification for the change in hours in these notices.

(d) In the event that research rooms, exhibit areas, or museums must make an emergency change to operating hours for reasons including, but not limited to, inclement weather, we will provide as much advance notice to the public as possible. We will post emergency notifications online at *http://www.archives.gov.*

■ 2. Revise part 1280 to read as follows:

PART 1280—USE OF NARA FACILITIES

Sec.

Subpart A—Rules of Conduct on or in NARA Property and Facilities

General Information

1280.1 NARA facilities and applicable rules of conduct.
1280.2 Items subject to inspection.
1280.4 Children under the age of 14.
1280.6 Service animals.
1280.8 Driving on NARA property.
1280.12 Additional rules.

Prohibited Activities

1280.14 Weapons and explosives.
1280.16 Illegal drugs and alcohol.
1280.18 Gambling.
1280.20 Smoking or using alternative smoking devices.
1280.22 Distributing or posting materials.
1280.24 Eating and drinking.
1280.26 Soliciting, vending, and debt collecting.
1280.28 Other prohibited behavior.
1280.30 Types of corrective action for prohibited behavior.
1280.32 Appealing a ban from NARA facilities or property.

Subpart B—Rules for Filming, Photographing, or Videotaping on NARA Property or in NARA Facilities

1280.40 Definitions.
1280.42 When the rules in this subpart apply.
1280.44 Filming, photographing, or videotaping for commercial purposes.
1280.46 Filming, photographing, or videotaping for personal use.

1280.48 Applying to film, photograph, or videotape for news purposes.
1280.50 What you may film, photograph, or videotape for news purposes.
1280.52 Rules for filming, photographing, or videotaping for news purposes.

Subpart C—Additional Rules for Using Public Areas of NARA Property or Facilities

1280.60 Permitting use of public areas.
1280.62 General rules when using public areas.
1280.64 Requesting to use our public areas.
1280.66 How we handle requests to use public areas.
1280.68 Fees for using public areas.
1280.70 Additional rules that apply to approved events.

Subpart D—Additional Information for Using Specific NARA Property or Facilities

1280.80 Public areas in the National Archives Building available for events.
1280.82 When public areas in the National Archives Building are available.
1280.84 Using the Rotunda.
1280.86 National Archives at College Park space available for events.
1280.88 When public areas in the National Archives at College Park are available.

Authority: 44 U.S.C. 2102 notes, 2104(a), 2112, 2903.

Subpart A—Rules of Conduct on or in NARA Property and Facilities

General Information

§ 1280.1 NARA facilities and applicable rules of conduct.

(a) *NARA facilities.* Some NARA facilities are located on property the United States owns or that is otherwise under the control of the Archivist of the United States (''NARA property''), other facilities are leased by NARA directly using authority delegated by the General Services Administration (GSA), and still others are located on property owned, leased by, or otherwise under GSA's control (''GSA property''), or owned and under the control of the Government Publishing Office (''GPO property'').

(b) *NARA property.* You must comply with the rules in this part when you are on NARA property or using facilities located on NARA property.

(1) *The National Archives Building.* The National Archives Building in Washington, DC, is NARA property and NARA's control includes:

(i) The Pennsylvania Avenue NW, entrance between 7th and 9th Streets, including the area within the retaining walls on either side of the entrance, inclusive of the statues, and the steps and ramps leading up to the entrance of the building;

(ii) On the 7th Street, 9th Street, and Constitution Avenue NW, sides of the building, all property between the National Archives Building and the curb line of the street, including the sidewalks, the statues facing Constitution Avenue, and the other grounds; the steps leading up from the Constitution Avenue sidewalk and the portico at the top of those steps; the general public's entrance to the National Archives Museum on Constitution Avenue (closer to 9th Street); and the Special Events entrance to the National Archives Museum on Constitution Avenue (closer to 7th Street).

(iii) The National Park Service controls the areas on the Pennsylvania Avenue side of the National Archives Building that are not NARA property.

(2) *Other NARA facilities.* The following NARA facilities are also located on NARA property: The National Archives at College Park, in College Park, MD; the Presidential libraries and museums listed in 36 CFR 1253.3; and the National Archives at Atlanta in Morrow, Georgia, listed in 36 CFR 1253.5(a).

(3) *Leased NARA facilities.* The following NARA facilities are located on private property leased by NARA: The Atlanta Federal Records Center in Ellenwood, GA; the National Archives at Riverside and the Riverside Federal Records Center at Perris, CA; the National Archives at Fort Worth and the Fort Worth Federal Records Center at Fort Worth, TX; and the National Personnel Records Center—Civilian Personnel Records in Valmeyer, IL. These Federal records centers are listed in 36 CFR 1253.4 and archival facilities are listed in 36 CFR 1253.5.

(c) *GSA property.* (1) The following NARA facilities are located on GSA property: All Federal records centers listed at 36 CFR 1253.4, except the Federal records centers listed in 36 CFR 1280.1(b)(3), and all archival research rooms and facilities listed at 36 CFR 1253.5, except the National Archives at Atlanta and the archival facilities listed in 36 CFR 1280.1(b)(3).

(2) You must comply with the following rules when you are on or using Federal records center or archival research rooms and facilities located on GSA property and those facilities listed in 36 CFR 1280.1(b)(3):

(i) GSA's regulations, 41 CFR part 102–74, subpart C, Conduct on Federal Property, and subpart D, Occasional Use of Federal Buildings (if you are interested in using the public areas in a facility for an event); and

(ii) NARA's regulations outlined in this part 1280. If a provision in this part conflicts with a GSA provision, comply with the GSA provision when on or using NARA facilities located on GSA property.

(d) *GPO property.* (1) The following NARA facilities are located on GPO property: The Office of the Federal Register (OFR), the Office of Government Information Services (OGIS), and the Center for Legislative Archives.

(2) In addition to NARA rules outlined in this part 1280, you must comply with GPO's rules for the use of its property when you are on or using NARA facilities located on GPO property (currently GPO Directive 825.38A, *Rules and Regulations Governing Buildings and Grounds).* If a provision in this part 1280 conflicts with a GPO provision, comply with the GPO provision when on or using NARA facilities on GPO property.

(e) *NARA research room rules.* If you are using records in a NARA research room in any NARA facility, you must also comply with the rules in 36 CFR part 1254. If you violate a rule or regulation in 36 CFR part 1254, you are subject to the types of corrective action set forth in that part, including revocation of research privileges.

(f) *Violations.* If you violate a rule or regulation in this part you are subject to, among other types of corrective action, removal and banning from the facility.

(g) *Closures.* The Archivist of the United States reserves the right to close NARA facilities, including those located on GSA and GPO property, at any time for security reasons, special events, or other NARA business needs.

§ 1280.2 Items subject to inspection.

We may, at our discretion, inspect packages, briefcases, and other containers in the immediate possession of employees, contractors, and other people arriving on, working at, visiting, or departing from NARA property and facilities. 41 CFR 102–74, subpart C, authorizes GSA to conduct similar inspections at NARA facilities on GSA property. These inspection authorities are in addition to NARA's research room rules (see 36 CFR part 1254 and 36 CFR 1280.1(e)).

§ 1280.4 Children under the age of 14.

We admit children under the age of 14 to NARA facilities only if they are accompanied by an adult who will supervise them at all times. The director of a NARA facility may authorize a lower age limit for unaccompanied children to meet special circumstances (*e.g.,* students who have been given permission to conduct research without adult supervision).

§ 1280.6 Service animals.

We allow service animals on or in NARA property and facilities in any area that the individual handling the service animal is otherwise entitled to

enter. A service animal is any dog individually trained to do work or perform tasks for the benefit of an individual with a disability. You may not bring any other animals onto or into NARA property and facilities, except for official purposes.

§ 1280.8 Driving on NARA property.

When driving on NARA property, you must obey speed limits, posted signs, and other traffic laws, and park only in designated spaces. We reserve the right to tow, at the owner's expense, any vehicle that is parked illegally. If you must leave your vehicle illegally parked due to an emergency, you must notify the facility security guards as soon as possible. We may, at our discretion, deny any vehicle access to NARA property for public safety or security reasons.

§ 1280.12 Additional rules.

(a) *All facilities.* NARA facilities and property may have additional posted rules that you must comply with. In addition, you must, at all times while in a NARA facility or on NARA property, comply with official signs and with the directions of the guards and NARA staff.

(b) *Presidential libraries.* You may be required to check all of your parcels and luggage in areas designated by library staff when visiting the museums or the Presidential libraries.

(c) *GSA and GPO property.* Visitors to NARA facilities that are located on GSA or GPO property must check for and follow the rules that apply to the facility they visit, as GSA and GPO may have additional or different rules from the rules in this Part.

(d) *NARA official shuttle bus.* People conducting research at or visiting the National Archives Building or the National Archives at College Park may use NARA's official shuttle to travel between these buildings, if space is available.

Prohibited Activities

§ 1280.14 Weapons and explosives.

(a) Federal law prohibits individuals to possess firearms or other dangerous weapons in Federal facilities unless the person is specifically authorized to possess such a weapon under 18 U.S.C. 930. State-issued carry permits are not valid in Federal facilities. Violators are subject to fine and/or imprisonment for a period up to five years.

(b) You are also prohibited from bringing or possessing explosives, or items intended for use in fabricating an explosive or incendiary device, either openly or concealed, on or in NARA property and facilities.

§ 1280.16 Illegal drugs and alcohol.

(a) Except in cases where you are using the drug as prescribed for you as a patient by a licensed physician, all people entering in or on NARA facilities or property are prohibited from:

(1) Being under the influence, using or possessing any narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines; or

(2) Operating a motor vehicle on the property while under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines.

(b) Except where the Archivist of the United States or his/her designee grants an exemption in writing for the appropriate official use of alcoholic beverages, all people entering in or on NARA property or facilities are prohibited from being under the influence of or using alcoholic beverages.

§ 1280.18 Gambling.

(a) You may not participate in any type of gambling while on or in NARA property or facilities. This includes:

(1) Participating in games for money or other personal property;

(2) Operating gambling devices;

(3) Conducting a lottery or pool; or

(4) Selling or purchasing numbers tickets.

(b) This rule does not apply to licensed blind operators of vending facilities who are selling chances for any lottery set forth in a state law and conducted by an agency of a state as authorized by section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107, *et seq.*)

§ 1280.20 Smoking or using alternative smoking devices.

You may not smoke or use alternative smoking devices (electronic or vapor) inside any NARA facility (including those located on GSA or GPO property), in courtyards on NARA property, or in any outdoor area within 25 feet of any NARA facility air intake duct or doorway. Due to dangers that smoking and smoking devices present to the safety of occupants and the security of archival holdings, we have a zero-tolerance policy. You may smoke and use alternative smoking devices only in marked smoking areas outside certain NARA facilities.

§ 1280.22 Distributing or posting materials.

You may not distribute or post handbills, fliers, pamphlets, or other materials on or in NARA property and facilities, except in spaces we designate for that purpose. This prohibition does not apply to displays or notices the Government distributes as part of authorized activities or bulletin boards employees use to post personal notices.

§ 1280.24 Eating and drinking.

You may eat and drink inside NARA facilities only in designated areas. You may not eat or drink in any research rooms, records storage areas, or museum areas unless specifically authorized by the Archivist or designee. Facility directors may, by local rule, prohibit eating and drinking in designated outdoor areas of NARA facilities or NARA property, as well (*e.g.,* near artifacts that are on display outdoors).

§ 1280.26 Soliciting, vending, and debt collecting.

(a) On NARA property or in NARA facilities, you may not:

(1) Solicit for personal, charitable, or commercial causes;

(2) Sell any products;

(3) Display or distribute commercial advertising; or

(4) Collect private debts.

(b) The following activities are exceptions to the prohibitions in subsection (a):

(1) Participating in national or local drives for welfare, health, or other funds that the Office of Personnel Management authorizes or that NARA approves (*e.g.,* the Combined Federal Campaign);

(2) Employees collecting non-monetary items such as food, clothing, or toys, as approved by the Archivist or his/her designee;

(3) Authorized employee organizations, including employee affinity groups, soliciting for membership dues or other organizational support, as approved by the Archivist or his/her designee; and

(4) Authorized charitable support organizations, like the National Archives Foundation or a Presidential library foundation (*e.g.,* the museum store at the National Archives Building), conducting revenue-producing activities.

§ 1280.28 Other prohibited behavior.

We reserve the right to remove anyone from NARA facilities or property who is:

(a) Stealing NARA property;

(b) Willfully damaging or destroying NARA property;

(c) Creating any hazard to people or things;

(d) Throwing anything from or at a NARA building; or climbing on statues, fountains, gravesites, artwork, or other items on display in outdoor areas, or any part of a NARA building;

(e) Improperly disposing of rubbish;

(f) Acting in a disorderly fashion;

(g) Acting in a manner that creates a loud or unusual noise or a nuisance;

(h) Acting in a manner that unreasonably obstructs the usual use of NARA facilities or property;

(i) Acting in a manner that otherwise impedes or disrupts performance of official duties by Government and contract employees;

(j) Acting in a manner that prevents the general public from obtaining NARA-provided services in a timely manner;

(k) Loitering; or

(l) Threatening directly (*e.g.,* in-person communications or physical gestures) or indirectly (*e.g.,* via regular mail, email, or phone) any NARA employee, visitor, volunteer, contractor, other building occupants, facility, or property.

§ 1280.30 Types of corrective action for prohibited behavior.

(a) Individuals who violate the provisions of this part are subject to:

(1) Being removed from the property or facility (for up to seven calendar days) and possible law enforcement notification;

(2) Being banned from NARA property or facilities;

(3) Arrest for trespass; and

(4) Any other corrective action a law or regulation prescribes.

(b) The Executive for Research Services, the Executive for Legislative Archives, Presidential Libraries, and Museum Services, the Executive for Agency Services, or the Director of the Security Management Division, may have the individual immediately removed and temporarily denied further access to the property or facility for up to seven calendar days.

(c) During this removal period, the Executive for Business Support Services renders a decision on whether the person should be banned from the specific facility from which they were removed, or all NARA property or facilities, for either a specific period of time or permanently. If the Executive decides to ban the person, they will issue a written decision and notify the affected NARA properties or facilities.

(d) Banning under this part includes automatic revocation of research privileges, notwithstanding the time periods set forth in 36 CFR 1254. Research privileges remain revoked until the ban is lifted, at which time the person who was banned may submit an application for new privileges.

§ 1280.32 Appealing a ban from NARA facilities or property.

(a) Within 30 calendar days after you receive notice that you have been banned from a NARA facility or property, you may appeal the decision in writing by mail to the Deputy Archivist of the United States (address: National Archives and Records Administration (ND); 8601 Adelphi Road; College Park, MD 20740–6001). In the request, you must state the reasons for the appeal.

(b) The Deputy Archivist has 30 calendar days after receiving the appeal to make a decision to rescind, modify, or uphold the ban, and will notify you of the decision in writing.

(c) If the Deputy Archivist upholds the ban, we will not consider another appeal from you within one year from the date of your last request for reconsideration. After one year has passed, you may submit another appeal and the same process will apply.

Subpart B—Rules for Filming, Photographing, or Videotaping on NARA Property or in NARA Facilities

§ 1280.40 Definitions.

(a) *Filming, photographing, or videotaping for commercial purposes.* Any filming, photographing, or videotaping to promote commercial enterprises or commodities.

(b) *News filming, photographing, or videotaping.* Any filming, photographing, or videotaping done by a commercial or non-profit news organization that is intended for use in a television or radio news broadcast, newspaper, or periodical.

(c) *Personal use filming, photographing, or videotaping.* Any filming, photographing, or videotaping intended solely for personal or non-commercial educational use that will not be commercially distributed.

§ 1280.42 When the rules in this subpart apply.

(a) These rules apply to anyone who is filming, photographing, or videotaping inside any NARA facility or while on NARA property.

(b) Filming, photographing, and videotaping on the grounds of any NARA archival research room except the ones in Atlanta, GA, Fort Worth, TX, and Perris (Riverside), CA, or on the grounds surrounding the Washington National Records Center, are governed by GSA regulations, 41 CFR part 101–20, Management of Buildings and Grounds, and must be approved by a GSA official.

§ 1280.44 Filming, photographing, or videotaping for commercial purposes.

You are not permitted to film, photograph, or videotape for commercial purposes on NARA property or in NARA facilities.

§ 1280.46 Filming, photographing, or videotaping for personal use.

(a) You may film, photograph, or videotape on NARA property outside a NARA facility so long as you do not impede vehicular or pedestrian traffic.

(b) You may film, photograph, or videotape inside a NARA facility during regular business hours in public areas, including research rooms and exhibition areas, under the following conditions:

(1) You may not use a flash or other supplemental lighting; and

(2) You may not use a tripod or similar equipment.

(c) However, you may not film, photograph, or videotape in any of the exhibit areas of the National Archives Building in Washington, DC, including the Rotunda where the Declaration of Independence, the Constitution, and the Bill of Rights are displayed.

§ 1280.48 Applying to film, photograph, or videotape for news purposes.

(a) If you wish to film, photograph, or videotape for news purposes at the National Archives Building (as delineated in § 1280.2(a)), the National Archives at College Park, or the Washington National Records Center, you must request permission from the NARA Public Affairs Officer by email at *public.affairs@nara.gov,* by phone at 202.357.5300, or by mail at National Archives and Records Administration; 700 Pennsylvania Avenue NW; Public Affairs Office; Washington, DC 20408–0001. See also § 1280.42(b) for additional permissions relating to the Washington National Records Center.

(b) If you wish to film, photograph, or videotape for news purposes at a Presidential library or at an archival research room facility, you must contact the director of the library (see 36 CFR 1253.3 for contact information) or archival research room facility (see 36 CFR 1253.5 for contact information) to request permission.

(c) Your request for permission to film, photograph, or videotape for news purposes must contain the following information (OMB control number 3095–0040):

(1) The name of the organization you are working for;

(2) Areas you wish to film, photograph, or videotape;

(3) Documents, if any, you wish to film;

(4) The purpose of the project you are working on;

(5) What you intend to do with the film, photograph, or videotape; and

(6) How long you will need to complete your work on or in NARA property or facilities.

(d) You must request permission at least two weeks in advance of your desired filming date. If you make a request within a shorter time period, we may not be able to accommodate your request.

(e) If you would like to use NARA equipment, you must also sign an agreement, NA Form 11010, Waiver of Liability (OMB control number 3095–0040).

(f) This section does not apply to you if you have permission to use your own microfilming equipment to film archival records and donated historical materials under the provisions of 36 CFR 1254.90–1254.110. You must follow the procedures in 36 CFR part 1254 for permission to film archival records and donated materials for research purposes or for microfilm publications.

§ 1280.50 What you may film, photograph, or videotape for news purposes.

(a) We will permit you to film, photograph, or videotape sections of the interior or exterior of any NARA facility or property only for stories about:

(1) NARA programs;

(2) NARA exhibits;

(3) NARA holdings;

(4) NARA services;

(5) A former President;

(6) A researcher who has made or is making use of NARA holdings (provided that the researcher also approves your request); or

(7) Any other NARA-related activity approved by the appropriate NARA representative.

(b) We reserve the right to reject any request that does not meet the criteria set forth in paragraphs (a) and (c) of this section or because of scheduling or staffing constraints.

(c) We will not grant you permission to film, photograph, or videotape if you intend to use the film, photographs, or videotape for commercial, partisan political, sectarian, or similar activities.

§ 1280.52 Rules for filming, photographing, or videotaping for news purposes.

The following conditions and restrictions apply to anyone that has been granted permission to film, photograph, or videotape for news purposes under subpart B of this part:

(a) We may limit or prohibit use of artificial light in connection with filming, photographing, or videotaping documents for news purposes. You may not use any supplemental lighting devices while filming, photographing, or videotaping inside a NARA facility in the Washington, DC, area without the prior permission of the NARA Public Affairs Officer. If the Public Affairs Officer approves your use of artificial lighting in the Rotunda or other exhibit areas, we will use facsimiles in place of the Declaration of Independence, the Constitution, the Bill of Rights, or other documents. If we approve your use of high intensity lighting, we will cover or replace with facsimiles all other exhibited documents that fall within the boundaries of such illumination. You may not use any supplemental lighting devices at the Presidential libraries and the archival research room facilities without permission from a NARA representative at that facility.

(b) While filming, photographing, or videotaping, you are liable for injuries to people or property that result from your activities on or in NARA property and facilities.

(c) At all times while on or in NARA property and facilities, you must conduct your activities in accordance with all applicable regulations contained in this part.

(d) Your filming, photographing, or videotaping activity may not impede people who are entering or exiting any NARA facility unless otherwise authorized by the facility's director, or by the NARA Public Affairs Officer for Washington, DC, area facilities.

(e) You must be accompanied by a NARA staff member when filming, photographing, or videotaping the interior of any NARA facility.

(f) We will approve your request to do press interviews of NARA personnel on or in NARA property and facilities only when such employees are being interviewed in connection with official business. Interviews with staff and researchers may take place only in areas designated by the NARA Public Affairs Officer for Washington, DC, area facilities, or by the appropriate NARA representative at other NARA facilities.

(g) You may film and photograph documents only in those areas which the NARA Public Affairs staff designates in the National Archives Building, the National Archives at College Park, or the Washington National Records Center, or in those areas designated as appropriate by the staff liaison at other NARA facilities.

(h) We will limit your film and photography sessions to two hours.

(i) You may not state or imply that NARA approves of or will sponsor:

(1) Your activities or views; or

(2) The uses to which you put images depicting any NARA facility.

Subpart C—Additional Rules for Using Public Areas of NARA Property or Facilities

§ 1280.60 Permitting use of public areas.

(a) The primary use for NARA property and facilities, including those areas open to the public, is conducting official NARA business. NARA's official business includes educational and public programs and other activities we conduct on our own or in conjunction with government organizations, the National Archives Foundation (''Foundation'') and Presidential library foundations, or other private organizations. NARA uses all of the public areas of NARA property and facilities in the course of conducting official business.

(b) We may permit, under the conditions described in this subpart, Federal agencies, quasi-Federal agencies, and state, local, and tribal government organizations to occasionally use certain public areas for official activities (''government organization use'').

(c) We may also permit occasional, non-official use of specified public areas for private group activities and events that relate to or further NARA's archival, records, or other interests. The authorities for such use are 44 U.S.C. 2112(e) (for Presidential libraries) and 44 U.S.C. 2903(b) (for other NARA property and facilities).

(1) Examples of private use that relate to or further NARA's archival, records, or other interests include, but are not limited to: Meetings and other business activities held by archival, historical, or other professional organizations with a connection to NARA's holdings or mission; activities or events that promote research in, or use or preservation of, NARA holdings; invitation-only screening of film or TV premieres when NARA holdings have been used in the production or when the screening otherwise promotes use of NARA holdings (*e.g.,* documentary film premiere); and dinners, receptions, or other private group events where the connection to NARA is the location itself (*e.g.,* The National Archives Building or a Presidential library) or the opportunity to view NARA exhibits. Private group events may include events of a personal or social nature, such as weddings and wedding receptions, and school-sponsored activities.

(2) Each NARA facility with public use space determines whether and what kind of events of a personal nature the facility can support, given the size and configuration of available space, staff availability, and other logistical factors. We also reserve the right to limit the

number and size of personal celebrations, and to limit or prohibit activities as part of a private group event that pose a risk to the facility, property, people, or our holdings. If you are interested in holding a private group event at a NARA facility, contact that facility directly for more information. See 36 CFR part 1253 for facility listings and contact information.

(3) We may charge fees for private group and government organization use of these public areas and the services related to such use. See § 1280.68. NARA, the Foundation, or Presidential library foundations may collect the fees.

§ 1280.62 General rules when using public areas.

In addition to the rules listed in subparts A and B of this part, the following rules apply to all government organization and private group use of NARA public areas:

(a) You may not characterize your use of NARA property or facilities as an endorsement by NARA of your organization or its activities, or otherwise suggest an official relationship between NARA and your organization if such a relationship does not exist.

(b) You may not charge or collect admission fees, or money for other purposes, at the event.

(c) You may not use NARA property, facilities, or permission to use a NARA property or facility for any activities that involve:

(1) Profit-making;

(2) Advertising, promoting, or selling commercial enterprises, products, or services;

(3) Partisan political activities;

(4) Sectarian or other similar activities; or

(5) Any use inconsistent with those authorized in this section.

(d) You may not use NARA property or facilities if you or your organization or group engage in discriminatory practices proscribed by the Civil Rights Act of 1964, as amended.

(e) You may not misrepresent your identity to the public or conduct any activities in a misleading or fraudulent manner.

(f) You must ensure that no Government property is destroyed, displaced, or damaged during your use of NARA public areas. You must take prompt action to replace, return, restore, repair, or repay NARA for any damage caused to Government property during your use of NARA facilities or property, and the facility director may charge additional fees to recoup the cost of any damage that occurs due to your use of the property or facility.

§ 1280.64 Requesting to use our public areas.

(a) This section provides a general description of the process that different NARA facilities use to review and respond to requests to use their public areas. You should contact a facility before submitting a formal request, to check on availability and to obtain any forms, procedures, or rules that are specific to that facility.

(b) *National Archives Building and the National Archives at College Park.* (1) If you are interested in hosting an official governmental event or meeting at the National Archives Building, you should contact NARA Special Events by phone at 202.357.5164 or by email at *specialevents@nara.gov.* If you are interested in hosting a private group event at the National Archives Building, you should contact the National Archives Foundation by phone at 202.357.5404, toll-free at 844.723.2155, or by email at *events@archivesfoundation.org.* Additional information is in subpart D of this part and online at *https://www.archives.gov/dc/host-an-event.*

(2) If you are interested in hosting an event or meeting at the National Archives at College Park, you should contact NARA Special Events by phone at 301.837.1504 or by email at *specialeventsa2@nara.gov.* Additional information is in subpart D of this part.

(3) You will need to submit a written request at least 30 calendar days before the proposed date of your event. Your request will need to include such information as the name of your group and any other organization that is participating, point-of-contact information, the date and time you are requesting, number of attendees, type of event, description of the event, other arrangements you would like to include, and other information about the event to enable us to determine whether we can accommodate it. We may also request additional information. OMB control number 3095–0043 covers this information collection.

(c) *Presidential libraries and museums.* (1) You should contact the Presidential library and museum where you wish to hold your event (see contact information in 36 CFR 1253.3).

(2) Depending on what kind of event you want to host, you may be referred to the foundation that supports the library to make the event arrangements and to pay any event fees and costs that apply. Some Presidential libraries are located at shared-use facilities where their library foundations own certain areas and spaces used for private group events and operate those areas and spaces under their rules rather than the rules in this part 1280.

(3) For events held in Presidential library areas or spaces that are considered NARA property, you will need to submit a written, signed request to the library you wish to use (see *36 CFR 1253.3* for the address) and complete NA Form 16011, Application for Use of Space in Presidential Libraries. OMB control number 3095–0024 covers this information collection.

(d) *Archival research facilities and Federal records centers (FRCs).* (1) Most archival research facilities and the FRCs do not have any public use areas or spaces.

(2) If you wish to request use of public areas at an archival research facility, you must submit a written, signed request to the director of the facility you wish to use (see *36 CFR 1253.5* for a list of addresses) at least 30 days before the proposed date of your event. GSA's rules for requesting use of the facility will also apply if the facility is located on GSA property (see 41 CFR part 102–74, subpart D, Occasional Use of Public Buildings).

(3) Your request will need to include such information as the name of your group and any other organization that is participating, point-of-contact information, the date and time you are requesting, number of attendees, type of event, description of the event, and other information about the event to enable us to determine whether we can accommodate it. We may also request additional information. OMB control number 3095–0043 covers this information collection.

(e) *NARA facilities located on GPO property.* None of the NARA facilities that are located on GPO property have spaces available for public use.

§ 1280.66 How we handle requests to use public areas.

(a) When you ask to use NARA property, we review your request to:

(1) Ensure that it meets all of the provisions in this subpart and subpart D of this part;

(2) Determine if the public area you have requested is available on the date and time you have requested;

(3) Evaluate whether the requested space can accommodate your proposed use; and

(4) Determine the fees and costs we will charge for the event.

(b) When we have completed this review, we will notify you of the decision. We may ask for additional information before deciding whether or not to approve your event.

(c) We reserve the right to review, reject, or require changes in any

material, activity, or caterer you intend to use for the event.

§ 1280.68 Fees for using public areas.

(a) We are authorized to charge fees for occasional, non-official use of NARA public areas, as well as for services related to such use, including additional cleaning, security, and other staff services. We will either exercise this authority directly, or through the Foundation or an authorized Presidential library foundation or support organization.

(b) Federal and quasi-Federal agencies, and state, local, and tribal governmental institutions using public space for official government functions pay fees for the costs of room rental, administrative fees, additional cleaning, security, and other staff services NARA provides.

(c) You will be informed in advance and in writing of the total estimated cost associated with using the public area of interest. If we collect the fees directly, you will pay the National Archives Trust Fund. If the Foundation collects the fees, you will pay the National Archives Foundation. If a Presidential library foundation collects the fees, they will inform you where to submit the payment.

§ 1280.70 Additional rules that apply to approved events.

(a) Once we approve your event, you must provide any support people you need to register guests, distribute approved literature, name tags, and other material.

(b) We must approve in advance any item that you plan to distribute or display during your use of NARA property or facilities, or any notice or advertisement that refers, directly or indirectly, to NARA, the Foundation, a Presidential foundation or supporting organization, or the National Archives Trust Fund, or incorporates any of NARA's logos or seals (see 36 CFR 1200.2).

(c) We must approve in advance any vendor or caterer who will work in NARA facilities. You must comply with all NARA requirements for the use of food and drink at your event.

(d) You may not allow or consume food or drink in areas where original records or historical materials are displayed.

Subpart D—Additional Information for Using Specific NARA Property or Facilities

§ 1280.80 Public areas in the National Archives Building available for events.

You may ask to use the following areas in the National Archives Building, Washington, DC:

TABLE 1 TO § 1280.80

Area	Capacity
Rotunda Galleries	250 people.
William G. McGowan Theater.	290 people.
Archivist's Reception Room.	125 people.
Presidential Conference Rooms.	20 to 70 people.

§ 1280.82 When public areas in the National Archives Building are available.

(a) Most public areas are available for set-up and use each day from 6 p.m. until 10:30 p.m. The areas are not available for private events on Federal holidays. A NARA representative must be present at all times when non–NARA groups use NARA spaces.

(b) Some public areas in the National Archives Building may be available for private events or government organization use only before or after the building closes to the public, while other public areas may be available for such use during normal business hours, subject to NARA's official business needs.

§ 1280.84 Using the Rotunda.

(a) We do not allow private group event activities (*e.g.,* dinner/reception, program) to be held in the Rotunda or the exhibit galleries in the National Archives Museum. We may, at our discretion, allow attendees at private group events to enter the Rotunda and other Museum areas in conjunction with their event to view the exhibits, but the event activities themselves may not be held in those spaces. Pursuant to § 1280.46(c), event attendees may not film, photograph, or videotape in the Rotunda or other Museum areas, including group photographs or videos.

(b) We may, upon application, permit other Federal agencies, quasi–Federal agencies, and state, local, and tribal governments to use the Rotunda for official functions, with NARA as a co-sponsor. Governmental groups that use the Rotunda for official functions must reimburse NARA for the cost of additional cleaning, security, and other staff services, as for use of any other public spaces.

§ 1280.86 National Archives at College Park space available for events.

You may ask to use the following areas:

TABLE 1 TO § 1280.86

Area	Capacity
Auditorium	300 people.
Lecture rooms	30 to 70 people (or up to 300 with all dividers removed).

§ 1280.88 When public areas in the National Archives at College Park are available.

(a) Most areas are available for set-up and use from 8:00 a.m. until 5:00 p.m., Monday through Friday, except on Federal holidays. A NARA staff member must be present at all times when the public area is in use. If the space and staff are available, we may approve requests for events held before or after these hours and on weekends or Federal holidays.

(b) Public areas at the National Archives at College Park are normally available for private events or government organization use during normal business hours.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2020–08755 Filed 5–5–20; 8:45 am]

BILLING CODE 7515–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 13–24 and 03–123; FCC 19–11; FRS 16659]

IP CTS Modernization and Reform; IP CTS Improvements and Program Management

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) removes paragraphs advising that compliance with rules amended in document FCC 19–11 was not required until approval was obtained from the Office of Management and Budget (OMB).

DATES: *Effective Date:* These rules are effective May 6, 2020.

FOR FURTHER INFORMATION CONTACT: Michael Scott, Consumer and Governmental Affairs Bureau, at (202) 418–1264, or email *Michael.Scott@fcc.gov.*

SUPPLEMENTARY INFORMATION: In document FCC 19–11, published at 84 FR 8457, March 8, 2019, the Commission adopted §§ 64.611(k) and 64.615(c), which advised that compliance with §§ 64.611(j)(2) and 64.615(a)(3) and (5), respectively, was not required until OMB approval was obtained. Sections 64.611(k) and 64.615(c) also each state that the Commission will publish a document in the **Federal Register** announcing the compliance date and revising the paragraphs. In a document, published at 85 FR 9392, February 19, 2020, the Commission announced OMB approval for §§ 64.611(j)(2) and 64.615(a)(3) and (5) and set the compliance date. The document also states it would remove §§ 64.611(k) and 64.615(c) of the Commission's rules. As the compliance date for §§ 64.611(j)(2) and 64.615(a)(3) and (5) is established, §§ 64.611(k) and 64.615(c) are no longer necessary. Accordingly, in this document the Commission removes §§ 64.611(k) and 64.615(c) from the Commission's rules.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications, Telecommunications relay services Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 228, 251(a), 251(e), 254(k), 262, 403(b)(2)(B), (c), 616, 620, 1401–1473, unless otherwise noted; sec. 503, Pub. L. 115–141, 132 Stat. 348.

§ 64.611 [Amended]

■ 2. Amend § 64.611 by removing paragraph (k).

§ 64.615 [Amended]

■ 3. Amend § 64.615 by removing paragraph (c).

[FR Doc. 2020–08252 Filed 5–5–20; 8:45 am]

BILLING CODE 6712–01–P

SURFACE TRANSPORTATION BOARD

49 CFR Part 1333

[Docket No. EP 759]

Demurrage Billing Requirements

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (STB or Board) adopts a final rule that requires Class I carriers to directly bill the shipper for demurrage when the shipper and warehouseman agree to that arrangement and so notify the rail carrier.

DATES: This rule is effective on June 20, 2020.

ADDRESSES: Requests for information or questions regarding this final rule should reference Docket No. EP 759, and be submitted either via e-filing or in writing addressed to Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Sarah Fancher at (202) 245–0355. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On October 7, 2019, the Board issued a notice of proposed rulemaking to propose changes to its existing demurrage regulations to address several issues regarding carriers' demurrage billing practices. *Demurrage Billing Requirements* (*NPRM*), EP 759 (STB served Oct. 7, 2019).[1] Demurrage is subject to Board regulation under 49 U.S.C. 10702, which requires railroads to establish reasonable rates and transportation-related rules and practices, and under 49 U.S.C. 10746, which requires railroads to compute demurrage charges, and establish rules related to those charges, in a way that will fulfill the national needs related to freight car use and distribution and maintenance of an adequate car supply.[2]

Demurrage is a charge that serves principally as an incentive to prevent undue car detention and thereby encourage the efficient use of rail cars in the rail network, while also providing compensation to rail carriers for the expense incurred when rail cars are unduly detained beyond a specified period of time (*i.e.,* ''free time'') for loading and unloading. *See Pa. R.R.* v. *Kittaning Iron & Steel Mfg. Co.,* 253 U.S. 319, 323 (1920) (''The purpose of demurrage charges is to promote car efficiency by penalizing undue detention of cars.''); 49 CFR 1333.1; *see also* 49 CFR pt. 1201, category 106.

In the simplest demurrage case, a railroad assesses demurrage on the consignor (the shipper of the goods) for delays in loading cars at origin and on the consignee (the receiver of the goods) for delays in unloading cars and returning them to the rail carrier at destination.[3]

Demurrage, however, can also involve third-party intermediaries, commonly known as warehousemen or terminal operators, that accept freight cars for loading and unloading but have no property interest in the freight being transported.[4] Warehousemen do not typically own the property being shipped (although, by accepting the cars, they can be in a position to facilitate or impede car supply).

In response to the *NPRM,* the Board received a significant number of comments from stakeholders.[5] This

[1] The proposed rule was published in the **Federal Register**, 84 FR 55109 (Oct. 15, 2019).

[2] In *Demurrage Liability,* EP 707, slip op. at 15–16 (STB served Apr. 11, 2014), the Board clarified that private car storage is included in the definition of demurrage for purposes of the demurrage regulations established in that decision. The Board uses the same definition of demurrage in this decision.

[3] As the Board noted in *Demurrage Liability,* EP 707, slip op. at 2 n.2, the Interstate Commerce Act, as amended by the ICC Termination Act of 1995 (ICCTA), Public Law 104–88, 109 Stat. 803 (1995), does not define ''consignor'' or ''consignee,'' though both terms are commonly used in the demurrage context. Black's Law Dictionary defines ''consignor'' as ''[o]ne who dispatches goods to another on consignment,'' and ''consignee'' ''as [o]ne to whom goods are consigned.'' *Demurrage Liability,* EP 707, slip op. at 2 n.2 (citing Black's Law Dictionary 327 (8th ed. 2004)). The Federal Bills of Lading Act defines these terms in a similar manner. *Demurrage Liability,* EP 707, slip op. at 2 n.2 (citing 49 U.S.C. 80101(1) & (2)). For purposes of this decision, the term ''shipper'' will sometimes be used to refer to either consignors or consignees.

[4] This decision uses the terms ''warehousemen'' and ''third-party intermediaries'' to refer to these entities.

[5] The Board received comments and replies from the following: American Chemistry Council; American Forest & Paper Association (AF&PA); American Fuel & Petrochemical Manufacturers (AFPM); American Iron and Steel Institute; American Short Line and Regional Railroad Association (ASLRRA); ArcelorMittal USA LLC (AM); Association of American Railroads (AAR); Barilla America, Inc. (Barilla); Canadian National Railway Company (CN); Canadian Pacific Railway Company (CP); Corn Refiners Association (CRA); CSX Transportation, Inc. (CSXT); Daniel R. Elliott; Diversified CPC International, Inc. (CPC); Dow, Inc. (Dow); The Fertilizer Institute (TFI); Freight Rail Customer Alliance (FRCA); Industrial Minerals Association—North America; The Institute of Scrap Recycling Industries, Inc. (ISRI); International Association of Refrigerated Warehouses (IARW); International Liquid Terminals Association (ILTA); International Paper; International Warehouse Logistics Association; The Kansas City Southern Railway Company (KCS); Kinder Morgan Terminals (Kinder Morgan); Lansdale Warehouse Company; National Association of Chemical Distributors; The Mosaic Company; National Coal Transportation

decision adopts the proposed rule with respect to requiring Class I carriers to directly bill the shipper for demurrage when the shipper and warehouseman agree to that arrangement and so notify the rail carrier, with the modifications discussed below.[6]

Background

This proceeding arises, in part, as a result of the testimony and comments submitted in *Oversight Hearing on Demurrage & Accessorial Charges,* Docket No. EP 754. In that proceeding, parties from a broad range of industries raised concerns about demurrage billing practices, including issues with the receipt of invoices containing insufficient information. *See NPRM,* slip op. at 5–6 (providing overview of comments received in Docket No. EP 754 related to the adequacy of demurrage invoices). Warehousemen also raised concerns related to Class I carriers' billing practices as applied to them following the Board's adoption of the final rule in *Demurrage Liability,* EP 707 (STB served Apr. 11, 2014), codified at 49 CFR part 1333, which established that a person receiving rail cars for loading or unloading that detains the cars beyond the free time provided in the rail carrier's governing tariff may be held liable for demurrage if that person had actual notice, prior to rail car placement, of the demurrage tariff establishing such liability. *See NPRM,* EP 759, slip op. at 6–8 (providing overview of comments received in Docket No. EP 754 relating to warehousemen).

After carefully considering the comments and testimony in Docket No. EP 754, the Board issued the *NPRM* in this docket.[7] As relevant here, the Board has proposed a rule relating to the identity of the party that should receive and be responsible for paying the demurrage bill when shipments are handled by warehousemen. As explained in the *NPRM,* before 2014, there was a split among the U.S. courts of appeals regarding who should bear liability for demurrage charges when a warehouseman that detains rail cars for too long is designated as consignee in the bill of lading, but asserts either that it did not know of its consignee status or that it affirmatively asked the shipper not to designate it as consignee. The Board reviewed those court decisions, determined that it needed to reexamine its policies to assist in providing clarification, and instituted a proceeding in *Demurrage Liability,* Docket No. EP 707. As noted above, in a final rule issued in that docket, the Board established that a person, including a warehouseman, receiving rail cars for loading or unloading that detains the cars beyond the free time provided in the rail carrier's governing tariff may be held liable for demurrage if that person had actual notice, prior to rail car placement, of the demurrage tariff establishing such liability. *Demurrage Liability,* EP 707, slip op. at 1, 17, 25. Under that final rule, the identification of a party in the bill of lading no longer controls; as the Board explained, it was ''adopting a conduct-based approach to demurrage in lieu of one based on the bill of lading.'' *Id.* at 15. The Board explained that its rule was ''based on the theory that responsibility for demurrage should be placed on the party in the best position to expedite the loading or unloading of rail cars at origin or destination.'' *Id.* at 8.

During the Docket No. EP 754 proceeding, warehousemen addressed the circumstances under which, in their view, a rail carrier should bill shippers directly for demurrage without requiring warehousemen to assume responsibility for any charges left unpaid by the shipper. Pointing out that, in some cases, shippers may be best positioned to mitigate delays in returning cars, warehousemen asked that the Board permit warehousemen and shippers to determine between themselves which party should receive and be responsible for the demurrage bill.[8]

In the *NPRM,* the Board found that warehousemen and shippers are in the best position to determine which party should bear responsibility for demurrage charges and, therefore, that they should be able to make agreements for payment of demurrage charges that reflect this determination. *NPRM,* EP 759, slip op. at 11. Allowing shippers and warehousemen to reach direct-billing agreements that impose liability for demurrage charges on the party best positioned to mitigate the delays that cause demurrage would promote the efficient use of rail assets, thereby fulfilling the purpose of demurrage. *Id.* Accordingly, the Board proposed a requirement that Class I carriers send any demurrage bills related to transportation involving a warehouseman to the shipper (without requiring the warehouseman to guarantee payment), if the shipper and warehouseman agree to that arrangement and so notify the carrier. *Id.* As discussed below, most shippers and warehousemen commenters either support the Board's direct-billing proposal or are neutral towards it, while the six Class I railroads that filed comments (and AAR) uniformly oppose the proposal, and ASLRRA supports the proposed exclusion of Class II and Class III carriers from the proposal. In addition, Class I carriers, warehousemen, and shippers ask the Board to clarify certain aspects of the proposal.

Final Rule

The Board now adopts a final rule requiring Class I carriers to directly bill the shipper for demurrage when the shipper and warehouseman agree to that arrangement and so notify the rail carrier. As discussed below, the final rule reflects modifications made in response to parties' comments, following the Board's review of the issues raised. The final rule is below.

As noted above, most shippers and warehousemen who commented on direct billing are in favor of the proposal or neutral towards it.[9] Kinder Morgan

Association (NCTA); The National Industrial Transportation League (NITL); North American Freight Car Association; Norfolk Southern Railway Company (NSR); Peabody Energy Corporation (Peabody); The Portland Cement Association; Private Railcar Food and Beverage Association, Inc.; Quad, Inc.; Union Pacific Railroad Company (UP); Valley Distributing & Storage Company (Valley Distributing); Western Coal Traffic League and Seminole Electric Cooperative, Inc.; and Yvette Longonje.

[6] In the *NPRM,* the Board also proposed requirements for minimum information to be included on or with Class I carriers' demurrage invoices. Concurrently with this decision, the Board is serving a supplemental notice of proposed rulemaking to invite comments on certain modifications and additions to the proposed requirements. *See Demurrage Billing Requirements,* EP 759 (STB served Apr. 30, 2020). The proposal pertaining to minimum information requirements, and the comments on that proposal, will be addressed in a separate decision.

[7] The Board has also issued a final policy statement announcing principles the Board would consider in evaluating the reasonableness of demurrage and accessorial rules and charges. *Policy Statement on Demurrage & Accessorial Rules & Charges,* EP 757 (STB served Apr. 30, 2020).

[8] *See* Kinder Morgan Terminals Comments 3–4, 19–20, May 8, 2019, *Oversight Hearing on Demurrage & Accessorial Charges,* EP 754.

[9] *See, e.g.,* Kinder Morgan Comments 1 (strongly supports the proposed rule); ILTA Comments 4 (stating that it supports the proposed rule even though it believes that returning to the regulatory environment in existence before *Demurrage Liability,* EP 707, would be a better solution); IARW Comments 1 (strongly supports the proposed rule); TFI Comments 4 (explaining that its primary interest is in ensuring that the Board continue to permit shippers and warehousemen to address demurrage in their contracts); NITL Comments 11 (stating that it has no concerns with the Board's direct-billing proposal); AM Comments 2 (stating that it supports the proposal as long as shippers are not responsible for demurrage absent an agreement with the warehouseman); Valley Distributing Comments 1 (supporting the direct-billing proposal); *but see* Peabody Comments 2 (stating that it does not support the direct-billing proposal because it believes that the shipper should always

Continued

states that the direct-billing requirement is ''very fair, as it is predicated upon agreement by the shipper and terminal and would help end the gridlock that has prevented reasonable discussion and resolution of individual disputes.'' (Kinder Morgan Comments 7.) Kinder Morgan argues that direct billing will allow for more efficient handling of demurrage disputes and will help end ''abusive practices by railroads with respect to the collection of demurrage charges.'' (*Id.* at 1, 8.) Likewise, ILTA contends that direct billing will bring greater clarity to the assessment and collection of demurrage charges and will help ensure fair treatment of warehousemen. (ILTA Comments 1.) Some commenters ask the Board to clarify certain aspects of the requirement to notify the carrier of the agreement. (ILTA Comments 3; IARW Comments 1.) In addition, some shippers and warehousemen argue that the rule should apply to Class II and Class III carriers. (*See, e.g.,* FRCA Comments 5.)

CN, CP, CSXT, KCS, and AAR (joined by NSR and UP) oppose the Board's direct-billing proposal. These commenters argue that they lack privity of contract to enforce direct-billing agreements, (*see* CSXT Comments 15; *see also* CN Comments 15; CP Comments 8–9; AAR Comments 6); that the notice requirement, as proposed in the *NPRM,* is flawed, (CSXT Comments 14–15; KCS Comments 3; CP Comments 8); that the direct-billing proposal is inconsistent with 49 U.S.C. 10746, (CSXT Comments 12), and the final rule in *Demurrage Liability,* EP 707, (CN Comments 17–18; AAR Comments 4, 6); and that the direct-billing proposal would only increase the difficulty and complexity of demurrage disputes, (CP Comments 7–9; CSXT Comments 15–16).

The Board will adopt its direct-billing proposal with the modifications discussed below.

Class I Carriers' Ability To Understand and Enforce Direct-Billing Agreements

Many Class I carrier commenters and AAR argue that the *NPRM*'s direct-billing proposal is unworkable because carriers would be unable to understand or enforce nuanced and complex agreements to which they are not parties. CSXT and CN explain that agreements between shippers and warehousemen can have substantially different provisions regarding when shippers will accept demurrage liability. (CSXT Comments 15; CN Comments 15.) CSXT expresses concern that shippers might limit the circumstances in which they will accept liability. (CSXT Comments 15.) In this regard, CN references Kinder Morgan's third-party complaint against some of its customers, which shows that Kinder Morgan's shipper-customers declined to accept across-the-board responsibility for demurrage liability, pointing instead to various exceptions that would place the liability on Kinder Morgan. (CN Comments 15.) CSXT further argues that carriers ''will have no knowledge of the terms of the agreement'' and therefore ''will have no ability to understand or effectively enforce these contractual provisions and no ability to adjudicate responsibility in situations where receiver and shipper disagree as to fault.'' (CSXT Comments 15.)[10] In order to ensure accountability to the carrier, CP urges the Board to require the shipper to ''expressly agree that it is liable to the railroad for demurrage on its assets even if such demurrage is due to actions taken by the warehouseman or actions of its other shippers.'' (CP Comments 9.)

Kinder Morgan argues that such preconditions by the carrier are not necessary for direct-billing arrangements, which Kinder Morgan points out were common before the Docket No. EP 707 rule was adopted. (Kinder Morgan Reply 14–16.) ILTA argues that Class I carriers' concern about not being parties to direct-billing agreements ''confounds both legal obligations and common sense.'' (ILTA Reply 2.)

The Board finds that the arguments by the Class I carriers and AAR are overstated. As the court cases preceding Docket No. EP 707 indicated, the shipper, rather than the warehouseman, is often the signatory to the bill of lading and the one that actually has the privity of contract with the railroad. Indeed, that was why some courts had held that, unless the warehouseman was aware that it had been named as a party to the bill of lading, the shipper was the only party to which the railroad could send the demurrage bill. *See Demurrage Liability,* EP 707, slip op. at 3–4 (citing *Norfolk S. Ry.* v. *Groves,* 586 F.3d 1273, 1275–76 (11th Cir. 2009), *cert. denied,* 131 S. Ct. 993 (2011)). Under the final rule adopted in this decision, where shippers and warehousemen jointly notify their serving railroads that the shipper is the party to be billed, billing arrangements would effectively proceed under the standard practices that prevailed for much of the industry before the final rule in Docket No. EP 707 was adopted. ILTA correctly notes that it is inconsistent for the carriers, from a contractual privity standpoint, to prefer avoiding direct billing of shippers with whom they are often signatories on the bill of lading in favor of holding warehousemen, with whom they often hold no contractual relationships, responsible for demurrage.

The intent in proposing the direct-billing requirement at 49 CFR 1333.3(b) was not to require Class I carriers to analyze or enforce any specific conditions of liability agreed upon by the shipper and warehouseman. Rather, in an agreement under the new direct-billing rule, the shipper must agree to (1) receive the demurrage bill from the Class I carrier and (2) be liable to the Class I carrier for demurrage that accrues on all of the shipments received by the warehouseman from the shipper during the term of the agreement.

Warehousemen and shippers may address the nuances of demurrage liability between themselves in their commercial relationships, as the Board has previously contemplated.[11] However, Class I carriers would not be responsible for billing in accordance with any specific liability conditions that the warehouseman and shipper may have agreed upon as between themselves.[12] Rather, to the extent the shipper believes that its commercial arrangement with the warehouseman requires the warehouseman to reimburse the shipper for demurrage it has paid to the carrier, the Board expects the shipper and warehouseman to resolve this issue between themselves. In doing so, the warehouseman would continue to have an incentive to make efficient use of rail cars in the rail network, contrary to carriers' claims that, if the shipper

be invoiced, in part, to reduce the risk that carriers will bill two parties for the same delay); AFPM Comments 9 (expressing concerns that there could be miscommunication over which party is to receive the invoice).

[10] *See also* AAR Comments 6 (arguing carriers would have no privity of contract to enforce agreements); CP Comments 8 (stating that ''it is unclear whether CP would have a cognizable legal claim against a shipper with whom it is not in privity of contract''); KCS Comments 2 (opposing the Board's direct-billing proposal because ''issues such as lack of privity of contract could prevent rail carriers from collecting demurrage that is rightly owed'').

[11] *See Demurrage Liability,* EP 707, slip op. at 9 (finding that its demurrage regulations ''should encourage warehousemen and shippers to address demurrage liability in their commercial arrangements'').

[12] Any suggestions of Class I carriers that they will be unable to hold shippers liable for demurrage at all when they are not parties to the agreements between shippers and warehousemen are unavailing. Under the direct-billing requirement, Class I carriers must seek demurrage from shippers—just as they regularly did before the Docket No. EP 707 rules were adopted—only when those shippers give notification that they have agreed to be responsible for demurrage under § 1333.3(b).

agrees to accept responsibility for demurrage, then the warehouseman would not have any incentive to efficiently utilize rail cars. (*See* AAR Comments 5; CN Comments 17; CP Comments 3.)

To clarify its intent in the regulations, the Board will revise § 1333.3(b) to specify that the Class I carrier must bill the shipper for demurrage when a warehouseman ''has reached an agreement with a shipper (or consignee) that the shipper (or consignee) shall be *billed* for demurrage'' and so notifies the Class I carrier.[13] Furthermore, the Board will add an additional sentence to clarify that, pursuant to this paragraph, ''the shipper (or consignee) shall be liable to the Class I carrier for demurrage but shall not be prohibited from seeking payment from the third-party intermediary for demurrage charges for which the third-party intermediary is responsible pursuant to an agreement between the shipper (or consignee) and the third-party intermediary.'' [14] The full text of revised § 1333.3(b) is set forth below.

Notice of Direct-Billing Agreements

Class I carrier commenters seek clarification of the *NPRM* proposal to require Class I carriers to bill the shipper for demurrage charges ''after being notified of the agreement by the shipper, consignee, or third-party intermediary.'' *NPRM,* EP 759, slip op. at 14. CSXT expresses concern that because the proposed rule requires notice by only one party, the counterparty would be able to disclaim the validity of the agreement to the carrier. (CSXT Comments 14–15.) Additionally, both KCS and CP express concerns about the notice requirement as it relates to interlined traffic. KCS states that, in some cases in which traffic is interlined for destination delivery to the warehouseman, it does not know the identity of the original shipper. (KCS Comments 3.) CP likewise explains that much of its traffic originates or terminates on CP, but not both, and when CP is the delivering carrier, it may not have a relationship with the shipper. (CP Comments 8.)

Warehousemen commenters seek clarity about the form of the notice contemplated by the *NPRM.* They argue that it is not feasible for shippers and warehousemen to share their entire contracts with carriers because doing so would expose confidential business information. Accordingly, they ask the Board to specify that the notice requirement may be satisfied by an excerpt or redacted version of the agreement, a separate letter or an email between the parties, or a copy of standard terms and conditions for storage. (ILTA Comments 3; IARW Comments 1.)

Based on these comments, the Board will revise and clarify the notice requirements. First, to avoid the possibility that one of the parties may subsequently disclaim the existence of an agreement and the validity of the notice, the Board will require that the shipper and warehouseman jointly notify the carrier of a direct-billing agreement.[15]

Second, the Board clarifies that the notice requirement does not expect that shippers and warehousemen share their contracts with Class I carriers. As discussed above, shippers that enter into direct-billing agreements must agree to be billed by Class I carriers for demurrage and to accept responsibility to the carrier for paying demurrage bills. Of course, the recipient of the bill, whichever party it may be, has every right to challenge the appropriateness of the bill with the carrier or with the Board. But any specific conditions under which the shipper and warehouseman apportion ultimate responsibility are for the shipper and warehouseman to address between themselves. If the shipper believes that it has been billed for demurrage for which the warehouseman is responsible under the terms of an agreement between the shipper and warehouseman, then the shipper may seek reimbursement for those charges from the warehouseman in accordance with their commercial arrangement and applicable laws. However, the notice of the billing agreement would be sufficient to provide the Class I carrier with the information it needs in order to know where to send its demurrage bills.

Third, to address commenters' concerns that a delivering carrier may not always know the identity of the shipper in the direct-billing agreement, the Board will require that the notice contain the shipper's contact information.[16] This information is necessary, not only for interline carriers, but also for all Class I carriers that seek to charge demurrage because *Demurrage Liability,* EP 707, established that carriers must provide actual notice of their demurrage tariffs prior to charging demurrage.[17] The Board will also require that the notice contain the date upon which the Class I carrier is to begin billing the shipper for demurrage. Recognizing that Class I carriers will need sufficient time to provide shippers with actual notice of the carriers' demurrage tariffs and to update their billing systems to reflect new direct-billing arrangements, this date shall be no earlier than 20 days after the notice is provided.

For the reasons discussed above, the Board will revise 49 CFR 1333.3(b), which is set forth in full in below, to state that Class I carriers must directly bill a shipper for demurrage ''after being jointly notified of the agreement by the shipper (or consignee) and third-party intermediary.'' The Board will also add a sentence clarifying that ''[t]he joint notice required by this paragraph may be provided in hard copy or electronic form, and must contain the contact information for the shipper (or consignee) who has agreed to be billed (and liable to the Class I carrier) for demurrage and provide the date upon which the Class I carrier is to begin billing the shipper (or consignee) for demurrage (no earlier than 20 days after the notice is provided).'' To address the concern discussed above regarding potential disagreements between warehousemen and their customers about the existence of direct-billing agreements, the Board will also modify § 1333.3(b) to require that a party to the agreement notify not only the Class I carrier but also the other party to the agreement that the agreement is no longer in force if and when appropriate.[18] To provide further

[13] Peabody's concern that the rule will make it more likely that two parties could be billed for the same demurrage, (*see* Peabody Comments 2), is unfounded, as the new rule will require that when a shipper and warehouseman agree that the shipper is to be billed for demurrage and convey such agreement to the railroad, the railroad will bill the shipper, as agreed.

[14] This clarification is intended to help ensure that shippers and warehousemen continue to have the ability to address demurrage in their contracts. (*See* TFI Comments 4; CRA Comments 4–5.) It also addresses CP's concern that the proposed rules would ''put the railroad in the middle'' of a dispute between the shipper and the warehouseman, which CP alleges would be contrary to the provision in the rail transportation policy that the Board should ''provide for the expeditious handling and resolution of [disputes].'' (*See* CP Comments 7–8 (citing 49 U.S.C. 10101(15)).)

[15] As discussed further in the Appendix below, this joint notice may be given to the carrier by way of a letter, such as the example provided in below. In addition, electronic signature of a joint notice would be sufficient. *See* 15 U.S.C. 7001(a).

[16] The Board contemplates that such contact information would typically include the shipper's full name, mailing address, telephone number, and email address.

[17] As shown below, this requirement is re-designated in the regulations as paragraph (a) of 49 CFR 1333.3.

[18] With respect to the Class I carriers' obligations for direct billing, a statement from one party that the agreement has been terminated is sufficient to end the direct-billing requirement, regardless of any disputes as to the sufficiency of the termination

Continued

guidance on these notice requirements, the Board has provided a sample letter in the Appendix below that the warehouseman and shipper may use (but are not required to use) to notify the Class I carrier of their direct-billing agreement.

Direct-Billing Agreements in Relation to 49 U.S.C. 10746

CSXT argues that a direct-billing requirement is contrary to 49 U.S.C. 10746 because ''[f]orcing a railroad's demurrage billing to be governed by contracts to which that railroad is not a party is directly inconsistent with Congress's instruction that railroads have the right to 'compute demurrage charges and establish rules related to those charges' in the first instance.'' (CSXT Comments 12.) However, requiring railroads to bill shippers instead of warehousemen for demurrage under specific circumstances does not limit the railroads' ability to compute demurrage and determine when it will apply. Indeed, as noted in *Demurrage Liability,* EP 707, slip op. at 3–4, the ICC, the Board, and the courts have all weighed in on whom the railroads could charge for demurrage. These sorts of actions are consistent with 49 U.S.C. 10702, which authorizes the Board to determine the reasonableness of railroad-established rates, rules, and practices, and with 49 U.S.C. 1321(a), which authorizes the Board to ''prescribe regulations in carrying out . . . subtitle IV.'' [19]

In establishing this final rule, the Board exercises its regulatory authority to ensure that carriers' demurrage practices allow shippers and warehousemen, who are best positioned to determine which party between them will typically be most able to promote prompt movement of the cars, to make agreements that reflect this determination. Allowing shippers and warehousemen to reach direct-billing agreements that impose liability for demurrage charges on the party best positioned to mitigate the delays that cause demurrage would promote the efficient use of rail assets, thereby fulfilling the purpose of demurrage.

Direct-Billing Agreements in Relation to Demurrage Liability, EP 707

Class I carrier commenters also argue that the direct-billing proposal contradicts the regulations established in *Demurrage Liability,* EP 707. However, the Board may modify its rules as long as its actions are rational and fully explained.[20] Here, these modifications comport with the spirit of Docket No. EP 707 (and with the other actions the Board is currently pursuing regarding demurrage) by advancing the principle that demurrage should be assessed on a party that can alter its behavior to help promote the efficient use of rail assets. Below, the Board discusses the direct-billing rule as it relates to the current demurrage regulations at 49 CFR 1333.2 and 1333.3 and modifies 1333.2.

1. 49 CFR 1333.2

CSXT and CN argue that a direct-billing rule contradicts the language in 49 CFR 1333.2, which states that a ''serving carrier and its customers (including those to which it delivers rail cars at origin or destination) may enter into contracts pertaining to demurrage, but in the absence of such contracts, demurrage will be governed by the demurrage tariff of the serving carrier.'' Based on this provision, CSXT and CN contend that the only contracts that can alter demurrage liability are those to which the serving carrier is a party. (CN Comments 13–14; CSXT Comments 12–13.) Some of the Class I carriers indicate that they would be willing to enter into such contracts provided they maintain their ability to hold warehousemen accountable when they deem it appropriate to do so. (CN Comments 19–20; CSXT Comments 12.)

As noted, the Board may modify existing regulations as long as its actions are rational and adequately explained. Here, the language of § 1333.2 relied on by CN and CSXT permitting contracts between a ''serving carrier and its customers'' does not prevent the Board from modifying the regulations to require direct billing to shippers in certain circumstances, and it provides no basis for a finding that payment guarantees from warehousemen are necessary in direct-billing agreements. As before, under § 1333.2, a ''serving carrier and its customers (including those to which it delivers rail cars at origin or destination) may enter into contracts pertaining to demurrage.'' The final rule here merely adds another option: A direct-billing arrangement between the shipper and warehouseman. To harmonize § 1333.2 with the final rule, the Board will revise this section to be consistent with the language in new § 1333.3(b). Specifically, the Board will add a sentence stating that ''a third-party intermediary may enter into contracts with a shipper (or consignee) that the shipper (or consignee) shall be billed for demurrage pursuant to § 1333.3(b).'' To reflect the added sentence, the Board will update the section heading to ''Who May Charge Demurrage and Who May Enter into Contracts Pertaining to Demurrage.'' The full text of the revised section 1333.2 is set forth below.

Furthermore, the Board does not find that payment guarantees from warehousemen are necessary in direct-billing agreements. After all, before 2014, railroads regularly billed shippers, rather than warehousemen, without holding warehousemen as guarantors.[21] Moreover, the Board rejects the view that warehousemen should be guarantors because they are the only parties positioned to mitigate demurrage. As discussed in the *NPRM,* EP 759, slip op. at 3, warehousemen, by accepting rail cars, may be in a position to facilitate or impede car supply. However, in some cases, shippers may be in a better position to affect car supply by, for example, modifying the frequency or volume with which they consign cars.[22] The Board continues to find, as discussed in the *NPRM,* that warehousemen and shippers are in the best position to know which party can best promote the prompt handling of cars and hence which party should bear responsibility for demurrage charges.

2. 49 CFR 1333.3

In the *NPRM,* the Board stated that while the ''proposed rule would amend the Board's current regulations to *require* Class I carriers to issue invoices to shippers and to treat shippers as the ultimate guarantors of payment (when the shipper and warehouseman agree to that arrangement and have so notified the rail carrier), . . . rail carriers are already *permitted* to do so under the current rule,'' which states that parties

under the terms of the specific agreement between the shipper and warehouseman.

[19] *See also* H.R. Rep. No. 104–311, at 100 (1995); H.R. Rep. No. 104–422, at 178 (1995) (Conf. Rep.) (indicating that § 10746 ''retains the agency's authority over demurrage charges and related rules'').

[20] *See Nat'l Cable & Telecommc'ns Ass'n* v. *Brand X internet Servs.,* 545 U.S. 967, 981–82, 1001 (2005) (finding that an agency ''is free within the limits of reasoned interpretation to change course if it adequately justifies the change''); *Chevron, U.S.A., Inc.* v. *Nat. Res. Def. Council, Inc.,* 467 U.S. 837, 863 (1984) (''An initial agency interpretation is not instantly carved in stone.'').

[21] As Kinder Morgan points out, guarantees from warehousemen are unnecessary because ''if the railroads directly billed their shippers, at the direction of the shipper and receiver as proposed by the Board, they would simply be engaging in arrangements that they have traditionally and customarily adopted and encouraged, without issue, for many decades.'' (Kinder Morgan Reply 14–15.)

[22] *See, e.g.,* ILTA Comments 1, May 8, 2019, *Oversight Hearing on Demurrage & Accessorial Charges,* EP 754; *see also* KCS Comments 3 (acknowledging that ''in some cases the warehouseman or terminal operator is not the party that actually causes demurrage to accrue and that responsibility lies with the shipper'').

who receive rail cars ''may be held liable for demurrage.'' *NPRM,* EP 759, slip op. at 11 (quoting 49 CFR 1333.3). CN takes exception to the Board's statement, contending that ''the [*NPRM*'s] suggestions that a rail carrier is already permitted to issue direct bills to shippers because they are 'listed on the bill of lading' has no support in the actual language of the Part 1333 regulations,'' which ''effectively forbid bills to nonreceivers in the absence of an explicit agreement to that effect.'' (CN Comments 17; *see also* AAR Comments 4, 6.) CN maintains that the proposed rule cannot be reconciled with the Board's prior decision to '' 'place demurrage liability on the receiver of rail cars, regardless of their designation in the bill of lading.' '' (*Id.* at 17–18 (quoting *Demurrage Liability,* EP 707, slip op. at 5).)

The Board does not agree with CN's interpretation of the rule adopted in Docket No. EP 707. The Board pointed out in the *NPRM* (and in the proposed policy statement in Docket No. EP 757) that § 1333.3 states, in permissive terms, that parties who receive rail cars ''may be held liable for demurrage.'' [23] In other words, § 1333.3 permits billing of warehousemen, but does not foreclose direct billing of shippers. None of this prevents the Board from adopting, as it does here, a final rule that explicitly requires shippers to be billed for demurrage under certain conditions. Furthermore, as discussed above, even if CN's interpretation were accurate, which it is not, the Board is not constrained from modifying regulations previously in effect, as long as its actions are rational and adequately explained.

Dispute Resolution

Some Class I carrier commenters contend that the Board's proposal would make demurrage disputes more complex and difficult to resolve. CP argues that demurrage disputes frequently involve information that is only within the warehouseman's possession, such as daily orders submitted by the warehouseman, pipeline information of other shippers, and information regarding cars arriving from other carriers (when the warehouseman is served by more than one carrier). (CP Comments 7.) CP and CSXT also contend that demurrage disputes can raise issues concerning confidential shipper data. (CP Comments 8; CSXT Comments 15–16.) CSXT argues that shippers ''will be in a poor position to assess whether any demurrage charges are attributable to railroad fault or to the receiver's conduct (such as favoring one customer's traffic over others)'' because ''[i]nformation about incoming shipments to other customers at that receiver facility will typically be protected by 49 U.S.C. 11904.'' (CSXT Comments 15–16.) To account for § 11904, CP requests that the Board mandate that a warehouseman ''obtain the consent of all its shippers for the delivering railroad to disclose all shipment data associated with that receiving location necessary to allow the shipper to audit the carrier's invoicing.'' (CP Comments 9.) CP also raises concerns about dispute resolution if it needs to pursue a shipper for demurrage in an inconvenient forum or ''in another country altogether.'' (*Id.* at 8.) CP states that there ''must be a clear path for formal resolution should the shipper refuse to pay due to delay or bunching that is not caused by the delivering rail carrier.'' (*Id.* at 9.)

Apart from the fact that some demurrage disputes may turn on information—such as the frequency and volume of cars consigned—that is more accessible to shippers than to warehousemen, these claims ring hollow. Before 2014, direct billing of the shipper rather than the warehouseman was common, and yet carriers were somehow able to resolve their highly fact-specific demurrage disputes.[24] Moreover, any information deficit an individual shipper may have vis-à-vis the warehouseman—such as access to information about incoming shipments from other customers at the warehouseman's facility—would presumably disadvantage the shipper rather than the railroad in a particular dispute.[25] Therefore, the Board concludes that shippers that choose to enter into agreements with warehousemen are capable of determining, based on the facts and circumstances of their particular situation, whether they are suited to assess the factual issues associated with a demurrage dispute. If a particular demurrage dispute between the carrier and shipper involves information that is solely within the warehouseman's possession, the discovery of such information is best addressed in the context of the individual dispute.[26]

To the extent carriers, shippers, and warehousemen are having difficulty resolving demurrage disputes informally or in another jurisdiction, the Board strongly encourages them to avail themselves of the Board's alternative dispute resolution options (mediation, arbitration,[27] and the Rail Customer and Public Assistance program [28]).

Exclusion of Class II and III Carriers

In the *NPRM,* the Board explained that it did not propose to require Class II and Class III carriers to comply with the rule because it would be more costly for smaller carriers to do so and the demurrage issues raised by stakeholders before the Board predominantly pertained to Class I carriers. *NPRM,* EP 759, slip op. at 10–11. The Board invited comment on the proposed exclusion of Class II and Class III carriers. *Id.* at 11.

Although some shippers find that that demurrage issues most frequently involve Class I carriers, (*see* AFPM Comments 8; ISRI Comments 10), several commenters express concerns about excluding Class II and Class III carriers,[29] particularly those with larger,

[23] CN cites to *Demurrage Liability,* EP 707, slip op. at 5, which states that the advance notice of proposed rulemaking in that proceeding ''sought public input on whether the Board should consider a new rule that would place demurrage liability on the receivers of rail cars, regardless of their designation in the bill of lading.'' (*See* CN Comments 17–18.) However, the Board ultimately proposed and adopted permissive language in § 1333.3.

[24] CP's expressed concerns that carriers may be forced to pursue a shipper for demurrage in an inconvenient forum are unpersuasive given the long history of direct shipper billing before 2014.

[25] As noted, some demurrage disputes may turn on information that is more accessible to shippers than to warehousemen, and warehousemen have also argued that they cannot access relevant information because they do not have commercial relationships with carriers. *See, e.g.,* ILTA Comments 2, May 8, 2019, *Oversight Hearing on Demurrage & Accessorial Charges,* EP 754 (arguing that the ''the terminal—lacking a contractual relationship with the railroad—has no access to information it would need to confirm or dispute charges''). Because shippers and carriers, and shippers and warehousemen, do have commercial relationships, the Board expects that direct-billing agreements could be drafted in such a way to reduce some information accessibility issues.

[26] CP makes an unwarranted request that the Board mandate that warehousemen obtain consent, presumably from multiple customers, to reveal what would otherwise be confidential shipper data under § 11904. The Board and the courts are well-suited to assist the parties in the resolution of discovery disputes of this nature in individual cases through, for example, the use of third-party subpoenas and protective orders.

[27] The Board notes that three of the Class I carriers have agreed to arbitrate certain demurrage disputes under the binding, voluntary program set forth in 49 CFR part 1108. *See* UP Notice (June 21, 2013), CSXT Notice (June 28, 2019), and CN Notice (July 1, 2019), *Assessment of Mediation & Arbitration Procedures,* EP 699.

[28] The Board's Rail Customer and Public Assistance (RCPA) office provides informal assistance to the public on a wide range of matters within the Board's expertise. The RCPA office can be reached by telephone at 202–245–0238 or email at *rcpa@stb.gov.*

[29] (*See* FRCA Comments 5; AFPM Comments 8; Barilla Comments 3; CPC Comments 3.) It is unclear whether some comments on this issue are intended to address exclusion of Class II and III carriers from the minimum invoicing requirements aspect of the rule, the direct-billing aspect, or both. For

Continued

more sophisticated operations, (*see* FRCA Comments 5; AFPM Comments 8). One commenter urges the inclusion of Class II and Class III carriers for uniformity across the industry, (*see* ISRI Comments 10), and others fear that Class I carriers will seek to evade the rule by tasking Class II and Class III carriers with demurrage invoicing where possible, (*see* NITL Comments 10; AF&PA Comments 10). Acknowledging that the new requirements may be too burdensome for the smallest carriers, some commenters suggest that the Board apply the rule to all carriers and grant waivers on a case-by-case basis. (NITL Comments 10; AF&PA Comments 10; AM Reply 5–6.) Others suggest that the Board exclude some or all Class III carriers from the rule, but not Class II carriers. (AFPM Comments 8 (exclude all Class III carriers, but not Class II carriers); FRCA Comments 5 (require Class II carriers and Class III carriers affiliated with large holding companies to comply.))

ASLRRA supports the Board's proposal to exclude Class II and Class III carriers, (*see* ASLRRA Comments 4), pointing out that shippers' complaints have been about Class I carriers and that small carriers already ''work closely every day with their customers and if there arises a question about invoices, services or anything else, the customer and small railroad resolve those issues in a timely manner directly between them,'' (*see* ASLRRA Reply 6–7). ASLRRA questions the workability of some commenters' suggestion that Class II and Class III carriers could file for individual waivers, which, it states, would be an expensive and time-consuming process for small carriers with limited resources. (ASLRRA Reply 7.) Importantly, ASLRRA dismisses commenters' concerns that Class I carriers would assign demurrage billing to Class II and Class III carriers to avoid the rule, arguing that Class I carriers will not ''want to cede the control of their operations or practices to others or the compensation they receive for the misuse of their rail assets.'' (*Id.* at 8.)

In the *NPRM,* EP 759, slip op. at 10, 11, the Board proposed to exclude Class II and Class III carriers because the demurrage issues raised by stakeholders in Docket No. EP 754 predominantly pertained to Class I carriers. The comments have not changed the Board's view on this issue, nor do they provide any realistic basis for concluding that Class I carriers will seek to avoid the rule by assigning their demurrage billing to small carriers.[30] The case-by-case waiver approach suggested by some shipper parties could be impractical and unduly burdensome for some small carriers. Likewise, the Board declines to adopt AFPM's proposal to make Class II carriers (but not Class III carriers) subject to the rule because, as noted above, the record indicates most demurrage issues pertain to Class I carriers and the record does not justify imposing the requirements on Class II carriers at this time. Nonetheless, the Board continues to strongly encourage Class II and Class III carriers to comply with the rule to the extent they are able to do so, but it will not make compliance mandatory at this time.

Conclusion

Consistent with this decision, the Board adopts a final rule requiring Class I carriers to directly bill the shipper for demurrage without requiring the warehouseman to act as a guarantor, when the shipper and warehouseman agree to that arrangement and so notify the rail carrier, unless and until a party to the agreement notifies both the Class I carrier and the other party to the agreement that the agreement is no longer in force. This rule is set out in full below and will be codified in the Code of Federal Regulations.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities, (2) analyze effective alternatives that may minimize a regulation's impact, and (3) make the analysis available for public comment. §§ 601–604. In its final rule, the agency must either include a final regulatory flexibility analysis, § 604(a), or certify that the proposed rule would not have a ''significant impact on a substantial number of small entities,'' § 605(b). Because the goal of the RFA is to reduce the cost to small entities of complying with federal regulations, the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates those entities. In other words, the impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the proposed rule. *White Eagle Coop.* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

As discussed above, the final rule will apply only to Class I carriers. Accordingly, the Board again 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 as defined by the RFA.[31] A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

Paperwork Reduction Act

In this proceeding, the Board is modifying an existing collection of information that is currently approved by the Office of Management and Budget (OMB) under OMB Control No. 2140–0021. In the *NPRM,* the Board sought comments pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3521, and OMB regulations at 5 CFR 1320.11, regarding: (1) Whether the collection of information, as modified, is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. The Board received one comment, from CN, in response to the Board's PRA analysis in the *NPRM* regarding the requirement that railroads directly bill the shipper for demurrage when the shipper and warehouseman agree to that arrangement and so notify the rail carrier.[32]

completeness, all potentially applicable comments are addressed here.

[30] Should sufficient evidence be presented in the future that Class I carriers are attempting to avoid the rule by assigning their demurrage claims processing to smaller connecting carriers, the Board can revisit this issue and propose any warranted modifications to the rule.

[31] For the purpose of RFA analysis, the Board defines a ''small business'' as only including those rail carriers classified as Class III carriers under 49 CFR 1201.1–1. *See Small Entity Size Standards Under the Regulatory Flexibility Act,* EP 719 (STB served June 30, 2016) (with Board Member Begeman dissenting). Class III carriers have annual operating revenues of $20 million or less in 1991 dollars ($39,194,876 or less when adjusted for inflation using 2018 data). Class II carriers have annual operating revenues of less than $250 million in 1991 dollars ($489,935,956 when adjusted for inflation using 2018 data). The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds on its website. 49 CFR 1201.1–1; *Indexing the Annual Operating Revenues of R.Rs.,* EP 748 (STB served June 14, 2019).

[32] In its initial comments, ASLRRA questions the source of the estimated 677 burden hours in the *NPRM.* This estimate comes from the existing collection for which the Board is seeking a modification. In other words, the burden analysis in the Appendix of the *NPRM* included the burdens for the existing portion of the collection being modified by this final rule.

CN argues that it would take longer than five minutes to permanently implement direct billing to a terminal customer. CN argues that, if it were required to change its billing for the 500 terminals it serves in its U.S. network, then it ''conservatively estimates that each large terminal of more than 5 shippers would require 1 hour of processing time per month, every month, and each small terminal would require 30 minutes per month, plus additional time at start up were they to opt for direct billing.'' (CN Comments 21–22.) However, Class I carriers are only required to directly bill the shipper for demurrage when the shipper and warehouseman agree to that arrangement and so notify the rail carrier. The Board estimates that each Class I railroad would receive approximately 60 of these agreements per year. The Board therefore disagrees with CN's burden-hour and frequency estimates. Nevertheless, Board staff has reviewed its burden-hour estimates to prepare for such direct billing and, to reflect the fact that the requests for direct billing could increase a carrier's workload, has increased its estimate from five minutes per agreement to one hour per agreement.[33]

No other railroads commented on the Board's estimates.

This modification to an existing collection, along with CN's comment and the Board's response, will be submitted to OMB for review as required under the PRA, 44 U.S.C. 3507(d), and 5 CFR 1320.11.

Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. 801–808, the Office of Information and Regulatory Affairs has designated this rule as non-major, as defined by 5 U.S.C. 804(2).

List of Subjects in 49 CFR Part 1333

Penalties, Railroads.

It is ordered:

1. The Board adopts the final rule as set forth below. Notice of the final rule will be published in the **Federal Register**.

2. This decision is effective on June 20, 2020.

3. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

Decided: April 30, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Jeffrey Herzig,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board amends part 1333 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1333—DEMURRAGE LIABILITY

■ 1. Revise the authority citation for part 1333 to read as follows:

Authority: 49 U.S.C. 1321, 10702, and 10746.

■ 2. Section 1333.2 is revised to read as follows:

§ 1333.2 Who May Charge Demurrage and Who May Enter into Contracts Pertaining to Demurrage.

A serving carrier and its customers (including those to which it delivers rail cars at origin or destination) may enter into contracts pertaining to demurrage. Additionally, a third-party intermediary may enter into contracts with a shipper (or consignee) that the shipper (or consignee) shall be billed for demurrage pursuant to section 1333.3(b). However, in the absence of such contracts, demurrage will be governed by the demurrage tariff of the serving carrier.

■ 3. In § 1333.3, redesignate the existing text as paragraph (a) and add paragraph (b) to read as follows:

§ 1333.3 Who Is Subject to Demurrage.

(a) * * *

(b) If the rail cars are delivered to a third-party intermediary that has reached an agreement with a shipper (or consignee) that the shipper (or consignee) shall be billed for demurrage, then the serving Class I carrier shall, after being jointly notified of the agreement by the shipper (or consignee) and third-party intermediary, bill the shipper (or consignee) for demurrage charges without requiring the third-party intermediary to act as a guarantor, unless and until a party to the agreement notifies both the serving Class I carrier and the other party to the agreement that the agreement is no longer in force. Pursuant to this paragraph, the shipper (or consignee) shall be liable to the Class I carrier for demurrage but shall not be prohibited from seeking payment from the third-party intermediary for demurrage charges for which the third-party intermediary is responsible pursuant to an agreement between the shipper (or consignee) and the third-party intermediary. The joint notice required by this paragraph may be provided in hard copy or electronic form, and must contain the contact information for the shipper (or consignee) who has agreed to be billed (and liable to the Class I carrier) for demurrage and provide the date upon which the Class I carrier is to begin billing the shipper (or consignee) for demurrage (no earlier than 20 days after the notice is provided). With respect to Class I carriers' obligations for direct billing, a statement from one party that the agreement has been terminated is sufficient to end the direct-billing requirement, regardless of any disputes as to the sufficiency of the termination under the terms of the specific agreement between the shipper (or consignee) and third-party intermediary.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

Sample Letter

[Date]

[Shipper's (or Consignee's) Name]
[Shipper's (or Consignee's) Mailing Address]
[Shipper's (or Consignee's) Phone Number]
[Shipper's (or Consignee's) Email Address]

[Third-Party Intermediary's Name]
[Third-Party Intermediary's Mailing Address]
[Third-Party Intermediary's Phone Number]
[Third-Party Intermediary's Email Address]

Dear [Serving Class I Carrier]:

[Shipper's (or Consignee's) Name] and [Third-Party Intermediary's Name] have reached an agreement that [Shipper's (or Consignee's) Name] shall be billed for demurrage as of [date], and that [Shipper's (or Consignee's) Name] shall be liable to [Serving Class I Carrier] for demurrage that accrues on all of the shipments received by [Third-Party Intermediary's Name] from [Shipper's (or Consignee's) Name] during the term of the agreement.

Sincerely,

Shipper's (or Consignee's) Name

Shipper's (or Consignee's) Signature

Third-Party Intermediary's Name

Third-Party Intermediary's Signature

[FR Doc. 2020–09683 Filed 5–5–20; 8:45 am]

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[33] The Board also clarifies that its burden estimates are on a per agreement basis (*see NRPM,* EP 759, slip op. at 16), not on a per invoice basis (*see id.* at 17, inadvertently referencing per invoice). CN suggests that, if only some terminal customers agree to direct billing and so notify CN, it would be ''required to devote significant staffing needs to creating and separating the bills.'' (CN Comments 22.) This general concern does not challenge the Board's frequency estimate (60 agreements per Class I carrier), nor does it provide specific burden hours based on a more limited number of agreements.

SURFACE TRANSPORTATION BOARD

49 CFR Part 1333

[Docket No. EP 757]

Policy Statement on Demurrage and Accessorial Rules and Charges

AGENCY: Surface Transportation Board.

ACTION: Statement of Board policy.

SUMMARY: The Surface Transportation Board (STB or Board) is issuing this policy statement, following public notice and comment, to provide the public with information on principles the Board would consider in evaluating the reasonableness of demurrage and accessorial rules and charges.

DATES: This policy statement is effective on May 30, 2020.

FOR FURTHER INFORMATION CONTACT: Sarah Fancher at (202) 245–0355. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Demurrage is subject to Board regulation under 49 U.S.C. 10702, which requires railroads to establish reasonable rates and transportation-related rules and practices, and under 49 U.S.C. 10746, which requires railroads to compute demurrage charges, and establish rules related to those charges, in a way that will fulfill the national needs related to freight car use and distribution and maintenance of an adequate car supply.[1] Demurrage is a charge that serves principally as an incentive to prevent undue car detention and thereby encourage the efficient use of rail cars in the rail network, while also providing compensation to rail carriers for the expense incurred when rail cars are unduly detained beyond a specified period of time (*i.e.,* ''free time'') for loading and unloading. *See Pa. R.R.* v. *Kittaning Iron & Steel Mfg. Co.,* 253 U.S. 319, 323 (1920) (''The purpose of demurrage charges is to promote car efficiency by penalizing undue detention of cars.''); 49 CFR 1333.1; *see also* 49 CFR pt. 1201, category 106.[2] Accessorial charges are not specifically defined by statute or regulation but are generally understood to include charges other than line-haul and demurrage charges. *See Revisions to Arbitration Procedures,* EP 730, slip op. at 7–8 (STB served Sept. 30, 2016). As discussed below, this policy statement pertains to accessorial charges that, like demurrage charges, are designed or intended to encourage the efficient use of rail assets.

On October 7, 2019, the Board issued, for public comment, a notice of proposed statement of Board policy providing information with respect to certain principles it would consider in evaluating the reasonableness of demurrage and accessorial rules and charges. *See Policy Statement on Demurrage & Accessorial Rules & Charges* (*NPPS*), EP 757 (STB served Oct. 7, 2019).[3] As described in the *NPPS,* EP 757, slip op. at 2–3, that action arose, in part, as a result of the testimony and comments submitted in *Oversight Hearing on Demurrage & Accessorial Charges* (*Oversight Proceeding*), Docket No. EP 754. The Board commenced the *Oversight Proceeding* by notice served on April 8, 2019 (*April 2019 Notice*), following concerns expressed by users of the freight rail network (rail users)[4] and other stakeholders about recent changes to demurrage and accessorial tariffs administered by Class I carriers, which the Board was actively monitoring.[5]

In response to the *NPPS,* the Board received 44 comments and 13 replies.[6] After considering the comments received, along with the record in the *Oversight Proceeding,* the Board is issuing this statement of Board policy. Through this policy statement, the Board expects to facilitate more effective private negotiations and problem solving between rail carriers and shippers and receivers on issues concerning demurrage and accessorial rules and charges; to help prevent unnecessary future issues and related disputes from arising; and, when they do arise, to help resolve them more efficiently and cost-effectively. The Board is not, however, making any binding determinations by this policy statement. Nor is the Board promoting complete uniformity across rail carriers' demurrage and accessorial rules and charges; the principles discussed in this policy statement recognize that there may be different ways to implement and administer reasonable rules and charges.

[1] The Board's authority to regulate demurrage includes, among other things, transportation under the exemptions set forth in 49 CFR 1039.11 (miscellaneous commodities exemptions) and section 1039.14 (boxcar transportation exemptions). The Board recently amended those regulations to state more clearly that the exemptions do not apply to the regulation of demurrage. It also revoked, in part, the class exemption for the rail transportation of certain agricultural commodities at 49 CFR 1039.10 so that the exemption does not apply to the regulation of demurrage, making it consistent with similar class exemptions covering non-intermodal rail transportation. *Exclusion of Demurrage Regulation from Certain Class Exemptions* (*Demurrage Exclusion Final Rule*), EP 760 (STB served Feb. 28, 2020).

[2] In *Demurrage Liability* (*Demurrage Liability Final Rule*), EP 707, slip op. at 15–16 (STB served Apr. 11, 2014), the Board clarified that private car storage is included in the definition of demurrage for purposes of the demurrage regulations established in that decision. The Board uses the same definition for purposes of this policy statement.

[3] Notice was published in the **Federal Register**, 84 FR 54,717 (Oct. 10, 2019).

[4] As used in this policy statement, the term ''rail users'' broadly means any person or business that receives rail cars for loading or unloading, regardless of whether that person or business has a property interest in the freight being transported. This policy statement uses the terms ''warehousemen'' or ''third-party intermediaries'' to refer more specifically to those entities with no property interest in the freight.

[5] The *April 2019 Notice* announced a public hearing, at which Class I carriers were directed to appear, and shippers, receivers, third-party logistics providers, and other interested parties were invited to participate. The notice also directed Class I carriers to provide specific information on their demurrage and accessorial rules and charges; required all hearing participants to submit written testimony (both in advance of the hearing); and permitted comments from interested parties who did not appear. The Board received over 90 pre-hearing submissions; heard testimony over a two-day period from 12 panels composed of, collectively, over 50 participants; and received 36 post-hearing comments. That record, which is detailed in the *NPPS* and summarized below, is available in Docket No. EP 754. *See NPPS,* EP 757, slip op. at 22–25 (Appendix listing the parties who provided comments or testimony in the proceeding).

[6] The Board received comments and/or reply comments from: The American Chemistry Council (ACC); the American Forest & Paper Association (AF&PA); American Fuel & Petrochemical Manufacturers (AFPM); the American Iron and Steel Institute (AISI); the American Short Line and Regional Railroad Association (ASLRRA); ArcelorMittal USA LLC (AM); Archer Daniels Midland Company; the Association of American Railroads (AAR); Auriga Polymers, Inc. a wholly owned subsidiary of Indorama, NA, on behalf of Indorama Ventures affiliates (Auriga/Indorama); the Automobile Carriers Conference; Barilla America, Inc. (Barilla); BNSF Railway Company (BNSF); Canadian National Railway Company (CN); Canadian Pacific Railway Company (CP); The Chlorine Institute (CI); The Corn Refiners Association (CRA); CSX Transportation, Inc. (CSXT); Diversified CPC International, Inc. (Diversified CPC); Dow, Inc. (Dow); The Fertilizer Institute (TFI); the Freight Rail Customer Alliance (FRCA); Growth Energy; the Industrial Minerals Association—North America (IMA–NA); the Institute of Scrap Recycling Industries, Inc. (ISRI); International Paper; the International Warehouse Logistics Association (IWLA); The Kansas City Southern Railway Company (KCS); Kinder Morgan Terminals (Kinder Morgan); the National Association of Chemical Distributors (NACD); the National Coal Transportation Association (NCTA); the National Grain and Feed Association (NGFA) (supported by the Agricultural Retailers Association; the Pet Food Institute; the National Oilseed Processors Association and the North American Millers' Association); The National Industrial Transportation League (NITL); the National Mining Association; the North American Freight Car Association (NAFCA); Omaha Public Power District (OPPD); Peabody Energy Corporation; Plastic Express/PX Services (Plastic Express); the Portland Cement Association (PCA); the Private Railcar Food and Beverage Association, Inc. (PRFBA); Union Pacific Railroad Company (UP); and the Western Coal Traffic League and Seminole Electric Cooperative, Inc. (WCTL/SEC). Two comments were filed after the comment deadline of November 6, 2019. In the interest of a more complete record, the late-filed comments are accepted into the record.

When adjudicating specific cases, the Board will consider all facts and arguments presented in such cases.

The Board encourages all carriers, and all shippers and receivers, to work toward collaborative, mutually beneficial solutions to resolve disputes on matters such as those raised in the *Oversight Proceeding*[7] and intends for this policy statement to provide useful guidance to all stakeholders.

Historical Overview and General Principles

The *NPPS,* EP 757, slip op. at 4–7, provides a detailed historical overview and summary of general principles related to demurrage. The Board here addresses some of the more general comments raised by commenters before turning to comments about the specific issues addressed in the policy statement.

Rail users generally support the proposed policy statement and endorse its key principles. Many rail carrier commenters also either generally support or do not take exception to the general principles discussed in the proposed policy statement. In particular, several Class I carriers voiced support for two key principles: That there may be different ways to implement and administer reasonable demurrage rules and practices, and that disputes pertaining to demurrage are best resolved on a case-specific basis that considers all pertinent facts. (*See* BNSF Comments 2–3; CSXT Comments 3; UP Comments 2; CN Reply Comments 3.) AAR, however, raises objections, which are shared by some carriers, to certain language in the proposed policy statement related to compensation and the imposition of demurrage charges for delays beyond a rail user's reasonable control. (*See* AAR Comments 1–6; CSXT Comments 1–2; CP Comments 15–16; KCS Comments 3, 5.)

In its discussion of general principles, the Board stated that the overarching purpose of demurrage is to incentivize the efficient use of rail assets (both equipment and track) by holding rail users accountable when their actions or operations use those resources beyond a specified period of time. *NPPS,* EP 757, slip op. at 6–7 (citing *Kittaning,* 253 U.S. at 323).[8] That period of time must be reasonable,[9] and further, it is unreasonable to charge demurrage for delays attributable to the rail carrier. *See, e.g., R.R. Salvage & Restoration, Inc.,* NOR 42102 et al., slip op. at 4 (''a shipper is not required to compensate a railroad for delay in returning the asset if the railroad and not the shipper is responsible for the delay''). The Board also reiterated its concerns about demurrage charges for delays that a shipper or receiver did not cause. *NPPS,* EP 757, slip op. at 7 (citing *Utah Cent. Ry.—Pet. for Declaratory Order—Kenco Logistic Servs., LLC,* FD 36131, slip op. at 12 n.38 (STB served Mar. 20, 2019); *Exemption of Demurrage from Regulation,* EP 462, slip op. at 4 (STB served Mar. 29, 1996)). The Board stated that where demurrage charges are imposed for circumstances beyond the shipper's or receiver's reasonable control, they do not accomplish their purpose to incentivize behavior to encourage efficiency—the stated rationale for and objective of the rail carriers' demurrage rules and charges.[10]

In its comments, AAR claims that the proposed policy statement ''ignore[s] the compensation function of demurrage.'' (AAR Comments 4.) But the Board's regulations and the *NPPS* recognize this dual role, *see NPPS,* EP 757, slip op. at 2 (citing 49 CFR 1333.1), and the Board recognizes and reaffirms here that carriers should be compensated when a rail user unduly detains rail assets. As noted by one rail carrier in the *Oversight Proceeding,* ''Congress framed the purposes of demurrage not in terms of cost recovery . . ., but rather in terms of incentives.'' CN Comments 8, June 6, 2019, *Oversight Proceeding,* EP 754. In other words, under the operative statutory framework, demurrage rules and charges must serve an incentivizing function. And, as AAR itself recognized in the *Oversight Proceeding,* demurrage and storage charges have long been considered ''primarily a penalty to deter undue car detention, and to a lesser extent, compensation to the railroad for expenses incurred.'' AAR Comments 4, June 6, 2019, *Oversight Proceeding,* EP 754 (quoting *R.Rs. Per Diem, Mileage, Demurrage & Storage—Agreement,* 1 I.C.C.2d 924, 933 (1985)).[11] When carriers established individualized demurrage programs in the post-Staggers Act[12] era, they stopped breaking out demurrage charges into incentivizing (punitive) and compensatory (per diem) components. Cases involving disputed charges are no longer decided on that basis, and, in the *Oversight Proceeding,* AAR eschewed a return to the former system.[13] The compensatory function of demurrage is achieved, along with its incentivizing function, by permitting the delivering carrier to retain the charges assessed for a rail user's undue detention of rail assets.

AAR also argues that ''[t]he law is well settled that assessment of demurrage charges in no way depends upon a finding of shipper or consignee fault.'' (AAR Comments 6 (quoting *Foreston Coal Int'l* v. *Balt. & Ohio R.R.,* 349 I.C.C. 495, 500 (1975).) AAR's argument, however, fails to take full account of the caselaw on this issue. As an initial matter, AAR overlooks that each case stands on its own facts, as the agency retains broad discretion to determine whether demurrage charges, under all the circumstances of a particular case (including fault), are reasonable under section 10702 and comport with the statutory requirements specified in section 10746.[14] Also overlooked is the fact that, as AAR acknowledged in the *Oversight Proceeding,* historically under ''straight'' demurrage programs,[15] ''the

[7] For example, KCS reportedly forgave significant demurrage bills because the shipper had agreed to spend at least an equal amount to build capacity to store its own cars. KCS Comments 5, May 8, 2019, *Oversight Proceeding,* EP 754.

[8] *Accord Increased Demurrage Charges, 1956,* 300 I.C.C. 577, 585 (1957) (''The primary purpose of demurrage regulations is to promote equipment efficiency by penalizing the undue detention of cars.'' (citation omitted)).

[9] *See, e.g., Kittaning,* 253 U.S. at 323 (''[T]he shipper or consignee . . . is entitled to detain the car a reasonable time . . . .''); *R.R. Salvage & Restoration, Inc.—Pet. for Declaratory Order—Reasonableness of Demurrage Charges,* NOR 42102 et al., slip op. at 4 (STB served July 20, 2010) (time period must be reasonable).

[10] *See, e.g.,* citations *infra* note 23.

[11] As the Interstate Commerce Commission also explained in that decision, ''[d]emurrage and storage charges are assessed by railroads against shippers or receivers for undue detention of equipment.'' 1 I.C.C.2d at 933. ''Unlike per diem and allowances, the primary purpose of demurrage and storage charges is not to compensate the owner of the car, but to enhance efficient car use by ensuring the prompt turnaround of equipment.'' *Id.* at 934.

[12] Staggers Rail Act of 1980, Public Law 96–448, 94 Stat. 1895.

[13] *See* AAR Comments 8, June 6, 2019, *Oversight Proceeding,* EP 754 (stating that ''[a]fter Staggers, it was no longer necessary or appropriate to require railroads to use uniform demurrage tariffs that included prescribed terms, compensatory and penalty elements, and regulated rates'').

[14] *See, e.g., N. Am. Freight Car Ass'n* v. *BNSF Ry.,* NOR 42060 (Sub-No. 1), slip op. at 8 (STB served Jan. 26, 2007) (stating that Congress ''gave the Board 'broad discretion to conduct case-by-case fact-specific inquiries to give meaning to [section 10702's statutory] terms, which are not self-defining' '' and explaining that ''[t]his broad discretion is necessary to permit the Board to tailor its analysis to the evidence proffered and arguments asserted under a particular set of facts'' (citing *Granite State Concrete Co.* v. *STB,* 417 F.3d 85, 92 (1st Cir. 2005))); *N. Am. Freight Car Ass'n* v. *STB,* 529 F.3d 1166, 1170–71 (DC Cir. 2008) (agency has ''wide discretion in formulating appropriate solutions'' when dealing with complex matters within its expertise, including claims involving statutory obligations under section 10702 and section 10746 (citation omitted)).

[15] Historically, the detention of freight rail cars was governed by a uniform code of demurrage rules and charges, which offered shippers and receivers

Continued

shipper or receiver was not assessed demurrage if severe weather or other circumstances beyond their control prevent[ed] them from returning cars on time.'' AAR Comments 5, June 6, 2019, *Oversight Proceeding,* EP 754. AAR also overlooks more recent Board decisions, discussed in the *NPPS,* EP 757, slip op. at 6–7, expressing concern about holding a rail user liable for demurrage attributable to delays beyond its reasonable control. Several carriers acknowledged at the oversight hearing various circumstances in which it would not be appropriate to charge a customer for delays the customer did not cause,[16] and UP and ASLRRA affirmatively state that demurrage should not be charged to rail users for delays beyond their reasonable control.[17]

In sum, the Board finds that AAR's arguments are misplaced, as there have been long-standing concerns about rail users being held responsible for circumstances beyond their reasonable control. The proposed policy statement properly focused on the foundational questions that arise in determining whether demurrage rules and charges are reasonable and designed to fulfill national needs related to freight car use and distribution, and to maintenance of an adequate car supply, under 49 U.S.C. 10746.[18]

As noted above, rail users generally support the proposed policy statement, and several agree with the Board that the principles outlined in the *NPPS* would help prevent disputes from arising, and, when they do arise, help resolve them more efficiently and cost-effectively.[19] Some voiced concern that carriers would not voluntarily change certain rules and practices and called for further prescriptive actions.[20] Such prescriptive actions are not appropriate for inclusion in a policy statement, and the Board declines at this time to take further regulatory action beyond the actions taken in *Demurrage Exclusion Final Rule,* Docket No. EP 760, and the actions under consideration in *Demurrage Billing Requirements,* Docket No. EP 759. However, the Board will remain open to argument that these concerns and suggestions should be considered in future proceedings in assessing the reasonableness of demurrage rules and charges and whether they comport with the objectives specified in section 10746. Further, carriers are encouraged to thoughtfully consider rail users' concerns and suggestions—along with the principles discussed below—as potential solutions that would promote the goals of transparency, timeliness, and mutual accountability stakeholders broadly profess to embrace.

Free Time

In the *NPPS,* EP 757, slip op. at 7–10, the Board described the background and current issues surrounding free time—the period of time allowed for a rail user to finish using rail assets and return them to the railroad before demurrage charges are assessed.[21] The Board explained that free time, which railroads may set within reasonable limits, helps temper adverse impacts to rail users of delays arising from service variability, and plays a role in the credit and debit rules and practices of many rail carriers. *NPPS,* EP 757, slip op. at 8.

The *NPPS* also explained that, until recently, rail carriers typically provided at least 24 hours of free time (or one credit day) to load rail cars and at least 48 hours of free time (or two credit days) to unload cars.[22] *NPPS,* EP 757, slip op. at 8 (citing *Portland & W. R.R.—Pet. for Declaratory Order—RK Storage & Warehousing, Inc.,* FD 35406, slip op. at 5 (STB served July 27, 2011).) Some Class I carriers use alternative rules and practices for private cars in which no credit days are given as a proxy for free time. *NPPS,* EP 757, slip op. at 8–9.

Recent reductions in free time implemented by several Class I carriers were a major focal point of the *Oversight Proceeding.* At least one rail carrier reduced the number of credit days for loading and unloading private cars, in some circumstances, from two to zero. Some other rail carriers reduced free time for unloading from 48 to 24 hours (or two credit days to one) for both private and railroad-owned cars. In its *April 2019 Notice,* the Board directed the Class I carriers to submit information on a list of specified subjects, including all tariff changes since January 2016 pertaining to the amount of free time allowed for loading and unloading rail cars and the reason(s) for the change. *April 2019 Notice,* EP 754, slip op. at 2–3.

Rail carriers that reduced free time identified similar objectives and rationales for doing so: to better align the behavior of shippers and receivers in order to promote network fluidity for the benefit of all rail users through improved service reliability and reduced cycle times. These carriers

two alternative methods for computing demurrage: Straight demurrage and average demurrage. Under the straight demurrage plan, which historically applied in the absence of any other arrangement with the rail carrier, charges were applied and billed on individual cars at daily rates when cars were detained beyond the allowable free time. *See NPPS,* EP 757, slip op. at 4. The Board mentions straight demurrage programs here not to suggest a return to the former system but rather to give a more complete account of the law and history on the issue.

[16] *See, e.g.,* UP Comments 10–11, 14, 23, June 6, 2019 (filing ID 247892), *Oversight Proceeding,* EP 754; Hr'g Tr. 146:11 to 147:1, May 22, 2019, *Oversight Proceeding,* EP 754 (CSXT agreeing that demurrage should not be assessed where charges penalize a shipper who is powerless to avoid or abate the detention); Hr'g Tr. 923:8 to 924:16, May 23, 2019, *Oversight Proceeding,* EP 754 (BNSF agreeing that ''it's not a strict liability standard in the law or in practice'' and noting language in its tariffs excusing demurrage for force majeure events beyond the control of a shipper).

[17] *See* UP Comments 3 (also endorsing same principle for accessorial charges); ASLRRA Comments 4.

[18] In response to AAR's assertion that a policy statement cannot be used to change the law, (*see* AAR Comments 5), the Board reiterates that this policy statement articulates what the Board may consider in future decisions and does not constitute a binding determination by the Board or seek to change the law. *See NPPS,* EP 757, slip op. at 3–4. The general principles and non-binding considerations discussed in a statement of Board policy—particularly one that was published for public comment—are well within the bounds of appropriate agency action.

[19] *See, e.g.,* ACC Comments 3; ISRI Comments 8, 12 (also noting that the policy statement appropriately ''provid[es] flexibility to account for differing factual circumstances inherent in the receipt and shipment of goods by rail''); Barilla Comments 2–3 (principles will ''establish a foundation for the railroads and their customers to recognize one another as partners when addressing issues and potential [rule] changes in the future''; also noting that some rules discussed at the oversight hearing have since been removed); AF&PA Comments 3 (principles in the policy statement provide ''provide valuable guidance for the future administration of demurrage and accessorial charges''); IMA–NA Comments 2 (same); CI Comments 1 (policy statement ''should assist in resolving many of the problems with demurrage and accessorial rules and charges'').

[20] Several parties state that the Board should require railroads to comply with and incorporate the policy statement into their tariffs. (*See, e.g.,* Kinder Morgan Comments 2, 11–12; AISI Comments 6–7; PCA Comments 3–4; WCTL/SEC Comments 5. *See also* AM Comments 5; NCTA Comments 4–5; NGFA Comments 3, 21–22 (arguing that the Board should adopt binding rules or final guidelines and direct railroads to conform within specified time); FRCA Comments 5 (arguing that ''the Board should require carriers to certify that their rules and practices comply with Board's standards'' and impose penalties if noncompliance is demonstrated).)

[21] As the Supreme Court has noted, ''the duty of loading and of unloading carload shipments rests upon the shipper or consignee. To this end he is entitled to detain the car a reasonable time without any payment in addition to the published freight rate.'' *Kittaning,* 253 U.S. at 323.

[22] Tariff provisions typically define the amount of free time provided in terms of 24-hour periods or ''credit days,'' which commonly begin to run at 12:01 a.m. the day following actual or constructive placement (a status assigned when a rail car is available for delivery but cannot actually be placed at the receiver's destination because of a condition attributable to the receiver such as lack of room on the tracks in the receiver's facility, *see Savannah Port Terminal R.R.—Pet. for Declaratory Order—Certain Rates & Practices as Applied to Capital Cargo, Inc.,* FD 34920, slip op. at 3 n.6 (STB served May 30, 2008)).

stated that the reductions were made to enable them to optimize network efficiencies and provide better, more reliable service; that the changes were not made to generate revenue; and that their hope is that recent revenue increases generated from demurrage charges will be temporary as shippers and receivers adapt and respond because, in the words of one rail carrier, ''the intention is to improve service, not drive cost increases for our customers.'' [23] Rail carriers' post-hearing submissions largely reiterated these points and expressed willingness to work with customers to help them align their behavior to better meet the reductions in free time. While the Board recognizes that some changes and rail carrier outreach occurred following the hearing, it is apparent that many issues related to free time remain.

In the *Oversight Proceeding,* interested parties from many industries expressed multiple concerns about the recent reductions in free time. Several stated that they lacked the physical capacity or capital needed to expand facilities to meet the reduced free-time periods. Many reported that bunching or otherwise unreliable service is a major obstacle to meeting the reduced free-time periods, and that the recent reductions have made it more difficult and costly to deal with unreliable service because the free time that has been eliminated had served as an important buffer against unpredictable railroad performance. Rail users that rely on private rail cars expressed additional objections and concerns and noted that there has been a significant industry shift from rail carrier ownership of rail cars to private car ownership since the enactment of section 10746. *See NPPS,* EP 757, slip op. at 9–10 (describing comments submitted in Docket No. EP 754). Although rail carriers presented data in the *Oversight Proceeding,* generally on a system-wide basis, reflecting recent improvements in some metrics, they presented limited data on the extent to which changes to their demurrage rules and charges succeeded in reducing loading and unloading times, as compared to the times prior to the changes. *See NPPS,* EP 757, slip op. at 11.

Comments from rail users on the *NPPS* broadly reiterate these concerns and suggest that the Board should take more binding action.[24] Comments from rail carriers on the *NPPS* were largely silent about its discussion of free time. CP states that its customers adapted to free-time reductions implemented in 2013 by adding track capacity, using CP tools to better manage their pipeline, and adjusting labor schedules, and that CP is moving more cars while demurrage charges have decreased. (CP Comments 7.) UP states that it has worked collaboratively with customers over the past year and that ''the vast majority'' have successfully adapted to a reduction in free time from 48 hours to 24 hours. (UP Reply 2.)

Demurrage serves a valuable purpose to encourage the efficient use of rail assets (both equipment and track) by holding rail users accountable when their actions or operations use those assets beyond a specified period of time. That period of time must be reasonable and consistent with the overarching purpose of demurrage. The Board continues to have serious concerns about the adverse impacts of reductions in free time to rail users, including the potentially negative consequences of providing no credit days for private cars if rail carriers do not have reasonable rules and practices for dealing with, among other things, variability in service and carrier-caused bunching, and for ensuring that rail users have a reasonable opportunity to evaluate their circumstances and order incoming cars before demurrage begins to accrue. Some of these reductions to free time or credit days may make it more difficult for rail users to contend with variations in rail service and therefore may not serve to incentivize their behavior to encourage the efficient use of rail assets.[25] In some circumstances, which would need to be examined in individual cases, such reductions may not be reasonable or consistent with rail carriers' statutory charge to compute demurrage and establish related rules in a way that fulfills the national needs specified in section 10746. Where, for example, carrier-caused circumstances give rise to a situation in which it is beyond the rail user's reasonable control to avoid charges, the overarching purpose of demurrage is not fulfilled.

As stated in the *NPPS,* EP 757, slip op. at 12, such circumstances might include, for example, charging demurrage that accrues as a result of a missed switch (both cars scheduled to be switched and incoming cars impacted by the missed switch); charging demurrage for transit days to move cars from constructive placement in remote locations; or charging demurrage that arises from bunched deliveries substantially in excess of the number of cars ordered until the rail user has had a reasonable opportunity to process the excess volume of incoming cars. Changes in historical practices on which the rail user has long relied (*e.g.,* regarding switching frequency or delivery methods that deviate from prior arrangements made by the parties) may also be taken into account.[26]

Lastly, the Board remains concerned that, in some circumstances, such reductions in free time may jeopardize important goals of the nation's rail transportation policy by rendering freight rail service less likely to meet the needs of the public and, if other modes are even effectively an option for a rail user, less competitive with other transportation modes.[27]

The Board recognizes that reductions in free time might be justified if there were evidence to show, by way of example, that (1) advances in technology or productivity have made compliance with the shorter time frames reasonably achievable; (2) service improvements resulting from more efficient use of rail assets would facilitate the ability of shippers and receivers to adjust to the reductions; (3) reductions are necessary to address systemic problems with inefficient behavior or practices by shippers or receivers; or (4) rail carriers have implemented tariff provisions or program features—such as credits for

[23] UP Comments 2, May 8, 2019, *Oversight Proceeding,* EP 754; *see generally id.* at 1–2; UP Comments 3, June 6, 2019 (filing ID 247876), *Oversight Proceeding,* EP 754; Norfolk Southern Railway Company (NSR) Comments 2–3, May 8, 2019, *Oversight Proceeding,* EP 754; CSXT Comments 3–5, May 8, 2019, *Oversight Proceeding,* EP 754. BNSF stated that it ''puts a tremendous amount of energy and resources into the area of demurrage and storage for the express purpose of collecting less demurrage revenue.'' BNSF Comments 5, May 8, 2019, *Oversight Proceeding,* EP 754.

[24] *See, e.g.,* TFI Comments 4–5; NITL Comments 4–5; CRA Comments 5–6; AF&PA Comments 4–5; AISI Comments 7–8; Dow Comments 3–4; Diversified CPC Comments 3; NGFA Comments 11–12; ISRI Comments 4–5; Joint Reply (ACC, CRA, TFI, NITL) 8–9.

[25] Parties are, of course, free to negotiate and enter into contracts that provide for any period of free time (including zero credit days) to which the parties agree. 49 CFR 1333.2; *Demurrage Liability Final Rule,* EP 707, slip op. at 25 (noting that the Board's rules specifically allow parties to enter into contracts pertaining to demurrage).

[26] On the other hand, circumstances within a rail user's reasonable control might include, for example, taking reasonable steps to: Ensure that its facility is right-sized for its expected volume of incoming traffic when it receives reliable, consistent service; manage its pipeline to mitigate incoming car volumes that exceed its capacity; and order and release cars in the manner specified by reasonable tariff requirements.

[27] *See* 49 U.S.C. 10101 (stating, in pertinent part, ''[i]n regulating the railroad industry, it is the policy of the United States Government . . . (4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense; . . . [and] (14) to encourage and promote energy conservation'').

bunching, service variabilities, and certain capacity constraints—that place the avoidance of demurrage charges within the reasonable control of the rail user.

The Board also recognizes an important goal of demurrage in incentivizing the behavior of rail users to encourage the efficient use of rail assets, which benefits rail carriers and users alike. Rail carriers and users have a shared responsibility in this endeavor—rail carriers to implement and administer reasonable rules and charges designed to accomplish this goal, and rail users to recognize and accept responsibility for promoting efficiencies within their reasonable control.

Although the Board will not, as certain commenters suggest, take more binding action pertaining to free time,[28] it will closely scrutinize demurrage rules and charges where free time has been reduced, or where no credit days have been provided. The Board encourages all stakeholders to take the principles and considerations discussed above into account going forward. The Board will do likewise in future proceedings, along with all evidence and argument the parties present.

Bunching

Bunching-related issues were identified as a common problem by rail users across a broad range of industries in the *Oversight Proceeding.* Some rail carriers in that proceeding stated that they award credits for bunching in some instances but did not describe with specificity how these credits are awarded or did not otherwise address the concerns expressed by rail users. *See NPPS,* EP 757, slip op. at 13–14 (describing comments submitted in Docket No. EP 754).

In response to the *NPPS,* rail users reiterate that bunching is a significant problem that has increased following changes to rail carriers' operating plans,[29] has become even more difficult to contend with due to free-time reductions,[30] and often is not sufficiently addressed in either carrier tariffs or the initial invoices.[31] Some commenters request the Board to elaborate on what it would consider ''reasonable rules and practices for dealing with . . . variability in service and carrier-caused bunching''; [32] two propose mechanisms keyed to trip-plan compliance; [33] and some state that upstream bunching is an issue best resolved among the railroads participating in the movement without involving the rail user.[34]

Certain rail carriers and ASLRRA express concerns about addressing upstream bunching in the policy statement. CP argues that any attempt by the Board to address upstream bunching is contrary to law insofar as past decisions have held rail users responsible for demurrage unless the delivering carrier is at fault. (CP Comments 10 (citing *Chrysler Corp.* v. *N.Y. Cent. R.R.,* 234 I.C.C. 755, 758 (1939).) In addition, these commenters note that because the delivering carrier may have no knowledge of or ability to control upstream events, it should not be forced to bear the costs of delays arising from off-line events. (CP Comments 10–12; KCS Comments 3 n.2; ASLRRA Reply 4–5.)

The types of factual scenarios described by CP, KCS, and ASLRRA are among the reasons why bunching should be addressed on a case-by-case basis in order to permit the Board to properly consider all relevant circumstances pertaining to an assessment of demurrage. Further, it is the Board's view that carriers should consider the actions of upstream carriers when administering their demurrage rules and charges. CP's claim that Board consideration of upstream bunching would be contrary to law overlooks the points discussed above and in the *NPPS* explaining that demurrage rules and charges must be designed to incentivize rail users' behavior.[35] Where rail carriers' operating decisions or actions result in bunched deliveries and demurrage charges that are not within the reasonable control of the rail user to avoid, the overarching purpose of demurrage is not fulfilled.[36] When analyzing the appropriateness of demurrage charges, rail carriers should consider these principles both when cars originate with the serving carrier and when cars originate on an upstream carrier—as at least one carrier professes to do.[37] The Board encourages all rail carriers to take these considerations into account in their administration of demurrage rules and charges, particularly in evaluating whether their automatic billing processes sufficiently account for carrier-caused bunching (especially for cars that originate on their network [38] or bunching attributable to missed switches), and in resolving bunching disputes. In any future proceeding, the Board expects to take these considerations into account as well, along with any additional evidence and argument the parties may choose to present.

Accessorial Charges

Some commenters request that the Board clarify the definition of accessorial charges for purposes of the policy statement,[39] and ask that the policy statement include a more robust

[28] *See, e.g.,* TFI Comments 4–5; NITL Comments 4–5; CRA Comments 5–6; AF&PA Comments 4–5; AISI Comments 7–8; Dow Comments 3–4; Diversified CPC Comments 3; NGFA Comments 11–12; ISRI Comments 4–5; Joint Reply (ACC, CRA, TFI, NITL) 8–9.

[29] *See, e.g.,* CRA Comments 7 (stating that bunching has increased amid changes implemented by some railroads, despite members' best efforts to spread out car deliveries, resulting in demurrage charges that are not within their reasonable control); NGFA Comments 13 (stating that bunching of empty return cars has increased due to ''unilaterally imposed reductions in service frequency as an outgrowth of carriers' implementation of the so-called precision schedule railroad [(PSR)] operating model''); AFPM Comments 8 (stating that ''[b]unched deliveries increased in frequency following changes to rail carriers' operating plans''); NCTA Comments 6–7 (stating that PSR has disrupted and undermined service and created problems such as bunched rail cars and insufficient locomotive availability).

[30] *See, e.g.,* AF&PA Comments 4–5 (stating that challenges of contending with free time reductions are aggravated by erratic service); TFI Comments 5 (same); NITL Comments 4 (same); CRA Comments 5–6 (same); Auriga/Indorama Comments 2 (same). *See also* ACC Comments 2 (stating that free time is necessary to account for carrier-caused bunching and service variability); Dow Comments 3–4 (proposing minimum free time be keyed to service variability).

[31] *See, e.g.,* AISI Comments 8–9 (stating that carriers' tariffs and billing practices do not properly address railcar bunching); PCA Comments 5 (stating that tariffs often fail to address bunching); Kinder Morgan Comments 9–10 (same).

[32] NAFCA Comments 7; *see also* OPPD Comments 5–6; WCTL/SEC Comments 5.

[33] AFPM Comments 9; NGFA Comments 12–13.

[34] ISRI Reply 5–6; Joint Reply (ACC, CRA, TFI, NITL) 4.

[35] The Board also notes that relief for upstream bunching was available under the former uniform code for rail users that chose the straight demurrage plan. *See NPPS,* EP 757, slip op. at 4–5 & n.13.

[36] As noted above, such circumstances might include, for example, charging demurrage that arises from bunched deliveries substantially in excess of the number of cars ordered until the rail user has had a reasonable opportunity to process the excess volume of incoming cars. Other circumstances that could bear on an assessment of bunching include the considerations described in note 26, above.

[37] UP reportedly employs ''a case-by-case process within which customers are credited for carrier-caused bunching.'' UP Comments 10, June 6, 2019 (filing ID 247892), *Oversight Proceeding,* EP 754 (explaining that UP ''takes into account customer choices and actions, the actions of [UP's] interline partners, and [UP's] own actions in determining whether a customer should be charged for bunching-related demurrage'' and reiterating that ''[UP] does *not* charge the customer for bunching that is beyond the customer's reasonable control'').

[38] The Board recognizes that carriers may lack information needed to take upstream bunching into account in their initial invoices, but encourages them to do so when resolving bunching-related disputes. The Board further encourages carriers to seek to reconcile any costs incurred as a result of actions by the upstream carrier with that carrier.

[39] *See* NAFCA Comments 4; OPPD Comments 3.

discussion of how its general principles apply to accessorial charges.[40]

As stated in the *April 2019 Notice,* EP 754, slip op. at 2 n.1, and the *NPPS,* EP 757, slip op. at 2 & n.3, accessorial charges are generally understood to include anything other than line-haul or demurrage charges. Upon further consideration, however, the Board notes that many accessorial charges do not serve the same efficiency-enhancing purpose as demurrage or implicate issues raised in the Docket No. EP 754 *Oversight Proceeding.*[41] The Board therefore clarifies that, insofar as the purpose of an accessorial charge is to enhance the efficient use of rail assets in the same way as demurrage, the principles discussed in the policy statement would generally apply. The Board further clarifies that references to accessorial charges in the policy statement are intended to encompass only such types of charges.[42]

Overlapping Charges

Many participants in the *Oversight Proceeding* voiced concerns about additional charges that had recently been instituted by two Class I carriers for claimed customer-caused congestion or delay. *See NPPS,* EP 757, slip op. at 15 (describing comments submitted in Docket No. EP 754 relating to a so-called ''congestion'' charge imposed by NSR and a ''not prepared for service'' charge imposed by UP).

As noted in the *NPPS,* both rail carriers have since responded to these specific concerns. *See NPPS,* EP 757, slip op. at 15 (noting announcements that NSR would discontinue the ''congestion'' charge and that UP had clarified and limited the application of the ''not prepared for service'' charge). The Board was encouraged by these actions but nevertheless found it important to provide forward-looking guidance indicating that it would have concerns about such overlapping demurrage-type charges. *See id.* Commenters generally either broadly supported or did not address the Board's proposed guidance. ACC, however, argues that the discussion in the *NPPS* did not fully capture the concerns about overlapping charges, which may arise even when one of the charges might be considered reasonable. (ACC Comments 3.) The Board clarifies that, when adjudicating specific cases, it would have significant concerns about the reasonableness of a tariff provision that sought to impose an overlapping charge intended to serve the same purpose as demurrage, or a charge arising from the assessment of demurrage for congestion or delay that is not within the reasonable control of the rail user to avoid.[43] In an individual proceeding, the Board remains open to evidence and argument that such a charge could in some instance be reasonable, but no such information was presented in Docket No. EP 754 or in this proceeding.

Invoicing and Dispute Resolution

In the *Oversight Proceeding,* the Board heard repeatedly that demurrage charges are difficult, time-consuming, and costly to dispute and that invoices are often inaccurate or lack information needed to assess the validity of the charges. Commenters also stated that, under some carriers' rules and practices, charges must be disputed within limited time frames, while carriers are often slow to respond and disputes are often denied. Some tariffs have imposed costs or charges that serve as a deterrent to pursuing a dispute or a formal claim. *See NPPS,* EP 757, slip op. at 16 (describing comments submitted in Docket No. EP 754). Rail users reiterate these points in comments on the proposed policy statement,[44] and in *Demurrage Billing Requirements,* Docket No. EP 759, where the Board has proposed to specify certain information that Class I carriers must provide on or with demurrage invoices to enable recipients to, among other things, more readily verify the validity of the demurrage charges.[45] Two commenters also express concerns about untimely billing.[46]

While the Board recognizes that some rail carriers may already employ billing and dispute resolution rules and practices consistent with the principles discussed in this policy statement, the Board remains deeply troubled by these reports, which come from rail users in a broad range of industries that are highly dependent on rail service. If rail carrier rules and practices effectively preclude a rail user from determining what occurred with respect to a particular demurrage charge, then the user would not be able to determine whether it was responsible for the delay; the responsible party would not be incentivized to modify its behavior; and the demurrage charges would not achieve their purpose. Transparency, timeliness, and mutual accountability are important factors in the establishment and administration of reasonable rules and charges for demurrage.[47] Rail users should be able to review and, if necessary, dispute charges without the need to engage a forensic accountant or expend ''countless hours and extra overhead'' to research charges and seek to resolve disputes.[48]

As indicated in the *NPPS,* the Board encourages all Class I carriers (and Class II and Class III carriers to the extent they are capable of doing so), taking into account the principles discussed here, to provide, at a minimum and on a car-specific basis: The unique identifying information of each car; the waybill date; the status of each car as loaded or empty; the commodity being shipped; the identity of the shipper, consignee, and/or care-of party; the origin station and state of the shipment; the dates and times of actual placement, constructive placement (if applicable), notification of constructive placement (if applicable), and release; and the number of credits and debits issued for the shipment (if applicable).[49] The Board also expects

[40] *See* NGFA Comments 6–7, 19; NAFCA Comments 5; OPPD Comments 3–4.

[41] For example, some types of accessorial charges are imposed for services such as weighing rail cars or requests for special trains.

[42] Such charges would include, by way of example, the types of overlapping charges discussed below. The Board notes that, based on the descriptions given by the rail carriers, many of the accessorial charges identified in the May 1, 2019 Class I data submissions in Docket No. EP 754 would appear to meet this criterion, including the UP ''deadhead'' charge referenced by commenters in both that docket and this proceeding.

[43] The Board also notes that one commenter continues to express concerns about the ''deadhead'' charge assessed by UP. (*See* NGFA Reply 8–12.) Although not specifically addressed in the *NPPS,* it appears these charges could similarly raise issues related to overlapping charges or lack of control but, consistent with the guidance in this policy statement, such charges would need to be examined on a case-by-case basis.

[44] *See, e.g.,* NACD Comments 4; OPPD Comments 6–7; AFPM Comments 10–11; NGFA Comments 16–17; CRA Comments 8; NITL Comments 6–7.

[45] Comments submitted by Class I carriers in Docket No. EP 759 generally state that a substantial amount of information is already provided with the invoice or available through online platforms, while ASLRRA claims that small carriers lack the resources needed to provide detailed information to invoice recipients. Rail carriers largely did not address, in either this docket or Docket No. EP 759, other concerns voiced by rail users about the billing and dispute resolution process.

[46] *See* NCTA Comments 3–4 (reporting that shippers have experienced delays up to six months in receiving demurrage bills and suggesting that ''a three month or 90-day time frame limit would be more appropriate''); FRCA Comments 5 (requesting that carriers be required to make all invoice information available on a monthly basis to avoid the undisclosed accumulation of potential charges).

[47] These general principles are also important factors in assessing the reasonableness of rules and practices pertaining to the assessment of accessorial charges.

[48] *See* International Paper Comments 4, May 7, 2019, *Oversight Proceeding,* EP 754; *accord* Packaging Corporation of America Comments 4–5, 7–8, May 8, 2019, *Oversight Proceeding,* EP 754 (describing process that is ''hugely time and resource consuming'').

[49] In response to comments received in *Demurrage Billing Requirements,* Docket No. EP

Continued

rail carriers to bill for demurrage only when the charges are accurate and warranted, consistent with the purpose of demurrage, and to send invoices on a regular and timely basis.[50]

With respect to the dispute resolution process more broadly, several commenters request elaboration or prescriptive action pertaining to the Board's initial guidance that shippers and receivers should be given a reasonable time period to request further information and to dispute charges, and the rail carrier likewise should respond within a reasonable time period.[51] The Board will not take prescriptive action at this time. However, the Board emphasizes that the time frames in question should be both reasonable and balanced. By way of example, the Board would have serious concerns about a process that imposed a short deadline to dispute charges or a process that placed no meaningful restrictions on the time carriers can take to respond. Similarly, the Board would have serious concerns about the reasonableness of costs or charges that could deter shippers and receivers from pursuing a disputed claim. Although the Board remains open to argument and evidence in individual proceedings, no apparent justification for imposing such costs or charges was provided in the record in the *Oversight Proceeding* or in this proceeding.

Finally, some commenters call for the Board to establish more streamlined formal dispute resolution procedures.[52] The Board notes that a variety of formal mechanisms already exist, both within and outside the Board's purview, for aggrieved parties to resolve demurrage and accessorial charge disputes in an efficient, cost-effective manner. For example, three Class I carriers have agreed to arbitrate certain demurrage disputes under the binding, voluntary program set forth in 49 CFR part 1108.[53] In addition, BNSF was commended by one commenter for including an arbitration provision in its tariffs, *see* NGFA Comments 28, May 8, 2019, *Oversight Proceeding,* EP 754, and UP reported that it has also agreed to arbitrate contested demurrage and accessorial charges using various external programs, *see* UP Response to Data Request 3 (pdf page 8), May 1, 2019, *Oversight Proceeding,* EP 754 (listing NGFA's Rail Arbitration Rules and AAR's Interchange Rules).[54]

The Board commends rail carrier commitments to address disputes about demurrage and accessorial rules and charges through arbitration or other streamlined dispute resolution procedures and strongly encourages all rail carriers to commit to doing so.[55] Likewise, the Board also strongly encourages rail users to make use of these procedures to resolve disputes that they are unable to resolve informally, and to keep the Board apprised of their endeavors to do so.[56] The Board hopes that such commitments by all stakeholders to make use of these procedures will make it unnecessary for the Board to revisit these issues. However, the Board remains open to doing so if stakeholders encounter obstacles to the effective use of the mechanisms already in place. The Board also expresses its commitment to resolve disputes brought before it in an expeditious manner. *See* 49 U.S.C. 10101(2) (''it is the policy of the United States government . . . to require fair and expeditious regulatory decisions when regulation is required'').

Credits

A common concern voiced by rail users in the *Oversight Proceeding* is that various limitations imposed by rail carriers diminish the utility of credits as a means of offsetting debits that are incurred, while carriers' charges (*i.e.,* debits) do not ''expire'' until they are paid. *See NPPS,* EP 757, slip op. at 18 (describing comments submitted in Docket No. EP 754). In the *NPPS,* the Board provided preliminary guidance as to how it would expect to evaluate credit rules and practices when adjudicating specific cases. In response, rail users reiterate the concerns about credits and broadly endorse the Board's suggestion that its concerns would be allayed if rail users were compensated for the value of unused credits at the end of each month (rather than the credits expiring).[57] Some rail users call for further action or guidance from the Board.[58] Some rail carriers state that credits are intended to address specific problems associated with carrier-caused delay, and that allowing customers to keep credits long after that delay would undermine the purpose of the credit, encourage inefficient use of rail assets, and create operational and accounting complexities. (CSXT Comments 3–4; CP

759, the Board is serving today a supplemental notice inviting parties to comment on certain modifications and additions to the notice of proposed rulemaking's proposal regarding information that Class I carriers would be required to provide on or with demurrage invoices to promote transparency and accountability.

[50] The Board declines to discuss specific time periods but notes that it would have significant concerns if (absent extenuating circumstances) a carrier permitted demurrage or accessorial charges to accrue over several months without invoicing the customer. The Board also notes that, according to information contained in the record in Docket No. EP 754 and various demurrage cases, carriers often appear to bill on a monthly cycle.

[51] *See, e.g.,* WCTL/SEC Comments 8 (asserting that carriers should be required to ''respond meaningfully'' to disputed charges within 30 days); NGFA Comments 17 (requesting greater specificity; recommending a minimum of 30 days for rail user to request additional information and dispute an erroneous charge); NAFCA Comments 8–9 (requesting greater specificity and more definitive Board position that carriers' dispute resolution processes should be expedited); OPPD Comments 7 (requesting greater specificity).

[52] AFPM Comments 14; PRFBA Comments 1; NGFA Comments 3, 7–8, 21–22; *see also* NGFA Comments 17 (stating that tariffs should clearly articulate the carrier's dispute resolution process, including whether it is willing to arbitrate disputes and if so, in which forum).

[53] *See* UP Notice (June 21, 2013), CSXT Notice (June 28, 2019), and CN Notice (July 1, 2019), *Assessment of Mediation & Arbitration Procedures,* EP 699.

[54] The Board also notes that, in addition to binding arbitration, parties can make use of the informal mediation process conducted by the Board's Rail Customer and Public Assistance (RCPA) program or formal mediation under 49 CFR part 1109 to attempt to negotiate an agreement resolving some or all of the issues involved in a dispute.

[55] The Board also encourages carriers to specify their dispute resolution procedures in their tariffs, consistent with their broadly expressed commitment to transparency in the Docket No. EP 754 *Oversight Proceeding.*

[56] The Board notes that its RCPA program (202–245–0238; *rcpa@stb.gov*) is available to assist with informal resolution of disputes. In addition, rail users have several avenues available to them to keep the Board apprised of demurrage-related problems that they encounter, such as the Railroad-Shipper Transportation Advisory Council, the National Grain Car Council, and the Rail Energy Transportation Advisory Committee, all of which meet regularly to provide guidance and advice to Board members on rail transportation issues and areas of concern. The Board therefore finds it unnecessary to establish an advisory committee or task force on demurrage as proposed by some commenters. (*See* NGFA Comments 9–10; CRA Comments 10–11.)

[57] *See, e.g.,* AF&PA Comments 7–8; TFI Comments 8–9; WCTL/SEC Comments 7–8; ISRI Comments 7; NGFA Comments 18; ISRI Reply 7–8; Joint Reply (ACC, CRA, TFI, NITL) 7–8; WCTL/SEC Reply 8.

[58] *See, e.g.,* AF&PA Comments 8 (arguing that the Board should clarify that railroads must offer credits for delays beyond the control of the shipper or receiver and should identify credits on the invoice); Kinder Morgan Comments 10–11 (asserting that credits that expire should be deemed presumptively unreasonable unless the railroad provides appropriate compensation); AISI Comments 8 (same); ACC Comments 2 (stating that the Board should adopt a policy calling for credits to be issued for cars delivered more than a specific time early or late from the original estimated time of arrival); NGFA Comments 12–13 (stating that carriers should be required to make tariffs reciprocal and provide remuneration if rail cars are not placed in accordance with the trip plan within the same amount of free time allowed by the carrier).

The Board acknowledges rail users' claims that providing such reciprocity may also promote more efficient car supply, and that the shift in rail car ownership from railroad-owned to private cars documented in the record of the *Oversight Proceeding, see NPPS,* EP 757, slip op. at 9–10, raises issues from the perspective of private car users. The Board remains open to argument and evidence in future cases in which these issues may be raised.

Comments 12–14 (also claiming that ''allowing [rail users] to monetize such credits penalizes the carrier'' and ''raises similar concerns as banked credits'' about disincentivizing efficiency); UP Comments 5–6 n.7.) UP also states that its system is consistent with agency precedent that favorably discusses monthly reconciliation of credits and debits and the expiration of unused credits, and suggests that the Board modify the policy statement to be consistent with that precedent. (UP Comments 5 (citing *Red Ash Coal Co.* v. *Central R.R. of N.J.,* 37 I.C.C. 460, 462 (1916).)

The Board remains troubled by the lack of reciprocity between demurrage credits and charges, particularly where the expiration date of a credit, in effect, undermines the value of credits allocated for a problem or delay that was not within the reasonable control of a rail user. The Board also recognizes that credits issued for carrier-caused problems and delays serve a different purpose than credits that function as a proxy for free time, and that different types of credits might have different application methods or expiration time frames. As stated in the *NPPS,* the Board remains open to argument and evidence in future cases that involve these issues. However, the Board disagrees with the concerns raised by the rail carriers on this issue. The primary concern in the *NPPS* was ''whether the shipper or receiver has been afforded a reasonable opportunity to make use of the credits,'' and, contrary to the claims of some carriers, (*see* CSXT Comments 3; CP Comments 13; UP Comments 6 n.7), the Board did not suggest that credits should never expire. The Board's concerns about this issue would be allayed if rail users were compensated for the value of unused credits at the end of each month. Compensating rail users for the value of unused credits at the end of each month could hold rail carriers more accountable for service failures that undermine network efficiency and make rail users less likely to incur future demurrage charges that could be offset by the credits; [59] it would also be consistent with the conventional calendar month-end accounting practice discussed in *Red Ash*.[60]

The Board reiterates its initial guidance and declines to take further regulatory action related to credits at this time. The Board intends to evaluate how credit rules and practices are administered in determining the reasonableness of demurrage rules and charges when adjudicating specific cases, including, in particular, whether the rail user has been afforded a reasonable opportunity to make use of the credits in question, before any expiration date imposed by the rail carrier. The Board reiterates that it would also take into account the purpose and function of the credits in question and that these concerns would be allayed if rail users were compensated for the value of unused credits at the end of each month (rather than the credits expiring). The Board remains open to argument and evidence on all credit issues, including those involving reciprocity.

Notice of Major Tariff Changes

Some commenters in the *Oversight Proceeding* indicated that carriers provided insufficient notice of major changes to demurrage and accessorial tariff provisions, particularly with respect to changes involving reductions in free time. Among other things, rail users commented that they were suddenly forced to try to redesign, on short notice, operations and infrastructure that had been designed around a 48-hour free-time provision, and noted that rail carriers had many months to adjust their operations to implement new operating plans but often expected customers to comply with their new rules and practices in 45 days. *See NPPS,* EP 757, slip op. at 19 (describing comments submitted in Docket No. EP 754). Rail users reiterate these points in this proceeding. Some comments call for prescriptive guidance that is not appropriate for inclusion in a policy statement; [61] others either tend to support or do not address the principles discussed in the *NPPS*.[62] UP states that it will continue to provide customers with ''reasonable notice of accessorial and demurrage tariff changes but not less than 60 days' notice.'' (UP Comments 3.)

The Board reiterates the guidance it provided in the *NPPS.* As a matter of commercial fairness, and consistent with the principles discussed in this policy statement, railroads should provide sufficient notice of major changes to demurrage and accessorial tariffs to enable shippers and receivers to evaluate, plan, and undertake any feasible, reasonable actions to avoid or mitigate new resulting charges. The Board recognizes that a 20-day notice period is statutorily prescribed for changes to common carrier rates and service terms. 49 U.S.C. 11101(c). However, in the Docket No. EP 754 *Oversight Proceeding,* rail carriers themselves recognized that 20 days was not sufficient lead time in many cases, and noted that they generally provided between 45 and 60 days, periods that other commenters found were still insufficient. Rail carriers also described various other actions taken to help shippers and receivers adapt, such as delayed billing and working with those that needed more flexibility. *See NPPS,* EP 757, slip op. at 19.

The Board continues to encourage rail carriers to take these and other initiatives to support all rail users facing the financial, operational, or other challenges of adjusting to major tariff changes, to thoughtfully consider the amount of advance notice that should be given, and to be especially cognizant of and accommodating to any unique obstacles a shipper or receiver may face in adapting to demurrage and accessorial tariff changes.

Demurrage Billing to Shippers Instead of Warehousemen

In the *Oversight Proceeding,* several participants expressed concerns about the impact of demurrage on third-party intermediaries who handle goods shipped by rail but have no property interest in them (also commonly known as warehousemen, as noted above) following the Board's adoption of the final rule in *Demurrage Liability,* Docket No. EP 707 (codified at 49 CFR part 1333). The *NPPS* addressed these issues and noted that the Board had initiated a rulemaking on this subject. *See NPPS,* EP 757, slip op. at 20–21. The Board refers stakeholders to the decision being issued concurrently herewith in *Demurrage Billing Requirements,* Docket No. 759, for further direction and guidance pertaining to this issue.

General Concluding Considerations

The Board concludes by restating two fundamental principles that all rail carriers, and all shippers and receivers, are encouraged to keep in mind. First, demurrage rules and charges may be unreasonable when they do not serve to incentivize the behavior of shippers and receivers to encourage the efficient use of rail assets. In other words, charges generally should not be assessed in circumstances beyond the shipper's or receiver's reasonable control. It follows, then, that revenue from demurrage

[59] Conversely, the Board notes that CP's claim that monetizing credits would ''raise[] similar concerns as banked credits'' about disincentivizing efficiency, (*see* CP Comments 14), is neither explained nor persuasive as a matter of policy.

[60] The Board also notes that the *Red Ash* case involved credits issued under an average demurrage plan to incentivize faster loading and unloading, not credits issued for service failures.

[61] *See* NGFA Comments 19; CRA Comments 10; AFPM Comments 12–13.

[62] *See, e.g.,* AF&PA Comments 8 (stating that it ''strongly agrees with the Board's views''); NITL Comments 8 (stating that it ''strongly supports the Board's proposed principles'').

charges should reflect reasonable financial incentives to advance the overarching purpose of demurrage and that revenue is not itself the purpose. Second, transparency, timeliness, and mutual accountability by both rail carriers and the shippers and receivers they serve are important factors in the establishment and administration of reasonable demurrage and accessorial rules and charges. Just as this policy statement recognizes that there may be different ways to implement and administer reasonable rules and charges, carriers are encouraged to recognize the importance of working with rail users to develop reasonable solutions to unique situations those shippers and receivers may face.

The Board expects to take all of the principles discussed in this policy statement into consideration, together with all of the evidence and argument that is before it, in evaluating the reasonableness of demurrage and accessorial rules and charges in future cases.

Congressional Review Act. Pursuant to the Congressional Review Act, 5 U.S.C. 801–808, the Office of Information and Regulatory Affairs has designated this policy statement as non-major, as defined by 5 U.S.C. 804(2).

Decided: April 30, 2020.

By the Board, Board Members Begeman, Oberman, and Fuchs.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2020–09682 Filed 5–5–20; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200428–0122]

RIN 0648–BJ13

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Atlantic Herring Fishery; Framework Adjustment 6 and the 2019–2021 Atlantic Herring Fishery Specifications

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

ACTION: Final rule.

SUMMARY: We are approving regulations to implement Framework Adjustment 6 to the Atlantic Herring Fishery Management Plan, including the 2019–2021 fishery specifications and management measures, as recommended by the New England Fishery Management Council. This action is intended to establish the allowable 2020–2021 herring harvest levels and river herring and shad catch caps, consistent with the Atlantic Herring Fishery Management Plan. The specifications and management measures are necessary to meet conservation objectives while providing sustainable levels of access to the fishery.

DATES: Effective May 5, 2020.

ADDRESSES: Copies of this action, including the Environmental Assessment and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared in support of this action, are available at: *https://s3.amazonaws.com/nefmc.org/Herring-FW6-DRAFT-final-submission.pdf*r from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The supporting documents are also accessible via the internet at: *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Fishery Policy Analyst, 978–281–9122.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the Atlantic Herring Fishery Management Plan (FMP) for herring are located at 50 CFR part 648, subpart K. Regulations at § 648.200 require the Council to recommend herring specifications for NMFS' review and publish in the **Federal Register**, including: The overfishing limit (OFL); acceptable biological catch (ABC); annual catch limit (ACL); optimum yield (OY); domestic annual harvest; domestic annual processing; U.S. at-sea processing; border transfer; the sub-ACL for each management area, including seasonal periods as specified at § 648.201(d) and modifications to sub-ACLs as specified at § 648.201(f); and research set-aside (RSA) (up to 3 percent of the sub-ACL from any management area) for 3 years. These regulations also allow the Council to recommend river herring and shad catch caps as part of the specifications.

Under the Magnuson-Stevens Fishery Conservation and Management Act, NMFS is required to publish proposed rules for comment after preliminarily determining whether they are consistent with applicable law. The Magnuson-Stevens Act permits NMFS to approve, partially approve, or disapprove framework adjustment measures proposed by the Council based only on whether the measures are consistent with the fishery management plan, plan amendment, the Magnuson-Stevens Act and its National Standards, and other applicable law. Otherwise, NMFS must defer to the Council's policy choices. Under the regulations guiding the herring specifications process, NMFS must review the Council's recommended specifications and publish notice proposing specifications, clearly noting the reasons for any differences from the Council's recommendations. NMFS must then publish a notice approving, disapproving, or partially approving these measures. NMFS is approving measures to implement Framework 6 as well as specifications and river herring/shad catch caps for the herring fishery, consistent with the Council's recommendations.

A new stock assessment for herring was completed in June 2018. The assessment concluded that although herring were not overfished and overfishing was not occurring in 2017, poor recruitment would likely result in a substantial decline in herring biomass over the next several years. The stock assessment estimated that recruitment was at historic lows during the most recent five years (2013–2017), but projected that biomass could increase after reaching a low in 2019 if recruitment returns to average levels. The final stock assessment summary report is available on the Center's website (*www.nefsc.noaa.gov/publications/*). The Magnuson-Stevens Act requires NMFS to notify the Council if a fishery has become overfished or is approaching the condition of being overfished. According to the Act, ''a fishery shall be classified as approaching a condition of being overfished if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary estimates that the fishery will become overfished within two years.'' In February 2019, we notified the Council that herring was approaching an overfished condition.

Based on the stock assessment and at the request of the Council, we reduced the 2018 ACL in August 2018 (83 FR 42450) (from 104,800 mt to 49,900 mt) and the 2019 ACL in February 2019 (84 FR 2760) (from 49,900 mt to 15,065 mt) through inseason adjustments to prevent overfishing and lower the risk of the stock becoming overfished. The ACL reduction for 2018 ensured at least a 50-percent probability of preventing overfishing, while the ACL reduction for

2019 reflected the Council's risk policy for herring and was consistent with the new ABC control rule developed in Amendment 8 to the Herring FMP.

The Northeast Fisheries Science Center has updated its schedule for stock assessments, and will now hold herring assessments every 2 years, with the next scheduled for June 2020. Accordingly, the Council and NMFS now plan to develop specifications every 2 years for the upcoming 3-year cycle. For example, the Council and NMFS will develop herring specifications in the summer/fall of 2020 for the 2021–2023 fishing years.

Approved Specifications

At its June 2019 meeting, the Council recommended maintaining status quo catch limits for 2019 and reducing catch limits for 2020 and 2021 (see Table 1). This rule approves herring specifications for 2019–2021 consistent with the Council's recommendations. These specifications are intended to provide for a sustainable herring fishery and to be consistent with the Council's harvest policy for herring.

Because the Herring FMP requires herring specifications for a period of 3 years, Framework 6 analyzes maintaining the status quo 2019 specifications that we implemented via inseason adjustment in early 2019 and new specifications for 2020 and 2021. Because Framework 6 will be effective after the end of 2019, this rule focuses on the 2020–2021 specifications.

TABLE 1—COMPARISON OF APPROVED ATLANTIC HERRING 2020–2021 SPECIFICATIONS (mt) TO 2019

	2019	2020–2021
Overfishing Limit	30,668	41,830—2020 69,064—2021
Acceptable Biological Catch	21,266	16,131
Management Uncertainty	6,200	4,560
Optimum Yield/Annual Catch Limit	*15,065	*11,571
Domestic Annual Harvest	15,065	11,571
Border Transfer	0	100
Domestic Annual Processing	15,065	11,471
U.S. At-Sea Processing	0	0
Area 1A Sub-ACL (28.9%)	*4,354	*3,344
Area 1B Sub-ACL (4.3%)	647	498
Area 2 Sub-ACL (27.8%)	4,188	3,217
Area 3 Sub-ACL (39%)	5,876	4,513
Fixed Gear Set-Aside	39	30
Research Set-Aside	(**)	(**)

*If New Brunswick weir landings are less than 2,942 mt through October 1, then 1,000 mt will be subtracted from the management uncertainty buffer and reallocated to the Area 1A sub-ACL and ACL. Thus, the Area 1A sub-ACL would increase to 4,344 mt, and the ACL would increase to 12,571 mt.

**3 percent of each sub-ACL.

Several factors contributed to the Council's ABC recommendations for 2020–2021. The ABC is reduced from the OFL to account for scientific uncertainty. The Council's Scientific and Statistical Committee (SSC) and the Council determined that a conservative method of management, specifically one that accounts for scientific uncertainty, was essential due to the current status of the herring stock and the uncertainty surrounding estimates of biomass and recruitment. Another consideration was Amendment 8's new control rule harvest policy of reducing available harvest to explicitly account for herring's role as forage in the ecosystem. Subsequent to the Council's recommendations, in November 2019 we approved Amendment 8's ABC control rule. For 2021, the SSC was uncomfortable with increasing the ABC based on the recent assessment's projection that recruitment would increase from historical lows to average levels. Therefore, the SSC and Council recommended maintaining the 2020 ABC for 2021. The 2020 stock assessment is expected to update recruitment information and allow the Council to reconsider the 2021 ABC for the next specifications.

The ACL is reduced from ABC to account for management uncertainty. Currently, although the FMP allows for consideration of other aspects of management uncertainty (*e.g.,* uncertainty around discard estimates of herring caught in Federal and state waters), the only source for management uncertainty that is applied to the 2020–2021 ABCs are landings in the New Brunswick weir fishery. Because weir fishery landings can be highly variable, fluctuating with effort and herring availability, the Council recommended a management uncertainty buffer of 4,560 mt, consistent with average landings in the New Brunswick weir fishery over the last 10 years (2009–2018). The resulting ACL for both 2020 and 2021 is 11,571 mt. The Council also recommended and this rule approves a provision that if weir fishery landings are less than 2,942 mt through October 1, NMFS will subtract 1,000 mt from the management uncertainty buffer and reallocate that 1,000 mt to the Area 1A sub-ACL and ACL. Previously, this provision is allowed if New Brunswick weir landings are less than 4,000 mt through October 1.

Border transfer is a processing allocation available to Canadian dealers that is included in, and does not reduce, the domestic catch limits. The Magnuson-Stevens Act provides for the issuance of permits to Canadian vessels transporting U.S. harvested herring to Canada for sardine processing. The Council recommended and this rule approves 100 mt for border transfer for 2020 and 2021. The amount specified for border transfer has equaled 4,000 mt since 2000, but we reduced it to 0 mt as part of the 2019 inseason adjustment. The Council recommended 100 mt for border transfer in case there continues to be Canadian interest in transporting herring for sardine processing.

The Council recommended and this rule approves maintaining status quo river herring/shad catch caps for 2020–2021 (see Table 2). These catch caps were originally set for the fishery in the 2016–2018 specifications, and we maintained them in the inseason adjustment for 2019. Catch is tracked against river herring/shad catch caps on trips landing more than 6,600 lb (3,000 kg) of herring. Once a catch cap is reached, the possession limit for herring

vessels using that gear type and fishing in that area (or the corresponding catch cap closure area) is reduced to 2,000 lb (907 kg) of herring for the remainder of the fishing year. These caps are intended to meet the original catch cap goals to provide a strong incentive for the herring fleet to continue to reduce river herring and shad catch, while allowing the fleet to fully harvest the herring ACL.

TABLE 2—APPROVED RIVER HERRING/SHAD CATCH CAPS (mt) FOR 2020–2021

	Gulf of Maine	Cape Cod	Southern New England/ Mid-Atlantic	Total
Midwater Trawl	76.7	32.4	129.6	238.7
Bottom Trawl	n/a	n/a	122.3	122.3

The Council recommended status quo methods to set all other herring specifications, including the management area sub-ACLs, fixed gear set-aside, and research set-aside.

Final 2018 Fishery Accounting

On January 24, 2020, NMFS determined that there were no ACL overages in fishing year 2018 and no pound-for-pound reductions are required in 2020. Table 3 below summarizes final catch by management area.

TABLE 3—FINAL FISHING YEAR 2018 ACCOUNTING BY MANAGEMENT AREA

Management area	Sub-ACL (mt)	Landed herring (mt)	Discarded herring (mt)	Total herring catch (mt)	Herring catch as a percentage of the sub-ACL
1A	28,038	24,861	0	24,861	88.7
1B	2,639	2,210	0	2,211	83.8
2	8,200	7,032	38	7,071	86.2
3	11,318	9,736	0	9,736	86
Total	50,195	43,839	39	43,878	87.4

Given that this rule suspends carryover from fishing year 2019 into 2020 and no ACL overages occurred in fishing year 2018, the specifications summarized in Table 1 are approved with no modification.

Other Approved Measures

This rule updates the ''overfished'' and ''overfishing'' definitions to make them more consistent with the 2018 herring stock assessment and definitions used for other stocks in the region, consistent with Framework 6. The updated definitions are:

The stock is considered overfished if stock biomass is less than ½ the stock biomass associated with the Maximum Sustainable Yield (MSY) level or its proxy (*e.g.,* Spawning Stock Biomass at MSY (SSB_{MSY}) or proxy). The stock is considered subject to overfishing if the estimated fishing mortality rate (F) exceeds the fishing mortality rate associated with the MSY level or its proxy (*e.g.,* F_{MSY} or proxy).

Over time, the parameters used to assess the herring stock have changed, and so have the corresponding projections used to evaluate stock status and set catch levels. The updated definition is more flexible because it can incorporate any estimate of biomass that is warranted (total biomass, SSB, or relevant proxy), depending on what is used in the stock assessment and considered the best available science. The new definitions are consistent with many overfishing and overfished definitions used in the region, as well as parameters in the new ABC control rule developed in Amendment 8.

Previously, regulations at § 648.201 require carryover of up to 10 percent of the unharvested catch in a herring management area shall be added to that area's sub-ACL for the fishing year following when total catch is determined. For example, total catch for 2018 would be determined in 2019. If there was unharvested catch in 2018, the unharvested catch in a management area (up to 10 percent of the initial sub-ACL for that area) would be added to the area's sub-ACL for 2020. This carryover increases the sub-ACL for that management area, but it does not increase the total ACL.

This rule approves the suspension of carryover of unharvested catch for the 2020 and 2021, consistent with the recommendation in Framework 6, such that unharvested catch in 2018 and 2019 will not be added to sub-ACLs for 2020 and 2021, respectively. Suspending carryover is approved because the amount of carryover from 2018 (just under 5,000 mt) is substantial relative to the ACL for 2020 and 2021 (11,571 mt), and could have unintended consequences on the stock or fishery. For example, if carryover is harvested in specific management areas early in the year, other areas that are typically fished later in the year may be constrained by the ACL such that the sub-ACLs in those areas cannot be fully harvested. Estimated 2019 year end catch is less than 85 percent of the ACL for 2019 (15,574 mt), so there may also be a substantial amount of unharvested catch that would have otherwise been carried over relative to the reduced ACL for 2021 (11,571 mt). Furthermore, given the low estimate of herring biomass, concentrating fishing effort and catch in certain management areas may have negative impacts on the herring stock. Continuation of the suspension of carryover into 2021 is consistent with the Council's conservative management due to the current status of the herring stock and the uncertainty surrounding estimates of biomass and recruitment.

Regulatory Clarifications

We are implementing the following administrative changes to the herring regulations under the authority of section 305(d) to the Magnuson-Stevens Act, which provides that the Secretary of Commerce may promulgate

regulations necessary to carry out an FMP or the Magnuson-Stevens Act.

First, in §§ 648.4, 648.7, 648.10, 648.11, 648.14, 648.15, 648.80, 648.83, 648.86, 648.201, 648.202, 648.204, and 648.205, this rule simplifies the names of herring vessel permits. Previously, each herring vessel permit has two names used in regulations, the first name specifies the permit type (*i.e.,* limited or open access) and herring management area and the second name assigns a category letter to each permit type. For example, the All Areas Limited Access Herring Permit is also known as a Category A Herring Permit. This rule simplifies references to herring vessel permits by only using the category name in regulation. This clarification is intended to aid in the understandability of herring regulations as most stakeholders refer to herring vessel permits by category name.

Second, this rule clarifies the transiting and pre-landing prohibitions for the herring fishery in § 648.14. This rule clarifies that vessels are prohibited from transiting Area 1A during June through September with midwater trawl gear onboard, unless gear is properly stowed and not available for immediate use, consistent with § 648.2. This rule also clarifies that herring vessels are required to notify NMFS of offloading through the vessel monitoring system of the time and place of offloading at least 6 hours prior to landing or, if fishing ends less than 6 hours before landing, as soon as the vessel stops catching fish. These requirements currently exist elsewhere in the regulations, and this rule updates regulations in § 648.14, accordingly.

Third, this rule updates the definition of OY consistent with new National Standard guidance for OY in § 648.200. This rule also updates terminology to reflect that the Atlantic States Marine Fisheries Commission's (Commission's) Herring Section is now a Herring Board and that the Commission's Atlantic Herring Technical Committee conducts the work that was previously described as being conducted by the Plan Review Team.

Comments and Responses

NMFS published a proposed rule on January 28, 2020 (85 FR 4932), seeking comment on the proposed specifications and measures. NMFS received eight comment letters on the proposed rule, including comments from the Conservation Law Foundation (CLF), Seatuck Environmental Association, and six members of the public. A summary of comments and NMFS responses is presented below:

Comment 1: CLF, Seatuck Environmental Association, and six members of the public supported the proposed specifications. CLF also supported changes to the overfished/overfishing definitions, and suspension of carryover.

Response: NMFS agrees with the Council's rationale for its specifications recommendation, as described earlier in this rule. These measures are approved without modification.

Comment 2: While the Seatuck Environmental Association supported the river herring and shad catch caps, CLF did not, stating that the proposed caps are inconsistent with National Standard 9 and inconsistent with the purpose and need of Framework Adjustment 3 to the Herring FMP.

Response: NMFS has determined that the river herring and shad catch caps are likely sufficiently conservative, meet the original catch cap goals to provide an incentive for the herring fleet to continue to reduce river herring and shad catch, and are consistent with National Standard 9. Catch caps were implemented through Framework 3, with a goal of minimizing river herring and shad bycatch and bycatch mortality to the extent practicable, while allowing the herring fishery an opportunity to fully harvest the herring ACL.

Framework 3 established a process for setting and modifying catch caps for river herring (alewife and blueback) and shad (American and hickory) catch caps in the Atlantic herring fishery (herring fishery), and sets specific river herring and shad catch caps for the 2014 and 2015 fishing years. Framework 3 outlined a process for setting and modifying the river herring and shad catch caps that includes: Identification of gears, areas, and trips that would be subject to the catch caps; changes to reporting requirements for vessels issued limited access and Herring Management Areas ⅔ open access herring permits; criteria that would trigger the closure of an area to directed herring fishing for a particular gear type; and a list of management measures related to setting catch caps that can be modified through the herring specifications process and/or framework adjustment process. Catch caps for 2014 and 2015 were set based upon the most recent river herring stock assessment conducted by the Atlantic States Marine Fisheries Commission, which indicated that river herring populations have declined from historic levels and many factors would need to be addressed to allow their recovery, including: Fishing in both state and Federal waters; improvement of river passageways and water quality; reduced predation; and understanding the effects of climate change.

These catch caps were intended to be adjusted when new information became available. The approved catch caps were originally implemented in a 2016–1018 specifications action and were calculated using updated data and a revised methodology. The 2016–2018 caps were set based on recent Commission river herring and shad assessments, which indicated that data are not robust enough to determine a biologically-based river herring/shad catch cap and/or the potential effects of such a catch cap on river herring/shad populations on a coast-wide scale. Through this specifications action, proactive catch caps were set to manage and minimize catch to the extent practicable.

No new information is available that inform altering the previously approved river herring and shad catch caps. The approved catch caps likely promote the concept of reducing bycatch to the extent practicable by providing an incentive to avoid incidental catch of river herring and shad while still allowing an opportunity to achieve OY. When a cap trigger is reached, it implements a minimal Atlantic herring possession limit (area closure) that is expected to end directed fishing effort for herring in the corresponding closure area for the rest of that fishing year.

In approving status quo river herring and shad catch caps, the Council acknowledged that it is possible that the fishery will catch the same amount of haddock, river herring, and shad, even with a lower herring quota. However, the approved catch caps likely reduce bycatch and bycatch mortality to the extent practicable by providing an incentive to avoid the incidental catch of river herring and shad by allowing an opportunity to achieve OY. This action also maintains the trigger that implements a low Atlantic herring possession limit (area closure) that is likely to further limit bycatch and bycatch mortality once the cap is reached. The approved caps remain proactive and should continue to provide an incentive for the Atlantic herring industry to avoid river herring and shad catch and bycatch, while still allowing an opportunity to use the full Atlantic herring ACL. Therefore, this action is both consistent with the purpose and need of Framework 3 and National Standard 9.

Changes From the Proposed Rule

This rule includes slight adjustments to the regulatory corrections in 50 CFR 648.7(b)(2)(i), 648.7(m), 648.11(r)(1)(iv)(A), and 648.80(e)(5)

implemented under section 305(d) of the Magnuson-Stevens Act to account for new regulations implemented in the New England Industry-Funded Monitoring Omnibus Amendment (85 FR 7414, February 7, 2020).

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Herring FMP, National Standards and other provisions of the Magnuson-Stevens Act, and other applicable law.

The Assistant Administrator for Fisheries finds good cause under the authority of 5 U.S.C. 553(d)(3) to waive the 30-day delay in this action's effective date. This action sets 2020 herring catch limits, puts in place other herring specifications, and sets river herring/shad catch caps for the herring fishery. This rule must be in effect as soon as practicable to prevent overharvesting the ACL and management area sub-ACLs and to ensure the FMP's goals and objectives are achieved. Because this rule lowers herring catch limits directly related to preventing overharvesting the ACL, a 30-day delay would be contrary to the public interest.

Delaying the effective date of the specifications for 30 days will affect NMFS' ability to prevent the herring fishery from exceeding its 2020 area sub-ACLs and ACL. Federal regulations at 50 CFR 648.201(a)(1)(i) require NMFS to implement a 2,000-lb possession limit for each management area through the end of the current fishing year once it is projected that 92 percent of the area sub-ACL will be harvested. NMFS must, under § 648.201(a)(1)(ii), implement the 2,000-lb possession limit for the whole fishery (all areas) when 95-percent of the total herring ACL is harvested. As required by § 648.201(a)(4), NMFS must also implement the 2,000-lb possession limit for river herring/shad accountability measure areas when 95-percent of the river herring/shad catch cap for a specific area is reached.

This action reduces the 2020 herring ACL (11,571 mt) by nearly 25 percent compared to the ACL that was in place in fishing year 2019 (15,065 mt). This action similarly reduces sub-ACLs for each Herring Management Area. Because this action reduces the 2020 herring ACL, NMFS is concerned about preventing catch from exceeding harvest limits in Herring Management Areas 2 (3,217 mt reduced from 4,188 mt) and 3 (4,513 mt reduced from 5,876 mt) which opened on January 1, 2020. Delaying implementation could encourage a derby-style rush to fish before the lower limits are in effect. This not only could result in exceeding the catch limits, but also could pose safety concerns as vessels might perceive a greater incentive to fish during the delay that could be contrary to safe practices. If catch exceeds a sub-ACL, the excess catch must be deducted from a future sub-ACL and would reduce future fishing opportunities.

The 2019–2021 herring specifications are based on the best available science. This action is reducing the herring ACL and sub-ACLs. Delaying implementation of the 2020–2021 herring specifications for 30 days would be contrary to the public interest because the herring fishery may exceed the new, lower sub-ACLs and/or the ACL. Exceeding these harvest limits would negatively impact the herring industry when future harvest is limited to account for excess catch.

The specifications are part of regular rulemaking prescribed by the FMP's regulations. As such, herring fishery participants expect the implementation of the specifications at the earliest date practicable. Catch limits are an integral part of the fishery and are not new requirements. The herring fishery participants are well aware of and accustomed to operating under the catch limits and catch caps. A 30-day delay to adjust these measures therefore is unnecessary because it provides no benefit to the herring fishery. Conversely, a 30-day delay could result in undue loss of economic opportunity from unnecessary catch restrictions or future economic restrictions due to otherwise avoidable overages in this fishing year. For these reasons, NMFS has determined that a 30-day delay in the effectiveness of this rule is contrary to the public interest.

This final rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866.

This final rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule, as required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, and a summary of the analyses completed in the Framework 6 EA. A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this action is contained in the preamble to the proposed rule (85 FR 4932), and is not repeated here. All of the documents that constitute the FRFA are available from NMFS and a copy of the IRFA, the RIR, and the EA are available upon request (see **ADDRESSES**) or via the internet at *www.greateratlantic.fisheries.noaa.gov.*

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

NMFS received eight comment letters on the proposed rule. Those comments, and NMFS' responses, are contained in the Comments and Responses section of this final rule and are not repeated here. None of the comments addressed the IRFA and NMFS did not make any changes in the final rule based on public comment.

Description and Estimate of Number of Small Entities to Which This Final Rule Would Apply

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide.

For the purposes of this analysis, ownership entities are defined by those entities with common ownership personnel as listed on permit application documentation. Permits with identical ownership personnel are categorized as a single entity. For example, if five permits have the same seven personnel listed as co-owners on their application paperwork, those seven personnel form one ownership entity, covering those five permits. If one or several of the seven owners also own additional vessels, with sub-sets of the original seven personnel or with new co-owners, those ownership arrangements are deemed to be separate ownership entities for the purpose of this analysis.

This rule would affect all permitted herring vessels; therefore, a directly regulated entity is a firm that owns at least one herring permit. There are many businesses that hold an open-access (Category D) permit. These businesses catch a small fraction of herring; furthermore, they are minimally

affected by the regulations. Firms are defined as active in the herring fishery if they landed any herring in 2018. This section describes the directly regulated small entities in four classes: All permitted firms; all active firms; limited access permitted firms; and active limited access permitted firms.

In 2018, there were 1,205 firms (1,193 small) that held at least one herring permit. There were 62 (60 small) active firms that held at least one herring permit. There were 68 (62 small) firms that held at least one limited access permit, 31 (29 small) of which were active. Small entity limited access permit holders as a whole derived approximately 38 percent of total entity revenue from the herring fishery. All small entity herring permit holders as a whole derived approximately 29 percent of total entity revenue from the herring fishery. Approved measures decrease the ACL in 2020 and 2021 from the baseline, as presented in Table 4.

TABLE 4—HERRING ACL FOR THE BASELINE (2019) COMPARED TO APPROVED 2020 AND 2021 SPECIFICATIONS

Year	Baseline (mt)	2020 and 2021 specifications (mt)
ACL	15,066	11,571
Area 1A Sub-ACL (28.9%)	4,354	3,344
Area 1B Sub-ACL (4.3%)	647	498
Area 2 Sub-ACL (27.8%)	4,188	3,217
Area 3 Sub-ACL (39%)	5,876	4,513

To examine effects of the approved measures, this analysis assumes catch is equal to the ACL. Recent catch from the four herring management areas has frequently been below the ACL and sub-ACLs. However, recent ACLs have been much higher than the Council's preferred 2020 ACL and portions of the fishery have been restricted due to catch of non-target species (*i.e.,* river herring and shad). With decreasing ACLs but status quo non-target species catch caps, excessive catch of non-target species becomes less likely. The sub-ACL percentages remain constant between the baseline period (2019) through 2020 and 2021; therefore, there is an approximate 23-percent decrease in available catch in each management area from 2019 to 2021. Using this information we can evaluate the effects of the action on small entity revenues. The average percentage of total small entity revenue derived from each management area is listed in Table 5.

TABLE 5—AVERAGE PERCENTAGE OF SMALL ENTITY REVENUE FROM EACH HERRING MANAGEMENT AREA

Management area	Overall average percent entity revenue
1A	44
1B	40
2	10
3	43

Seventeen small entities, mainly purse seine vessels, fished for herring in Area 1A in 2018. Ten of these small entities derived 30 percent or less of total entity revenue from Area 1A. Seven small entities derived more than 80 percent of total entity revenue from Area 1A. Area 1A generates revenue for more small entities than any other area; all other areas only have 3 entities deriving more than 80 percent of revenue from herring. Nine small entities fished for herring in Area 1B in 2018, with 5 entities deriving 30 percent or less from the area and 4 entities deriving between 70 and 100 percent from 1B. Thirty-nine small entities fished for herring in Area 2 in 2018. Twenty-seven of them derived between 0 and 1 percent of total entity revenue from Area 2, and another 6 entities derived less than 30 percent of entity revenue from Area 2. Four entities derived between 70 and 100 percent of total entity revenue from herring in Area 2. Finally, 8 small entities fished for herring in Area 3 in 2018. Four of those entities derived less than 30 percent of total entity revenue from Areas 3 and 4 entities derived between 70 and 100 percent of total entity revenue from Area 3.

While the overall fishery ACL will decline by 23 percent, NMFS does not expect that each of these small entities will have a 23-percent reduction in herring revenue. Rather, because of the low catch limits, some companies may decide not to fish for herring in 2020 and 2021 and would lose 100 percent of revenue from herring. If this happens, the remaining small entities who fish for herring in 2020 and 2021 may realize less than 23-percent reduction in revenue from herring, as there may be fewer vessels herring fishing. Because entities that catch herring are also active in other fisheries, the reduction in total revenue for small entities would likely be less than the reduction in herring revenue. Without being able to predict these specific shifts, Table 6 estimates the percent change for small entities in total revenue resulting from a 23-percent reduction in the herring ACL.

TABLE 6—ESTIMATES OF PERCENT REDUCTION IN TOTAL SMALL ENTITY REVENUE FROM THIS ACTION

Percent change in total small entity revenue	Count of small entities
0 to 1 percent	17
1 to 7 percent	4
18 to 23 percent	8

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This final rule does not introduce any new reporting, recordkeeping, or other compliance requirements.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

Specification of commercial harvest and river herring/shad catch caps are constrained by the conservation objectives set forth in the FMP and implemented at 50 CFR part 648, subpart K under the authority of the Magnuson-Stevens Act. Furthermore, specifications must be based on the best available scientific information, consistent with National Standard 2 of the Magnuson-Stevens Act. With the specification options considered, the measures in this final rule are the only measures that both satisfy these overarching regulatory and statutory requirements while minimizing, to the extent possible, impacts on small entities. This rule implements the herring specifications outlined in Table 1 and the river herring/shad catch caps

outlined in Table 2. Other options considered by the Council, including those that could have less of an impact on small entities, failed to meet one or more of these stated objectives and, therefore, cannot be implemented.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a bulletin to permit holders that also serves as small entity compliance guide was prepared. This final rule and the guide (*i.e.,* bulletin) will be sent via email to the Greater Atlantic Regional Fisheries Office herring email list and are available on the website at: *https://www.fisheries.noaa.gov/species/atlantic-herring.* Hard copies of the guide and this final rule will be available upon request (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: April 29, 2020.

Samuel D. Rauch III,

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

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.4, revise paragraphs (a)(10)(ii), (a)(10)(iv)(A) through (C), and (a)(10)(v), and remove paragraph (a)(10)(vi).

The revisions read as follows:

§ 648.4 Vessel permits.

(a) * * *

(10) * * *

(ii) *Atlantic herring carrier.* An Atlantic herring carrier must have been issued and have on board a herring permit and a letter of authorization to receive and transport Atlantic herring caught by another permitted fishing vessel or it must have been issued and have on board a herring permit and have declared an Atlantic herring carrier trip via VMS consistent with the requirements at § 648.10(m)(1). Once a vessel declares an Atlantic herring carrier trip via VMS, it is bound to the VMS operating requirements, specified at § 648.10, for the remainder of the fishing year. On Atlantic herring carrier trips under either the letter of authorization or an Atlantic herring carrier VMS trip declaration, an Atlantic herring carrier is exempt from the VMS, IVR, and VTR vessel reporting requirements, as specified in § 648.7 and subpart K of this part, except as otherwise required by this part. If not declaring an Atlantic herring carrier trip via VMS, an Atlantic herring carrier vessel must request and obtain a letter of authorization from the Regional Administrator, and there is a minimum enrollment period of 7 calendar days for a letter of authorization. Atlantic herring carrier vessels operating under a letter of authorization or an Atlantic herring carrier VMS trip declaration may not conduct fishing activities, except for purposes of transport, or possess any fishing gear on board the vessel capable of catching or processing herring, and they must be used exclusively as an Atlantic herring carrier vessel, and they must carry observers if required by NMFS. While operating under a valid letter of authorization or Atlantic herring carrier VMS trip declaration, such vessels are exempt from any herring possession limits associated with the herring vessel permit categories. Atlantic herring carrier vessels operating under a letter of authorization or an Atlantic herring carrier VMS trip declaration may not possess, transfer, or land any species other than Atlantic herring, except that they may possess Northeast multispecies transferred by vessels issued either a Category A or B Herring Permit, consistent with the applicable possession limits for such vessels specified at § 648.86(a)(3) and (k).

* * * * *

(iv) * * *

(A) A vessel of the United States that fishes for, possesses, or lands more than 6,600 lb (3 mt) of herring, except vessels that fish exclusively in state waters for herring, must have been issued and carry on board either one of the limited access herring permits described in paragraphs (a)(10)(iv)(A)(*1*) through (*3*) of this section or an open access Category E Herring Permit (as described in § 648.4(a)(10)(v)(B)), including both vessels engaged in pair trawl operations.

(*1*) *Category A Herring Permit (All Areas Limited Access Herring Permit).* A vessel may fish for, possess, and land unlimited amounts of herring from all herring areas, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(*2*) *Category B Herring Permit (Areas 2 and 3 Limited Access Herring Permit).* A vessel may fish for, possess, and land unlimited amounts of herring from herring Areas 2 and 3, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(*3*) *Category C Herring Permit (Limited Access Incidental Catch Herring Permit).* (*i*) A vessel that does not qualify for either of the permits specified in paragraphs (a)(10)(iv)(A)(*1*) and (*2*) of this section may fish for, possess, and land up to 55,000 lb (25 mt) of herring from any herring area, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(*ii*) A vessel that does not qualify for a Category A Herring Permit specified in paragraph (a)(10)(iv)(A)(*1*) of this section, but qualifies for the Category B Herring Permit specified in paragraph (a)(10)(iv)(A)(*2*) of this section, may fish for, possess, and land up to 55,000 lb (25 mt) of herring from Area 1, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(B) *Eligibility for Category A and B Herring Permits, and Confirmation of Permit History (CPH).* A vessel is eligible for and may be issued either a Category A or B Herring Permit if it meets the permit history criteria in paragraph (a)(10)(iv)(B)(*1*) of this section and the relevant landing requirements in paragraphs (a)(10)(iv)(B)(*2*) and (*3*) of this section.

(*1*) *Permit history criteria for Category A and B Herring Permits.* (*i*) The vessel must have been issued a Federal herring permit (Category 1 or 2) that was valid as of November 10, 2005; or

(*ii*) The vessel is replacing a vessel that was issued a Federal herring permit (Category 1 or 2) between November 10, 2003, and November 9, 2005. To qualify as a replacement vessel, the replacement vessel and the vessel being replaced must both be owned by the same vessel owner; or, if the vessel being replaced was sunk or destroyed, the vessel owner must have owned the vessel being replaced at the time it sunk or was destroyed; or, if the vessel being replaced was sold to another person, the vessel owner must provide a copy of a written agreement between the buyer of the vessel being replaced and the owner/seller of the vessel, documenting that the vessel owner/seller retained the herring permit and all herring landings history.

(*2*) *Landings criteria for the Category A Herring Permit*—(*i*) The vessel must have landed at least 500 mt of herring in any one calendar year between January 1, 1993, and December 31, 2003, as verified by dealer reports submitted to NMFS or documented through valid dealer receipts, if dealer reports were not required by NMFS. In those cases where a vessel has sold herring but there are no required dealer receipts, *e.g.,* transfers of bait at sea and border transfers, the vessel owner can submit other documentation that documents such transactions and proves that the herring thus transferred should be added to their landings history. The owners of vessels that fished in pair trawl operations may provide landings information as specified in paragraph (a)(10)(iv)(B)(*2*)(*iii*) of this section. Landings made by a vessel that is being replaced may be used to qualify a replacement vessel consistent with the requirements specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and the permit splitting prohibitions in paragraph (a)(10)(iv)(N) of this section.

(*ii*) *Extension of eligibility period for landings criteria for vessels under construction, reconstruction, or purchase contract.* An applicant who submits written evidence that a vessel was under construction, reconstruction, or was under written contract for purchase as of December 31, 2003, may extend the period for determining landings specified in paragraph (a)(10)(iv)(B)(*2*)(*i*) of this section through December 31, 2004.

(*iii*) Landings criteria for vessels using landings from pair trawl operations. To qualify for a limited access permit using landings from pair trawl operations, the owners of the vessels engaged in that operation must agree on how to divide such landings between the two vessels and apply for the permit jointly, as verified by dealer reports submitted to NMFS or valid dealer receipts, if dealer reports were not required by NMFS.

(*3*) *Landings criteria for the Category B Herring Permit.* (*i*) The vessel must have landed at least 250 mt of herring in any one calendar year between January 1, 1993, and December 31, 2003, as verified by dealer reports submitted to NMFS or documented through valid dealer receipts, if dealer reports were not required by NMFS. In those cases where a vessel has sold herring but there are no required dealer receipts, *e.g.,* transfers of bait at sea and border transfers, the vessel owner can submit other documentation that documents such transactions and proves that the herring thus transferred should be added to their landings history. The owners of vessels that fished in pair trawl operations may provide landings information as specified in paragraph (a)(10)(iv)(B)(*2*)(*iii*) of this section. Landings made by a vessel that is being replaced may be used to qualify a replacement vessel consistent with the requirements specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and the permit splitting prohibitions in paragraph (a)(10)(iv)(N) of this section.

(*ii*) *Extension of eligibility period for landings criteria for vessels under construction, reconstruction or purchase contract.* An applicant who submits written evidence that a vessel was under construction, reconstruction, or was under written contract for purchase as of December 31, 2003, may extend the period for determining landings specified in paragraph (a)(10)(iv)(B)(*3*)(*i*) of this section through December 31, 2004.

(*iii*) *Landings criteria for vessels using landings from pair trawl operations.* See paragraph (a)(10)(iv)(B)(*2*)(*iii*) of this section.

(*4*) *CPH.* A person who does not currently own a fishing vessel, but owned a vessel that satisfies the permit eligibility requirements in paragraph (a)(10)(iv)(B) of this section that has sunk, been destroyed, or transferred to another person, but that has not been replaced, may apply for and receive a CPH that allows for a replacement vessel to obtain the relevant limited access herring permit if the fishing and permit history of such vessel has been retained lawfully by the applicant as specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and consistent with (a)(10)(iv)(N) of this section.

(C) *Eligibility for Category C Herring Permit, and CPH.* A vessel is eligible for and may be issued a Category C Herring Permit if it meets the permit history criteria specified in paragraph (a)(10)(iv)(C)(*1*) of this section and the landings criteria in paragraph (a)(10)(iv)(C)(*2*) of this section.

(*1*) *Permit history criteria.* (*i*) The vessel must have been issued a Federal permit for Northeast multispecies, Atlantic mackerel, Atlantic herring, longfin or *Illex* squid, or butterfish that was valid as of November 10, 2005; or

(*ii*) The vessel is replacing a vessel that was issued a Federal permit for Northeast multispecies, Atlantic mackerel, Atlantic herring, longfin or *Illex* squid, or butterfish that was issued between November 10, 2003, and November 9, 2005. To qualify as a replacement vessel, the replacement vessel and the vessel being replaced must both be owned by the same vessel owner; or, if the vessel being replaced was sunk or destroyed, the vessel owner must have owned the vessel being replaced at the time it sunk or was destroyed; or, if the vessel being replaced was sold to another person, the vessel owner must provide a copy of a written agreement between the buyer of the vessel being replaced and the owner/seller of the vessel, documenting that the vessel owner/seller retained the herring permit and all herring landings history.

(*2*) *Landings criteria for Category C Herring Permit.* (*i*) The vessel must have landed at least 15 mt of herring in any calendar year between January 1, 1988, and December 31, 2003, as verified by dealer reports submitted to NMFS or documented through valid dealer receipts, if dealer reports were not required by NMFS. In those cases where a vessel has sold herring but there are no required dealer receipts, *e.g.,* transfers of bait at sea and border transfers, the vessel owner can submit other documentation that documents such transactions and proves that the herring thus transferred should be added to the vessel's landings history. The owners of vessels that fished in pair trawl operations may provide landings information as specified in paragraph (a)(10)(iv)(B)(*2*)(*iii*) of this section. Landings made by a vessel that is being replaced may be used to qualify a replacement vessel consistent with the requirements specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and the permit splitting prohibitions in paragraph (a)(10)(iv)(N) of this section.

(*ii*) *Extension of eligibility period for landings criteria for vessels under construction, reconstruction or purchase contract.* An applicant who submits written evidence that a vessel was under construction, reconstruction, or was under written contract for purchase as of December 31, 2003, may extend the period for determining landings specified in paragraph (a)(10)(iv)(C)(*2*)(*i*) of this section through December 31, 2004.

(*3*) *CPH.* A person who does not currently own a fishing vessel, but owned a vessel that satisfies the permit eligibility requirements in paragraph (a)(10)(iv)(C) of this section that has sunk, been destroyed, or transferred to another person, but that has not been replaced, may apply for and receive a CPH that allows for a replacement vessel to obtain the relevant limited access herring permit if the fishing and permit history of such vessel has been retained lawfully by the applicant as specified in paragraph (a)(10)(iv)(B)(*1*)(*ii*) of this section and

consistent with (a)(10)(iv)(N) of this section.

* * * * *

(v) *Open access herring permits.* A vessel that has not been issued a limited access herring permit may obtain:

(A) A Category D Herring Permit (*All Areas Open Access Herring Permit*) to possess up to 6,600 lb (3 mt) of herring per trip from all herring management areas, limited to one landing per calendar day; and/or

(B) A Category E Herring Permit (*Areas 2/3 Open Access Herring Permit*) to possess up to 20,000 lb (9 mt) of herring per trip from Herring Management Areas 2 and 3, limited to one landing per calendar day, provided the vessel has also been issued a Limited Access Atlantic Mackerel permit, as defined at § 648.4(a)(5)(iii).

* * * * *

■ 3. In § 648.7, revise paragraphs (b)(2)(i), (b)(3)(i) introductory text, and (b)(3)(i)(A) to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(2) * * *

(i) *Atlantic herring vessel owners or operators issued a Category D Herring Permit.* The owner or operator of a vessel issued a Category D Herring Permit to fish for herring must report catch (retained and discarded) of herring via an IVR system for each week herring was caught, unless exempted by the Regional Administrator. IVR reports are not required for weeks when no herring was caught. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification; week in which herring are caught; management areas fished; and pounds retained and pounds discarded of herring caught in each management area. The IVR reporting week begins on Sunday at 0001 hour (hr) (12:01 a.m.) local time and ends Saturday at 2400 hr (12 midnight). Weekly Atlantic herring catch reports must be submitted via the IVR system by midnight each Tuesday, eastern time, for the previous week. Reports are required even if herring caught during the week has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

* * * * *

(3) * * *

(i) *Atlantic herring owners or operators issued a limited access permit or Category E Herring Permit.* The owner or operator of a vessel issued a limited access permit (*i.e.,* Category A, B, or C) or Category E Herring Permit to fish for herring must report catch (retained and discarded) of herring daily via VMS, unless exempted by the Regional Administrator. The report shall include at least the following information, and any other information required by the Regional Administrator: Fishing Vessel Trip Report serial number; month and day herring was caught; pounds retained for each herring management area; and pounds discarded for each herring management area. Additionally, the owner or operator of a vessel issued a limited access permit or Category E Herring Permit to fish for herring using midwater trawl or bottom trawl gear must report daily via VMS the estimated total amount of all species retained (in pounds, landed weight) by statistical area for use in tracking catch against catch caps (haddock, river herring and shad) in the herring fishery. Daily Atlantic herring VMS catch reports must be submitted in 24-hr intervals for each day and must be submitted by 0900 hr (9:00 a.m.) of the following day. Reports are required even if herring caught that day has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

(A) The owner or operator of any vessel issued a limited access herring permit (*i.e.,* Category A, B, or C) or a Category E Herring Permit must submit a catch report via VMS each day, regardless of how much herring is caught (including days when no herring is caught), unless exempted from this requirement by the Regional Administrator.

* * * * *

■ 4. In § 648.10, revise paragraphs (b)(8) and (m) to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(b) * * *

(8) A vessel issued a limited access herring permit (*i.e.,* Category A, B, or C), or a vessel issued a Category E Herring Permit, or a vessel declaring an Atlantic herring carrier trip via VMS.

* * * * *

(m) *Atlantic herring VMS notification requirements.* (1) A vessel issued a limited access herring permit (*i.e.,* Category A, B, or C) or a Category E Herring Permit intending to declare into the herring fishery or a vessel issued a herring permit and intending to declare an Atlantic herring carrier trip via VMS must notify NMFS by declaring a herring trip with the appropriate gear code prior to leaving port at the start of each trip in order to harvest, possess, or land herring on that trip.

(2) A vessel issued a limited access herring permit (*i.e.,* Category A, B, or C) or a Category E Herring Permit or a vessel that declared an Atlantic herring carrier trip via VMS must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hours prior to landing or, if fishing ends less than 6 hours before landing, as soon as the vessel stops catching fish. The Regional Administrator may adjust the prior notification minimum time through publication of a document in the **Federal Register** consistent with the Administrative Procedure Act.

* * * * *

■ 5. In § 648.11, revise paragraphs (a), (m)(1)(i) introductory text, (m)(1)(ii) introductory text, (m)(1)(iv), (m)(2)(i), (m)(2)(iii) introductory text, and (m)(7)(iv) through (vi) to read as follows:

§ 648.11 Monitoring coverage.

(a) *Coverage.* The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, Atlantic surfclam, ocean quahog, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry a NMFS-certified fisheries observer. A vessel holding a permit for Atlantic sea scallops is subject to the additional requirements specified in paragraph (k) of this section. A vessel holding a Category A or B Herring Permit is subject to the additional requirements specified in paragraph (m) of this section. Also, any vessel or vessel owner/operator that fishes for, catches or lands hagfish, or intends to fish for, catch, or land hagfish in or from the exclusive economic zone must carry a NMFS-certified fisheries observer when requested by the Regional Administrator in accordance with the requirements of this section.

* * * * *

(m) * * *

(1) * * *

(i) In addition to the requirement for any vessel holding an Atlantic herring permit to carry a NMFS-certified observer described in paragraph (a) of this section, vessels issued a Category A or B Herring Permit are subject to industry-funded monitoring (IFM) requirements on declared Atlantic herring trips, unless the vessel is carrying a NMFS-certified observer to fulfill Standard Bycatch Reporting

Methodology requirements. An owner of a midwater trawl vessel, required to carry a NMFS-certified observer when fishing in Northeast Multispecies Closed Areas at § 648.202(b), may purchase an IFM high volume fisheries (HVF) observer to access Closed Areas on a trip-by-trip basis. General requirements for IFM programs in New England Council FMPs are specified in paragraph (g) of this section. Possible IFM monitoring for the Atlantic herring fishery includes NMFS-certified observers, at-sea monitors, and electronic monitoring and portside samplers, as defined in § 648.2.

* * * * *

(ii) Vessels issued a Category A or B Herring Permit are subject to IFM at-sea monitoring coverage. If the New England Council determines that electronic monitoring, used in conjunction with portside sampling, is an adequate substitute for at-sea monitoring on vessels fishing with midwater trawl gear, and it is approved by the Regional Administrator as specified in paragraph (m)(1)(iii) of this section, then owners of vessels issued a Category A or B Herring Permit may choose either IFM at-sea monitoring coverage or IFM electronic monitoring and IFM portside sampling coverage, pursuant with requirements in paragraphs (h) and (i) of this section. Once owners of vessels issued a Category A or B Herring Permit may choose an IFM monitoring type, vessel owners must select one IFM monitoring type per fishing year and notify NMFS of their selected IFM monitoring type via selection form six months in advance of the beginning of the SBRM year (October 31). NMFS will provide vessels owners with selection forms no later than September 1 in advance of the beginning of the SBRM year.

* * * * *

(iv) Owners, operators, or managers of vessels issued a Category A or B Herring Permit are responsible for their vessel's compliance with IFM requirements. When NMFS notifies a vessel owner, operator, or manager of the requirement to have monitoring coverage on a specific declared Atlantic herring trip, that vessel may not fish for, take, retain, possess, or land any Atlantic herring without the required monitoring coverage. Vessels may only embark on a declared Atlantic herring trip without the required monitoring coverage if the vessel owner, operator, and/or manager has been notified that the vessel has received a waiver for the required monitoring coverage for that trip, pursuant to paragraphs (m)(2)(iii)(B) and (C) and (m)(3) of this section.

* * * * *

(2) * * *

(i) At least 48 hr prior to the beginning of any trip on which a vessel may harvest, possess, or land Atlantic herring, the owner, operator, or manager of a vessel issued a limited access herring permit (*i.e., Category A, B, or C*) or a vessel issued an open access herring permit (Category D or E) fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), or a vessel acting as a herring carrier must notify NMFS/FSB of the trip.

* * * * *

(iii) For vessels issued a Category A or B Herring Permit, the trip notification must also include the following requests, if appropriate:

* * * * *

(7) * * *

(iv) If a vessel issued a Category A or B Herring permit slips catch for any of the reasons described in paragraph (m)(7)(i) of this section when an observer or monitor is aboard, the vessel operator must move at least 15 nm (27.78 km) from the location of the slippage event before deploying any gear again, and must stay at least 15 nm (27.78 km) away from the slippage event location for the remainder of the fishing trip.

(v) If a vessel issued a Category A or B Herring permit slips catch for any reason on a trip selected by NMFS for portside sampling, pursuant to paragraph (m)(3) of this section, the vessel operator must move at least 15 nm (27.78 km) from the location of the slippage event before deploying any gear again, and must stay at least 15 nm (27.78 km) away from the slippage event location for the remainder of the fishing trip.

(vi) If catch is slipped by a vessel issued a Category A or B Herring permit for any reason not described in paragraph (m)(7)(i) of this section when an observer or monitor is aboard, the vessel operator must immediately terminate the trip and return to port. No fishing activity may occur during the return to port.

* * * * *

■ 6. In § 648.14, revise paragraphs (k)(1)(i)(D); (r)(1)(vi)(A), (r)(1)(vii)(D) and (E), (r)(1)(viii)(B) and (C), remove paragraph (r)(1)(viii)(D), and revise paragraphs (r)(2)(i) through (iv) and (r)(2)(ix) through (xiv).

The revisions read as follows:

§ 648.14 Prohibitions.

* * * * *

(k) * * *

(1) * * *

(i) * * *

(D) Any haddock, and up to 100 lb (45 kg) of other regulated NE multispecies other than haddock, were harvested by a vessel issued a Category A or B Herring Permit on a declared herring trip, regardless of gear or area fished, or a vessel issued a Category C, D, or E Herring Permit that fished with midwater trawl gear, pursuant to the requirements in § 648.80(d) and (e), and such fish are not sold for human consumption.

* * * * *

(r) * * *

(1) * * *

(vi) * * *

(A) For the purposes of observer deployment, fail to notify NMFS/FSB at least 48 hr prior to departing on a declared herring trip with a vessel issued a Category A or B Herring Permit and fishing with midwater trawl or purse seine gear, or on a trip with a vessel issued a Category C, D, or E Herring Permit that is fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), pursuant to the requirements in § 648.80(d) and (e).

* * * * *

(vii) * * *

(D) Transit Area 1A from June 1 through September 30 with more than 2,000 lb (907.2 kg) of herring while having on board midwater trawl gear that is not properly stowed or available for immediate use as defined in § 648.2.

(E) Discard haddock at sea that has been brought on deck, or pumped into the hold, of a vessel issued a Category A or B Herring Permit fishing on a declared herring trip, regardless of gear or area fished, or on a trip with a vessel issued a Category C, D, or E Herring Permit fishing with midwater trawl gear, pursuant to the requirements in § 648.80(d) and (e).

* * * * *

(viii) * * *

(B) Fail to notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hours prior to landing or, if fishing ends less than 6 hours before landing, as soon as the vessel stops catching fish, if a vessel has been issued a limited access herring permit (*i.e., Category A, B, or C*) or a Category E Herring Permit or has declared an Atlantic herring carrier trip via VMS.

(C) Fail to declare via VMS into the herring fishery by entering the appropriate herring fishery code and appropriate gear code prior to leaving port at the start of each trip to harvest,

possess, or land herring, if a vessel has been issued a limited access herring permit (*i.e., Category A, B, or C*) or issued a Category E Herring Permit or is intending to act as an Atlantic herring carrier.

* * * * *

(2) * * *

(i) Sell, purchase, receive, trade, barter, or transfer haddock or other regulated NE multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, white hake, and Atlantic wolffish); or attempt to sell, purchase, receive, trade, barter, or transfer haddock or other regulated NE multispecies for human consumption; if the regulated NE multispecies are landed by a vessel issued a Category A or B Herring Permit fishing on a declared herring trip, regardless of gear or area fished, or by a vessel issued a Category C, D, or E Herring Permit fishing with midwater trawl gear pursuant to § 648.80(d).

(ii) Fail to comply with requirements for herring processors/dealers that handle individual fish to separate out, and retain, for at least 12 hours, all haddock offloaded from a vessel issued a Category A or B Herring Permit that fished on a declared herring trip regardless of gear or area fished, or by a vessel issued a Category C, D, or E Herring Permit that fished with midwater trawl gear pursuant to § 648.80(d).

(iii) Sell, purchase, receive, trade, barter, or transfer; or attempt to sell, purchase, receive, trade, barter, or transfer; to another person, any haddock or other regulated NE. multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, white hake, and Atlantic wolffish) separated out from a herring catch offloaded from a vessel issued a Category A or B Herring Permit that fished on a declared herring trip regardless of gear or area fished, or by a vessel issued a Category C, D, or E Herring Permit that fished with midwater trawl gear pursuant to § 648.80(d).

(iv) While operating as an at-sea herring processor, fail to comply with requirements to separate out and retain all haddock offloaded from a vessel issued a Category A or B Herring Permit that fished on a declared herring trip regardless of gear or area fished, or by a vessel issued a Category C, D, or E Herring Permit that fished with midwater trawl gear pursuant to § 648.80(d).

* * * * *

(ix) For vessels with Category A or B Herring Permits, fail to move 15 nm (27.78 km), as required by §§ 648.11(m)(7)(iv) and (v) and 648.202(b)(4)(iv).

(x) For vessels with Category A or B Herring Permits, fail to immediately return to port, as required by §§ 648.11(m)(7)(vi) and 648.202(b)(4)(iv).

(xi) Fail to complete, sign, and submit a Released Catch Affidavit as required by §§ 648.11(m)(7)(iii) and 648.202(b)(4)(ii).

(xii) Fail to report or fail to accurately report a slippage event on the Atlantic herring daily VMS catch report, as required by §§ 648.11(m)(7)(iii) and 648.202(b)(4)(iii).

(xiii) For vessels with Category A or B Herring Permits, fail to comply with industry-funded monitoring requirements at § 648.11(m).

(xiv) For a vessel with a Category A or B Herring Permit, fail to comply with its NMFS-approved vessel monitoring plan requirements, as described at § 648.11(m).

* * * * *

■ 7. In § 648.15, revise paragraphs (d) and (e) to read as follows:

§ 648.15 Facilitation of enforcement.

* * * * *

(d) *Retention of haddock by herring dealers and processors.* (1) Federally permitted herring dealers and processors, including at-sea processors, that cull or separate out from the herring catch all fish other than herring in the course of normal operations, must separate out and retain all haddock offloaded from a vessel issued a Category A or B Herring Permit that fished on a declared herring trip regardless of gear or area fished, or by a vessel issued a Category C, D, or E Herring Permit that fished with midwater trawl gear pursuant to § 648.80(d). Such haddock may not be sold, purchased, received, traded, bartered, or transferred, and must be retained, after they have been separated, for at least 12 hours for dealers and processors on land, and for 12 hours after landing by at-sea processors. The dealer or processor, including at-sea processors, must clearly indicate the vessel that landed the retained haddock or transferred the retained haddock to an at-sea processor. Authorized officers must be given access to inspect the haddock.

(2) All haddock separated out and retained is subject to reporting requirements specified at § 648.7.

(e) *Retention of haddock by herring vessels using midwater trawl gear.* A vessel issued a Category A or B Herring Permit fishing on a declared herring trip regardless of gear or area fished, or a vessel issued a Category C, D, or E Herring Permit and fishing with midwater trawl gear pursuant to § 648.80(d), may not discard any haddock that has been brought on the deck or pumped into the hold.

■ 8. In § 648.80, revise paragraphs (d)(4) through (6) and (e)(4) through (6) to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(d) * * *

(4) The vessel does not fish for, possess or land NE. multispecies, except that a vessel issued a Category A or B Herring Permit and fishing on a declared herring trip, regardless of gear or area fished, or a vessel issued a Category C, D, or E Herring Permit and fishing with midwater trawl gear pursuant to paragraph (d) of this section, may possess and land haddock and other regulated multispecies consistent with the catch caps and possession restrictions in § 648.86(a)(3) and (k). Such haddock or other regulated NE multispecies may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for, or intended for, human consumption. Haddock or other regulated NE multispecies that are separated out from the herring catch pursuant to § 648.15(d) may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for any purpose. A vessel issued a Category A or B Herring Permit fishing on a declared herring trip, regardless of gear or area fished, or a vessel issued a Category C, D, or E Herring Permit and fishing with midwater trawl gear pursuant to this paragraph (d), may not discard haddock that has been brought on the deck or pumped into the hold;

(5) To fish for herring under this exemption, a vessel issued a Category A or B Herring Permit fishing on a declared herring trip, or a vessel issued a Category C, D, or E Herring Permit fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), must provide notice of the following information to NMFS at least 48 hr prior to beginning any trip into these areas for the purposes of observer deployment: Vessel name; contact name for coordination of observer deployment;

telephone number for contact; the date, time, and port of departure; and

(6) A vessel issued a Category A or B Herring Permit fishing on a declared herring trip with midwater trawl gear, or a vessel issued a Category C or E Herring Permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined at § 648.200(f)(1) and (3), must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hours prior to landing or, if fishing ends less than 6 hours before landing, as soon as the vessel stops catching fish. The Regional Administrator may adjust the prior notification minimum time through publication of a document in the **Federal Register** consistent with the Administrative Procedure Act.

* * * * *

(e) * * *

(4) The vessel does not fish for, possess, or land NE multispecies, except that vessels that have a Category A or B Herring Permit fishing on a declared herring trip may possess and land haddock or other regulated species consistent with possession restrictions in § 648.86(a)(3) and (k), respectively. Such haddock or other regulated multispecies may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for, or intended for, human consumption. Haddock or other regulated species that are separated out from the herring catch pursuant to § 648.15(d) may not be sold, purchased, received, traded, bartered, or transferred, or attempted to be sold, purchased, received, traded, bartered, or transferred for any purpose. A vessel issued a Category A or B Herring Permit may not discard haddock that has been brought on the deck or pumped into the hold;

(5) To fish for herring under this exemption, vessels that have a Category A or B Herring Permit must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 48 hr prior to beginning any trip into these areas for the purposes of observer deployment; and

(6) All vessels that have a Category A or B Herring Permit must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hours prior to landing or, if fishing ends less than 6 hours before landing, as soon as the vessel stops catching fish. The Regional Administrator may adjust the prior notification minimum time through publication of a document in the **Federal Register** consistent with the Administrative Procedure Act.

* * * * *

■ 9. In § 648.83, revise paragraph (b)(4) to read as follows:

§ 648.83 Multispecies minimum fish sizes.

* * * * *

(b) * * *

(4) Vessels that have a Category A or B Herring Permit may possess and land haddock and other regulated species that are smaller than the minimum size specified under § 648.83, consistent with the bycatch caps specified in § 648.86(a)(3) and (k). Such fish may not be sold for human consumption.

* * * * *

■ 10. In § 648.86, revise paragraphs (a)(3)(i), (a)(3)(ii)(A)(*1*), and (k) to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(a) * * *

(3) * * *

(i) *Incidental catch allowance for some Atlantic herring vessels.* A vessel issued a Category A or B Herring Permit fishing on a declared herring trip, regardless of gear or area fished, or a vessel issued a Category C, D, or E Herring Permit and fishing with midwater trawl gear pursuant to § 648.80(d), may only possess and land haddock, in accordance with requirements specified in § 648.80(d) and (e).

(ii) * * *

(A) * * *

(*1*) *Haddock incidental catch cap.* When the Regional Administrator has determined that the incidental catch allowance for a given haddock stock, as specified in § 648.90(a)(4)(iii)(D), has been caught, no vessel issued an Atlantic herring permit and fishing with midwater trawl gear in the applicable stock area, *i.e.,* the Herring GOM Haddock Accountability Measure (AM) Area or Herring GB Haddock AM Area, as defined in paragraphs (a)(3)(ii)(A)(*2*) and (*3*) of this section, may fish for, possess, or land herring in excess of 2,000 lb (907.2 kg) per trip in or from that area, unless all herring possessed and landed by the vessel were caught outside the applicable AM Area and the vessel's gear is stowed and not available for immediate use as defined in § 648.2 while transiting the AM Area. Upon this determination, the haddock possession limit is reduced to 0 lb (0 kg) for a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear or for a vessel issued a Category A or B Herring Permit fishing on a declared herring trip, regardless of area fished or gear used, in the applicable AM area, unless the vessel also possesses a NE multispecies permit and is operating on a declared (consistent with § 648.10(g)) NE multispecies trip. In making this determination, the Regional Administrator shall use haddock catches observed by NMFS-certified observers or monitors by herring vessel trips using midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), expanded to an estimate of total haddock catch for all such trips in a given haddock stock area.

* * * * *

(k) *Other regulated NE multispecies possession restrictions for some Atlantic herring vessels.* A vessel issued a Category A or B Herring Permit on a declared herring trip, regardless of area fished or gear used, or a vessel issued a Category C, D, or E Herring Permit and fishing with midwater trawl gear pursuant to § 648.80(d), may possess and land haddock, and up to 100 lb (45 kg), combined, of other regulated NE. multispecies, other than haddock, in accordance with the requirements in § 648.80(d) and (e). Such fish may not be sold for human consumption.

* * * * *

■ 11. In § 648.200, revise paragraphs (a), (b)(1), and (c) to read as follows:

§ 648.200 Specifications.

(a) The Atlantic Herring Plan Development Team (PDT) shall meet at least every 3 years, but no later than July of the year before new specifications are implemented, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Technical Committee (TC) to develop and recommend the following specifications for a period of 3 years for consideration by the New England Fishery Management Council's Atlantic Herring Oversight Committee: Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limit (ACL), Optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), U.S. at-sea processing (USAP), border transfer (BT), the sub-ACL for each management area, including seasonal periods as specified at § 648.201(d) and modifications to sub-ACLs as specified at § 648.201(f), the amount to be set aside for the RSA (from 0 to 3 percent of the sub-ACL from any management area), and river herring and shad catch caps, as specified in § 648.201(a)(4). Recommended specifications shall be

presented to the New England Fishery Management Council.

(1) The PDT shall meet with the Commission's TC to review the status of the stock and the fishery and prepare a Stock Assessment and Fishery Evaluation (SAFE) report at least every 3 years. The Herring PDT will meet at least once during interim years to review the status of the stock relative to the overfishing definition if information is available to do so. When conducting a 3-year review and preparing a SAFE Report, the PDT/TC will recommend to the Council/Commission any necessary adjustments to the specifications for the upcoming 3 years.

(2) If the Council determines, based on information provided by the PDT/TC or other stock-related information, that the specifications should be adjusted during the 3-year time period, it can do so through the same process outlined in this section during one or both of the interim years.

(b) * * *

(1) OFL must be equal to catch resulting from applying the maximum fishing mortality threshold to a current or projected estimate of stock size. When the stock is not overfished and overfishing is not occurring, this is usually the fishing rate supporting maximum sustainable yield (*e.g.,* F_{MSY}). Catch that exceeds this amount would result in overfishing. The stock is considered overfished if stock biomass is less than ½ the stock biomass associated with the MSY level or its proxy (*e.g.,* SSB_{MSY} or proxy). The stock is considered subject to overfishing if the fishing mortality rate exceeds the fishing mortality rate associated with the MSY level or its proxy (*e.g.,* F_{MSY} or proxy).

* * * * *

(c) The Atlantic Herring Oversight Committee shall review the recommendations of the PDT and shall consult with the Commission's Herring Board. Based on these recommendations and any public comment received, the Herring Oversight Committee shall recommend to the Council appropriate specifications for a 3-year period. The Council shall review these recommendations and, after considering public comment, shall recommend appropriate 3-year specifications to NMFS. NMFS shall review the recommendations, consider any comments received from the Commission, and publish notification in the **Federal Register** proposing 3-year specifications. If the proposed specifications differ from those recommended by the Council, the reasons for any differences shall be clearly stated and the revised specifications must satisfy the criteria set forth in paragraph (b) of this section.

* * * * *

■ 12. In § 648.201, revise paragraphs (a)(2), (g), and (h) to read as follows:

§ 648.201 AMs and harvest controls.

(a) * * *

(2) When the Regional Administrator has determined that the GOM and/or GB incidental catch cap for haddock in § 648.90(a)(4)(iii)(D) has been caught, no vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear in the applicable Accountability Measure (AM) Area, *i.e.,* the Herring GOM Haddock AM Area or Herring GB Haddock AM Area, as defined in § 648.86(a)(3)(ii)(A)(*2*) and (*3*) of this part, may fish for, possess, or land herring in excess of 2,000 lb (907.2 kg) per trip in or from the applicable AM Area, and from landing herring more than once per calendar day, unless all herring possessed and landed by a vessel were caught outside the applicable AM Area and the vessel's gear is not available for immediate use as defined in § 648.2 while transiting the applicable AM Area. Upon this determination, the haddock possession limit is reduced to 0 lb (0 kg) in the applicable AM area for a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear or for a vessel issued a Category A or B Herring Permit fishing on a declared herring trip, regardless of area fished or gear used, in the applicable AM area, unless the vessel also possesses a Northeast multispecies permit and is operating on a declared (consistent with § 648.10(g)) Northeast multispecies trip.

* * * * *

(g) *Carryover.* (1) Subject to the conditions described in this paragraph (g), unharvested catch in a herring management area in a fishing year (up to 10 percent of that area's sub-ACL) shall be carried over and added to the sub-ACL for that herring management area for the fishing year following the year when total catch is determined. For example, NMFS will determine total catch from Year 1 during Year 2, and will add carryover to the applicable sub-ACL(s) in Year 3. All such carryover shall be based on the herring management area's initial sub-ACL allocation for the fishing year, not the sub-ACL as increased by carryover or decreased by an overage deduction, as specified in paragraph (a)(3) of this section. All herring caught from a herring management area shall count against that area's sub-ACL, as increased by carryover. For example, if 500 mt of herring is added as carryover to a 5,000 mt sub-ACL, catch in that management area would be tracked against a total sub-ACL of 5,500 mt. NMFS shall add sub-ACL carryover only if the ACL, specified consistent with § 648.200(b)(3), for the fishing year in which there is unharvested herring, is not exceeded. The ACL, consistent with § 648.200(b)(3), shall not be increased by carryover specified in this paragraph (g).

(2) Carryover of unharvested catch as described in this paragraph (g) shall not be added to any herring management area's sub-ACL in the 2020 and 2021 herring fishing years.

(h) If NMFS determines that the New Brunswick weir fishery landed less than 2,942 mt of herring through October 1, NMFS will subtract 1,000 mt from management uncertainty and reallocate that 1,000 mt to the ACL and Area 1A sub-ACL. NMFS will notify the Council of this adjustment and publish the adjustment in the **Federal Register**.

■ 13. In § 648.202, revise paragraph (b)(4)(iv) to read as follows:

§ 648.202 Season and area restrictions.

* * * * *

(b) * * *

(4) * * *

(iv) Comply with the measures to address slippage specified in § 648.11(m)(4)(iv) and (v) if the vessel was issued a Category A or B Herring Permit.

■ 14. In § 648.204, revise paragraph (a) to read as follows:

§ 648.204 Possession restrictions.

(a) A vessel must be issued and possess a valid limited access herring permit (*i.e.,* Category A, B, or C) or Category E Herring Permit (as defined in § 648.4(a)(10)(iv) and (v)) to fish for, possess, or land more than 6,600 lb (3 mt) of Atlantic herring from any herring management area in the EEZ. A vessel must abide by any harvest restriction specified in § 648.201 that has been implemented.

(1) A vessel issued a Category A Herring Permit may fish for, possess, or land Atlantic herring with no possession restriction from any of the herring management areas defined in § 648.200(f), provided none of the accountability measures or harvest restrictions specified in § 648.201 have been implemented.

(2) A vessel issued only a Category B Herring Permit may fish for, possess, or land Atlantic herring with no possession restriction only from Area 2 or Area 3, as defined in § 648.200(f), provided none of the accountability measures or harvest restrictions

specified in § 648.201 have been implemented. Such a vessel may fish in Area 1 only if issued a Category C or D Herring Permit, and only as authorized by the respective permit.

(3) A vessel issued a Category C Herring Permit may fish for, possess, or land up to, but no more than, 55,000 lb (25 mt) of Atlantic herring in any calendar day, and is limited to one landing of herring per calendar day, from any management area defined in § 648.200(f), provided none of the accountability measures or harvest restrictions specified in § 648.201 have been implemented.

(4) A vessel issued a Category D Herring Permit may fish for, possess, or land up to, but no more than, 6,600 lb (3 mt) of Atlantic herring from any herring management area per trip, and is limited to one landing of herring per calendar day, provided none of the accountability measures or harvest restrictions specified in § 648.201 have been implemented.

(5) A vessel issued a Category E Herring Permit may fish for, possess, or land up to, but no more than, 20,000 lb (9 mt) of Atlantic herring from only Area 2 or Area 3, as defined in § 648.200(f), per trip, and is limited to one landing of herring per calendar day, provided none of the accountability measures or harvest restrictions specified in § 648.201 have been implemented.

(6) A vessel issued a herring permit may possess herring roe provided that the carcasses of the herring from which it came are not discarded at sea.

* * * * *

■ 15. Section 648.205 is revised to read as follows:

§ 648.205 VMS requirements.

The owner or operator any vessel issued a limited access herring permit (*i.e.,* Category A, B, or C) or Category E Herring Permit, with the exception of fixed gear fishermen, must install and operate a VMS unit consistent with the requirements of § 648.9. The VMS unit must be installed on board, and must be operable before the vessel may begin fishing. Atlantic herring carrier vessels are not required to have VMS (See § 648.10(m) for VMS notification requirements.).

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Proposed Rules

Federal Register
Vol. 85, No. 88
Wednesday, May 6, 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–2020–0341; Product Identifier 2020–NM–017–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

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 The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. This proposed AD was prompted by significant changes made to the airworthiness limitations (AWLs) related to fuel tank ignition prevention and the nitrogen generation system. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate the latest revision of the AWLs. 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 June 22, 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 Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0341; 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, 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: Christopher Baker, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3556; email: *Christopher.R.Baker@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–2020–0341; Product Identifier 2020–NM–017–AD'' at the beginning of your comments. The FAA specifically invite 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.

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 NPRM.

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, the FAA issued a final rule titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements that rule included Amendment 21–78, which established Special Federal Aviation Regulation No. 88 (''SFAR 88'') at 14 CFR part 21. Subsequently, SFAR 88 was amended by Amendment 21–82 (67 FR 57490, September 10, 2002; corrected at 67 FR 70809, November 26, 2002), Amendment 21–83 (67 FR 72830, December 9, 2002; corrected at 68 FR 37735, June 25, 2003, to change ''21–82'' to ''21–83''), and Amendment 21–101 (83 FR 9162, March 5, 2018).

Among other actions, SFAR 88 requires certain type design (*i.e.,* type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the final rule published on May 7, 2001, the FAA intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, the FAA has established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in

combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The FAA has determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

The FAA issued AD 2008–10–10 R1, Amendment 39–16164 (75 FR 1529, January 12, 2010) (''AD 2008–10–10 R1'') and AD 2018–20–24, Amendment 39–19458 (83 FR 51815, October 15, 2018) (''AD 2018–20–24''), which apply to certain The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes. AD 2008–10–10 R1 and AD 2018–20–24 require incorporation of fuel system AWLs and also require an initial inspection to phase in certain repetitive inspections, and repair if necessary. The fuel system AWLs were developed to satisfy SFAR 88 requirements and included in the Airworthiness Limitations Section (ALS) of the manufacturer's Instructions for Continued Airworthiness. Since AD 2008–10–10 R1 and AD 2018–20–24 were issued, the ALS has been significantly revised by the manufacturer to correct technical and editorial errors and also to add new requirements. Those changes affect the fuel system and nitrogen generation system AWLs.

The FAA proposes to adopt this new AD to require revising the maintenance or inspection program, as applicable, to incorporate the latest revision of the AWLs. The FAA is proposing this AD to prevent the potential for ignition sources inside the fuel tanks and also to prevent increasing the flammability exposure of the center fuel tank caused by latent failures, alterations, repairs, or maintenance actions, which could result in a fuel tank explosion and consequent loss of an airplane.

The FAA has determined that accomplishing the revision required by paragraph (g) of this proposed AD would terminate the following requirements for that airplane:

- All requirements of AD 2008–10–10 R1.
- The revision required by paragraphs (h) and (h)(1) of AD 2008–06–03, Amendment 39–15415 (73 FR 13081, March 12, 2008).
- The revision required by paragraph (g) of AD 2008–17–15, Amendment 39–15653 (73 FR 50714, August 28, 2008).
- The revision required by paragraph (k) of AD 2011–18–03, Amendment 39–16785 (76 FR 53317, August 26, 2011).
- All requirements of AD 2013–15–17, Amendment 39–17533 (78 FR 52838, August 27, 2013).
- All requirements of AD 2018–20–24.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing 737–600/700/700C/800/900/900ER Special Compliance Items/Airworthiness Limitations, D626A001–9–04, dated April 2019. This service information describes AWLs that include airworthiness limitation instructions (ALIs) and critical design configuration control limitations (CDCCLs) tasks related to fuel tank ignition prevention and the nitrogen generation system. 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

The FAA is proposing this AD because the agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections) and CDCCLs. Compliance with these actions and CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (k) of this proposed AD.

Differences Between This Proposed AD and the Service Information

The ''description'' column of AWL No. 28–AWL–20 identifies certain operational tests. However, airplanes on which the actions specified in paragraph (g)(2)(ii) of AD 2011–20–07, Amendment 39–16818 (76 FR 60710, September 30, 2011), have been done are not required to do the operational test for left center tank fuel boost pump relay R54 and right center tank fuel boost pump relay R55.

Paragraph (g) of this proposed AD would require operators to revise their existing maintenance or inspection program by incorporating, in part, AWL No. 28–AWL–05, ''Wire Separation Requirements for New Wiring Installed in Proximity to Wiring That Goes Into the Fuel Tanks'' in Boeing 737–600/700/700C/800/900/900ER Special Compliance Items/Airworthiness Limitations, D626A001–9–04, dated April 2019. Paragraph (h) of this proposed AD would allow certain changes to be made to the requirements specified in AWL No. 28–AWL–05 as an option.

Clarification of the Service Information

The ''applicability'' column of AWL No. 28–AWL–19 identifies affected airplanes. For airplanes on which the actions specified in paragraph (s) of AD 2011–18–03 have been done, incorporation of Boeing Service Bulletin 737–28A1206 is not required. Therefore, those airplanes are not affected by AWL No. 28–AWL–19 and are not required to do the functional test.

The ''applicability'' column of AWL No. 28–AWL–23 identifies affected airplanes. For airplanes on which the actions specified in paragraph (s) of AD 2011–18–03 have been done, incorporation of Boeing Service Bulletin 737–28A1248 is not required. Therefore, those airplanes are not affected by AWL No. 28–AWL–23 and are not required to do the functional test.

Costs of Compliance

The FAA estimates that this proposed AD affects 2,057 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. In the past, the FAA estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the average total cost per operator to be $7,650 (90 work-hours x $85 per work-hour).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

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):

The Boeing Company: Docket No. FAA–2020–0341; Product Identifier 2020–NM–017–AD.

(a) Comments Due Date

The FAA must receive comments by June 22, 2020.

(b) Affected ADs

This AD affects the ADs specified in paragraphs (b)(1) through (6) of this AD.

(1) AD 2008–06–03, Amendment 39–15415 (73 FR 13081, March 12, 2008) (''AD 2008–06–03'').

(2) AD 2008–10–10 R1, Amendment 39–16164 (75 FR 1529, January 12, 2010) (''AD 2008–10–10 R1'').

(3) AD 2008–17–15, Amendment 39–15653 (73 FR 50714, August 28, 2008) (''AD 2008–17–15'').

(4) AD 2011–18–03, Amendment 39–16785 (76 FR 53317, August 26, 2011) (''AD 2011–18–03'').

(5) AD 2013–15–17, Amendment 39–17533 (78 FR 52838, August 27, 2013) (''AD 2013–15–17'').

(6) AD 2018–20–24, Amendment 39–19458 (83 FR 51815, October 15, 2018) (''AD 2018–20–24'').

(c) Applicability

This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before December 18, 2019.

(d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Unsafe Condition

This AD was prompted by significant changes made to the airworthiness limitations (AWLs) related to fuel tank ignition prevention and the nitrogen generation system. The FAA is issuing this AD to address the development of an ignition source inside the fuel tanks and also to prevent increasing the flammability exposure of the center fuel tank, which could lead to fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Section A, including Subsections A.1., A.2., and A.3, of Boeing 737–600/700/700C/800/900/900ER Special Compliance Items/Airworthiness Limitations, D626A001–9–04, dated April 2019; except as provided by paragraph (h) of this AD. The initial compliance times for the airworthiness limitation instruction (ALI) tasks are within the applicable compliance times specified in in paragraphs (g)(1) through (14) of this AD.

(1) For AWL No. 28–AWL–01, ''External Wires Over Center Fuel Tank:'' Within 120 months after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness, or within 120 months after the most recent inspection was performed as specified in AWL No. 28–AWL–01, whichever is later.

(2) For AWL No. 28–AWL–03, ''Fuel Quantity Indicating System (FQIS)-Out Tank Wiring Lightning Shield to Ground Termination:'' Within 120 months after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness, or within 120 months after the most recent inspection was performed as specified in AWL No. 28–AWL–03, whichever is later.

(3) For AWL No. 28–AWL–19, ''Center Tank Fuel Boost Pump Automatic Shutoff System:'' Within 12 months after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness, within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1206, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–19, whichever is latest. This AWL does not apply to airplanes that have complied with paragraph (s) of AD 2011–18–03.

(4) For AWL No. 28–AWL–20, ''Over-Current and Arcing Protection Electrical Design Features Operation-Boost Pump Ground Fault Interrupter (GFI):'' Within 12 months after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness, within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1201, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–20, whichever is latest. For airplanes that have complied with paragraph (g)(2)(ii) of AD 2011–20–07, Amendment 39–16818 (76 FR 60710, September 30, 2011), the operational test for left center tank fuel boost pump relay R54 and right center tank fuel boost pump relay R55 does not apply.

(5) For AWL No. 28–AWL–23, ''Center Tank Fuel Boost Pump Power Failed On Protection System:'' Within 12 months after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness, within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1248, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–23, whichever is latest. This AWL does not apply to airplanes that have complied with paragraph (s) of AD 2011–18–03.

(6) For AWL No. 28–AWL–24, ''Spar Valve Motor Operated Valve (MOV) Actuator-Lightning and Fault Current Protection Electrical Bond:'' Within 72 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1207, or

within 72 months after the most recent inspection was performed as specified in AWL No. 28–AWL–24, whichever is later.

(7) For AWL No. 28–AWL–29, ''Full Cushion Clamps and Teflon Sleeving (If Installed) Installed on Out-of-Tank Wire Bundles Installed on Brackets that are Mounted Directly on the Fuel Tanks:'' For airplanes having line numbers (L/N) 1 through 1754 inclusive, within 120 months after accomplishment of the actions specified in Boeing Service Bulletin 737–57A1279. For airplanes having L/N 1755 and subsequent, within 120 months after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness, or within 48 months after the effective date of this AD, whichever is later.

(8) For AWL No. 28–AWL–35, ''Fuel Quantity Indicating System (FQIS)—Center Fuel Tank In-Tank Component and Wire Harness Protection Features—Separation from Center Tank Internal Structure:'' For airplanes that have incorporated Boeing Service Bulletin 737–28–1356, within 120 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28–1356, or within 120 months after the most recent inspection was performed as specified in AWL No. 28–AWL–35, whichever is later.

(9) For AWL No. 28–AWL–37, ''Fuel Quantity Indicating System (FQIS)—Built in Test Equipment (BITE) Test:'' For airplane L/Ns 6987 and 7000 and subsequent, within 750 flight hours since the date the most recent BITE test was accomplished as specified in AWL No. 28–AWL–37, or within 750 flight hours after the effective date of this AD, whichever is later.

(10) For AWL No. 47–AWL–04, ''Nitrogen Generation System-Thermal Switch:'' Within 22,500 flight hours after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness, within 22,500 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 737–47–1003, or within 22,500 flight hours after the most recent inspection was performed as specified in AWL No. 47–AWL–04, whichever is latest.

(11) For AWL No. 47–AWL–06, ''Nitrogen Generation System (NGS)-Cross Vent Check Valve:'' Within 13,000 flight hours after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness, within 13,000 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 737–47–1003, or within 13,000 flight hours after the most recent inspection was performed as specified in AWL No. 47–AWL–06, whichever is latest.

(12) For AWL No. 47–AWL–07, ''Nitrogen Generation System (NGS)-Nitrogen Enriched Air (NEA) Distribution Ducting Integrity:'' Within 6,500 flight hours after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness, within 6,500 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 737–47–1003, or within 6,500 flight hours after the most recent inspection was performed as specified in AWL No. 47–AWL–07, whichever is latest.

(13) For AWL No. 47–AWL–09, ''Nitrogen Generation System—Oxygen Sensor:'' Within 18,000 flight hours after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness, or within 18,000 flight hours after the most recent replacement was performed as specified in AWL No. 47–AWL–09, or within 12 months after the effective date of this AD, whichever is latest.

(14) For AWL No. 28–AWL–101, ''Engine Fuel Suction Feed Operational Test:'' Within 7,500 flight hours or 36 months, whichever occurs first, after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness; or within 7,500 flight hours or 36 months, whichever occurs first, after the most recent inspection was performed as specified in AWL No. 28–AWL–101; whichever is later.

(h) Additional Acceptable Wire Types and Sleeving

As an option, when accomplishing the actions required by paragraph (g) of this AD, the changes specified in paragraphs (h)(1) and (2) of this AD are acceptable.

(1) Where AWL No. 28–AWL–05 identifies wire types BMS 13–48, BMS 13–58, and BMS 13–60, the following wire types are acceptable: MIL–W–22759/16, SAE AS22759/16 (M22759/16), MIL–W–22759/32, SAE AS22759/32 (M22759/32), MIL–W–22759/34, SAE AS22759/34 (M22759/34), MIL–W–22759/41, SAE AS22759/41 (M22759/41), MIL–W–22759/86, SAE AS22759/86 (M22759/86), MIL–W–22759/87, SAE AS22759/87 (M22759/87), MIL–W–22759/92, and SAE AS22759/92 (M22759/92); and MIL–C–27500 and NEMA WC 27500 cables constructed from these military or SAE specification wire types, as applicable.

(2) Where AWL No. 28–AWL–05 identifies TFE–2X Standard wall for wire sleeving, the following sleeving materials are acceptable: Roundit 2000NX and Varglas Type HO, HP, or HM.

(i) No Alternative Actions, Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

Except as provided in paragraph (h) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k) of this AD.

(j) Terminating Action for Certain AD Requirements

Accomplishment of the revision required by paragraph (g) of this AD terminates the requirements specified in paragraphs (j)(1) through (6) of this AD for that airplane.

(1) The revision required by paragraphs (h) and (h)(1) of AD 2008–06–03.

(2) All requirements of AD 2008–10–10 R1.

(3) The revision required by paragraph (g) of AD 2008–17–15.

(4) The revision required by paragraph (k) of AD 2011–18–03.

(5) All requirements of AD 2013–15–17.

(6) All requirements of AD 2018–20–24.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (l)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(l) Related Information

(1) For more information about this AD, contact Christopher Baker, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3556; email: *Christopher.R.Baker@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on April 23, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–09395 Filed 5–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0443; Project Identifier AD–2020–00178–E]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all General Electric Company (GE) GEnx–1B64, 1B64/P1, –1B64/P2, –1B67, –1B67/P1, –1B67P2, –1B70, –1B70/75/P1, –1B70/75/P2, –1B70/P1, –1B70/P2, –1B70C/P1, –1B70C/P2, –1B74/75/P1, –1B74/75/P2, –1B76/P2, and –1B76A/P2 model turbofan engines. This proposed AD was prompted by reports of combustor case burn-through. This proposed AD would require installation of electronic engine control (EEC) software, version B205 or later. 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 June 22, 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 General Electric Company, 1 Neumann Way, Cincinnati, OH, 45215, United States; phone: (513) 552–3272; email: *aviation.fleetsupport@ae.ge.com*; website: *www.ge.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety 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–2020–0443; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mehdi Lamnyi, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7743; fax: (781) 238–7199; email: *Mehdi.Lamnyi@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–2020–0443; Project Identifier AD–2020–00178–E'' 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 Mehdi Lamnyi, Aerospace Engineer, ECO 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 FAA received two reports of engine overheat messages on airplanes operating GE GEnx–1B model turbofan engines during revenue flights. One message led to a commanded in-flight shutdown and both flights diverted and made safe landings. Investigation of these incidents revealed combustor case burn-through as the result of damage to the fuel nozzle caused by high amplitude load on the combustor components during fuel mixing. The breach in the fuel nozzle produced sideways jets and fanned spray directed towards the combustor case which led to burn-through of the cases. The software upgrade required by this AD would introduce changes to the fuel scheduling to reduce the high load during the fuel mixing that led to damage to the fuel nozzle. This condition, if not addressed, could result in failure of the fuel nozzle, damage to the combustor case, engine fire and damage to the airplane.

Related Service Information

The FAA reviewed GE GEnx–1B Service Bulletin (SB) 73–0085 R00, dated December 23, 2019. The SB describes procedures for installing the EEC software version B205.

FAA's Determination

The FAA is proposing this AD because the Agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require installation of EEC software, version B205 or later.

Costs of Compliance

The FAA estimates that this proposed AD affects 176 engines installed on airplanes 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
Install EEC software version B205 or later	1 work-hour × $85 per hour = $85	$0	$85	$14,960

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.

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):

General Electric Company: Docket No. FAA–2020–0443; Project Identifier AD–2020–00178–E.

(a) Comments Due Date

The FAA must receive comments by June 22, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company (GE) GEnx–1B64, 1B64/P1, –1B64/P2, –1B67, –1B67/P1, –1B67P2, –1B70, –1B70/75/P1, –1B70/75/P2, –1B70/P1, –1B70/P2, –1B70C/P1, –1B70C/P2, –1B74/75/P1, –1B74/75/P2, –1B76/P2, and –1B76A/P2 model turbofan engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7240, Turbine Engine Combustion Section.

(e) Unsafe Condition

This AD was prompted by two reports of combustor case burn-through. The FAA is issuing this AD to prevent failure of the fuel nozzle. The unsafe condition, if not addressed, could result in damage to the combustor case, engine fire, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

Within 120 days after the effective date of this AD, install electronic engine control (EEC) software that is eligible for installation.

(h) Definition

For the purpose of this AD, EEC software that is eligible for installation is EEC software that is version B205 or later.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

(1) For more information about this AD, contact Mehdi Lamnyi, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: (781) 238–7743; fax: (781) 238–7199; email: *Mehdi.Lamnyi@faa.gov.*

(2) For service information identified in this AD, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215, United States; phone: (513) 552–3272; email: *aviation.fleetsupport@ae.ge.com*; website: *www.ge.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Issued on April 29, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–09437 Filed 5–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0331; Product Identifier 2020–NM–019–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

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 The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. This proposed AD was prompted by a report that the

necessary sealant was not applied to the side of body (SOB) slot as a result of a production drawing that provided unclear SOB slot sealant application instructions. This proposed AD would require a general visual inspection for insufficient sealant in the SOB slot, and related investigative and corrective actions. 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 June 22, 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 Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0331.

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–2020–0331; 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, 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: James Laubaugh, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3622; email: *james.laubaugh@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–2020–0331; Product Identifier 2020–NM–019–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.

The FAA will post all comments, 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 NPRM.

Discussion

The FAA has received a report indicating that the necessary sealant was not applied to the SOB slot as a result of a production drawing providing unclear SOB slot sealant application instructions on certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. In 2019, an operator of a Model 737–800 airplane reported a fuel smell in the cabin, and the airplane was diverted. During post-flight inspection, insulation blankets in the air distribution mix bay (ADMB) were found to be soaked with fuel. The ADMB is located in the fuselage lower lobe immediately forward of the body station (BS) 540 front spar bulkhead. An investigation of this incident led to the finding that there was no sealant applied in the SOB slot. For any part of a fuel tank that is inside the pressurized boundary, a secondary fuel barrier is required. On The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, the areas requiring secondary barrier are the wing center section upper surface and the part of the wing center section front spar that is inside the pressure boundary. The secondary barrier is achieved by application of BMS 5–81 secondary fuel barrier sealant (commonly referred to as ''vapor barrier''). On the reporting airplane, sealant inside the center fuel tank was repaired to correct the primary leak in the tank, and the SOB slot sealant was restored. The investigation concluded that the production drawing lacked clarity regarding the SOB slot sealant application. The drawing was revised beginning at line number (L/N) 937, but production planning did not reflect the drawing change until L/N 1935. The ADMB is not a flammable fluid leakage zone and therefore does not have ignition prevention and fire detection features, and is also immediately adjacent to the passenger compartment. Fuel leaking into the ADMB, if not addressed, could possibly lead to an ignition of flammable fluid vapors, fire, or explosion, or fuel vapor inhalation by passengers and crew.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Multiple Operator Message MOM–MOM–20–0049–01B (R1), dated January 29, 2020. This service information describes procedures for a general visual inspection for insufficient sealant in the SOB slot. The service information also describes procedures for related investigative actions including a general visual inspection of the ADMB for fuel contamination, a check for external leaks of the center fuel tank external surfaces inside the pressure boundary, and an internal leak check of the center fuel tank to identify the leakage path(s). The service information also describes procedures for corrective actions including removal of all insulation blankets below the crease beam left side to right side, clean-up of all fuel contamination, repair of any leak, preparation of the SOB slot for sealing, application of sealant, and repair of the secondary fuel barrier. 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

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously. For information on the procedures, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0331.

Costs of Compliance

The FAA estimates that this proposed AD affects 731 airplanes 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
Inspection for sealant	30 work-hours × $85 per hour = $2,550	$0	$2,550	$1,864,050

The FAA estimates the following costs to do any necessary repairs that would be required based on the results of the proposed inspection. The FAA has no way of determining the number of aircraft that might need these repairs:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair of sealant	2 work-hours × $85 per hour = $170	$129	$299
Insulation blanket replacement	24 work-hours × $85 per hour = $2,040	6,312	8,352
Leak checks	6 work-hours × $85 per hour = $510	0	510

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.

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):

The Boeing Company: Docket No. FAA–2020–0331; Product Identifier 2020–NM–019–AD.

(a) Comments Due Date

The FAA must receive comments by June 22, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category, line numbers 1 through 1934 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by a report that sealant was not applied to the side of body (SOB) slot inside of a pressurized boundary, which could lead to inconsistent application of the required secondary fuel barrier sealant (vapor barrier). The FAA is issuing this AD to address possible ignition of flammable fluid vapors, fire, or explosion, or fuel vapor inhalation by passengers and crew.

(f) Compliance

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

(g) Inspection Definition

For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(h) SOB Slot Inspection and Related Investigative and Corrective Actions

Within 9 months after the effective date of this AD: Do a general visual inspection for insufficient sealant in the SOB slot, and do all applicable related investigative and corrective actions, in accordance with Boeing Multiple Operator Message MOM–MOM–20–0049–01B (R1), dated January 29, 2020. Do all related investigative and corrective actions before further flight.

(i) Deferred Repair

Repair of insufficient sealant as required by paragraph (h) may be deferred for 10 days

provided there is no fuel present in the center tank as specified in the procedures in item 28–02A of the operator's existing minimum equipment list, and there is no fuel contamination in the ADMB.

(j) Reporting Provisions

Although the service information referenced in Boeing Multiple Operator Message MOM–MOM–20–0049–01B (R1), dated January 29, 2020, specifies to report inspection findings, this AD does not require any report.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (l)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(l) Related Information

(1) For more information about this AD, contact James Laubaugh, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3622; email: *james.laubaugh@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on April 23, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–09396 Filed 5–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0348; Product Identifier 2020–NM–054–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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 Airbus SAS Model A330–202, –203, –223, –223F, –243, –243F, –302, –303, –323, –343, and –941 airplanes; and Model A340–313, –541, and –642 airplanes. This proposed AD was prompted by the results of laboratory tests on non-rechargeable lithium batteries installed in emergency locator transmitters (ELT), which highlighted a lack of protection against currents of 28 volts DC or 115 volts AC that could lead to thermal runaway and a battery fire. This proposed AD would require modifying a certain ELT by installing a diode between the ELT and the terminal block, as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. 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 June 22, 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 the material identified in this proposed AD that will be incorporated by reference (IBR), contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0348.

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–2020–0348; 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, 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: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email *vladimir.ulyanov@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–2020–0348; Product Identifier 2020–NM–054–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 based on those comments.

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 NPRM.

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0083, dated April 3, 2020 (''EASA AD 2020–0083'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A330–202, –203, –223,

–223F, –243, –243F, –302, –303, –323, –343, and –941 airplanes; and Model A340–313, –541, and –642 airplanes.

This proposed AD was prompted by the results of laboratory tests on non-rechargeable lithium batteries installed in ELTs, which highlighted a lack of protection against currents of 28 volts DC or 115 volts AC that could lead to thermal runaway and a battery fire. The FAA is proposing this AD to address local (temporary) fires in non-rechargeable lithium batteries installed in ELTs, which could result in damage to the airplane and injury to occupants. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0083 describes procedures for modifying a certain ELT by installing a diode between the ELT and the terminal block.

This material 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 and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD after evaluating all the relevant information and determining 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 accomplishing the actions specified in EASA AD 2020–0083 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2020–0083 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2020–0083 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2020–0083 that is required for compliance with EASA AD 2020–0083 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0348 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 12 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
3 work-hours × $85 per hour = $255	$460	$715	$8,580

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in our cost estimate.

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.

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):

Airbus SAS: Docket No. FAA–2020–0348; Product Identifier 2020–NM–054–AD.

(a) Comments Due Date

The FAA must receive comments by June 22, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus SAS airplanes specified in paragraphs (c)(1) through (7) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2020–0083, dated April 3, 2020 (''EASA AD 2020–0083'').

(1) Model A330–202, –203, –223, and –243 airplanes.

(2) Model A330–223F and –243F airplanes.

(3) Model A330–302, –303, –323, and –343 airplanes.

(4) Model A330–941 airplanes.

(5) Model A340–313 airplanes.

(6) Model A340–541 airplanes.

(7) Model A340–642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Reason

This AD was prompted by the results of laboratory tests on non-rechargeable lithium batteries installed in emergency locator transmitters (ELT), which highlighted a lack of protection against currents of 28 volts DC or 115 volts AC that could lead to thermal runaway and a battery fire. The FAA is issuing this AD to address local (temporary) fires in non-rechargeable lithium batteries installed in ELTs, which could result in damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2020–0083.

(h) Exceptions to EASA AD 2020–0083

(1) Where EASA AD 2020–0083 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0083 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2020–0083 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) For information about EASA AD 2020–0083, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0348.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email *vladimir.ulyanov@faa.gov.*

Issued on April 28, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–09376 Filed 5–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0319; Airspace Docket No. 20–ACE–5]

RIN 2120–AA66

Proposed Amendment of Class D and E Airspace; St. Louis, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class D airspace and the Class E surface airspace at Spirit of St. Louis Airport, St. Louis, MO, and the Class E airspace extending upward from 700 feet above the surface at St. Louis Lambert International Airport, St. Louis, MO, Spirit of St. Louis Airport, and St. Charles County Smartt Airport, St. Charles, MO, which is contained within the St. Louis, MO, airspace legal description, and removing St. Louis Regional Airport, Alton/St. Louis, IL, which is contained within the St. Louis, MO, airspace legal description. The FAA is proposing these actions as the result of airspace reviews caused by the decommissioning of the Cardinal VHF omnidirectional range (VOR) navigation aid, which provided navigation information for the instrument procedures at these airports, as part of the VOR Minimum Operational Network (MON) Program; and the decommissioning of the outer markers for runways 12R, 24, and 30L at St. Louis Lambert International Airport. The names of St. Louis Lambert International Airport and the Spirit of St. Louis: RWY 25L–LOC would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before June 22, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2020–0319/Airspace Docket No. 20–ACE–5 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between

9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class D airspace and the Class E surface airspace at Spirit of St. Louis Airport, St. Louis, MO, and the Class E airspace extending upward from 700 feet above the surface at St. Louis Lambert International Airport, St. Louis, MO, Spirit of St. Louis Airport, and St. Charles County Smartt Airport, St. Charles, MO, which is contained within the St. Louis, MO, airspace legal description, and removing St. Louis Regional Airport, Alton/St. Louis, IL, which is contained within the St. Louis, MO, airspace legal description, to support instrument flight rule operations at these airports.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2020–0319/Airspace Docket No. 20–ACE–5.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by:

Amending the Class D airspace at Spirit of St. Louis Airport, St. Louis, MO, by updating the bearing of the east extension to 078° (previously 079°); and updating the bearing of the west extension to 258° (previously 259°);

Amending the Class E surface area at Spirit of St. Louis Airport by updating the bearing of the east extension to 078° (previously 079°); and updating the bearing of the west extension to 258° (previously 259°);

Amending the Class E airspace extending upward from 700 feet above the surface at St. Louis Lambert International Airport, St. Louis, MO, to within an 8.5-mile (increased from 7.1-mile) radius of the airport; removing the St. Louis Lambert International Runway 24 Localizer and the associated extension from the airspace legal description, as it is no longer needed; removing the St. Louis Lambert International Runway 12R Localizer and the associated extension from the airspace legal description, as it is no longer needed; removing the St. Louis Lambert International Runway 30L Localizer and the associated extension from the airspace legal description, as it is no longer needed; removing the ZUMAY LOM and the associated extension from the airspace legal description, as it is no longer needed; removing the OBLIO LOM and the associated extension from the airspace legal description, as it is no longer needed; updating the name of the St. Louis Lambert International Airport (previously Lambert-St. Louis International Airport) to coincide with the FAA's aeronautical database; updating the bearing of the east extension of Spirit of St. Louis Airport to 078° (previously 079°); updating the name of the Spirit of St. Louis: RWY 26L–LOC (previously Spirit of St. Louis Runway 26L Localizer) to coincide with the FAA's aeronautical database; updating the extension east of the Spirit of St. Louis: RWY 26L–LOC to within 3.8 miles (decreased from 4.1 miles) north and 5.7 miles (decreased from 6.4 miles) south of the 078° (previously 079°) bearing from the Spirit of St. Louis: RWY 26L–LOC extending from the 6.9-mile radius of the Spirit of St. Louis Airport to 10.6 miles (decreased from 11.3 miles) east of the Spirit of St. Louis: RWY 26L–LOC; updating the bearing of the west extension of Spirit

of St. Louis Airport to 258° (previously 259°); adding an extension at St. Charles County Smartt Airport, St. Charles, MO, within 3.3 miles each side of the 028° radial from the St. Louis VORTAC extending from the 6.4-mile radius of St. Charles County Smartt Airport to 12.4 miles northeast of St. Charles County Smartt Airport; and removing St. Louis Regional Airport, Alton/St. Louis, IL, which is contained within the St. Louis, MO, airspace legal description, and the Civic Memorial NDB and the associated north and south extensions from St. Louis Regional Airport. (A separate airspace review of St. Louis Regional Airport resulted in the Class E airspace extending upward from 700 feet above the surface at St. Louis Regional Airport no longer adjoining the St. Louis, MO, Class E airspace extending upward from 700 feet above the surface. As a result, a separate Class E airspace extending upward from 700 feet above the surface airspace legal description will be created for Alton/St. Louis, IL, under FAA Docket No. FAA–2020–0321/ Airspace Docket 20–AGL–17 and will be become effective coincidentally with this action.)

Class D and E airspace designations are published in paragraph 5000, 6002, and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ACE MO D St. Louis, MO [Amended]

Spirit of St. Louis Airport, MO
(Lat. 38°39′44″ N, long. 90°39′07″ W)

That airspace extending upward from the surface to and including 3,000 feet within a 4.4-mile radius of Spirit of St. Louis Airport, and within 1 mile each side of the 078° bearing from the airport extending from the 4.4-mile radius to 4.6 miles east of the airport, and within 1 mile each side of the 258° bearing from the airport extending from the 4.4-mile radius to 4.6 miles west of the airport, excluding that airspace within the St. Louis, MO Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ACE MO E2 St. Louis, MO [Amended]

Spirit of St. Louis Airport, MO
(Lat. 38°39′44″ N, long. 90°39′07″ W)

That airspace extending upward from the surface to and including 3,000 feet within a 4.4-mile radius of Spirit of St. Louis Airport, and within 1 mile each side of the 078° bearing from the airport extending from the 4.4-mile radius to 4.6 miles east of the airport, and within 1 mile each side of the 258° bearing from the airport extending from the 4.4-mile radius to 4.6 miles west of the airport, excluding that airspace within the St. Louis, MO Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Chart Supplement.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE MO E5 St. Louis, MO [Amended]

St. Louis Lambert International Airport, MO
(Lat. 38°44′55″ N, long. 90°22′12″ W)
Spirit of St. Louis Airport, MO
(Lat. 38°39′44″ N, long. 90°39′07″ W)
St. Charles County Smartt Airport, MO
(Lat. 38°55′47″ N, long. 90°25′48″ W)
St. Louis VORTAC
(Lat. 38°51′38″ N, long. 90°28′57″ W)
Spirit of St. Louis: RWY 26L–LOC
(Lat. 38°39′26″ N, long. 90°39′48″ W)

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of St. Louis Lambert International Airport, and within a 6.9-mile radius of Spirit of St. Louis Airport, and within 2.5 miles each side of the 078° bearing from the Spirit of St. Louis Airport extending from the 6.9-mile radius of the airport to 8.1 miles east of the airport, and within 3.8 miles north and 5.7 miles south of the 078° bearing from the Spirit of St. Louis: RWY 26L–LOC extending from the 6.9-mile radius of the Spirit of St. Louis Airport to 10.6 miles east of the Spirit of St. Louis: RWY 26L–LOC, and within 3.9 miles each side of the 258° bearing from the Spirit of St. Louis Airport extending from the 6.9-mile radius of the airport to 10.6 miles west of the airport, and within a 6.4-mile radius of St. Charles County Smartt Airport, and within 3.3 miles each side of the 028° radial from the St. Louis VORTAC extending from the 6.4-mile radius of St. Charles County Smartt Airport to 12.4 miles northeast of the airport.

Issued in Fort Worth, Texas, on April 27, 2020.

Steven Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2020–09463 Filed 5–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0324; Airspace Docket No. 20–ACE–6]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Sedalia, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace extending upward from 700 feet above the surface at Sedalia Regional Airport, Sedalia, MO. The FAA is proposing this action as the result of an airspace review due to the decommissioning of the Sedalia non-directional beacon (NDB) which provided navigation information to the instrument procedures at this airport. The name of the airport would also be updated to coincide with the FAA's aeronautic database. Airspace redesign is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: Comments must be received on or before June 22, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2020–0324/Airspace Docket No. 20–ACE–6 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at Sedalia Regional Airport, Sedalia, MO, to support IFR operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2020–0324/Airspace Docket No. 20–ACE–6.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Class E airspace extending upward from 700 feet above the surface to within a 6.6-mile (decreased from a 7.1-mile) radius of the Sedalia Regional Airport, Sedalia, MO; updating the name of the Sedalia Regional Airport (previously Sedalia Memorial Airport) to coincide with the FAA's aeronautical database; and removing the Sedalia NDB and associated extension from the airspace legal description.

This action is necessary due to an airspace review due to the decommissioning of the Sedalia NDB which provided navigation information to the instrument procedures at this airport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11D, dated August 8, 2019,

and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order. FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 6005. Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ACE MO E5 Sedalia, MO [Amended]

Sedalia Regional Airport, MO
(Lat. 38°42′27″ N, long. 93°10′33″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Sedalia Regional Airport.

Issued in Fort Worth, Texas, on April 27, 2020.

Steven Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2020–09464 Filed 5–5–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. FDA–2020–F–1275]

Biomin GmbH; Filing of Food Additive Petition (Animal Use)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification; petition for rulemaking.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by Biomin GmbH, proposing that the food additive regulations be amended to provide for the safe use of fumonisin esterase to degrade fumonisins present in swine feed.

DATES: The food additive petition was filed on March 26, 2020.

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 document, into the ''Search'' box and follow the prompts; and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Carissa Adams, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6283, *Carissa.Adams@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), we are giving notice that we have filed a food additive petition (FAP 2311) submitted by Biomin GmbH; Erber Campus 1, 3131 Getzersdorf, Austria. The petition proposes to amend Title 21 of the Code of Federal Regulations (CFR) in part 573 (21 CFR part 573) *Food Additives Permitted in Feed and Drinking Water of Animals* to provide for the safe use of fumonisin esterase to degrade fumonisins present in swine feed.

The petitioner has claimed that this action is categorically excluded under 21 CFR 25.32(r) because it is of a type that does not individually or cumulatively have a significant effect on the human environment. In addition, the petitioner has stated that, to their knowledge, no extraordinary circumstances exist. If FDA determines a categorical exclusion applies, neither an environmental assessment nor an environmental impact statement is required. If FDA determines a categorical exclusion does not apply, we will request an environmental assessment and make it available for public inspection.

Dated: April 24, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–09187 Filed 5–5–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 82

[201A2100DD/AAKC001030/A0A501010.999900 253G]

RIN 1076–AF51

Procedures for Federal Acknowledgment of Alaska Native Entities

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule; correction and reopening of period for comments on the information collection.

SUMMARY: The Bureau of Indian Affairs published a proposed rule in the **Federal Register** of January 2, 2020, that contained errors in the Paperwork Reduction Act statement. This document provides a corrected Paperwork Reduction Act statement and reopens the comment period for comments on the information collection described in that statement.

DATES: Comments on the information collection, published on January 2, 2020 (85 FR 37), are due by May 21, 2020.

ADDRESSES: You may send comments on the information collection, identified by RIN number 1076–AF51 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for sending comments.
- *Email: consultation@bia.gov.* Include RIN number 1076–AF51 in the subject line of the message.
- *Mail or Hand-Delivery/Courier:* Office of Regulatory Affairs & Collaborative Action—Indian Affairs (RACA), U.S. Department of the Interior, 1849 C Street NW, Mail Stop 4660, Washington, DC 20240.

All submissions received must include the Regulatory Information Number (RIN) for this rulemaking (RIN 1076–AF51). All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action, (202) 273–4680; *elizabeth.appel@bia.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of January 2, 2020, in FR Doc. 2019–27998, on page 45, in the third column:

- Replace ''we are seeking to revise this information collection'' with ''we are seeking to renew and revise this information collection'';
- Replace ''14,360 annual burden hours'' with ''1,436 annual burden hours''; and
- Replace ''*Estimated Total Annual Non-Hour Cost:* $2,100,000'' with ''*Estimated Total Annual Non-Hour Cost:* $4,200,000''.

We are restating the entire Paperwork Reduction Act statement (which was provided in Section V.J. of the preamble to the proposed rule) here for the convenience of anyone who wishes to comment on the information collection.

J. Paperwork Reduction Act

OMB Control No. 1076–0104 currently authorizes the collections of information related to petitions for Federal acknowledgment under the Indian Reorganization Act (IRA) contained in 25 CFR part 83, with an expiration of October 31, 2021. With this rulemaking, we are seeking to renew and revise this information collection to include collections of information related to petitions for Federal acknowledgment under the Alaska IRA and 25 CFR part 82. The current authorization totals an estimated 1,436 annual burden hours. This rule change would require a revision to an approved information collection under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* for which the Department is requesting OMB approval.

OMB Control Number: 1076–0104.

Title: Federal Acknowledgment as an Indian Tribe, 25 CFR 82 & 83.

Brief Description of Collection: This information collection requires entities seeking Federal recognition as an Indian Tribe to collect and provide information in a documented petition evidencing that the entities meet the criteria set out in the rule.

Type of Review: Revision of currently approved collection.

Respondents: Entities petitioning for Federal acknowledgment.

Number of Respondents: 2 on average (each year).

Number of Responses: 2 on average (each year).

Frequency of Response: On occasion.

Estimated Time per Response: (See table below).

Estimated Total Annual Hour Burden: 2,872 hours.

Estimated Total Annual Non-Hour Cost: $4,200,000.

OMB Control No. 1076–0104 currently authorizes the collections of information contained in 25 CFR part 83. If this proposed rule is finalized, DOI estimates that the annual burden hours for respondents (entities petitioning for Federal acknowledgment) will increase by approximately 1,436 hours, for a total of 2,872 hours.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020–09100 Filed 5–5–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2020–0081]

RIN 1625–AA08

Special Local Regulation; Choptank River, Hambrooks Bay, 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 at Cambridge, MD, during a high-speed power boat racing event on July 25, 2020, and July 26, 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 June 5, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0081 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

Kent Narrows Racing Association of Chester, MD, notified the Coast Guard that it will be conducting the Thunder on the Choptank from 9:30 a.m. to 5 p.m. on July 25, 2020, and from 9:30 a.m. to 5 p.m. on July 26, 2020. The high-speed power boat racing event consists of approximately 50 participating inboard and outboard hydroplane and runabout race boats of various classes, 16 to 21 feet in length. The vessels will be competing on a designated, marked 1-mile oval course located in the Choptank River in a cove located between Hambrooks Bar and the shoreline at Cambridge, MD. Hazards from the power boat racing event include risks of injury or death resulting from near or actual contact among participant vessels and spectator vessels or waterway users if normal vessel

traffic were to interfere with the event. Additionally, such hazards include participants operating near designated navigation channels, as well as operating near approaches to local public boat ramps, private marinas and yacht clubs, and waterfront businesses. The COTP Maryland-National Capital Region has determined that potential hazards associated with the power boat races 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 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 to be enforced from 8:30 a.m. through 6 p.m. on July 25, 2020, and from 8:30 a.m. through 6 p.m. on July 26, 2020. The regulated area would cover all navigable waters of the Choptank River and Hambrooks Bay bounded by a line connecting the following coordinates: Commencing at the shoreline at Long Wharf Park, Cambridge, MD, at position latitude 38°34′30″ N, longitude 076°04′16″ W; thence east to latitude 38°34′20″ N, longitude 076°03′46″ W; thence northeast across the Choptank River along the Senator Frederick C. Malkus, Jr. (US–50) Memorial Bridge, at mile 15.5, to latitude 38°35′30″ N, longitude 076°02′52″ W; thence west along the shoreline to latitude 38°35′38″ N, longitude 076°03′09″ W; thence north and west along the shoreline to latitude 38°36′42″ N, longitude 076°04′15″ W; thence southwest across the Choptank River to latitude 38°35′31″ N, longitude 076°04′57″ W; thence west along the Hambrooks Bay breakwall to latitude 38°35′33″ N, longitude 076°05′17″ W; thence south and east along the shoreline back to the point of origin.

This proposed rule provides additional information about areas within the regulated area, and the restrictions that apply to mariners. These areas include a ''Race Area,'' ''Buffer Zone'' and ''Spectator Area.''

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 high-speed power boat races, scheduled to take place from 9:30 a.m. to 5 p.m. on July 25, 2020, and those same hours on July 26, 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 Thunder on the Choptank 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 while the rule is being enforced. Vessel operators could 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 and duration of the regulated area, which would impact a small designated area of the Choptank River for 19 total enforcement 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 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security 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 19 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.T05–0081 to read as follows:

§ 100.T05–0081 Thunder on the Choptank, Choptank River, Hambrooks Bay, Cambridge, MD.

(a) *Regulated areas.* The regulations in this section apply to the following areas:

(1) *Regulated area.* All navigable waters within Choptank River and Hambrooks Bay bounded by a line connecting the following coordinates: Commencing at the shoreline at Long Wharf Park, Cambridge, MD, at position latitude 38°34′30″ N, longitude 076°04′16″ W; thence east to latitude 38°34′20″ N, longitude 076°03′46″ W; thence northeast across the Choptank River along the Senator Frederick C. Malkus, Jr. (US–50) Memorial Bridge, at mile 15.5, to latitude 38°35′30″ N, longitude 076°02′52″ W; thence west along the shoreline to latitude 38°35′38″ N, longitude 076°03′09″ W; thence north and west along the shoreline to latitude 38°36′42″ N, longitude 076°04′15″ W; thence southwest across the Choptank River to latitude 38°35′31″ N, longitude 076°04′57″ W; thence west along the Hambrooks Bay breakwall to latitude 38°35′33″ N, longitude 076°05′17″ W; thence south and east along the shoreline to and terminating at the point of origin. The following locations are within the regulated area:

(i) *Race Area.* Located within the waters of Hambrooks Bay and Choptank River, between Hambrooks Bar and Great Marsh Point, MD.

(ii) *Buffer Zone.* All waters within Hambrooks Bay and Choptank River (with the exception of the Race Area designated by the marine event sponsor) bound to the north by the breakwall and continuing along a line drawn from the east end of breakwall located at latitude 38°35′27.6″ N, longitude 076°04′50.1″ W, thence southeast to latitude 38°35′17.7″ N, longitude 076°04′29″ W, thence south to latitude 38°35′01″ N, longitude 076°04′29″ W, thence west to the shoreline at latitude 38°35′01″ N, longitude 076°04′41.3″ W.

(iii) *Spectator Area.* All waters of the Choptank River, eastward and outside of Hambrooks Bay breakwall, thence bound by line that commences at latitude 38°35′28″ N, longitude 076°04′50″ W; thence northeast to latitude 38°35′30″ N, longitude 076°04′47″ W; thence southeast to latitude 38°35′23″ N, longitude 076°04′29″ W; thence southwest to latitude 38°35′19″ N, longitude 076°04′31″ W; thence northwest to and terminating at the point of origin.

(2) *Coordinates.* 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 Thunder on the Choptank 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 8:30 a.m. through 6 p.m. on July 25, 2020, and, from 8:30 a.m. through 6 p.m. on July 26, 2020.

Dated: April 23, 2020.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2020–09285 Filed 5–5–20; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 360

[Docket No. 20–CRB–0006–RM]

Procedural Regulations of the Copyright Royalty Board Requiring Electronic Filing of Claims

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Proposed rule.

SUMMARY: The Copyright Royalty Judges propose to amend regulations governing the filing of claims to royalty fees collected under compulsory license to require that all claims be filed electronically through the Copyright Royalty Board's (CRB) electronic filing system (eCRB). The Judges solicit comments on the proposed rule.

DATES: Comments are due no later than June 5, 2020.

ADDRESSES: You may send comments, identified by docket number 20–CRB–0006–RM, online through eCRB at *https://app.crb.gov.*

Instructions: All submissions received must include the Copyright Royalty Board name and the docket number for this rulemaking. All comments received will be posted without change to eCRB at *https://app.crb.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to eCRB at *https://app.crb.gov* and perform a case search for docket 20–CRB–0006–RM.

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, at 202–707–7658 or *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: In 2017, the CRB deployed its electronic filing and case management system, eCRB, and began accepting claims to compulsory license royalties electronically. The CRB continued, however, to permit the filing of claims on paper forms.

The CRB has since received a diminishing number of paper claims. In the most recent claims filing period for cable and satellite royalties (July 2019), out of 545 and 280 claims, respectively, the CRB received two claims for cable royalties and one claim for satellite royalties that were filed exclusively in paper form.[1] In the most recent claims filing period for DART royalties (January–February 2020), out of 61 claims filed, the CRB received no claims that were filed exclusively in paper form.[2]

The handling of paper claims is more resource-intensive for the CRB than the handling of electronic claims. Each paper claim must be opened, date-stamped, numbered, scanned, and uploaded to eCRB, and details from the paper claim must be entered manually into eCRB to generate an electronic claim.

More critically, acceptance of paper claims creates a dependency on the receipt and processing of mail and courier deliveries. The current disruption at the Library of Congress to both mail processing and acceptance of courier deliveries because of the COVID–19 pandemic demonstrates the risk to claims processing of that dependency.

In order to eliminate the need for resource-intensive manual processing of paper claims and to mitigate the risk to CRB operations of a disruption to normal mail and courier delivery, the Judges propose to amend 37 CFR part 360 to require that all claims be filed online through eCRB.

List of Subjects in 37 CFR Part 360

Administrative practice and procedure, Cable royalties, Claims, Copyright, Electronic filing, Satellite royalties.

Proposed Regulations

For the reasons set forth in the preamble, and under the authority of chapter 8, title 17, United States Code, the Copyright Royalty Judges propose to amend part 360 of Title 37 of the Code of Federal Regulations as follows:

[1] For both cable and satellite claims, the CRB received approximately 20 backup paper claims—*i.e.,* claims filed in paper form that are duplicates of claims filed in electronic form. The practice of filing backup paper claims is neither necessary nor encouraged by the CRB.

[2] The CRB received four backup paper claims.

SUBCHAPTER C—SUBMISSION OF ROYALTY CLAIMS

PART 360—FILING OF CLAIMS TO ROYALTY FEES COLLECTED UNDER COMPULSORY LICENSE

■ 1. The authority citation for part 360 continues to read as follows:

Authority: 17 U.S.C. 801, 803, 805.

Subpart A also issued under 17 U.S.C. 111(d)(4) and 119(b)(4).

Subpart B also issued under 17 U.S.C. 1007(a)(1).

Subpart C also issued under 17 U.S.C. 111(d)(4), 119(b)(4) and 1007(a)(1).

Subpart A—Cable and Satellite Claims

§ 360.3 [Amended]

■ 2. Amend § 360.3 by:
■ a. In paragraph (b), removing the words ''or by mail or hand delivery in accordance with § 301.2'';
■ b. Removing paragraph (d); and
■ c. Redesignating paragraph (e) as paragraph (d).
■ 3. Amend § 360.4 by:
■ a. Revising paragraph (a);
■ b. Removing paragraph (b)(1)(v);
■ c. Redesignating paragraph (b)(1)(vi) as paragraph (b)(1)(v);
■ d. Revising paragraph (b)(2)(i);
■ e. In paragraph (b)(2)(iii), removing the words ''for claims submitted through eCRB'';
■ f. Removing paragraph (b)(2)(v); and
■ g. Redesignating paragraph (b)(2)(vi) as paragraph (b)(2)(v).

The revisions read as follows:

§ 360.4 Form and content of claims.

(a) *Electronic filing.* (1) Each filer must file claims online using the claims filing feature of eCRB to claim cable compulsory license royalty fees or satellite compulsory license royalty fees and must provide all information required by the online form and its accompanying instructions.

(2) Filers may access eCRB at *https://app.crb.gov.* The claims filing feature for claims to cable compulsory license royalty fees and satellite compulsory license royalty fees will be available only during the month of July.

(b) * * *

(2) * * *

(i) With the exception of joint claims filed by a performing rights society on behalf of its members, a list including the full legal name, address, and email address of each copyright owner whose claim(s) are included in the joint claim. Claims must include an Excel spreadsheet containing the information if the number of joint claimants is in excess of ten.

* * * * *

§ 360.5 [Removed]

■ 4. Remove § 360.5.

Subpart B—Digital Audio Recording Devices and Media (DART) Royalty Claims

■ 5. Amend § 360.22 by:
■ a. Revising paragraph (a);
■ b. In paragraph (b)(2), removing the words ''for claims submitted through eCRB'';
■ c. Removing paragraph (c);
■ d. Redesignating paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e) respectively; and
■ e. Revising newly redesignated paragraph (d).

The revisions read as follows:

§ 360.22 Form and content of claims.

(a) *Electronic filing.* (1) Each claim to DART royalty payments must be filed online using the claims filing feature of eCRB and must contain the information required by the online form and its accompanying instructions.

(2) Filers may access eCRB at *https://app.crb.gov.* The claims filing feature for claims to DART royalty payments will be available only during the months of January and February.

* * * * *

(d) *List of claimants.* If the claim is a joint claim, it must include the name of each claimant participating in the joint claim. Filers submitting joint claims on behalf of ten or fewer claimants, must list the name of each claimant included in the joint claim directly on the filed joint claim. Filers submitting joint claims on behalf of more than ten claimants must include an Excel spreadsheet listing the name of each claimant included in the joint claim.

* * * * *

§ 360.23 [Removed]

■ 6. Remove § 360.23.

§ 360.24 [Redesignated as § 360.23 and Amended]

■ 7. Amend § 360.24 by:
■ a. Redesignating § 360.24 as § 360.23; and
■ b. In paragraph (b) of newly redesignated § 360.23, adding the words ''online through eCRB'' after the word ''notice''.

Subpart C—Rules of General Application

■ 8. Amend § 360.30 by adding the sentence ''All Notices of Amendment must be filed online through eCRB.'' at the end of the paragraph to read as follows:

§ 360.30 Amendment of claims.

* * * All Notices of Amendment must be filed online through eCRB.

■ 9. Amend § 360.31 by adding the sentence ''All Notices of Withdrawal of Claim(s) must be filed online through eCRB.'' at the end of the paragraph to read as follows:

§ 360.31 Withdrawal of claims.

* * * All Notices of Withdrawal of Claim(s) must be filed online through eCRB.

Dated: April 22, 2020.

Jesse M. Feder,

Chief Copyright Royalty Judge.

[FR Doc. 2020–08926 Filed 5–5–20; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2020–0062; FRL–10008–86–Region 3]

Air Plan Approval; Maryland; 1997 8-Hour Ozone NAAQS Limited Maintenance Plan for the Kent and Queen Anne's Counties Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Maryland. This revision pertains to the Maryland Department of the Environment's (MDE) plan for maintaining the 1997 8-hour ozone national ambient air quality standards (NAAQS) for the Kent and Queen Anne's Counties area. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before June 5, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2020–0062 at *https://www.regulations.gov,* or via email to *spielberger.susan@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be

accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: David Talley, 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) 814–2117. Mr. Talley can also be reached via electronic mail at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION: On December 18, 2019, MDE submitted a revision to the Maryland SIP to incorporate a plan for maintaining the 1997 ozone NAAQS through January 1, 2028, in accordance with CAA section 175A. On March 12, 2020, MDE submitted a technical correction to their initial submittal, which included ''Appendix B—2014 Emissions Inventory Methodology Documentation.'' This appendix had been inadvertently omitted from the original submittal.

I. Background

In 1979, under section 109 of the CAA, EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm), averaged over a 1-hour period. 44 FR 8202 (February 8, 1979). On July 18, 1997, EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. 62 FR 38856 (July 18, 1997).[1] EPA set the 8-hour ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone NAAQS was set.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 30, 2004, EPA designated the Kent and Queen Anne's Counties area as nonattainment for the 1997 8-hr ozone NAAQS. 69 FR 23858.

Once a nonattainment area has three years of complete, certified air quality data that has been determined to attain the NAAQS, and the area has met the other criteria outlined in CAA section 107(d)(3)(E),[2] the state can submit a request to EPA to redesignate the area to attainment. Areas that have been redesignated by EPA from nonattainment to attainment are referred to as ''maintenance areas.'' One of the criteria for redesignation is to have an approved maintenance plan under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the standard for the period extending 10 years after redesignation, and it must contain such additional measures as necessary to ensure maintenance as well contingency measures as necessary to assure that violations of the standard will be promptly corrected.

On December 22, 2006 (effective January 22, 2007), EPA approved a redesignation request (and maintenance plan) from MDE for the Kent and Queen Anne's Counties area. 71 FR 76920. In accordance with section 175A(b), at the end of the eighth year after the effective date of the redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the standard for an additional 10 years.

EPA's final implementation rule for the 2008 ozone NAAQS revoked the 1997 ozone NAAQS and provided that one consequence of revocation was that areas that had been redesignated to attainment (*i.e.,* maintenance areas) for the 1997 NAAQS no longer needed to submit second 10-year maintenance plans under CAA section 175A(b).[3] However, in *South Coast Air Quality Management District* v. *EPA*[4] (South Coast II), the United States Court of Appeals for the District of Columbia (D.C. Circuit) vacated EPA's interpretation that, because of the revocation of the 1997 ozone standard, second maintenance plans were not required for ''orphan maintenance areas,'' (*i.e.,* areas like Kent and Queen Anne's Counties) that had been redesignated to attainment for the 1997 NAAQS and were designated attainment for the 2008 ozone NAAQS. Thus, states with these ''orphan maintenance areas'' under the 1997 ozone NAAQS must submit maintenance plans for the second maintenance period.

As previously discussed, CAA section 175A sets forth the criteria for adequate maintenance plans. In addition, EPA has published longstanding guidance that provides further insight on the content of an approvable maintenance plan, explaining that a maintenance plan should address five elements: (1) An attainment emissions inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan.[5] The 1992 Calcagni memo provides that states may generally demonstrate maintenance by either performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (*i.e.,* attainment year inventory). See Calcagni Memo at p. 9. EPA further clarified in three subsequent guidance memos describing ''limited maintenance plans'' (LMPs)[6] that the requirements of CAA section 175A could be met by demonstrating that the area's design value[7] was well below the NAAQS and that the historical stability of the area's air quality levels showed that the area was unlikely to violate the NAAQS in the future. Specifically, EPA believes that if the most recent air quality design value for the area is at a level that is below 85% of the standard, or in this

[1] In March 2008, EPA completed another review of the primary and secondary ozone standards and tightened them further by lowering the level for both to 0.075 ppm. 73 FR 16436 (March 27, 2008). Additionally, in October 2015, EPA completed a review of the primary and secondary ozone standards and tightened them by lowering the level for both to 0.70 ppm. 80 FR 65292 (October 26, 2015).

[2] The requirements of CAA section 107(d)(3)(E) include attainment of the NAAQS, full approval under section 110(k) of the applicable SIP, determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all applicable section 110 and part D requirements, and a fully approved maintenance plan under CAA section 175A.

[3] See 80 FR 12315 (March 6, 2015).

[4] 882 F.3d 1138 (D.C. Cir. 2018).

[5] ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni Memo).

[6] See ''Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas'' from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'' from Joseph Paisie, OAQPS, dated October 6, 1995; and ''Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas'' from Lydia Wegman, OAQPS, dated August 9, 2001.

[7] The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone nonattainment area is the highest design value of any monitoring site in the area.

case below 0.071 ppm, then EPA considers the state to have met the section 175A requirement for a demonstration that the area will maintain the NAAQS for the requisite period. Accordingly, on December 18, 2019, MDE submitted an LMP for the Kent and Queen Anne's Counties area, demonstrating that the area will maintain the 1997 ozone NAAQS through January 1, 2028, *i.e.,* through the entire 20-year maintenance period.

II. Summary of SIP Revision and EPA Analysis

MDE's December 18, 2019 SIP submittal outlines a plan for continued maintenance of the 1997 ozone NAAQS which addresses the criteria set forth in the Calcagni Memo as follows.

A. Attainment Emissions Inventory

A state should develop a comprehensive and accurate inventory of actual emissions for an attainment year which identifies the level of emissions in the area which is sufficient to maintain the NAAQS. The inventory should be developed consistent with EPA's most recent guidance. For ozone, the inventory should be based on typical summer day's emissions of oxides of nitrogen (NO_X) and volatile organic compounds (VOC), the precursors to ozone formation.

Table 1 presents a summary of the 2014 inventories submitted in the maintenance plan.

TABLE 1—2014 TYPICAL SUMMER DAY VOC AND NO_X EMISSIONS

[tons/day] [8]

Area	Source category	VOC	NO_X
Kent County	Nonroad	2.49	1.23
	Onroad	0.42	0.96
	Point Source	0.04	0.23
	Area Source	0.82	0.05
Queen Anne's County	Nonroad	2.63	1.60
	Onroad	1.10	3.69
	Point Source	0.03	0.05
	Area Source	1.97	0.09
Total		9.50	7.90

The 2014 emissions inventory was prepared by MDE and uploaded into EPA's Emissions Inventory System (EIS) for inclusion in EPA's National Emission Inventory (NEI). The inventory addresses four anthropogenic emission source categories: Stationary (point) sources, stationary nonpoint (area) sources, nonroad mobile, and on-road mobile sources. Point sources are stationary sources that have the potential to emit (pte) more than 100 tons per year (tpy) of VOC, or more than 50 tpy of NO_X, and which are required to obtain an operating permit. Data are collected for each source at a facility and reported to MDE. Stationary area sources have relatively low emissions individually, but due to the large number of sources, cumulative emissions could be significant. Examples include fuel combustion for household heating. Emissions are estimated by using emission factors and known variables such as population, or number of households. On-road mobile emissions are modelled by MDE using EPA's Motor Vehicle Emission Simulator (MOVES). MDE generates nonroad mobile source emissions data through the use of EPA's NONROAD2014a model, except for marine air and rail emissions which are estimated at the county level based on emission factors and activity levels. EPA reviewed the supporting documentation submitted by MDE [9] and proposes to conclude that the plan's inventory is acceptable for the purposes of a subsequent maintenance plan under CAA section 175A(b).

B. Maintenance Demonstration

In order to attain the 1997 ozone NAAQS, the three-year average of the fourth-highest daily average ozone concentrations (design value, DV) at each monitor within an area must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, appendix I, the standard is attained if the DV is 0.084 ppm or below. CAA section 175A requires a demonstration that the area will continue to maintain the NAAQS throughout the duration of the requisite maintenance period. Consistent with the prior guidance documents discussed previously in this document, EPA believes that if the most recent DV for the area is well below the NAAQS (*e.g.,* below 85%, or in this case below 0.071 ppm), the section 175A demonstration requirement has been met, provided that Prevention of Significant Deterioration requirements, any control measures already in the SIP, and any Federal measures remain in place through the end of the second 10-year maintenance period (absent a showing consistent with section 110(l) that such measures are not necessary to assure maintenance). Table 2 shows that the last two DVs for the Kent and Queen Anne's County area continue to be below 85% of the 1997 ozone NAAQS.[10]

TABLE 2—RECENT AIR QUALITY VALUES FOR KENT AND QUEEN ANNE'S COUNTIES

Designated area	Design value years	AQS site ID	Design value (DV)	DV <0.071 ppm?
Kent and Queen Anne's Counties	2015–2017	24–029–0002	0.070	Yes.
	2016–2018	24–029–0002	0.069	Yes.

[8] Data in Table 1 have been rounded. See Table 4.1–1 of MDE's December 18, 2019 submittal for precise data.

[9] See Appendix B of MDE's March 12, 2020 technical correction.

[10] The 2016–2018 DV was published by EPA after the date of MDE's submittal. See *https://www.epa.gov/sites/production/files/2019-07/ozone_designvalues_20162018_final_06_28_19.xlsx.*

Additionally, states can support the demonstration of continued maintenance by showing stable or improving air quality trends. Several kinds of analyses can be performed by states wishing to make such a showing. One approach is to take the most recent DV for the area and add the biggest increase that has been observed over the past several years. A sum that is still below the NAAQS would be considered a good indication of continued attainment.[11] Going back to the 2004–2006 DV years, the largest increase in DV was 0.008 ppm and occurred between the 2009–2011 (0.074 ppm) and the 2010–2012 (0.082 ppm) DV years.[12] Adding 0.008 ppm to the most recent DV of 0.069 ppm results in a sum that is still below the NAAQS (0.077 ppm). Therefore, EPA believes MDE has satisfactorily demonstrated that future violations of the NAAQS in this area are unlikely.

C. Continued Air Quality Monitoring and Verification of Continued Attainment

Once an area has been redesignated to attainment, the State remains obligated to maintain an air quality network in accordance with 40 CFR part 58, in order to verify the area's attainment status. MDE monitors ambient ozone concentrations at the Millington, MD site (Air Quality System (AQS)) Site ID 24–029–0002). In the December 18, 2019 submittal, Maryland committed to maintaining an appropriate air quality monitoring network, in accordance with part 58. MDE committed to track and analyze any exceedances of the NAAQS during the maintenance period.

D. Contingency Plan

CAA section 175A requires that each maintenance plan include provisions which require the state to maintain all control measures which were in place in the SIP prior to redesignation. Additionally, each maintenance plan must contain contingency measures sufficient to assure that the state will promptly correct violations of the NAAQS after the area is redesignated as an attainment area.

MDE's December 18, 2019 submittal outlines its foundation control program, which is intended to prevent violations of the NAAQS. MDE committed to continued implementation of the SIP measures for the control of NO_X and VOC which were in place prior to redesignation. These include the Tier 3 Vehicle Emissions and Control Program, Vehicle Inspection and Maintenance Programs, and standards for various nonroad engines.[13]

MDE's December 18, 2019 submittal also included a contingency plan, to be implemented in the event of NAAQS violations in the future. MDE listed two specific regulatory measures which will be evaluated and implemented through the promulgation of a rule in the event that the contingency plan is triggered. First, MDE will consider accelerating compliance with Code of Maryland Regulations (COMAR) section 26.11.13.07 (Control of VOC Emissions from Portable Fuel Containers) by creating a voluntary portable fuel container exchange program affecting residences and businesses. Second, MDE will consider lowering the applicability threshold for industrial, commercial, and institutional (ICI) boiler standards under COMAR 26.11.09.08, potentially impacting the sources listed in Table 3.

TABLE 3—SOURCES POTENTIALLY IMPACTED BY LOWER APPLICABILITY THRESHOLDS

Queen Anne's County	Kent County
Chesapeake College	Washington College.
Kent Narrows Waste Water Treatment Plant	Kent and Queen Anne's Hospital.
Queen Anne's County Emergency Center	Wenger's Feed Mill.
Chesapeake Bay Bridge Maintenance and Administration Facility	Kent County Public Works and Roads Building.
Centerville Town Hall and Sheriff's Department	Monsanto-Asgrow Seeds.
Queenstown Town Offices and Courthouse	Maryland SHA District 2 Office.
County Health Department	Maryland State Police.
County Board of Education	National Guard Armory.
County Courthouse	County Courthouse.
County Department of Public Works	Chestertown Filtration Plant.
Maryland SHA Garage	County Schools.
Maryland State Police.	
National Guard Armory.	
County Schools.	

MDE's contingency plan also includes the possibility of implementing other measures as necessary in order to return the area to attainment.

After the fourth ozone season exceedance of the 1997 NAAQS (0.08 ppm) at the Millington monitoring station, MDE will immediately recalculate the DV for that monitor. If the recalculated DV exceeds the NAAQS, the contingency plan will be ''triggered,'' based on the following schedule: (1) Within two weeks of the trigger, MDE will notify Kent and Queen Anne's Counties and other stakeholders and schedule a meeting concerning the selection and implementation of contingency measures; (2) Within six weeks of the trigger, the meeting will be convened; (3) Within twelve weeks of the trigger, a public meeting will be held on the proposed contingency measures; (4) Within eighteen weeks of the trigger, all stakeholders will convene to consider public comments and finalize a list of planned contingency measures; (5) After the list of contingency measures is finalized, it will take approximately twelve months to complete any required rulemaking processes; (6) Within twenty four months of the trigger, agreed upon contingency measure will be implemented in the impacted counties.

E. Transportation Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay

[11] See *https://www.epa.gov/sites/production/files/2018-11/documents/ozone_1997_naaqs_lmp_resource_document_nov_20_2018.pdf* at pgs. 6–7.

[12] See Tables 3.1–1 and 3.2–2 of MDE's December 18, 2019 submittal found at *https://www.regulations.gov,* Docket ID No. EPA–R03–OAR–2020–0062.

[13] See MDE's December 18, 2019 submittal at pgs. 10–12.

timely attainment of the NAAQS (CAA 176(c)(1)(B)). EPA's conformity rule at 40 CFR part 93 requires that transportation plans, programs and projects conform to SIPs and establish the criteria and procedures for determining whether or not they conform. The conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicle emissions budget (MVEB) contained in the control strategy SIP revision or maintenance plan (40 CFR 93.101, 93.118, and 93.124). A MVEB is defined as ''that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions (40 CFR 93.101).''

Under the conformity rule, LMP areas may demonstrate conformity without a regional emission analysis (40 CFR 93.109(e)). However, because LMP areas are still maintenance areas, certain aspects of transportation conformity determinations still will be required for transportation plans, programs and projects. Specifically, for such determinations, RTPs, TIPs and transportation projects still will have to demonstrate that they are fiscally constrained (40 CFR 93.108), meet the criteria for consultation (40 CFR 93.105 and 40 CFR 93.112) and transportation control measure implementation in the conformity rule provisions (40 CFR 93.113). Additionally, conformity determinations for RTPs and TIPs must be determined no less frequently than every four years, and conformity of transportation plan and TIP amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104. In addition, for projects to be approved, they must come from a currently conforming RTP and TIP (40 CFR 93.114 and 93.115).

III. Proposed Action

EPA's review of MDE's December 18, 2019 submittal and March 12, 2020 technical correction indicates they meet CAA section 175A and all applicable CAA requirements. EPA is proposing to approve the LMP for Kent and Queen Anne's Counties as a revision to the Maryland SIP. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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

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

In addition, this proposed rule, pertaining Maryland's limited maintenance plan for Kent and Queen Anne's Counties, 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.

List of Subjects in 40 CFR Part 52

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

Dated: April 27, 2020.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2020–09373 Filed 5–5–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R05–RCRA–2018–0376; FRL–10008–91–Region 5]

Indiana: Proposed Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Indiana has applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. EPA has reviewed Indiana's application and has determined that these changes satisfy all requirements needed to qualify for final authorization. Therefore, we are proposing to authorize the State's changes. EPA seeks public comment prior to taking final action.

DATES: Comments must be received on or before June 22, 2020.

ADDRESSES: Submit your comments by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: gromnicki.jean@epa.gov.*

Instructions: EPA must receive your comments by June 22, 2020. Direct your comments to Docket ID Number EPA–R05–RCRA–2018–0376. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information

provided, unless the comment includes information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov,* or email. The federal *www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. (For additional information about EPA's public docket, visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm*).

Docket: All documents in the docket are listed in the *www.regulations.gov,* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in *www.regulations.gov.* For alternative access to docket materials, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jean Gromnicki, Indiana Regulatory Specialist, U.S. EPA Region 5, LL–17J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6162, email: *gromnicki.jean@epa.gov.* The EPA Region 5 office is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION:

A. Why are revisions to state programs necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time that they take effect in unauthorized states. Thus, EPA will implement those requirements and prohibitions in Indiana, including the issuance of new permits implementing those requirements, until the State is granted authorization to do so.

B. What decisions has EPA made in this rule?

On January 23, 2020, Indiana submitted a complete program revision application seeking authorization of changes to its hazardous waste program that correspond to certain Federal rules promulgated between March 18, 2010 and April 8, 2015 (including RCRA Clusters XIX through XXIV). EPA concludes that Indiana's application to revise its authorized program meets all of the statutory and regulatory requirements established under RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, EPA proposes to grant Indiana final authorization to operate its hazardous waste program with the changes described in the authorization application, and as outlined below in Section F of this document. Indiana has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of HSWA, as discussed above.

C. What is the effect of this proposed authorization decision?

If Indiana is authorized for the changes described in Indiana's authorization application, these changes will become part of the authorized State hazardous waste program, and will therefore be federally enforceable. Indiana will continue to have primary enforcement authority and responsibility for its State hazardous waste program. EPA would maintain its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses and reports;
- Enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations for which EPA is proposing to authorize Indiana are already effective under state law and are not changed by today's proposed action.

D. What happens if EPA receives comments that oppose this action?

If EPA receives comments on this proposed action, we will address all such comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you should do so at this time.

E. What has Indiana previously been authorized for?

Indiana initially received Final Authorization on January 31, 1986, effective January 31, 1986 (51 FR 3955) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on October 31, 1986, effective December 31, 1986 (51 FR 39752); January 5, 1988, effective January 19, 1988 (53 FR 128); July 13, 1989, effective September 11, 1989 (54 FR 29557); July 23, 1991, effective September 23, 1991 (56 FR 33717); July 24, 1991, effective September 23, 1991 (56 FR 33866); July 29, 1991, effective September 27, 1991 (56 FR 35831); July 30, 1991, effective September 30, 1991 (56 FR 36010); August 20, 1996, effective October 21, 1996 (61 FR 43018); September 1, 1999, effective November 30, 1999 (64 FR 47692); January 4, 2001 effective January 4, 2001 (66 FR 733); December 6, 2001 effective December 6, 2001 (66 FR 63331); October 29, 2004 (69 FR 63100) effective October 29, 2004; November 23, 2005 (70 FR 70740) effective November 23, 2005; and June 6, 2013 (78 FR 33986) effective June 6, 2013.

F. What changes are we proposing with today's action?

On January 23, 2020, Indiana submitted a final complete program

revision application, seeking authorization of changes to its hazardous waste management program in accordance with 40 CFR 271.21. EPA proposes to determine, subject to receipt of written comments that oppose this action, that Indiana's hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. Therefore, EPA is proposing to authorize Indiana for the following program changes:

TABLE 1—INDIANA'S ANALOGS TO THE FEDERAL REQUIREMENTS

Description of federal requirement	**Federal Register** date and page	Analogous state authority
Hazardous Waste Technical Corrections and Clarifications Checklist 223.	March 18, 2010; 75 FR 12989 and amended on June 4, 2010; 75 FR 31716.	329 IAC 3.1–4–1(a); 3.1–4–1(b); 3.1–4–5 through 25.1; 3.1–6–1; 3.1–6–2(4); 3.1–6–2(7); 3.1–6–2(10); 3.1–6–3; 3.1–6–4; 3.1–7–1; 3.1–7–2(4); 3.1–8–1; 3.1–8–2(1); 3.1–8–2 (7); 3.1–8–4; 3.1–9–1; 3.1–9–2(8); 3.1–10–1; 3.1–10–2(11); 3.1–10–2(21); 3.1–11–1; 3.1–11–2(3); 3.1–12–1; 3.1–12–2(10); 3.1–13–1 Effective November 5, 2016.
Withdrawal of the Emission Comparable Fuel Exclusion under RCRA Checklist 224.	June 15, 2010; 75 FR 33712.	329 IAC 3.1–6–1 Effective June 28, 2012.
Removal of Saccharin and Its Salts from the Lists of Hazardous Wastes Checklist 225.	December 17, 2010; 75 FR 78918.	329 IAC 3.1–6.1; 3.1–12–1; 3.1–12–2(10) Effective June 28, 2012.
Academic Laboratories Generator Standards Technical Corrections Checklist 226.	December 20, 2010; 75 FR 79304.	329 IAC 3.1–7–1 Effective June 28, 2012.
Revisions of the Land Disposal Treatment Standards for Carbamate Wastes Checklist 227.	June 13, 2011; 76 FR 34147.	329 IAC 3.1–12–1; 3.1–12–2(10) Effective July 3, 2015.
Hazardous Waste Technical Corrections and Clarifications Checklist 228.	April 13, 2012; 77 FR 22229.	329 IAC 3.1–6–1; 3.1–11–1 Effective July 3, 2015.
Conditional Exclusions for Solvent Contaminated Wipes Checklist 229.	July 31, 2013; 78 FR 46448	329 IAC 3.1–4–1(a); 3.1–4–1(b); 3.1–4–5 through 25.1; 3.1–6–1; 3.1–6–2(13) Effective July 3, 2015.
Conditional Exclusions for Carbon Dioxide Streams in Geologic Sequestration Activities Checklist 230.	January 3, 2014; 79 FR 350.	329 IAC 3.1–4–1(a); 3.1–4–1(b); 3.1–4–5 through 25.1; 3.1–6–1 Effective July 3, 2015.
Hazardous Waste Electronic Manifest Rule Checklist 231.	February 7, 2014; 79 FR 7518.	329 IAC 3.1–2; 3.1–3–1; 3.1–4–1(a); 3.1–4–1(b) through 25.1; 3.1–7–1; 3.1–8–1; 3.1–8–2(1); 3.1–8–2(2); 3.1–9–1; 3.1–9–2(8) Effective November 5, 2016.
Revisions to the Export Provisions of the Cathode Ray Tube Rule Checklist 232.	June 26, 2014; 79 FR 36220.	329 IAC 3.1–4–1(a); 3.1–4–1(b); 3.1–4–5 through 25.1; 3.1–6–1 Effective November 5, 2016.
Revisions to the Definition of Solid Waste Checklist 233A.	January 13, 2015; 80 FR 1694.	329 IAC 3.1–5–4; 3.1–5–4(b); 3.1–5–7(a); 3.1–5–7(b) Effective November 5, 2016.
Revisions to the Definition of Solid Waste Checklist 233C.	January 13, 2015; 80 FR 1694.	329 IAC 3.1–6–1; 3.1–6–2(3) Effective November 5, 2016.
Revisions to the Definition of Solid Waste Checklist 233E.	January 13, 2015; 80 FR 1694.	329 IAC 3.1–4–1(a); 3.1–4–1(b); 3.1–4–5 through 25.1; 3.1–6–1; 3.1–6–2(2) Effective November 5, 2016.
Response to Vacaturs of the Comparable Fuels Rule and the Gasification Rule Checklist 234.	April 8, 2015; 80 FR 18777	329 IAC 3.1–4–1(a); 3.1–4–1(b); 3.1–4–5 through 25.1; 3.1–6–1 Effective November 5, 2016.

Indiana is not seeking authorization for the transfer-based exclusion, at 40 CFR 261.4(a)(24) and (25), or the definition of legitimate recycling, at 40 CFR 260.43, at this time.

G. Where are the revised State rules different from the Federal rules?

When revised state rules differ from the Federal rules in the RCRA state authorization process, EPA determines whether the state rules are equivalent to, more stringent than, or broader in scope than the federal program. Pursuant to Section 3009 of RCRA, 42 U.S.C. 6929, state programs may contain requirements that are more stringent than the federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable. Although the statute does not prevent states from adopting regulations that are broader in scope than the federal program, states cannot receive federal authorization for such regulations, and they are not federally enforceable.

EPA considers the following State requirements to be more stringent than the Federal requirements:

329 IAC 3.1–6–3, because the State adds six hazardous wastes to the acute hazardous waste list that are not acute hazardous wastes in 40 CFR part 261.

329 IAC 3.1–9–2, because the State maintains more stringent levels for groundwater protection for several of the constituents listed in Table 1 of 40 CFR 264.94.

These requirements are part of Indiana's authorized program and are federally enforceable.

Broader-in-scope requirements do not become part of the authorized program and EPA cannot enforce them. Although regulated entities must comply with these requirements in accordance with State law, they are not RCRA requirements.

There are no state requirements in the program revisions Indiana seeks authorization for that are considered to be broader in scope than the Federal requirements.

EPA cannot authorize the Federal requirements at 40 CFR 268.5, 268.6, 268.42(b), 268.44, and 270.3. Indiana has excluded those non-delegable federal requirements. EPA will continue to implement those requirements.

H. Who handles permits after the final authorization takes effect?

When the Final Authorization takes effect, Indiana will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which EPA issues prior to the effective date of the

proposed authorization until they expire or are terminated. EPA will not issue any new permits or new portions of permits for the provisions listed in the Table above after the effective date of the final authorization. EPA will continue to implement and issue permits for HSWA requirements for which Indiana is not yet authorized. EPA has the authority to enforce state-issued permits after the State is authorized.

I. How does today's action affect Indian country (18 U.S.C. 1151) in Indiana?

Indiana is not authorized to carry out its hazardous waste program in Indian country within the State, which includes:

- All lands within the exterior boundaries of Indian reservations within or abutting the State of Indiana;
- Any land held in trust by the U.S. for an Indian tribe; and
- Any other land, whether on or off an Indian reservation, that qualifies as Indian country.

Therefore, this action has no effect on Indian country. EPA retains jurisdiction over Indian country and will continue to implement and administer the RCRA program on these lands.

J. What is codification and will EPA codify Indiana's hazardous waste program as proposed in this rule?

Codification is the process of placing citations and references to the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by adding those citations and references to the authorized State rules in 40 CFR part 272. EPA is not proposing to codify the authorization of Indiana's changes at this time. However, EPA reserves the ability to amend 40 CFR part 272, subpart P for the authorization of Indiana's program changes at a later date.

K. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action proposes to authorize State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as today's proposed authorization of Indiana's revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action proposes to authorize pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to authorize State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in proposing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). ''Burden'' is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this action proposes authorization of pre-existing State rules which are at least equivalent to, and no less stringent than existing federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, this proposed rule is not subject to Executive Order 12898.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: April 29, 2020.

Kurt Thiede,

Regional Administrator, Region 5.

[FR Doc. 2020–09548 Filed 5–5–20; 8:45 am]

BILLING CODE 6560–50–P

SURFACE TRANSPORTATION BOARD

49 CFR Chapter X

[Docket No. EP 759]

Demurrage Billing Requirements

AGENCY: Surface Transportation Board.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: In response to comments received in the notice of proposed rulemaking (*NPRM*) in this docket, the Surface Transportation Board (STB or Board) invites parties, through this supplemental notice of proposed rulemaking (*SNPRM*), to comment on certain modifications and additions to the minimum information requirements proposed in the *NPRM.*

DATES: Comments are due by June 5, 2020. Reply comments are due by July 6, 2020.

ADDRESSES: Comments and replies may be filed with the Board via e-filing. Written comments and replies will be posted to the Board's website at *www.stb.gov.*

FOR FURTHER INFORMATION CONTACT: Sarah Fancher at (202) 245–0355. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On October 7, 2019, the Board issued a notice of proposed rulemaking to propose changes to its existing demurrage regulations to address several issues regarding carriers' demurrage billing practices. *See Demurrage Billing Requirements* (*NPRM*), EP 759 (STB served Oct. 7, 2019).[1] Demurrage is subject to Board regulation under 49 U.S.C. 10702, which requires railroads to establish reasonable rates and transportation-related rules and practices, and under 49 U.S.C. 10746, which requires railroads to compute demurrage charges, and establish rules related to those charges, in a way that will fulfill the national needs related to freight car use and distribution and maintenance of an adequate car supply.[2] Demurrage is a charge that serves principally as an incentive to prevent undue car detention and thereby encourage the efficient use of rail cars in the rail network, while also providing compensation to rail carriers for the expense incurred when rail cars are unduly detained beyond a specified period of time (*i.e.,* ''free time'') for loading and unloading. *See Pa. R.R.* v. *Kittaning Iron & Steel Mfg. Co.,* 253 U.S. 319, 323 (1920) (''The purpose of demurrage charges is to promote car efficiency by penalizing undue detention of cars.''); 49 CFR1333.1; *see also* 49 CFR pt. 1201, category 106.

In the simplest demurrage case, a railroad assesses demurrage on the consignor (the shipper of the goods) for delays in loading cars at origin and on the consignee (the receiver of the goods) for delays in unloading cars and returning them to the rail carrier at destination.[3] Demurrage, however, can also involve third-party intermediaries, commonly known as warehousemen or terminal operators,[4] that accept freight cars for loading and unloading but have no property interest in the freight being transported. Warehousemen do not typically own the property being shipped (although, by accepting the cars, they could be in a position to facilitate or impede car supply).

In the *NPRM,* the Board proposed requirements for minimum information to be included on or with Class I carriers' demurrage invoices and proposed that the serving Class I carrier be required to directly bill the shipper for demurrage when the shipper and warehouseman agree to that arrangement and so notify the rail carrier. *NPRM,* EP 759, slip op. at 8–11, 14–15. In response, the Board received a significant number of comments from stakeholders.[5] In light of the comments received, the Board is issuing this *SNPRM* to invite comment on certain modifications and additions to the proposed requirements for minimum information to be included on or with Class I carriers' demurrage invoices, as discussed in more detail below.[6]

Background

This proceeding arises, in part, as a result of the testimony and comments submitted in *Oversight Hearing on Demurrage & Accessorial Charges,* Docket No. EP 754. In that proceeding, parties from a broad range of industries raised concerns about demurrage billing practices, including issues involving the receipt of invoices containing insufficient information. *See NPRM,* EP 759, slip op. at 5–6 (providing overview of comments received in Docket No. EP 754 related to the adequacy of demurrage invoices). Warehousemen also raised concerns related to Class I carriers' billing practices as applied to them following the Board's adoption of the final rule in *Demurrage Liability,* EP 707 (STB served Apr. 11, 2014), codified at 49 CFR part 1333, which established that a person receiving rail cars for loading or unloading who detains the cars beyond the free time provided in the rail carrier's governing tariff may be held liable for demurrage if that person had actual notice, prior to rail car placement, of the demurrage tariff establishing such liability. *See NPRM,* EP 759, slip op. at 6–8 (providing overview of comments received in

[1] The proposed rules were published in the **Federal Register**, 84 FR 55,109 (Oct. 15, 2019).

[2] In *Demurrage Liability,* EP 707, slip op. at 15–16 (STB served Apr. 11, 2014), the Board clarified that private car storage is included in the definition of demurrage for purposes of the demurrage regulations established in that decision. The Board uses the same definition of demurrage in this decision.

[3] As the Board noted in *Demurrage Liability,* EP 707, slip op. at 2 n.2, the Interstate Commerce Act, as amended by the ICC Termination Act of 1995 (ICCTA), Public Law 104–88, 109 Stat. 803, does not define ''consignor'' or ''consignee,'' though both terms are commonly used in the demurrage context. Black's Law Dictionary defines ''consignor'' as ''[o]ne who dispatches goods to another on consignment,'' and ''consignee'' ''as [o]ne to whom goods are consigned.'' *Demurrage Liability,* EP 707, slip op. at 2 n.2 (citing Black's Law Dictionary 327 (8th ed. 2004)). The Federal Bills of Lading Act defines these terms in a similar manner. *Id.* (citing 49 U.S.C. 80101(1) & (2)).

[4] This decision uses the terms ''warehousemen'' and ''third-party intermediaries'' to refer to these entities. This decision uses ''rail users'' to broadly mean any person or business that sends goods by rail or receives rail cars for loading or unloading, regardless of whether that person has a property interest in the freight being transported.

[5] The Board received comments and/or replies from the following: American Chemistry Council (ACC); American Forest & Paper Association; American Fuel & Petrochemical Manufacturers (AFPM); American Iron and Steel Institute (AISI); American Short Line and Regional Railroad Association (ASLRRA); ArcelorMittal USA LLC (AM); Association of American Railroads (AAR); Barilla America, Inc.; Canadian National Railway Company (CN); Canadian Pacific Railway Company (CP); Corn Refiners Association (CRA); CSX Transportation, Inc. (CSXT); Daniel R. Elliott; Diversified CPC International, Inc. (CPC); Dow, Inc. (Dow); The Fertilizer Institute (TFI); Freight Rail Customer Alliance; Industrial Minerals Association—North America; The Institute of Scrap Recycling Industries, Inc. (ISRI); International Association of Refrigerated Warehouses; International Liquid Terminals Association; International Paper; International Warehouse Logistics Association; The Kansas City Southern Railway Company (KCS); Kinder Morgan Terminals (Kinder Morgan); Lansdale Warehouse Company; National Association of Chemical Distributors); The Mosaic Company; National Coal Transportation Association; The National Industrial Transportation League (NITL); North American Freight Car Association (NAFCA); Norfolk Southern Railway Company (NSR); Peabody Energy Corporation; The Portland Cement Association (PCA); Private Railcar Food and Beverage Association, Inc. (PRFBA); Quad, Inc.; Union Pacific Railroad Company (UP); Valley Distributing & Storage Company; Western Coal Traffic League and Seminole Electric Cooperative, Inc.; and Yvette Longonje.

[6] In the *NPRM,* the Board also proposed that the serving Class I carrier be required to directly bill the shipper for demurrage (instead of the warehouseman) when the shipper and warehouseman agree to that arrangement and so notify the rail carrier. *See NPRM,* EP 759, slip op. at 11, 14–15. The direct-billing proposal, and the comments on that proposal, will be addressed in a separate decision.

Docket No. EP 754 relating to warehousemen).

After carefully considering the comments and testimony in Docket No. EP 754, the Board issued the *NPRM* in this docket. As relevant here, the Board proposed requirements for certain minimum information to be included on or with Class I carriers' demurrage invoices. Specifically, the Board proposed the inclusion of:

- The unique identifying information (*e.g.,* reporting marks and number) of each car involved;
- the following shipment information, where applicable:
  - The date the waybill was created;
  - the status of each car as loaded or empty;
  - the commodity being shipped (if the car is loaded);
  - the identity of the shipper, consignee, and/or care-of party, as applicable; and
  - the origin station and state of the shipment;
- the dates and times of:
  - Actual placement of each car;
  - constructive placement of each car (if applicable and different from actual placement);
  - notification of constructive placement to the shipper, consignee, or third-party intermediary (if applicable); and
  - release of each car; and
- the number of credits and debits attributable to each car (if applicable).

NPRM, EP 759, slip op. at 9–10. The Board also proposed to require Class I carriers, prior to sending demurrage invoices, to take ''appropriate action to ensure that the demurrage charges are accurate and warranted, consistent with the purpose of demurrage.'' *NPRM,* EP 759, slip op. at 10 (footnote omitted). Under the *NPRM,* both the minimum information requirements and the ''appropriate action'' requirement would be added in a proposed new regulation at 49 CFR 1333.4.

In the *NPRM,* EP 759, slip op. at 10, the Board invited stakeholders to comment on the proposed rules and on any additional information that Class I carriers could reasonably provide on or with demurrage invoices to help shippers and warehousemen effectively evaluate those invoices. In response to the *NPRM,* the Board received a significant number of comments from stakeholders. While rail users generally support the minimum information requirements proposed by the Board, they identify additional information that they argue would allow them to evaluate demurrage invoices more effectively. Class I carriers largely oppose the proposed minimum information requirements, arguing that they already provide most (or all) of the required information on their web platforms and urging the Board to consider a more flexible standard. In addition, both rail users and Class I carriers ask the Board to clarify the ''appropriate action'' requirement.

Discussion and Request for Comments

In the *NPRM,* the Board explained that the requirements proposed there were:

> intended to ensure that the recipients of demurrage invoices will be provided sufficient information to readily assess the validity of those charges without having to undertake an unreasonable effort to gather information that can be provided by the railroad in the first instance, to properly allocate demurrage responsibility, and to modify their behavior if their own actions led to the demurrage charges.

NPRM, EP 759, slip op. at 10. After reviewing the comments received, the Board is now considering modifying the proposed regulations at 49 CFR 1333.4 to require certain additional information on or with demurrage invoices from Class I carriers beyond that discussed in the *NPRM.* These additions would include: (1) The date range (*i.e.,* the billing cycle) covered by the invoice; (2) the original estimated date and time of arrival (ETA) of each car (as established by the invoicing carrier) and the date and time each car was received at interchange (if applicable), either on or with each invoice or, alternatively, upon reasonable request from the invoiced party; and (3) the date and time of each car ordered in (if applicable). Finally, the Board is considering requiring that Class I carriers provide access to demurrage invoicing data in machine-readable format.

Below, the Board discusses these additional items, which are in response to various stakeholders' comments, and invites stakeholders to comment on their inclusion in section 1333.4(a), the Board's proposed regulations regarding requirements for demurrage invoices. In addition, and as discussed below, the Board invites further comment on the Board's proposed demurrage regulations at section 1333.4(b), which would require Class I carriers to take ''appropriate action'' to ensure that demurrage charges are accurate and warranted prior to sending demurrage invoices.[7]

Billing Cycle. CPC asks the Board to require carriers to include on demurrage invoices the dates covered by the invoice, which the Board construes to mean the billing cycle. (CPC Comments 4–5.) Class I carriers did not respond to this specific request. The information sought by CPC is standard invoice information that would allow invoice recipients to easily identify the period covered by the invoice. To assess the validity of demurrage charges, recipients of demurrage invoices may need to evaluate the timing of the charges with their own record of events, and clearer information on the billing cycle would assist in this assessment. Given the basic nature of the information, which may already be provided by some carriers, compiling the information to include it on or with demurrage invoices would not appear to be burdensome. The Board invites comment on requiring Class I carriers to include on or with all demurrage invoices the billing period covered by the invoice.

Original ETA and Date and Time Cars Received at Interchange. Several commenters identify the original ETA and, if applicable, the date and time that cars are received at interchange, as information that would give rail users greater visibility into how carrier-caused bunching,[8] which has been of concern to the Board,[9] and other delays affect demurrage charges.

First, commenters state that, if the original ETA were included on carriers' demurrage invoices, rail users could compare that ETA to the car placement information in order to better recognize if carrier-caused problems, including bunching, may have impacted the

[7] Comments on the *NPRM* that are not specifically discussed in this *SNPRM* will be considered in a subsequent decision.

[8] Recently, the Board has described bunching as ''rail car deliveries that are not reasonably timed or spaced.'' *See Demurrage Liability,* EP 707, slip op. at 23.

[9] In Docket No. EP 754, the Board invited stakeholders to comment on their recent experiences with demurrage and accessorial charges pertaining to bunching, including bunching that may be attributable to upstream rail carriers. *See Oversight Hearing on Demurrage & Accessorial Charges,* EP 754, slip op. at 3 (STB served Apr. 8, 2019). In response, rail users across a broad range of industries described issues related to bunching, including that they regularly experience demurrage charges associated with bunched deliveries. *See Policy Statement on Demurrage & Accessorial Rules & Charges,* EP 757, slip op. at 13 n.38 (STB served Oct. 7, 2019) (describing comments received in Docket No. EP 754 relating to bunching). Some rail carriers in that proceeding stated that they award credits for bunching in some instances but did not describe with specificity how these credits are awarded or otherwise address the concerns expressed by rail users. *See id.* at 13–14 (describing comments submitted in Docket No. EP 754).

Additionally, the Board provides guidance on the general principles it expects to consider when evaluating the reasonableness of demurrage and accessorial rules and charges in future cases, including those that involve claims of carrier-caused bunching, by separate decision. *See Policy Statement on Demurrage & Accessorial Rules & Charges,* EP 757 (STB served Apr. 30, 2020).

timing of a car's placement. (ACC Comments 1; Dow Comments 5–6.) With this information, commenters assert that they would know when to dispute demurrage charges attributable to carriers' actions and could verify credits when applicable. For example, ISRI alleges that one Class I carrier, which provides credits for early or late arrivals, will occasionally replace the original ETA if delays occur. (ISRI Comments 9.) ISRI contends that, if rail users have access to the original ETA on demurrage invoices, they would be able to avoid the ''burdensome and unfair administrative process'' of tracking original ETAs, thereby mitigating the risk that rail users do not receive the number of credits they are ''entitled to receive.'' (*Id.*) Furthermore, AFPM and PRFBA argue that requiring carriers to provide original ETA information on demurrage invoices would encourage them to apply increased scrutiny to demurrage invoices before sending them. (AFPM Comments 6; PRFBA Comments 1–2.) Dow reasons that this additional requirement would not be unreasonably burdensome for carriers because they already generate this information in the normal course of business in order to account for delays when assessing demurrage. (Dow Comments 6.)

Second, commenters identify the date and time at which a delivering carrier received rail cars at interchange, if applicable, as useful information that would help rail users identify upstream carrier-caused bunching. (ACC Comments 2; Dow Comments 6.) ACC and Dow explain that delivering carriers do not award demurrage credits for delays caused by upstream carriers and, without interchange information, rail users cannot identify these delays themselves. (ACC Comments 2; Dow Comments 6.) Dow argues that having interchange information would allow rail users to calculate the transit time on an upstream carrier's line and credibly approach the upstream carrier about assuming responsibility for any demurrage it causes. (Dow Comments 6.) Dow contends that this requirement would not be unreasonably burdensome for carriers since they must generate this information already in order to account for delays on joint-line shipments. (*Id.* at 7.)

Several Class I carriers briefly reference these proposed additions in their replies, generally suggesting that it is unnecessary to require this information on invoices. For example, CSXT states that its web platform currently provides rail users with the original ETA and date and time of interchange, and that requiring carriers to include the additional items requested by commenters would add to the ''burdensome paperwork requirements'' that, according to CSXT, would be created by the *NPRM.* (CSXT Reply 2, 4.) UP contends that the date and time at which rail cars were received at interchange is information that ''only applies to a subset of shippers' operations'' and would not be useful for a majority of ''customers [for whom] the invoice acts as an end-of-month summary of charges.'' (UP Reply 3.) [10]

As discussed in the *NPRM,* the purpose of the Board's proposed rule is to ensure that the recipients of demurrage invoices will be provided sufficient information in demurrage invoicing so that they can more easily determine the cause of demurrage charges, verify the validity of those charges, properly allocate demurrage responsibility, and modify their behavior if their own actions led to the demurrage charges. *NPRM,* EP 759, slip op. at 10. Based on the comments and replies received in response to the *NPRM,* it appears that the inclusion of the original ETA of each car (as established by the invoicing carrier) and the date and time at which cars are received at interchange, if applicable, on or with invoices may further these objectives by helping recipients identify sources of delay and carrier-caused bunching and assess the validity of any resulting demurrage charges. Moreover, this information appears to be readily available to carriers as it is used in the ordinary course of business to track car movement and place cars.[11] Accordingly, the Board invites comments on revisions to proposed section 1333.4 that would require Class I carriers to provide on or with their demurrage invoices (1) the original ETA of each car (as established by the invoicing carrier); [12] and (2) the date and time at which each car was received at interchange, if applicable. The Board also invites comment on whether the requirement that Class I carriers provide the date and time at which each car was received at interchange, if applicable, should be limited to the last interchange with the invoicing carrier.

The Board also recognizes, however, that bunching information may not be relevant to every invoice recipient in all circumstances. Accordingly, the Board also invites comment on whether Class I carriers should instead be required to provide these items to the invoiced party upon reasonable request, but not include them on or with every invoice.[13] A request for this information might be reasonable when the invoiced party has reason to believe that carrier-caused bunching occurred and cannot otherwise easily access the requested information. A request might not be reasonable if a carrier already provides the information to the invoiced party through other means, including the carrier's web-based platform, so long as it is easily accessible and remains easily accessible on or with the demurrage invoice. Comment is invited on what would constitute a reasonable request.

Ordered-In Date and Time. Several commenters ask the Board to require carriers to specify, if applicable, the date and time that cars were ordered into a rail user's facility. (ACC Comments 2; Dow Comments 4; CPC Comments 4–5.) Dow explains that, at closed-gate facilities, carriers cannot place cars until they receive approval from those facilities, at which time demurrage stops accruing. (Dow Comments 4 & n.4.) Both Dow and ACC argue that ordered-in information would allow rail users to ''validate demurrage charges, alter their practices to prevent similar demurrage events, and hold railroads accountable for railroad-caused delays.'' (ACC Comments 2; *see also* Dow Comments 4.) Dow acknowledges that many rail users would have ordered-in

[10] NSR also indicates that its web platform does not provide users with information about ''bunching events'' because they are subjective, though it is unclear precisely what type of bunching information NSR is referencing here. (NSR Reply 1.)

[11] *See* CSXT Reply 4 (explaining that it already provides this information on its web platform).

[12] The Board also invites comment on how to define ''original ETA,'' which was not defined by commenters, and whether the original ETA may differ depending on whether the rail car is loaded or empty. The Board notes that NSR's current tariff states the following with respect to original ETA: ''Following interchange or release of shipment and complete billing to final destination, the first reported movement on [NSR] will generate the NSR Original Estimated Time of Availability (ETA). Though the time of availability may change during transit due to delays or advances en route, it is the original NSR ETA against which an early or late shipment will be measured.'' NSR Tariff 6004–D, Item 200 (effective Sept. 1, 2019). The Board seeks comment on whether, for example, original ETA should be generated promptly following interchange or release of shipment to the invoicing carrier and be based on the first movement of the invoicing carrier.

[13] Many commenters support requiring Class I carriers to provide supporting information, upon request from the invoiced party, to help recipients verify that the demurrage charges are accurate and warranted. While these commenters' suggestions for information that should be available upon request vary in scope, they all ask that invoice recipients be allowed to request information that can provide more visibility into bunching. (*See, e.g.,* Kinder Morgan Comments 14; AISI Comments 9–10; AM Comments 6; ISRI Reply 13.) In response to one of these comments, NSR argues that providing specific information upon request would essentially force the carrier to prove its case to a rail user, allow that user to still refuse to pay the railroad, and then require the railroad to sue and prove its case all over again in court. (NSR Reply 3.)

information in their own records, reflecting the date on which the rail user believes it ordered the car. (Dow Comments 4.) However, Dow argues that requiring carriers to provide ordered-in information on demurrage invoices would allow rail users to ''quickly ascertain whether the carrier has used the correct dates for calculating demurrage'' and validate invoices more efficiently. (*Id.*) Dow also argues that requiring the ordered-in date and time, at which the accrual of demurrage stops, would be consistent with the Board's proposal to require the date and time of constructive placement, at which the accrual of demurrage starts. (*Id.* at 5.) Dow maintains that providing this information would not place an unreasonable burden on carriers since they already have this information readily available to calculate demurrage charges. (*Id.*) ACC and Dow also note that one carrier already provides this information on demurrage invoices. (ACC Comments 2; Dow Comments 5.) Class I carriers did not respond specifically to this proposed addition.

Because the ordered-in date and time is essential to the calculation of demurrage at closed-gate facilities, such information would be valuable on or with demurrage invoices for both demurrage accrual and verification purposes. As stakeholders explain, the ordered-in date and time stops the accrual of demurrage at closed-gate facilities and also impacts how certain carriers calculate credits. For example, UP has stated that it issues ''one credit per day from the time a rail car is ordered into a customer's facility until it is delivered,'' as well as ''one credit per rail car not supplied'' if UP ''fails to supply a rail car that the customer ordered and the customer has capacity within its facility to take the rail car.'' [14] The Board also understands that disagreements over the ordered-in date and time may be the source of some demurrage disputes. In *Oversight Hearing on Demurrage & Accessorial Charges,* Docket No. EP 754, rail users described issues with demurrage charges accruing after cars had been ordered into a facility.[15] If rail users have easy access to the carriers' ordered-in date and time to compare against their own records, then they may be better equipped to verify demurrage invoices and spot any discrepancies. Because rail carriers use this information in the ordinary course of business to compute demurrage invoices, compiling this information to provide it on or with demurrage invoices would not appear to be burdensome. Accordingly, the Board invites comment on a modification to proposed section 1333.4 that would require Class I carriers to provide the ordered-in date and time on or with demurrage invoices.

Machine-Readable Data. Many commenters express a preference for ''machine-readable'' data.[16] Certain commenters define this term as ''a structured data file format that is open and capable of being easily processed by a computer,'' including ''Comma Separated Values (CSV), Office Open XML ([XLSX]), and OpenDocument Spreadsheet (ODS).'' (Joint Reply (ACC, CFA, TFI, and NITL) 2 n.2; *see also* Dow Reply 2 n.3.) They state that ''a format is open if it is not limited to a specific software platform and not subject to restrictions on re-use.'' (Joint Reply (ACC, CFA, TFI, and NITL) 2 n.2; *see also* Dow Reply 2 n.3.) Commenters explain that most railroads currently provide invoices in PDF or paper format, which necessitates manual and resource-intensive review, the burden of which may cause rail users to pay large amounts in erroneous charges that are difficult to detect. (Joint Reply (ACC, CFA, TFI, and NITL) 2, 4–6; Dow Reply 2, 6.) They argue that, conversely, machine-readable data would allow users to efficiently and effectively audit the invoices through coding and automation. (Joint Reply (ACC, CFA, TFI, and NITL) 4–5; Dow Reply 6.) Commenters reference NSR as the only Class I carrier that currently invoices in a machine-readable format. (Joint Reply (ACC, CFA, TFI, and NITL) 4; Dow Reply 6.) Commenters state that many Class I carriers do not allow access to machine-readable data on their web-based platforms, and, to the extent that carriers do allow such access,[17] commenters say that this information is not easily accessible, is cumbersome to download, or is available only for a limited time period. (Joint Reply (ACC, CFA, TFI, and NITL) 3–4; Dow Reply 5–6.)

Machine-readable invoicing may be one way to make the process of verifying demurrage charges less burdensome for invoice recipients and thereby further the Board's objective to make demurrage invoices more transparent and information related to demurrage charges more accessible. However, as some advocates note, electronic auditing may involve coding and require upfront costs, (Joint Reply (ACC, CFA, TFI, and NITL) 5), and the Board expects that some smaller rail users would not have the resources to use machine-readable data. Furthermore, while NSR states that it currently offers machine-readable formatting,[18] the Board does not have information about how large of an undertaking machine-readable formatting would be for those Class I carriers that do not currently offer this data format.[19] For these reasons, the Board invites comments on matters that may be associated with modifying section 1333.4 to require Class I carriers to provide machine-readable data, such as through a machine-readable invoice, a separate electronic file containing machine-readable data, or a customized link so the rail user could directly download the data in a machine-readable format. It would be at each rail carrier's discretion to select how to provide rail users access to the machine-readable data. With this potential modification, the Board does not intend that invoice information would be available to rail users only in a machine-readable format that would render it inaccessible to rail users without resources for coding or new upfront costs. The Board invites comment on ways to prevent such inaccessibility. The Board also invites comment from smaller rail users on whether machine-readable data would provide them with greater access to information, and on any other issues pertaining to the

[14] UP Comments 2–3, May 8, 2019, *Oversight Hearing on Demurrage & Accessorial Charges,* EP 754.

[15] Hr'g Tr. 387:2–387:17, May 22, 2019, *Oversight Hearing on Demurrage & Accessorial Charges,* EP 754 (Ag Processing, Inc., stating that it had experienced demurrage charges accruing on cars that were ordered into a facility after more conveniently-placed cars were switched instead); Brainerd Chemical Company, Inc., Comments 4, May 8, 2019, *Oversight Hearing on Demurrage & Accessorial Charges,* EP 754 (describing being charged demurrage for two cars that had been previously ordered into its facility and not switched as scheduled); Packaging Corporation of America Comments 4–5, May 8, 2019, *Oversight Hearing on Demurrage & Accessorial Charges,* EP 754 (asserting that five missed switches resulted in demurrage charges of $15,500 at one location in one month).

[16] AISI Comments 10; Joint Reply (ACC, CFA, TFI, and NITL) 4; Dow Reply 6; ISRI Reply 13.

[17] Commenters cite CSXT and UP as carriers that allow access to machine-readable data on their web-based platforms. (Joint Reply (ACC, CFA, TFI, and NITL) 3; Dow Reply 6.) CP also states that it allows users to download some data from its web portal into a Microsoft Excel spreadsheet for analysis purposes. (CP Comments, V.S. Melo 4, 6, 11, 13.)

[18] *See* NSR Reply 1–2 (also requesting that ''the Board clarify that the information specified in the [*NPRM*] need not appear on physical demurrage invoices and instead need only be readily accessible via web-based applications in machine-readable format'').

[19] *See Publ'n Requirements for Agricultural Prods.,* EP 528 (Sub-No. 1) et al., slip op. at 8 (STB served June 30, 2017) (indicating that the Board did not yet have enough information about the burden that would be associated with a requested machine-readability requirement for agricultural rate and service information).

accessibility of machine-readable data for smaller rail users. Furthermore, the Board invites comment on how to define ''machine-readable,'' including the following definition proposed by commenters: ''a structured data file format that is open and capable of being easily processed by a computer. A format is open if it is not limited to a specific software platform and not subject to restrictions on re-use.'' (Joint Reply (ACC, CFA, TFI, and NITL) 2 n.2; *see also* Dow Reply 2 n.3.)

Appropriate Action to Ensure Demurrage Charges Are Accurate and Warranted. Section 1333.4(b) of the rule proposed in the *NPRM* would require Class I carriers to ''take appropriate action to ensure that the demurrage charges are accurate and warranted'' prior to sending demurrage invoices. Several commenters support this provision,[20] but some express concern that it will create more uncertainty and potential litigation over its meaning.[21] In order to clarify this requirement, certain commenters offer their own definitions for actions that would qualify. For example, NAFCA suggests a revision to proposed section 1333.4(b) that would require Class I carriers to provide ''a concise explanation of how the charge was calculated and the carrier's reasons for the charge being assessed.'' (NAFCA Comments 3.) AFPM asks the Board to compel carriers, as part of this requirement, to furnish specific types of documentation, such as signed and certified documents, photographs, and original trip plans to confirm the accuracy of the charges. (AFPM Comments 7.)

CN expresses concern that if the proposal ''were interpreted to require that every single invoice be manually double-checked before it is sent, significant additional resources would have to be deployed to perform busy work of reviewing invoices that already have a high degree of accuracy,'' which would only slow down the invoicing process. (CN Comments 8.) CN states that it already dedicates a team of ten employees to review the accuracy of demurrage invoices ''using a highly structured process, with the focus being proactive adjustment of optional services invoices before they are issued.'' (*Id.*) Likewise, KCS states that it believes it already takes appropriate action to ensure that its demurrage bills are accurate as evidenced by the fact that ''only a very small fraction'' of the invoices are disputed. (KCS Comments 6.)

Whether a carrier has taken appropriate action to ensure that demurrage charges are accurate and warranted depends on the particular facts and circumstances of a situation. Since Class I carriers utilize different invoicing systems, one carrier may be able to ensure accuracy in its invoicing system by different methods than another. ISRI calls upon Class I carriers to explain the actions they currently take to ensure the accuracy of their demurrage invoices, as those responses could ''assist the Board in determining and clarifying steps the railroads may need to take to achieve this important objective.'' (ISRI Reply 13.) The Board agrees that such information would be useful in its consideration of proposed section 1333.4(b) and, accordingly, invites further comments from the Class I carriers regarding what actions they currently take, and from all stakeholders on what actions Class I carriers reasonably should be required to take, to ensure that demurrage invoices are accurate and warranted.

Conclusion

For the reasons discussed above, the Board invites comments on the additions to proposed 49 CFR 1333.4 discussed in this decision, as well as further comment on the Board's proposal that Class I carriers be required to take ''appropriate action to ensure that demurrage charges are accurate and warranted.'' Comments will be due by June 5, 2020; replies will be due July 6, 2020.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities, (2) analyze effective alternatives that may minimize a regulation's impact, and (3) make the analysis available for public comment. Sections 601–604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, section 603(a), or certify that the proposed rule would not have a ''significant impact on a substantial number of small entities,'' section 605(b). Because the goal of the RFA is to reduce the cost to small entities of complying with federal regulations, the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates those entities. In other words, the impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the proposed rule. *White Eagle Coop.* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

In the *NPRM,* the Board limited its proposal to Class I carriers and does not modify that proposal here.[22] Accordingly, the Board again 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 as defined by the RFA.[23] A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

Paperwork Reduction Act

In this decision, the Board invites parties to comment on possible revisions to its proposed rule that would require Class I carriers to include certain additional information on or with their demurrage invoices. In the *NPRM,* the Board sought comments, pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3521, Office of Management and Budget (OMB) regulations, 5 CFR 1320.8(d)(3), and the *NPRM*'s Appendix, about the impact of the proposed rule on the currently approved collection of the Demurrage Liability Disclosure Requirements (OMB Control No. 2140–0021). Specifically, the Board sought comments regarding: (1) Whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate.

[20] *See, e.g.,* NITL Comments 10; TFI Comments 4; CRA Comments 4; NACD Comments 4; PCA Comments 5.

[21] *See, e.g.,* NAFCA Comments 3; KCS Comments 6; CSXT Comments 11; CN Comments 8.

[22] Arguments that the Board should require Class II and III carriers to comply with proposed section 1333.4 will be addressed in a future decision.

[23] For the purpose of RFA analysis, the Board defines a ''small business'' as only including those rail carriers classified as Class III carriers under 49 CFR 1201.1–1. *See Small Entity Size Standards Under the Regulatory Flexibility Act,* EP 719 (STB served June 30, 2016) (with Board Member Begeman dissenting). Class III carriers have annual operating revenues of $20 million or less in 1991 dollars ($39,194,876 or less when adjusted for inflation using 2018 data). Class II carriers have annual operating revenues of less than $250 million in 1991 dollars ($489,935,956 when adjusted for inflation using 2018 data). The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds on its website. 49 CFR 1201.1–1; *Indexing the Annual Operating Revenues of R.Rs.,* EP 748 (STB served June 14, 2019).

In the *NPRM,* the Board estimated that the proposed requirements for minimum information to be included on or with Class I carriers' demurrage invoices would add a total one-time hourly burden of 280 hours (or 93.3 hours per year as amortized over three years) because, in most cases, those carriers would likely need to modify their billing systems to implement some or all of these changes. *NPRM,* EP 759, slip op. at 13. The Board also estimated that the proposed requirement that Class I carriers take appropriate action to ensure that demurrage charges are accurate and warranted would add a total one-time hourly burden of 560 hours (or 186.7 hours per year as amortized over three years) because Class I carriers would likely need to establish or modify appropriate demurrage invoicing protocols and procedures. *Id.*[24]

The Board received comments from CSXT and CN pertaining to the collection of this information under the PRA.[25] CSXT and CN both argue that the Board's 280-hour estimate of the time it would take Class I carriers to modify their invoicing systems is too low for those Class I carriers that would need to make modifications to comply with the proposed rule. CSXT contends that, if the Board requires Class I carriers to provide the required information on demurrage invoices (rather than solely on their web platforms), then it would need nine months to implement a software redesign. (CSXT Reply Comments 6.) CN does not believe that it would need to adjust its invoicing system to comply with the proposed requirements; however, it argues that the time necessary to implement invoicing system changes, including ''software development,'' ''internal training,'' and ''communications with customers about changes'' could ''easily encompass hundreds of hours.'' (CN Comments 20–21.) Moreover, CN maintains that the Board's 560-hour estimate of the time it would take Class I carriers to establish or modify appropriate demurrage invoicing protocols and procedures to ensure that demurrage charges are accurate and warranted is ''significantly understated'' because the *NPRM* appears to propose an ongoing review requirement for every individual invoice, which would require ongoing time and effort. (*Id.* at 21.)

CN and CSXT argue that the estimated burden to modify demurrage invoices or establish or modify demurrage invoicing protocols should be larger than the Board estimated in the *NPRM,* but neither provides quantitative analysis or data to support any particular increases. Further, CSXT's estimate of ''nine months'' and CN's estimate of ''hundreds of hours'' appear overstated in comparison to other software programming requirements recently estimated by the Board or proposed by carriers. *See Pet. for Rulemaking to Amend 49 CFR part 1250,* EP 724 (Sub-No. 5), slip op. at 5–6 (STB served Sept. 30, 2019) (noting that rail carriers estimated that it would take 80 hours to make software changes necessary for proposed new performance reporting requirements); *Waybill Sample Reporting,* EP 385 (Sub-No. 8), slip op. at 13, 16 (STB served Nov. 29, 2019) (proposing a one-time burden of 80 hours to implement programming changes). Nonetheless, based on CSXT's and CN's stated concern that Class I carriers would collectively need more than 280 hours to modify their invoicing systems to include the proposed minimum information requirements, the Board will increase its estimate from 280 hours (or 40 hours per Class I carrier) to 560 hours (or 80 hours per Class I carrier). The Board expects that the 560 hours would cover the time Class I carriers would need to include the possible modifications discussed in the *SNPRM,* especially given that this information appears to be readily available to carriers in the ordinary course of their business. Furthermore, the Board would expect that Class I carriers would only need to undertake one software redesign to incorporate both the proposed minimum information requirements discussed in the *NPRM* and the proposed revisions discussed in the *SNPRM.*

Similarly, in response to CN's contention that the Board's estimate of the time it would take Class I carriers to establish or modify appropriate demurrage invoicing protocols and procedures is ''significantly understated,'' the Board will increase its estimate from 560 hours (or 80 hours per Class I carrier) to 840 hours (or 120 hours per Class I carrier). However, with respect to CN's argument that the requirement that Class I carriers take appropriate action to ensure that demurrage charges are accurate and warranted necessitates both a one-time hourly burden to establish or modify invoicing procedures and an additional hourly burden for continuing review of demurrage invoices, the Board declines to adjust the hourly burden for an ongoing review requirement since, as Class I carriers have indicated, they review invoices in the ordinary course of business.[26]

The Board welcomes comments on the estimates of actual time and costs of compliance with the possible modifications to its proposed invoicing requirements for Class I carriers. Information pertinent to these issues is included in the Appendix below and will be submitted to OMB for review as required under 44 U.S.C. 3507(d) and 5 CFR 1320.11(b). Once the comment period ends, comments received by the Board regarding the information collection will also be forwarded to OMB for its review.

List of Subjects in 49 CFR Part 1333

Penalties, Railroads.

It is ordered:

1. The Board requests comments on revisions to its proposed rule as set forth in this decision. Notice of this request for comment will be published in the **Federal Register**.

2. The procedural schedule is established as follows: Comments on this decision are due by June 5, 2020; replies are due by July 6, 2020.

3. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

4. This decision is effective on its service date.

Decided: April 30, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Jeffrey Herzig,

Clearance Clerk.

Note: The Appendix below will not appear in the Code of Federal Regulations.

[24] The Board also provided an hourly burden estimate for the proposal that Class I carriers directly bill the shipper for demurrage when the shipper and warehouseman agree to that arrangement and so notify the rail carrier. *Id.* Comments pertaining to this hourly burden estimate will be addressed in a separate decision.

[25] Additionally, ASLRRA argues that the Board's collection of information under the PRA is deficient because it does not address the hourly burdens on Class II and Class III carriers, should the proposed rule be extended to them. (ASLRRA Comments 4.) However, such a discussion in the *NPRM* would have been unnecessary because the proposed rule excludes Class II and Class III carriers from its requirements. The Appendix below addresses the burdens to those carriers for the existing collection.

[26] *See* CSXT Comments 5, May 8, 2019, *Oversight Hearing on Demurrage & Accessorial Charges,* EP 754 (stating that CSXT has a team dedicated to reviewing demurrage matters); CN Comments 8, May 8, 2019, *Oversight Hearing on Demurrage & Accessorial Charges,* EP 754 (stating that invoices go through ''internal validating processes that include both system and manual processes to validate that the charges are accurate''); BNSF Railway Company Comments 6, May 8, 2019, *Oversight Hearing on Demurrage & Accessorial Charges,* EP 754 (stating that ''BNSF independently undertakes a rigorous review of demurrage pre-bills to ensure that billing is occurring in appropriate circumstances before a bill ever leaves the building'').

Appendix

Information Collection

Title: Demurrage Liability Disclosure Requirements.

OMB Control Number: 2140–0021.

Form Number: None.

Type of Review: Revision of a currently approved collection.

Summary: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (STB or Board) gives notice that it is requesting from the Office of Management and Budget (OMB) approval for the revision of the currently approved information collection, Demurrage Liability Disclosure Requirements, OMB Control No. 2140–0021. The requested revision to the currently approved collection is necessitated by the *NPRM* (which proposed requirements for certain minimum information to be included on or with Class I carriers' demurrage invoices and proposed that serving Class I carriers be required to directly bill the shipper, instead of the warehouseman, for demurrage when the shipper and warehouseman agree to that arrangement and so notify the rail carrier) and this *SNPRM* (which invites parties to comment on certain modifications and additions to the minimum information requirements proposed in the *NPRM*). All other information collected by the Board in the currently approved collection is without change from its approval, except for an update to the number of non-Class I carriers (currently expiring on June 30, 2020).

Respondents: Freight railroads subject to the Board's jurisdiction.

Number of Respondents: 684 (including seven Class I carriers).

Estimated Time per Response: The estimated hourly burden for demurrage liability notices for new customers remains one hour per notice. The modification sought here for certain minimum information to be included on or with Class I carriers' demurrage invoices is an estimated annualized one-time hourly burden—resulting from an adjustment to the seven Class I carriers' billing systems—of 80 hours per railroad. The modification requiring Class I carriers to take appropriate action to ensure that the demurrage invoices are accurate and warranted is an estimated annualized one-time hourly burden of 120 hours. The modification requiring Class I carriers to directly bill the shipper for demurrage when the shipper and warehouseman agree to that arrangement and so notify the rail carrier is an estimated annual hourly burden of one hour per agreement.[27]

Frequency: On occasion. The existing demurrage liability disclosure requirement is triggered in two circumstances: (1) When a shipper initially arranges with a railroad for transportation of freight pursuant to the rail carrier's tariff; or (2) when a rail carrier changes the terms of its demurrage tariff. The modification sought here makes three changes to the existing collection, as follows: (1) One-time adjustments to the Class I railroads' billing systems to (a) include certain minimum information on or with demurrage invoices and (b) take appropriate action to ensure that the demurrage invoices are accurate and warranted; and (2) an annual adjustment to the Class I carriers' billing practices to directly bill the shipper for demurrage when the warehouseman and the shipper agree to that arrangement and so notify the rail carrier (estimated 60 agreements).

Total Burden Hours (annually including all respondents): 1,896.7 hours. Consistent with the existing, approved information collection, Board staff estimates that: (1) Seven Class I carriers would each take on 15 new customers each year (105 hours); (2) each of the seven Class I carriers would update its demurrage tariffs annually (2.3 hours); (3) 677 non-Class I carriers (which are already subject to the existing collection requirements, but which will not be subject to the new requirements) would each take on one new customer a year (677 hours); and (4) each of the non-Class I carriers would update its demurrage tariffs every three years (225.7 hours annualized). For the modification to include certain minimum information on or with demurrage invoices, Board staff estimates that, on average, each Class I carrier would have a one-time burden of 80 hours (560 total hours). Amortized over three years, this one-time burden equals 186.7 hours per year. For the modification requiring each Class I carrier to take appropriate action to ensure that demurrage charges are accurate and warranted, Board staff estimates that, on average, each Class I carrier would have a one-time burden of 120 hours (840 total hours) to establish or modify appropriate protocols and procedures. Amortized over three years, this one-time burden equals 280 hours per year. For the modification requiring Class I carriers to directly bill the shipper for demurrage when the shipper and warehouseman agree to that arrangement and so notify the rail carrier, Board staff estimates that annually seven Class I carriers would each receive 60 direct-billing agreements per year at one hour per agreement (420 hours).

The total hourly burdens are also set forth in the table below.

TABLE—TOTAL BURDEN HOURS

[per year]

Respondents	Existing annual burden	Existing annual update burden (hours)	Estimated one-time burden for additional data (hours)	Estimated one-time burden for appropriate protocols (hours)	Estimated annual burden for invoicing agreement (hours)	Total yearly burden hours
7 Class I Carriers	105	[28] 2.3	186.7	280	420	994
677 Non-Class I Carriers	677	225.7	.....	.....	.....	902.7
Totals	782	228	186.7	280	420	1,896.7

Total ''Non-hour Burden'' Cost: There are no other costs identified.

Needs and Uses: Demurrage is subject to Board regulation under 49 U.S.C. 10702, which requires railroads to establish reasonable rates and transportation-related rules and practices, and under 49 U.S.C. 10746, which requires railroads to compute demurrage charges, and establish rules related to those charges, in a way that will fulfill the national needs related to freight car use and distribution and maintenance of an adequate car supply. Demurrage is a charge that serves principally as an incentive to prevent undue car detention and thereby encourage the efficient use of rail cars in the rail network, while also providing compensation to rail carriers for the expense incurred when rail cars are unduly detained beyond a specified period of time (*i.e.,* ''free time'') for loading and unloading. *See Pa. R.R.* v. *Kittaning Iron & Steel Mfg. Co.,* 253 U.S. 319, 323 (1920) (''The purpose of demurrage charges is to promote car efficiency by penalizing undue detention of cars.''); 49 CFR 1333.1; *see also* 49 CFR part 1201, category 106.

Under 49 CFR 1333.3, a railroad's ability to charge demurrage pursuant to its tariff is conditional on its having given, prior to rail car placement, actual notice of the demurrage tariff to the person receiving rail cars for loading and unloading. Once a shipper

[27] In a final rule decision issued on the same day as this decision, the Board increased its estimate of the time Class I carriers would need to implement direct billing from five minutes per agreement to one hour per agreement. *See Demurrage Billing Requirements,* EP 759, slip op. at 16–17 (STB served Apr. 30, 2020).

[28] In the *NPRM,* the Board used seven hours for the existing annual update burden for Class I carriers; however, this number has been corrected to 2.3 hours to reflect the average over three years.

receives a notice as to a particular tariff, additional notices are required only when the tariff changes materially. The parties rely on the information in the demurrage tariffs to avoid demurrage disputes, and the Board uses the tariffs to adjudicate demurrage disputes that come before it.

As described in detail in this *SNPRM,* the *NPRM,* and the final rule relating to direct billing issued simultaneously with this *SNPRM,* the Board is amending the rule that applies to this collection of demurrage disclosure requirements to require Class I carriers to include certain minimum information on or with demurrage invoices, take appropriate action to ensure that demurrage charges are accurate and warranted, and directly bill the shipper for demurrage when the shipper and warehouseman agree to that arrangement and so notify the rail carrier. The collection and use of this information by the Board enable the Board to meet its statutory duties.

[FR Doc. 2020–09684 Filed 5–5–20; 8:45 am]

BILLING CODE 4915–01–P

Notices

Federal Register
Vol. 85, No. 88
Wednesday, May 6, 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.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Dakota Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the North Dakota Advisory Committee to the Commission will be held by teleconference at 12:00 p.m. (CDT) on Monday, May 11, 2020. The purpose of the meeting is for planning of its next civil rights project.

DATES: Monday, May 11, 2020, at 12:00 p.m. CDT.

Public Call-In Information: Conference call-in number: 1–888–204–4368 and conference call 2737236.

TDD: Dial Federal Relay Service 1–800–877–8339 and give the operator the above conference call number and conference ID.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, at *ebohor@usccr.gov* or by phone at (202) 376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–888–204–4368 and conference call 2737236. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call-in number: 1–888–204–4368 and conference call 2737236.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012, faxed to (213) 894–3435, or emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact Evelyn Bohor at 202–381–8915.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://gsageo.force.com/FACA/apex/FACAPublicCommittee?id=a10t0000001gzl9AAA;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Western Regional Office at the above phone numbers, email or street address.

Agenda

Monday, May 11, 2020, 12:00 p.m. (CDT)

- Roll call
- Planning Next Civil Rights Project
- Other Business
- Open Comment
- Adjourn

Dated: May 1, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–09660 Filed 5–5–20; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–24–2020]

Foreign-Trade Zone (FTZ) 7—San Juan, Puerto Rico; Notification of Proposed Production Activity; Amgen Manufacturing Limited (Pharmaceuticals), Juncos, Puerto Rico

Amgen Manufacturing Limited (Amgen) submitted a notification of proposed production activity to the FTZ Board for its facility in Juncos, Puerto Rico. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on April 28, 2020.

Amgen already has authority to produce pharmaceuticals within Subzone 7M. The current request would add a foreign status material/component to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status material/component described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Amgen from customs duty payments on the foreign-status material/component used in export production. On its domestic sales, for the foreign-status material/component noted below, Amgen would be able to choose the duty rates during customs entry procedures that apply to the pharmaceutical products in Amgen's existing scope of authority (duty-free). Amgen would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The material/component sourced from abroad is L-Carnosine (duty rate 6.5%). The request indicates that the material/component is subject to special duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The

closing period for their receipt is June 15, 2020.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Juanita Chen at *juanita.chen@trade.gov* or 202–482–1378.

Dated: April 30, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–09676 Filed 5–5–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–22–2020]

Foreign-Trade Zone 139—Sierra Vista, Arizona; Application for Reorganization (Expansion of Service Area) Under Alternative Site Framework; Correction

The **Federal Register** notice (85 FR 23506, April 28, 2020) describing the application submitted by the Arizona Regional Economic Development Foundation, grantee of Foreign-Trade Zone 139, requesting authority to expand its service area under the alternative site framework is corrected as follows:

In the heading of the notice, fourth line, the location of Foreign-Trade Zone 139 should read ''Sierra Vista, Arizona.''

Dated: April 30, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–09675 Filed 5–5–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) seeks public comment on any subsidies, including stumpage subsidies, provided by certain countries exporting softwood lumber or softwood lumber products to the United States during the period July 1, 2019 through December 31, 2019.

DATES: Comments must be submitted within 30 days after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 805 of Title VIII of the Tariff Act of 1930 (the Softwood Lumber Act of 2008), the Secretary of Commerce is mandated to submit to the appropriate Congressional committees a report every 180 days on any subsidy provided by countries exporting softwood lumber or softwood lumber products to the United States, including stumpage subsidies. Commerce submitted its last subsidy report on December 30, 2019. As part of its newest report, Commerce intends to include a list of subsidy programs identified with sufficient clarity by the public in response to this notice.

Request for Comments

Given the large number of countries that export softwood lumber and softwood lumber products to the United States, we are soliciting public comment only on subsidies provided by countries which had exports accounting for at least one percent of total U.S. imports of softwood lumber by quantity, as classified under Harmonized Tariff Schedule of the United States (HTSUS) codes 4407.1001, 4407.1100, 4407.1200, 4407.1905, 4407.1906, 4407.1910, during the period July 1, 2019 through December 31, 2019. Official U.S. import data published by the United States International Trade Commission's DataWeb indicate that four countries (Brazil, Canada, Germany, and Sweden) exported softwood lumber to the United States during that time period in amounts sufficient to account for at least one percent of U.S. imports of softwood lumber products. We intend to rely on similar previous six-month periods to identify the countries subject to future reports on softwood lumber subsidies. For example, we will rely on U.S. imports of softwood lumber and softwood lumber products during the period January 1, 2020, through June 30, 2020, to select the countries subject to the next report.

Under U.S. trade law, a subsidy exists where an authority: (i) Provides a financial contribution; (ii) provides any form of income or price support within the meaning of Article XVI of the GATT 1994; or (iii) makes a payment to a funding mechanism to provide a financial contribution to a person, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments, and a benefit is thereby conferred.[1]

Parties should include in their comments: (1) The country which provided the subsidy; (2) the name of the subsidy program; (3) a brief description (no more than 3–4 sentences) of the subsidy program; and (4) the government body or authority that provided the subsidy.

Submission of Comments

As specified above, to be assured of consideration, comments must be received no later than 30 days after the publication of this notice in the **Federal Register**. All comments must be submitted through the Federal eRulemaking Portal at *http://www.regulations.gov,* Docket No. ITA–2020–0002. The materials in the docket will not be edited to remove identifying or contact information, and Commerce cautions against including any information in an electronic submission that the submitter does not want publicly disclosed. Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF formats only.

The electronic comments should be addressed to Joseph Laroski, Deputy Assistant Secretary for Policy and Negotiations, at U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

Dated: April 22, 2020.

Joseph Laroski,

Deputy Assistant Secretary for Policy and Negotiations.

[FR Doc. 2020–09674 Filed 5–5–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–484–803]

Large Diameter Welded Pipe From Greece: Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

[1] *See* section 771(5)(B) of the Tariff Act of 1930, as amended.

SUMMARY: The Department of Commerce (Commerce) is issuing the preliminary results of the changed circumstances review (CCR) of the antidumping duty (AD) order on large diameter welded pipe from Greece.

DATES: Applicable May 6, 2020.

FOR FURTHER INFORMATION CONTACT: Brittany Bauer, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3860.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 2020, in response to a request by Corinth Pipeworks Pipe Industry S.A. (Corinth), a Greek producer of large diameter welded pipe (welded pipe), Commerce published a notice of initiation of a changed circumstances review to partially revoke the antidumping duty order on welded pipe from Greece.[1] The specific types of large diameter welded pipe which are under consideration for partial revocation are described in the Attachment to this notice. In the *Initiation Notice,* we requested comments from interested parties.[2] In March 2020, we received comments from Corinth [3] and the domestic producers,[4] and rebuttal comments from Corinth.[5] On April 9, 2020, we spoke with the domestic producers regarding both this CCR and the CCRs of welded pipe from India.[6]

[1] *See Large Diameter Welded Pipe from Greece: Initiation of Antidumping Duty Changed Circumstances Review,* 85 FR 10150 (February 21, 2020) (*Initiation Notice*).

[2] *See Initiation Notice,* 85 FR at 10151.

[3] *See* Corinth's Letter, ''Changed Circumstances Review of Large Diameter Welded Pipe from Greece—Corinth Pipeworks' Comments and New Factual Information for Changed Circumstances Review,'' dated March 6, 2020 (Corinth's Comments); and Domestic Producers' Letter, ''Large Diameter Welded Pipe from Greece: Comments on Initiation of Changed Circumstances Review,'' dated March 6, 2020 (refiled with amended bracketing on March 13, 2020) (Domestic Producers' Comments).

[4] The domestic producers are American Cast Iron Pipe Company; Berg Steel Pipe Corp./Berg Spiral Pipe Corp.; Dura-Bond Industries; Stupp Corporation; (individually and as members of the American Line Pipe Producers Association); Greens Bayou Pipe Mill, LP; JSW Steel (USA) Inc.; Skyline Steel; and Trinity Products LLC (collectively the petitioners in the less-than-fair-value investigation) and Welspun Global Trade LLC.

[5] *See* Corinth's Letter, ''Changed Circumstances Review of Large Diameter Welded Pipe from Greece—Corinth Pipeworks' Rebuttal Comments,'' dated March 20, 2020 (Corinth's Rebuttal Comments).

[6] *See* Memorandum, ''AD Order on Large Diameter Welded Pipe from Greece; AD and CVD Orders on Large Diameter Welded Pipe from India—*Ex Parte* Memorandum,'' dated April 14, 2020.

Scope of the *Order*

The merchandise covered by this order is welded carbon and alloy steel line pipe (other than stainless steel pipe), more than 406.4 mm (16 inches) in nominal outside diameter (large diameter welded line pipe), regardless of wall thickness, length, surface finish, grade, end finish, or stenciling. Large diameter welded pipe may be used to transport oil, gas, slurry, steam, or other fluids, liquids, or gases.

Large diameter welded line pipe is used to transport oil, gas, or natural gas liquids and is normally produced to the American Petroleum Institute (API) specification 5L. Large diameter welded line pipe can be produced to comparable foreign specifications, grades and/or standards or to proprietary specifications, grades and/or standards, or can be non-graded material. All line pipe meeting the physical description set forth above, including any dual- or multiple-certified/stenciled pipe with an API (or comparable) welded line pipe certification/stencil, is covered by the scope of the orders.

Subject merchandise also includes large diameter welded line pipe that has been further processed in a third country, including but not limited to coating, painting, notching, beveling, cutting, punching, welding, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the in-scope large diameter welded line pipe.

Excluded from the scope of the order is structural pipe, which is produced only to American Society for Testing and Materials (ASTM) standards A500, A252, or A53, or other relevant domestic specifications, or comparable foreign specifications, grades and/or standards or to proprietary specifications, grades and/or standards. Also excluded is large diameter welded pipe produced only to specifications of the American Water Works Association (AWWA) for water and sewage pipe.

The large diameter welded line pipe that is subject to the order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.1060, and 7305.19.5000. Merchandise currently classifiable under subheadings 7305.31.4000, 7305.31.6090, 7305.39.1000 and 7305.39.5000 and that otherwise meets the above scope language is also covered. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Preliminary Results of Changed Circumstances Review

In this changed circumstances review, pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), Commerce is considering the partial revocation of the order on welded pipe from Greece. The Greek welded pipe producer Corinth requested a changed circumstances review following the initiation and preliminary partial revocation of the antidumping and countervailing (CVD) duty orders on large diameter welded pipe from India.[7] In its request, Corinth included the public version of the domestic producers' request to initiate the Indian CCRs. In the Indian CCR requests, the ten domestic producers filing the request assert that they account for ''substantially all'' [8] of the domestic production of large diameter welded pipe.[9] In the *Initiation Notice* for the Greek CCR, we requested comments related to the applicability of the ''no interest'' statement in the Indian CCR request to the Greek CCR. In response, we received a submission from the domestic producers in which they stated the following: ''{the domestic producers} confirm the comments made in the CCR of the antidumping and countervailing duty orders of LDWP from India.'' [10]

We find that: (1) The ten domestic producers' statement of no interest in the AD and CVD orders with respect to certain specific large diameter welded pipe products from India; (2) the domestic producers' statement that they do not currently produce the particular large diameter welded pipe products subject to this CCR request; [11] (3) the domestic producers' statement that the investment needed for the industry to

[7] *See* Corinth's Letter, ''Large Diameter Welded Pipe from Greece: Request for Changed Circumstances Review and Revocation, In Part,'' dated January 3, 2020 (Corinth CCR Request); and *Large Diameter Welded Pipe from India: Initiation and Expedited Preliminary Results of Antidumping Duty and Countervailing Duty Changed Circumstances Reviews,* 84 FR 69356 (December 18, 2019) (*Indian CCR Initiation and Prelim*).

[8] Commerce has interpreted ''substantially all'' to mean at least 85 percent of the total production of the domestic like product covered by the order. *See, e.g., Supercalendered Paper from Canada: Final Results of Changed Circumstances Review and Revocation of Countervailing Duty Order,* 83 FR 32268 (July 12, 2018).

[9] *See* Corinth CCR Request, at Exhibit 2 and *Indian CCR Initiation and Prelim,* 84 FR at 69357.

[10] *See* Domestic Producers' Comments, at 2.

[11] *See* Corinth CCR Request, at Exhibits 1 (at 84 FR 69357), 2 (at internal page numbers 4 and 8), and 4 (at internal page numbers 9–10).

produce these products far exceeds the potential benefit of such an investment, given that the U.S. market for deep offshore projects, *i.e.,* the primary market for the large diameter welded pipe product groups at issue is relatively small; [12] and (4) the domestic industry's support for excluding the pipe products at issue from the Greek order, in the event that Commerce determines to treat all three orders equally, all support a preliminary finding to exclude the specified products from the AD order on large diameter welded pipe from Greece.

In its comments on the initiation of this review, Corinth argued that: (1) The domestic industry has expressed a lack of interest in these products; (2) no party objected to the Section 232 exclusion requests for these same products; and (3) Corinth currently produces these varieties of welded pipe.[13] In response, the domestic producers stated that, while the partial revocation of the Indian orders would convey a benefit to the domestic producers, it did not believe that a similar domestic benefit would be conferred by the exclusion of the same products from Greek order.[14]

In its rebuttal comments, Corinth argues that ''domestic benefit'' is not a consideration in the law, regulation, or practice of CCRs.[15] Corinth argues that the relevant factors are: (1) The domestic industry's statement of no interest in its request for CCRs of Indian welded pipe; (2) the fact that the domestic industry does not produce these varieties of welded pipe; (3) the fact that the domestic industry has no intention of producing these varieties of pipe, because the investment needed outweighs any economic benefits due to the small size of market for these types of welded pipe; and (4) ten domestic producers, who account for at least 85 percent of domestic production of welded pipe, supported the statement of no interest.[16] Further, Corinth pointed out that in the Indian proceedings, the domestic producers inaccurately stated that only India, Brazil, and Germany produce the specified welded pipe in meaningful quantities.[17]

Corinth also argues that the domestic producers are incorrect in their assertion that an exclusion for any other country subject to the orders is unnecessary.[18] The domestic producers did not rebut Corinth's comments.

While the direct statement of no interest from the domestic producers is from the Indian welded pipe CCRs, the domestic producers have stated that these varieties of welded pipe are not produced domestically and that there are no plans to undertake the investments needed to produce these varieties of welded pipe.[19] Further, there is no evidence that harm is done to the domestic industry only by imports of Greek welded pipe and not by Indian welded pipe. Accordingly, we find that the domestic producers' statements are equally applicable to the CCRs for both countries, as the lack of domestic production or planned domestic production is true regardless of the foreign country of production.

Therefore, in the absence of an objection by any other interested parties, and based upon the four factual factors listed above, we preliminarily find excluding those products from the Greek and Indian Orders to be equally appropriate. Thus, we preliminarily determine that substantially all of the domestic producers of the like product have no interest in the continued application, in part, of the AD order on the same types of large diameter welded pipe from Greece. Accordingly, we are notifying the public of our intent to revoke, in part, the AD order as it relates to certain specific large diameter welded pipe products. We intend to change the scope of the AD order on large diameter welded pipe from Greece by adding the exclusion language provided in the Attachment to this notice.

Public Comment

Interested parties may submit case briefs not later than 14 days after the date of publication of this notice.[20] Rebuttal briefs, which must be limited to issues raised in case briefs, may be filed not later than seven days after the due date for case briefs.[21] All submissions must be filed electronically using Enforcement and Compliance's AD and CVD Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* An electronically filed document must be received successfully in its entirety in ACCESS by 5:00 p.m. Eastern Time on the due date set forth in this notice. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until May 19, 2020, unless extended.[22]

An interested party may request a hearing within 14 days of publication of this notice. Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.[23] Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

Unless extended, consistent with 19 CFR 351.216(e), we intend to issue the final results of these CCRs no later than 270 days after the date on which these reviews were initiated, or within 45 days of that date if all parties agree to the outcome of the reviews.

Notification to Interested Parties

This notice is published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.221(c)(3).

Dated: April 30, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Attachment

Proposed Revision to the Scope of the Order

Excluded from the scope of the antidumping duty *Order* are large diameter welded pipe products in the following combinations of grades, outside diameters, and wall thicknesses:

- Grade X60, X65, or X70, 18″ outside diameter, 0.688″ or greater wall thickness;
- Grade X60, X65, or X70, 20″ outside diameter, 0.688″ or greater wall thickness;
- Grade X60, X65, X70, or X80, 22″ outside diameter, 0.750″ or greater wall thickness; and
- Grade X60, X65, or X70, 24″ outside diameter, 0.750″ or greater wall thickness.

[FR Doc. 2020–09677 Filed 5–5–20; 8:45 am]

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[12] *See* Corinth CCR Request at 6 and Exhibits 2 (at internal page number 4) and Exhibit 4 (at internal page number 10).

[13] *See* Corinth's Comments at 3–5 and Exhibits 2, 3, and 4.

[14] *See* Domestic Producers' Comments at 2.

[15] *See* Corinth's Rebuttal Comments at 2–3.

[16] *See* Corinth's Rebuttal Comments at 3.

[17] *Id.* at 4.

[18] *Id.* at 4–6.

[19] *See* Corinth CCR Request, at 6 and Exhibits 1 (at 84 FR 69357), 2 (at internal page numbers 4 and 8), and 4 (at internal page numbers 9–10).

[20] Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(ii) to alter the time limit for filing of case briefs.

[21] Commerce is exercising its discretion under 19 CFR 351.309(d)(1) to alter the time limit for filing of rebuttal briefs.

[22] *See* Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19, 85 FR 17006 (March 26, 2020).

[23] *See* 19 CFR 351.310(d).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–924, A–520–803]

Polyethylene Terephthalate Film, Sheet and Strip From the People's Republic of China and the United Arab Emirates: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of these expedited (120-day) sunset reviews, the Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders 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 May 6, 2020.

FOR FURTHER INFORMATION CONTACT: Kathryn Turlo, 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) 482–3870.

SUPPLEMENTARY INFORMATION:

Background

On November 10, 2008, Commerce issued the *Orders* on polyethylene terephthalate film, sheet, and strip (PET film) from the People's Republic of China (China) and the United Arab Emirates (UAE).[1] On July 1, 2019, Commerce published the *Notice of Initiation* of the second sunset reviews of the *Orders* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On January 13 and 15, 2020, Commerce received notices of intent to participate from the petitioners [3] and Terphane LLC (Terphane), respectively.[4] Each filing was timely submitted within the 15-day deadline specified in 19 CFR 351.218(d)(1)(i). The petitioners and Terphane each claimed interested party status under section 771(9)(C) of the Act as a producer of the domestic like product in the United States.

On January 31 and February 3, 2020, Commerce received adequate substantive responses to the *Notice of Initiation* from the petitioners and Terphane, respectively, within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[5] We received no substantive responses from respondent interested parties with respect to either of the orders covered by these sunset reviews.

On February 24, 2020, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.[6] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce has conducted expedited (120-day) sunset reviews of the *Orders.*

Scope of the *Orders*

The products covered by the *Orders* is PET film and is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. A full description of the scope of the *Orders* is contained in the accompanying Issues and Decision Memorandum.[7]

Analysis of Comments Received

All issues raised in these sunset reviews are addressed in the Issues and Decision Memorandum. The issues discussed in the Issues and Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the *Orders* were revoked. 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.* A list of topics discussed in the Issues and Decision Memorandum is included as an 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 version of the Issues and Decision Memorandum are identical in content.

Final Results of Reviews

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the AD orders on PET film from China and the UAE would be likely to lead to the continuation or recurrence of dumping at weighted-average dumping margins up to 76.72 percent for China and 4.05 percent for the UAE.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

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.

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[1] *See Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates,* 73 FR 66595 (November 10, 2008) (the *Orders*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 85 FR 67 (January 2, 2020) (*Notice of Initiation*).

[3] The petitioners are DuPont Teijin Films; Mitsubishi Polyester Film, Inc.; SKC, Inc.; and Toray Plastics (America), Inc.

[4] *See* Petitioners' Letter, ''Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People's Republic of China: Notice of Intent to Participate in Sunset Review,'' dated January 13, 2020; *see also* Petitioners' Letter, ''Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the United Arab Emirates: Notice of Intent to Participate in Sunset Review,'' dated January 15, 2020; Terphane's Letter, ''Five-Year (''Sunset'') Review Of Antidumping Order On Polyethylene Terephthalate (PET) Film, Sheet, And Strip From The People's Republic of China: Notice Of Intent To Participate,'' dated January 15, 2020; and Terphane's Letter, ''Five-Year (''Sunset'') Review Of Antidumping Order On Polyethylene Terephthalate (PET) Film, Sheet, And Strip from The United Arab Emirates: Notice Of Intent To Participate,'' dated January 15, 2020.

[5] *See* Petitioners' Letter, ''Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People's Republic of China: Substantive Response to the Notice of Initiation,'' dated January 31, 2020; *see also* Petitioners' Letter, ''Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the United Arab Emirates: Substantive Response to the Notice of Initiation,'' dated January 31, 2020; and Terphane's Letter, ''Five-Year (''Sunset'') Review Of Antidumping Orders On Polyethylene Terephthalate (PET) Film, Sheet, And Strip From China And The United Arab Emirates: Terphane's Substantive Response,'' dated February 3, 2020.

[6] *See* Commerce's Letter, ''Sunset Review Initiation on January 2, 2020,'' dated February 24, 2020.

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Second Expedited Sunset Reviews of the Antidumping Duty Orders on Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China and the United Arab Emirates,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Dated: April 30, 2020.

Joseph Laroski,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Orders
IV. History of the Orders
V. Legal Framework
VI. Discussion of the Issues
1. Likelihood of Continuation or Recurrence of Dumping
2. Magnitude of the Margin of Dumping Likely To Prevail
VII. Final Results of Sunset Reviews
VIII. Recommendation

[FR Doc. 2020–09671 Filed 5–5–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–939]

Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on tow-behind lawn groomers and certain parts thereof from the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping, at the level indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable May 6, 2020.

FOR FURTHER INFORMATION CONTACT: Dakota Potts, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0223.

SUPPLEMENTARY INFORMATION:

Background

After publication of the notice of initiation of this sunset review of the AD order on tow-behind lawn groomers and certain parts thereof from China,[1] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), Agri-Fab, Inc. (domestic interested party) filed with Commerce a timely and complete notice of intent to participate in the sunset review,[2] and a timely and adequate substantive response.[3] Commerce did not receive a substantive response from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(*2*), Commerce conducted an expedited (120-day) sunset review of the *Order*.[4]

Scope of the Order

The merchandise covered by the order is certain non-motorized tow-behind lawn groomers, manufactured from any material, and certain parts thereof, from China. The lawn groomers that are the subject of this order are currently classifiable in the Harmonized Tariff schedule of the United States (''HTSUS'') statistical reporting numbers 8432.41.0000, 8432.42.0000, 8432.80.0000, 8432.80.0010, 8432.90.0060, 8432.90.0081, 8479.89.9496, 8479.90.9496, and 9603.50.0000. These HTSUS provisions are given for reference and customs purposes only, and the description of merchandise is dispositive for determining the scope of the product included in this order.[5]

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of dumping in the event of revocation of the *Order* and the magnitude of the dumping margins likely to prevail if the *Order* were to be revoked, is provided in the accompanying Issues and Decision Memorandum.[6] A list of the topics discussed in the Issues and Decision Memorandum is attached as an appendix to this notice. 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*. In addition, a complete version of the Issues and Decision Memorandum can be accessed 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 Sunset Review

Pursuant to sections 751(c)(1), 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-average dumping margins up to 386.28 percent.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials, or conversion to judicial protective, orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218 and 19 CFR 351.221(c)(5)(ii).

Dated: April 30, 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 Continuation or Recurrence of Dumping
2. Magnitude of the Margin of Dumping Likely To Prevail

[1] *See Initiation of Five-Year (Sunset) Reviews,* 85 FR 67 (January 2, 2020); *see also Antidumping Duty Order: Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China,* 74 FR 38395 (August 3, 2009) (*Order*).

[2] *See* Domestic Interested Party's Letter, ''Second Five-Year (''Sunset'') Review of Antidumping Duty Order on Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from The People's Republic of China; Notice of Intent to Participate,'' dated January 16, 2020.

[3] *See* Domestic Interested Party's Letter, ''Second Five-Year (''Sunset'') Review of Antidumping Duty Order on Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from The People's Republic of China; Agri-Fab's Response to Notice of Initiation,'' dated January 31, 2020 (Substantive Response).

[4] For a complete description of the background of this sunset review of the *Order, see* Memorandum, ''Issues and Decision Memorandum for the Expedited Second Sunset Review of the Antidumping Duty Order on Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] The full scope of the *Order* is included in the Issues and Decision Memorandum.

[6] *Id.*

VII. Final Results of Sunset Review
VIII. Recommendation

[FR Doc. 2020–09670 Filed 5–5–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–011]

Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Final Results of the Expedited Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this expedited sunset review, the Department of Commerce (Commerce) finds that revocation of the countervailing duty order on Certain Crystalline Silicon Photovoltaic Products (certain solar products) from the People's Republic of China (China) would be likely to lead to continuation or recurrence of countervailable subsidies as indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable May 6, 2020.

FOR FURTHER INFORMATION CONTACT: Kathryn Turlo, 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) 482–3870.

SUPPLEMENTARY INFORMATION:

Background

On February 18, 2015, Commerce published its CVD order on certain solar products from China in the **Federal Register.**[1] On January 2, 2020, Commerce initiated the first sunset review of the countervailing duty order covering certain solar products from China, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] Commerce received notices of intent to participate in this sunset review from SunPower Manufacturing Oregon, LLC (SunPower) and Hanwha Q CELLS USA, Inc. (Q Cells) (collectively, the domestic interested parties), within the 15-day period specified in 19 CFR 351.218(d)(1)(i).[3] The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as producers of certain solar products.

Commerce received adequate substantive responses to the *Notice of Initiation* from the domestic interested parties within the 30-day period specified in 19 CFR 351.218(d)(3)(i).[4] On February 25, 2020, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive a substantive response from respondent interested parties.[5] In accordance with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order* on certain solar products from China.

Scope of the Order

The products covered by the *Order* is certain solar products, which are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6020, 8541.40.6030 and 8501.31.8000. A full description of the scope of the *Order* is contained in the accompanying Issues and Decision Memorandum.[6]

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum, including the likelihood of continuation or recurrence of countervailable subsidies and the net countervailable subsidy likely to prevail if the *Order* were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Services System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://enforcement.trade.gov/frn/index.html.* A list of the issues discussed in the decision memorandum is attached at the Appendix to this notice. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the countervailing duty *Order* on certain solar products from China would be likely to lead to continuation or recurrence of countervailable subsidies at the following rates: 27.65 percent for Wuxi Suntech Power Co., Ltd. (Wuxi Suntech); 33.50 percent for Changzhou Trina Solar Energy Co., Ltd. (Trina Solar); and 33.58 percent for all others.

Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing the final results and notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: May 1, 2020.

Joseph A. Laroski Jr.,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix

List of Topics Discussed in the Final Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. History of the *Order*
V. Legal Framework
VI. Discussion of the Issues
VII. Final Results of Sunset Review

[1] *See Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 80 FR 8592 (February 18, 2015) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 85 FR 67 (January 2, 2020) (*Notice of Initiation*).

[3] *See* SunPower's Letter, ''Crystalline Silicon Photovoltaic Products from China and Taiwan: Intent to Participate in Sunset Reviews,'' dated January 13, 2020; *see also* Q Cells' Letter, ''Crystalline Silicon Photovoltaic Products from People Republic of China and Taiwan: Hanwha Q CELLS USA, Inc.'s Notice of Intent to Participate in Sunset Reviews,'' dated January 17, 2020.

[4] *See* SunPower's Letter, ''Crystalline Silicon Photovoltaic Products from China and Taiwan Sunset Reviews: Substantive Response of SPMOR,'' dated February 3, 2020; *see also* Q Cells' Letter, ''Certain Crystalline Silicon Photovoltaic Products from China and Taiwan, Inv. Nos. 701–TA–511 and 731–TA–1246 and 1247 (1st Sunset Review); Hanwha Q CELLS USA, Inc.'s Substantive,'' dated February 3, 2020.

[5] *See* Commerce's Letter, ''Sunset Review Initiated on January 2, 2020,'' dated February 25, 2020.

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the First Expedited Sunset Review of the Antidumping Duty Orders on Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China,'' dated concurrently with this notice (Issues and Decision Memorandum).

VIII. Recommendation

[FR Doc. 2020–09669 Filed 5–5–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–881; C–533–882]

Large Diameter Welded Pipe From India: Final Results of Antidumping Duty and Countervailing Duty Changed Circumstances Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On December 18, 2019, the Department of Commerce (Commerce) published a notice of initiation and expedited preliminary results of the changed circumstances reviews (CCR) of the antidumping duty (AD) and countervailing duty (CVD) orders on large diameter welded pipe from India which revoked, in part, these orders as they relate to certain specific large diameter welded pipe products. Commerce has adopted the scope exclusion language in these final results.

DATES: Applicable May 6, 2020.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson or Jaron Moore, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4929 or (202) 482–3640, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 2019, Commerce published the AD and CVD orders on large diameter welded pipe from India.[1] On December 18, 2019, in response to a request submitted by members of the domestic industry, including the petitioners from the underlying investigations,[2] Commerce published the *Initiation and Preliminary Results,*[3] in which Commerce preliminarily revoked, in part, the *Orders* with respect to certain large diameter welded pipe products with specific combinations of grades, diameters and wall thicknesses. These products have been incorporated into the exclusion language of the scope, below in bold.

The petitioners, representing ''substantially all'' of the domestic industry,[4] demonstrated ''good cause'' to conduct the CCRs less than 24 months after the date of publication of notices of the final determinations in the investigations.[5] Specifically, the domestic industry does not currently produce the particular large diameter welded pipe products subject to this partial revocation request, and the investment needed to do so far exceeds the potential benefit of such investment. In addition, the domestic producers provided an explanation indicating that the commercial reality has changed since the *Orders* were put in place.

In the *Initiation and Preliminary Results,* we provided all interested parties an opportunity to comment and to request a public hearing regarding our preliminary findings.[6] On January 2, 2020, SeAH Steel Corporation (SeAH) commented on the *Initiation and Preliminary Results.*[7] The domestic industry submitted rebuttal comments on January 9, 2020.[8]

Scope of the Orders

The merchandise covered by these *Orders* is welded carbon and alloy steel line pipe (other than stainless steel pipe), more than 406.4 mm (16 inches) in nominal outside diameter (large diameter welded line pipe), regardless of wall thickness, length, surface finish, grade, end finish, or stenciling. Large diameter welded pipe may be used to transport oil, gas, slurry, steam, or other fluids, liquids, or gases.

Large diameter welded line pipe is used to transport oil, gas, or natural gas liquids and is normally produced to the American Petroleum Institute (API) specification 5L. Large diameter welded line pipe can be produced to comparable foreign specifications, grades and/or standards or to proprietary specifications, grades and/or standards, or can be non-graded material. All line pipe meeting the physical description set forth above, including any dual- or multiple-certified/stenciled pipe with an API (or comparable) welded line pipe certification/stencil, is covered by the scope of the *Orders.*

Subject merchandise also includes large diameter welded line pipe that has been further processed in a third country, including but not limited to coating, painting, notching, beveling, cutting, punching, welding, or any other processing that would not otherwise remove the merchandise from the scope of the *Orders* if performed in the country of manufacture of the in-scope large diameter welded line pipe.

Excluded from the scope of the *Orders* is structural pipe, which is produced only to American Society for Testing and Materials (ASTM) standards A500, A252, or A53, or other relevant domestic specifications, or comparable foreign specifications, grades and/or standards or to proprietary specifications, grades and/or standards. Also excluded is large diameter welded pipe produced only to specifications of the American Water Works Association (AWWA) for water and sewage pipe. Also excluded is large diameter welded pipe in the following combinations of grades, outside diameters, and wall thicknesses:

- Grade X60, X65, or X70, 18 inches outside diameter, 0.688 inches or greater wall thickness;
- Grade X60, X65, or X70, 20 inches outside diameter, 0.688 inches or greater wall thickness;
- Grade X60, X65, X70, or X80, 22 inches outside diameter, 0.750 inches or greater wall thickness; and
- Grade X60, X65, or X70, 24 inches outside diameter, 0.750 inches or greater wall thickness.

The large diameter welded line pipe that is subject to these *Orders* is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.1060, and 7305.19.5000. Merchandise currently

[1] *See Large Diameter Welded Pipe from India: Antidumping Duty Order,* 84 FR 8079 (March 6, 2019) and *Large Diameter Welded Pipe from India: Countervailing Duty Order,* 84 FR 8085 (March 6, 2019) (*Orders*).

[2] The companies composing the ''domestic industry'' are: American Cast Iron Pipe Company; Berg Steel Pipe Corp./Berg Spiral Pipe Corp.; Dura-Bond Industries; Stupp Corporation; (individually and as members of the American Line Pipe Producers Association); Greens Bayou Pipe Mill, LP; JSW Steel (USA) Inc.; Skyline Steel; and Trinity Products LLC (collectively the petitioners in the less-than-fair-value investigation) and Welspun Global Trade LLC.

[3] *See Large Diameter Welded Pipe from India: Initiation and Expedited Preliminary Results of Antidumping Duty and Countervailing Duty Changed Circumstances Reviews,* 84 FR 69356 (December 18, 2019) (*Initiation and Preliminary Results*).

[4] *Id.,* 84 FR at 65357. Commerce has interpreted ''substantially all'' to mean at least 85 percent of the total production of the domestic like product covered by the order. *See, e.g., Supercalendered Paper From Canada: Final Results of Changed Circumstances Review and Revocation of Countervailing Duty Order,* 83 FR 32268 (July 12, 2018).

[5] *See* 19 CFR 351.216(c).

[6] *See Initiation and Preliminary Results,* 84 FR at 65357.

[7] *See* SeAH's Letter, ''Changed Circumstances Review of Antidumping and Countervailing Duty Orders on Large Diameter Welded Pipe from India—Comments on Preliminary Results of Review,'' dated January 2, 2020 (SeAH Comments).

[8] *See* the Domestic Industry's Letter, ''Large Diameter Welded Pipe from India: Response to SeAH's Comments on Preliminary Results of Review,'' dated January 9, 2020 (Petitioners' Rebuttal Comments).

classifiable under subheadings 7305.31.4000, 7305.31.6090, 7305.39.1000, and 7305.39.5000 and that otherwise meets the above scope language is also covered. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these *Orders* is dispositive.

Final Results of CCRs

In its comments, SeAH argues that if Commerce modifies the scope of the *Orders,* it must do so with respect to all of the orders on large diameter welded pipe from countries that resulted from the investigations that were included in the International Trade Commission's (ITC) cumulated injury analysis. Specifically, in order to maintain the integrity of its proceedings, Commerce must modify the scope of the orders on Canada, China, Greece, Korea, and Turkey in addition to the India orders.[9] SeAH also argues that it is possible that the ITC might have made a negative injury determination for Canada, Korea and Turkey if the imports of the products at issue had not been considered in its cumulative analysis.

Finally, SeAH also asserts that, in order to maintain the integrity of its proceedings, Commerce cannot allow the domestic industry to select which of the various AD and CVD orders will have an exclusion and which of the orders will not. SeAH argues that one of the U.S. producers now seeks to exclude imports from a foreign affiliate whose AD and CVD cash deposit rates are based on adverse facts available, but not from other producers in other countries covered by the petitions. The domestic industry's request ''raises serious questions of unlawful anticompetitive intent.'' [10]

In its comments, the domestic industry argues that SeAH has no evidence to support its claim that the ITC may have made a different injury determination had the products at issue not been considered in the ITC's cumulated injury analysis. The domestic industry argues that whenever Commerce narrows the scope of an order, there is necessarily a product removed from the scope that could have been considered by the ITC in its injury analysis.[11] The domestic industry argues that the statute and regulations give Commerce the authority to revoke an order in part based on changed circumstances when it concludes that the domestic producers accounting for substantially all of the production of the domestic like product express a lack of interest in part of the order.[12] Finally, the domestic producers argue that the scope exclusion is extremely narrow and the merchandise at issue accounts for a very small portion of the U.S. market and is not produced in the United States. Therefore, LDWP from India, including that produced by the Indian affiliate of one of the U.S. producers, will still be subject to AD and CVD duties in the vast majority of the U.S. market.[13]

Section 751(b) authorizes Commerce to modify the scopes of AD and CVD orders only for those orders in which we conduct a CCR.[14] Further, 19 CFR 351.216(c) requires that ''good cause'' exists when it conducts a CCR within 24 months of the publication of a final determination of an investigation. In the *Initiation and Preliminary Results,* Commerce found that ''good cause'' existed to initiate these CCRs.[15]

These CCRs pertain to the India large diameter pipe orders. SeAH's comments referencing the other large diameter pipe orders are beyond the scope of these CCRs.

Further, with respect to SeAH's argument that Commerce cannot allow the domestic producers to select which of the countries covered by the orders will have an exclusion and which will not, Commerce has the authority to revoke an order in part based on changed circumstances if it concludes that the domestic producers accounting for substantially all of the production of the domestic like product express a lack of interest in part of the order.[16] In these CCRs, the ten domestic producers which requested the CCRs represent substantially all of the production of the domestic like product covered by these *Orders,* and have stated that they are no longer interested in the merchandise at issue being covered by the *Orders.*[17] There is no information on the record to contradict the domestic industry's claim. SeAH's argument that the ITC may have made a negative injury determination if the products at issue were not included in its cumulated injury analysis is immaterial to these CCRs. Therefore, for the reasons stated in the *Initiation and Preliminary Results,* Commerce continues to find that it is appropriate to revoke the *Orders,* in part, with respect to certain large diameter welded pipe products with specific combinations of grades, diameters and wall thicknesses, as reflected in the ''Scope of the Orders'' section of this notice.

Notification to Interested Parties

We are issuing this determination and publishing these final results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Act and 19 CFR 351.216(e), 351.221(b), and 351.221(c)(3).

Dated: April 30, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–09678 Filed 5–5–20; 8:45 am]

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[9] *See* SeAH Comments at 2 (citing *Large Diameter Welded Pipe from China and India, Investigation Nos. 701–TA–593 and 594 and 731–TA–1402 and 1404 (Final),* USITC Pub. 4859 (January 2019), and *Large Diameter Welded Pipe from Canada, Greece, Korea, and Turkey, Investigation Nos. 701–TA–595–596 and 731–TA–1401, 1403, 1405–1406 (Final),* USITC Pub. 4883 (April 2019)).

[10] *Id.* at 4.

[11] *See* Petitioners' Rebuttal Comments at 3.

[12] *Id.* at 3.

[13] *Id.* at 3–4.

[14] *See Carbon and Alloy Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Changed Circumstances Review,* 84 FR 13888 (April 8, 2019) (*Carbon and Alloy Steel Wire Rod from Korea*); *see also Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review,* 84 FR 49508 (September 20, 2019).

[15] *See Initiation and Preliminary Results,* 84 FR at 69357.

[16] *See Carbon and Alloy Steel Wire Rod from Korea* (2019); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of the Changed Circumstances Review,* 81 FR 9427 (February 25, 2016).

[17] *See* the Domestic Industry's Letter, ''Large Diameter Welded Pipe from India: Petitioner's Request for Changed Circumstances Review and Partial Revocation,'' dated October 18, 2019.

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) has received requests to conduct administrative reviews of various antidumping duty (AD) and countervailing duty (CVD) orders and findings with March anniversary dates. In accordance with Commerce's regulations, we are initiating those administrative reviews.

DATES: Applicable May 6, 2020.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Commerce has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various AD and CVD orders and findings with March anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify Commerce within 30 days of publication of this notice in the **Federal Register.** All submissions must be filed electronically at *https://access.trade.gov* in accordance with 19 CFR 351.303.[1] Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on Commerce's service list.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 30 days of publication of the initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted within seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments within five days after the deadline for the initial comments.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act, the following guidelines regarding collapsing of companies for purposes of respondent selection will apply. In general, Commerce has found that determinations concerning whether particular companies should be ''collapsed'' (*e.g.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this AD proceeding (*e.g.,* investigation, administrative review, new shipper review, or changed circumstances review). For any company subject to this review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (Q&V) Questionnaire for purposes of respondent selection, in general, each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where Commerce considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of a particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[2] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial responses to section D of the questionnaire.

Separate Rates

In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is Commerce's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, Commerce analyzes each entity exporting the subject merchandise. In accordance with the separate rates criteria, Commerce assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, Commerce requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on Commerce's website at *https://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[4] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on Commerce's website at *https://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Application, refer to the instructions contained in the application. Separate Rate Applications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a Separate Rate Application or Certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following AD and CVD orders and findings. We intend to issue the final results of these reviews not later than March 31, 2021.

	Period to be reviewed
AD Proceedings	
BRAZIL: Certain Uncoated Paper, A–351–842	3/1/19–2/29/20
International Paper do Brasil Ltda.	
International Paper Exportadora Ltda.	
Suzano S.A. (formerly Suzano Papel e Celulose S.A.).	
PORTUGAL: Uncoated Paper, A–471–807	3/1/19–2/29/20
Navigator Company, S.A.	
THAILAND: Circular Welded Carbon Steel Pipes and Tubes, A–549–502	3/1/19–2/29/20
Apex International Logistics.	
Aquatec Maxcon Asia.	
Asian Unity Part Co., Ltd.	
Blue Pipe Steel Center.	
Bis Pipe Fitting Industry Co., Ltd.	
Chuhatsu (Thailand) Co., Ltd.	
CSE Technologies Co., Ltd.	
Expeditors International (Bangkok).	
Expeditors Ltd.	
FS International (Thailand) Co., Ltd.	
K Line Logistics.	
Kerry-Apex (Thailand) Co., Ltd.	
Oil Steel Tube (Thailand) Co., Ltd.	
Otto Ender Steel Structure Co., Ltd.	
Pacific Pipe Public Company Limited.	
Pacific Pipe and Pump.	
Panalpina World Transport Ltd.	
Polypipe Engineering Co., Ltd.	
Saha Thai Steel Pipe Public Co., Ltd.	
Schlumberger Overseas S.A.	
Siam Fittings Co., Ltd.	
Siam Steel Pipe Co., Ltd.	
Sino Connections Logistics (Thailand) Co., Ltd.	
Thai Malleable Iron and Steel.	
Thai Oil Group.	
Thai Oil Pipe Co., Ltd.	
Thai Premium Pipe Co., Ltd.	

[3] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[4] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Vatana Phaisal Engineering Company.	
Visavakit Patana Corp., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Amorphous Silica Fabric, A–570–038	3/1/19–2/29/20
Access China Industrial Textile (Pinghu) Inc.	
Access China Industrial Textile (Shanghai) Inc.	
Acmetex Co., Ltd.	
Beijing Great Pack Materials Co., Ltd.	
Beijing Landingji Engineering Tech. Co., Ltd.	
Beijing Tianxing Ceramic Fiber Composite Materials Corp.	
Changshu Yaoxing Fiberglass Insulation Products Co., Ltd.	
Changzhou Kingze Composite Materials Co., Ltd.	
Changzhou Utek Composite Co.	
Chengdu Chang Yuan Shun Co., Ltd.	
Chengdu Youbang Hengtai New Material Co., Ltd.	
China Beihai Fiberglass Co., Ltd.	
China National Building Materials International Corporation.	
China Yangzhou Guo Tai Fiberglass Co., Ltd.	
Chongqing Polycomp International Corp. (CPIC).	
Chongqing Tenways Material Corporation.	
Chongqing Yangkai Import & Export Trade Co., Ltd.	
Cixi Sunrise Sealing Material Co., Ltd.	
Fujian Minshan Fire-Fighting Co., Ltd.	
Ganzhou Guangjian Fiberglass Co., Ltd.	
Grant Fiberglass Co., Ltd.	
Haining Jiete Fiberglass Fabric Co., Ltd.	
Haining Jorhom Imp. & Ex. Co., Ltd.	
Hebei Yuniu Fiberglass Manufacturing Co., Ltd.	
Hebei Yuyin Trade Co., Ltd.	
Hengshui Aohong International Trading Co., Ltd.	
Hitex Insulation (Ningbo) Co., Ltd.	
Huatek New Material Inc.	
Jiangsu Jiuding New Material Co., Ltd.	
Jiangxi Aidmer Seal & Packing Co., Ltd.	
Jiujiang Huaxing Glass Fiber Co., Ltd.	
Langfang Wanda Industrial Co., Ltd.	
Lanxi Joen Fiberglass Co., Ltd.	
Mowco Industry Limited.	
Nantong Jinpeng Fiberglass Products Co., Ltd.	
Nanjing Debeili New Materials Co., Ltd.	
Nanjing Tianyuan Fiberglass Material Co., Ltd.	
New Fire Co., Ltd.	
New Fire, Ltd.	
Ningbo EAS Material Co., Ltd.	
Ningbo Firewheel Thermal Insulation & Sealing Co., Ltd.	
Ningbo Fitow High Strength Composites Co., Ltd.	
Ningbo Universal Star Industry & Trade Limited.	
Ningguo BST Thermal Protection Products Co., Ltd.	
Nische New Material (Nantong) Co., Ltd.	
Pizhou Hua Yixiang Import and Export.	
Pizhou Hua Yixiang Import and Export Trading Co., Ltd.	
Qingdao Feelongda Industry & Trade Co., Ltd.	
Qingdao Junfeng Industry Company Limited.	
Qingdao Meikang Fireproof Materials Co., Ltd.	
Qingdao Shishuo Industry Co., Ltd.	
Rugao City Ouhua Composite Material Co., Ltd.	
Rugao Nebula Fiberglass Co., Ltd.	
Shandong Rondy Composite Materials, Co., Ltd.	
Shanghai Bonthe Insulative Material Co., Ltd.	
Shanghai Horse Construction Co., Ltd.	
Shanghai Industrial Products Imp. & Exp. Co., Ltd.	
Shanghai Liankun Electronics Material Co., Ltd.	
Shanghai New Union Textra Import.	
Shanghai Porcher Industries Co., Ltd.	
Shanghai Suita Environmental Protection Technology Co., Ltd.	
Shanghai Weldflame Co., Ltd.	
Shangqiu Huanyu Fiberglass Co., Ltd.	
Shaoxing Sunway Tools & Hardware Import & Export Co., Ltd.	
Shengzhou Top-Tech New Material Co., Ltd.	
Shnzhen Core-Tex Composite Materials Co., Ltd.	
Shenzhen Songxin Silicone Products Co., Ltd.	
Suntex Composite Industrial Co., Ltd.	
Suretex Composite Co., Ltd.	
Taian Fibtex Trade Co., Ltd.	
Taian Juli Composite Materials Co., Ltd.	

	Period to be reviewed
Taixing Chuanda Plastic Co., Ltd.	
Taixing Kaixin Composite Materials Co., Ltd.	
Taixing Ruifeng Rubber Products Co., Ltd.	
Taixing Vichen Composite Material Co., Limited.	
TaiZhou Xinxing Fiberglass Products Co., Ltd.	
Tenglong Sealing Products Manufactory Yuyao.	
Texaspro (China) Company.	
Tianjin Bin Jin Fiberglass Products Co., Ltd.	
Tongxiang Suretex Composite Co., Ltd.	
Wallean Industries Co., Ltd.	
Wuhan Dinfn Industries Co., Ltd.	
Wuxi First Special-Type Fiberglass Co., Ltd.	
Wuxi Xingxiao Hi-tech Material Co., Ltd.	
Yuyao Feida Insulation Sealing Factory.	
Yuyao Tianyi Special Carbon Fiber Co., Ltd.	
Zibo Irvine Trading Co., Ltd.	
Zibo Yao Xing Fire-Resistant and Heat Preservation Material Co., Ltd.	
Zibo Yuntai Furnace Technology Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Glycine, A–570–836	3/1/19–2/29/20
Avid Organics Private Limited.	
Baoding Mantong Fine Chemistry Co., Ltd.	
Kumar Industries.	
Mulji Mehta Enterprises.	
Studio Disrupt.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Frozen Warmwater Shrimp,[5] A–570–893	2/1/19–1/31/20
Rongcheng Yinhai Aquatic Product Co., Ltd.	
Rushan Chunjiangyuan Foodstuffs Co., Ltd.	
CVD Proceedings	
INDIA: Certain New Pneumatic Off-The-Road Tires, C–533–870	1/1/19–12/31/19
Balkrishna Industries Limited.	
INDIA: Fine Denier Polyester Staple Fiber, C–533–876	1/1/19–12/31/19
Reliance Industries Limited.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Amorphous Silica Fabric, C–570–039	1/1/19–12/31/19
Access China Industrial Textile (Pinghu) Inc. (ACIT).	
Access China Industrial Textile (Shanghai) Inc. (ACIT).	
Acmetex Co., Ltd.	
Beijing Great Pack Materials Co., Ltd.	
Beijing Landingji Engineering Tech. Co., Ltd.	
Beijing Tianxing Ceramic Fiber Composite Materials Corp.	
Changshu Yaoxing Fiberglass Insulation Products Co., Ltd.	
Changzhou Kingze Composite Materials Co., Ltd.	
Changzhou Utek Composite Co.	
Chengdu Chang Yuan Shun Co., Ltd.	
Chengdu Youbang Hengtai New Material Co., Ltd.	
China Beihai Fiberglass Co., Ltd.	
China National Building Materials International Corporation.	
China Yangzhou Guo Tai Fiberglass Co., Ltd.	
Chongqing Polycomp International Corp. (CPIC).	
Chongqing Tenways Material Corporation.	
Chongqing Yangkai Import & Export Trade Co., Ltd.	
Cixi Sunrise Sealing Material Co., Ltd.	
Fujian Minshan Fire-Fighting Co., Ltd.	
Ganzhou Guangjian Fiberglass Co., Ltd.	
Grant Fiberglass Co., Ltd.	
Haining Jiete Fiberglass Fabric Co., Ltd.	
Haining Jorhom Imp. & Ex. Co., Ltd.	
Hebei Yuniu Fiberglass Manufacturing Co., Ltd.	
Hebei Yuyin Trade Co., Ltd.	
Hengshui Aohong International Trading Co., Ltd.	
Hitex Insulation (Ningbo) Co., Ltd.	
Huatek New Material Inc.	
Jiangsu Jiuding New Material Co., Ltd.	
Jiangxi Aidmer Seal & Packing Co., Ltd.	
Jiujiang Huaxing Glass Fiber Co., Ltd.	
Langfang Wanda Industrial Co., Ltd.	
Lanxi Joen Fiberglass Co., Ltd.	
Mowco Industry Limited.	
Nantong Jinpeng Fiberglass Products Co., Ltd.	
Nanjing Debeili New Materials Co., Ltd.	
Nanjing Tianyuan Fiberglass Material Co., Ltd.	
New Fire Co., Ltd.	
New Fire, Ltd.	
Ningbo EAS Material Co., Ltd.	
Ningbo Firewheel Thermal Insulation & Sealing Co., Ltd.	

	Period to be reviewed
Ningbo Fitow High Strength Composites Co., Ltd.	
Ningbo Universal Star Industry & Trade Limited.	
Ningguo BST Thermal Protection Products Co., Ltd.	
Nische New Material (Nantong) Co., Ltd.	
Pizhou Hua Yixiang Import and Export.	
Pizhou Hua Yixiang Import and Export Trading Co., Ltd.	
Qingdao Feelongda Industry & Trade Co., Ltd.	
Qingdao Junfeng Industry Company Limited.	
Qingdao Meikang Fireproof Materials Co., Ltd.	
Qingdao Shishuo Industry Co., Ltd.	
Rugao City Ouhua Composite Material Co., Ltd.	
Rugao Nebula Fiberglass Co., Ltd.	
Shandong Rondy Composite Materials, Co., Ltd.	
Shanghai Bonthe Insulative Material Co., Ltd.	
Shanghai Horse Construction Co., Ltd.	
Shanghai Industrial Products Imp. & Exp. Co., Ltd.	
Shanghai Liankun Electronics Material Co., Ltd.	
Shanghai New Union Textra Import.	
Shanghai Porcher Industries Co., Ltd.	
Shanghai Suita Environmental Protection Technology Co., Ltd.	
Shanghai Weldflame Co., Ltd.	
Shangqiu Huanyu Fiberglass Co., Ltd.	
Shaoxing Sunway Tools & Hardware Import & Export Co., Ltd.	
Shengzhou Top-Tech New Material Co., Ltd.	
Shnzhen Core-Tex Composite Materials Co., Ltd.	
Shenzhen Songxin Silicone Products Co., Ltd.	
Suntex Composite Industrial Co., Ltd.	
Suretex Composite Co., Ltd.	
Taian Fibtex Trade Co., Ltd.	
Taian Juli Composite Materials Co., Ltd.	
Taixing Chuanda Plastic Co., Ltd.	
Taixing Kaixin Composite Materials Co., Ltd.	
Taixing Ruifeng Rubber Products Co., Ltd.	
Taixing Vichen Composite Material Co., Limited.	
TaiZhou Xinxing Fiberglass Products Co., Ltd.	
Tenglong Sealing Products Manufactory Yuyao.	
Texaspro (China) Company.	
Tianjin Bin Jin Fiberglass Products Co., Ltd.	
Tongxiang Suretex Composite Co., Ltd.	
Wallean Industries Co., Ltd.	
Wuhan Dinfn Industries Co., Ltd.	
Wuxi First Special-Type Fiberglass Co., Ltd.	
Wuxi Xingxiao Hi-tech Material Co., Ltd.	
Yuyao Feida Insulation Sealing Factory.	
Yuyao Tianyi Special Carbon Fiber Co., Ltd.	
Zibo Irvine Trading Co., Ltd.	
Zibo Yao Xing Fire-Resistant and Heat Preservation Material Co., Ltd.	
Zibo Yuntai Furnace Technology Co., Ltd.	
TURKEY: Circular Welded Carbon Steel Pipes and Tubes, C–489–502	1/1/19–12/31/19
Borusan Holding.	
Borusan Mannesmann Boru Sanayi ve Ticaret A.S.	
Borusan Mannesmann Boru Yatirim Holding.	
Borusan Birlesik Boru Fabrikalari San ve Tic.	
Borusan Istikbal Ticaret T.A.S.	
Borusan Mannesmann.	
Borusan Gemlik Boru Tesisleri A.S.	
Borusan Ihracat Ithalat ve Dagitim A.S.	
Borusan Ithicat ve Dagitim A.S.	
Borusan Lojistik Dagitim Depolama Tasimacilik ve Ticaret A.S.	
Borusan Mannesmann Pipe US, Inc.	
Cagil Makina Sanayi ve Ticaret A.S.	
Cayirova Boru Sanayi ve Ticaret A.S.	
Cimtas Boru Imalatlari ve Ticaret Sirketi.	
Cinar Boru Profil San. Ve Tic. As.	
Eksen Makina.	
Erbosan Erciyas Boru Sanayi ve Ticaret A.S.	
Guner Eksport.	
Guven Steel Pipe.	
Guven Celik Born San. Ve Tic. Ltd.	
HDM Celik Boru Sanayi ve Ticaret Ltd. Sti.	
Kale Baglanti Teknolojileri San ve Tic. A.S.	
Kalibre Boru Sanayi ve Ticaret A.S.	
MTS Lojistik ve Tasimacilik Hizmetleri TIC A.S. Istanbul.	
Net Boru Sanayi ve Dis Ticaret Koll. Sti.	

	Period to be reviewed
Noksel Celik Boru Sanayi A.S. Perfektup Ambalaj San. ve Tic. A.S. Schenker Arkas Nakliyat ve Ticaret A.S. Toscelik Metal Ticaret A.S. Toscelik Profil ve Sac Endustrisi A.S. Tosyali Dis Ticaret A.S. Tubeco Pipe and Steel Corporation. Umran Celik Born Sanayii A.S. Umran Steel Pipe Inc. Vespro Muhendislik Mimarlik Danismanlik Sanayi ve Ticaret A.S. Yucel Boru ve Profil Endustrisi A.S. Yucelboru Ihracat Ithalat ve Pazarlama A.S.	

Suspension Agreements

None.

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an AD order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), Commerce, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether AD duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant ''gap'' period of the order (*i.e.,* the period following the expiry of provisional measures and before definitive measures were put into place), if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Factual Information Requirements

Commerce's regulations identify five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). These regulations require any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The regulations, at 19 CFR 351.301, also provide specific time limits for such factual submissions based on the type of factual information being submitted. Please review the *Final Rule,*[6] available at *https://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in this segment. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until May 19, 2020, unless extended.[7]

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information using the formats provided at the end of the *Final Rule*.[8] Commerce intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable certification requirements.

Extension of Time Limits Regulation

Parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by Commerce.[9] In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) Q&V questionnaires. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties

[5] These companies were inadvertently combined on a single line in the previous initiation notice. *See February Initiation Notice,* 85 FR at 19737.

[6] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[7] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020).

[8] *See* section 782(b) of the Act; *see also Final Rule;* and the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[9] *See* 19 CFR 351.302.

simultaneously. In such a case, Commerce will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This policy also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which Commerce will grant untimely-filed requests for the extension of time limits. Please review the *Final Rule,* available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: April 30, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–09667 Filed 5–5–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–010, A–583–853]

Crystalline Silicon Photovoltaic Products From the People's Republic of China and Taiwan: Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on crystalline silicon photovoltaic products from the People's Republic of China (China) and Taiwan would likely lead to continuation or recurrence of dumping at the level indicated in the ''Final Results of Sunset Reviews'' section of this notice.

DATES: Applicable May 6, 2020.

FOR FURTHER INFORMATION CONTACT: Abdul Alnoor and Eva Kim, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4554 and (202) 482–8283, respectively.

SUPPLEMENTARY INFORMATION:

Background

After publication of the notice of initiation of these sunset reviews of the AD orders [1] on crystalline silicon photovoltaic products from China and Taiwan,[2] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), SunPower Manufacturing Oregon, LLC and Hanwha Q CELLS USA, Inc. (Hanwha) (domestic interested parties) filed with Commerce timely and complete notices of intent to participate in the sunset reviews,[3] and timely and adequate substantive responses.[4] Commerce did not receive a substantive response from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(*2*), Commerce conducted an expedited (120-day) sunset review of the *Orders.*[5]

Scope of the Orders

The merchandise covered by these *Orders* is crystalline silicon photovoltaic products from China and Taiwan. Merchandise covered by the *Orders* is currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under subheadings 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.60.15, 8541.40.6020, 8541.40.6030, 8541.40.60.35 and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of the *Orders* is dispositive.[6]

[1] *See Antidumping Duty Order: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China,* 80 FR 8592 (February 18, 2015) and *Antidumping Duty Order: Certain Crystalline Silicon Photovoltaic Products from Taiwan,* 80 FR 8596 (February 18, 2015) (*Orders*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 85 FR 67 (January 2, 2020).

[3] *See* Domestic Interested Parties' Letter, ''Crystalline Silicon Photovoltaic Products from China and Taiwan: Intent to Participate in Sunset Reviews,'' dated January 13, 2020; *see also* ''Crystalline Silicon Photovoltaic Products from People Republic of China and Taiwan: Hanwha Q CELLS USA, Inc.'s Notice of Intent to Participate in Sunset Reviews,'' dated January 17, 2020.

[4] *See* Domestic Interested Parties' Letters, ''*Crystalline Silicon Photovoltaic Products from China and Taiwan Sunset Reviews: Substantive Response of SPMOR,*'' dated February 3, 2020; and ''Certain Crystalline Silicon Photovoltaic Products from China and Taiwan, Inv. Nos. 701–TA–511 and 731–TA–1246 and 1247 (1st Sunset Review); Hanwha Q CELLS USA, Inc.'s Substantive Response,'' dated February 3, 2020.

[5] For a complete description of the background for these sunset reviews, *see* Commerce Memorandum, ''Issues and Decision Memorandum for the Expedited First Sunset Reviews of the Antidumping Duty Orders on Crystalline Silicon Photovoltaic Products from the People's Republic of China and Taiwan,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[6] The full scope of the *Orders* is included in the Issues and Decision Memorandum.

Analysis of Comments Received

A complete discussion of all issues raised in these sunset reviews, including the likelihood of continuation or recurrence of dumping in the event of revocation of the *Orders* and the magnitude of the dumping margins likely to prevail if the *Orders* were to be revoked, is provided in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice.[7] A list of the topics discussed in the Issues and Decision Memorandum is attached as an Appendix to this notice. 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.* In addition, a complete version of the Issues and Decision Memorandum can be accessed on the internet at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1), 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Orders* would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-average dumping margins up to 165.04 percent for China and 27.55 percent for Taiwan.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials, or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218 and 19 CFR 351.221(c)(5)(ii).

[7] *See* Issues and Decision Memorandum.

Dated: May 1, 2020.

Joseph A. Laroski Jr.,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Orders*
IV. History of the *Orders*
V. Legal Framework
VI. Discussion of the Issues
1. Likelihood of Continuation or Recurrence of Dumping
2. Magnitude of the Margin of Dumping Likely to Prevail
VII. Final Results of Sunset Reviews
VIII. Recommendation

[FR Doc. 2020–09668 Filed 5–5–20; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA139]

Atlantic Highly Migratory Species; Meeting of the Atlantic Highly Migratory Species Advisory Panel

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

ACTION: Notice of meeting.

SUMMARY: NMFS will hold a 1-day Atlantic Highly Migratory Species (HMS) Advisory Panel (AP) meeting via webinar in May 2020. The intent of the meeting is to consider options for the conservation and management of Atlantic HMS. The meeting is open to the public.

DATES: The AP meeting and webinar will be held from 8:45 a.m. to 3:30 p.m. on Tuesday, May 19, 2020.

ADDRESSES: The meeting on Tuesday, May 21, will be accessible via conference call and webinar. Conference call and webinar access information are available at: *https://www.fisheries.noaa.gov/event/may-2020-hms-advisory-panel-meeting.*

Participants are strongly encouraged to log/dial in 15 minutes prior to the meeting. NMFS will show the presentations via webinar and allow public comment during identified times on the agenda.

FOR FURTHER INFORMATION CONTACT: Peter Cooper at (301) 427–8503.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.,* as amended by the Sustainable Fisheries Act, Public Law 104–297, provided for the establishment of an AP to assist in the collection and evaluation of information relevant to the development of any FMP or FMP amendment for Atlantic HMS. NMFS consults with and considers the comments and views of AP members when preparing and implementing FMPs or FMP amendments for Atlantic tunas, swordfish, billfish, and sharks. The AP has previously consulted with NMFS on all Atlantic HMS FMPs and FMP amendments since the inception of the AP in 1998.

Generally AP meetings are held in-person, but because of current restrictions on travel and public gatherings this AP meeting will be conducted via webinar. The intent of this meeting is to consider alternatives for the conservation and management of all Atlantic tunas, swordfish, billfish, and shark fisheries. We anticipate discussing:

- Draft Amendment 12, which would update the 2006 Consolidated HMS FMP using revised National Standard guidelines;
- A proposed rule and Environmental Assessment to modify shark and swordfish retention limits;
- Updates on the bluefin tuna fishery and Amendment 13 (bluefin tuna).

We also anticipate inviting other NMFS offices and the United States Coast Guard to provide updates, if available, on their activities relevant to HMS fisheries.

Additional information on the meeting and a copy of the draft agenda will be posted prior to the meeting at: *https://www.fisheries.noaa.gov/event/may-2020-hms-advisory-panel-meeting.*

Dated: April 30, 2020.

Hélène M.N. Scalliet,

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

[FR Doc. 2020–09628 Filed 5–5–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board (SAB); Solicitation for Members of the NOAA Science Advisory Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Oceanic and Atmospheric Research (OAR), Department of Commerce (DOC).

ACTION: Notice of solicitation for members of the NOAA Science Advisory Board.

SUMMARY: NOAA is soliciting nominations for members of the NOAA Science Advisory Board (SAB). The SAB is the only Federal Advisory Committee with the responsibility to advise the Under Secretary of Commerce for Oceans, Atmosphere, and NOAA Administrator on long- and short-range strategies for research, education, and application of science to resource management and environmental assessment and prediction. The SAB consists of approximately fifteen members reflecting the full breadth of NOAA's areas of responsibility and assists NOAA in maintaining a complete and accurate understanding of scientific issues critical to the agency's missions.

DATES: Nominations should be sent to the web address specified below and must be received by June 22, 2020.

ADDRESSES: Applications should be submitted electronically to *noaa.sab.newmembers@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Rm. 11230, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Fax: 301–713–1459, Email: *Cynthia.Decker@noaa.gov*); or visit the NOAA SAB website at *http://www.sab.noaa.gov.*

SUPPLEMENTARY INFORMATION: At this time, individuals are sought with expertise in tsunami science; extreme weather prediction (including tornadoes); social sciences (including geography, sociology, behavioral science); Great Lakes research; cloud computing, artificial intelligence and data management; unmanned, autonomous system technology; 'omics science and eDNA; weather modeling and data assimilation; and ocean ecosystem science. Individuals with expertise in other NOAA mission areas are also welcome to apply.

Composition and Points of View: The Board will consist of approximately fifteen members, including a Chair, designated by the Under Secretary in accordance with Federal Advisory Committee Act requirements.

Members will be appointed for three-year terms, renewable once, and serve at the discretion of the Under Secretary. If a member resigns before the end of his or her first term, the vacancy appointment shall be for the remainder of the unexpired term, and shall be renewable twice if the unexpired term is less than one year. Members will be

appointed as special government employees (SGEs) and will be subject to the ethical standards applicable to SGEs. Members are reimbursed for actual and reasonable travel and per diem expenses incurred in performing such duties but will not be reimbursed for their time. As a Federal Advisory Committee, the Board's membership is required to be balanced in terms of viewpoints represented and the functions to be performed as well as the interests of geographic regions of the country and the diverse sectors of U.S. society.

The SAB meets in person three times each year, exclusive of teleconferences or subcommittee, task force, and working group meetings. Board members must be willing to serve as liaisons to SAB working groups and/or participate in periodic reviews of the NOAA Cooperative Institutes and overarching reviews of NOAA's research enterprise.

Nominations: Interested persons may nominate themselves or third parties.

Applications: An application is required to be considered for Board membership, regardless of whether a person is nominated by a third party or self-nominated. The application package must include: (1) The nominee's full name, title, institutional affiliation, and contact information; (2) the nominee's area(s) of expertise; (3) a short description of his/her qualifications relative to the kinds of advice being solicited by NOAA in this Notice; and (4) a current resume (maximum length four [4] pages).

Dated: April 28, 2020.

David Holst,

Director Chief Financial Officer/CAO, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2020–09641 Filed 5–5–20; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XV180]

Determination of Overfishing or an Overfished Condition

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

ACTION: Notice.

SUMMARY: This action serves as a notice that NMFS, on behalf of the Secretary of Commerce (Secretary), has found that Saint Matthew Island blue king crab is still overfished, the American Samoa Bottomfish Multi-species Complex is now subject to overfishing and now overfished, and the Guam Bottomfish Multi-species Complex is now overfished. NMFS, on behalf of the Secretary, notifies the appropriate regional fishery management council (Council) whenever it determines that overfishing is occurring, a stock is in an overfished condition, or a stock is approaching an overfished condition.

FOR FURTHER INFORMATION CONTACT: Regina Spallone, (301) 427–8568.

SUPPLEMENTARY INFORMATION: Pursuant to section 304(e)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1854(e)(2), NMFS, on behalf of the Secretary, must notify Councils, and publish in the **Federal Register**, whenever it determines that a stock or stock complex is subject to overfishing, overfished, or approaching an overfished condition.

NMFS has determined that Saint Matthew Island blue king crab is still overfished. This determination is based on the most recent assessment, completed in 2019 using data through 2019, which indicates that the biomass estimate remains below its threshold. NMFS has notified the North Pacific Fishery Management Council of the requirements to rebuild this stock.

NMFS has determined that the American Samoa Bottomfish Multi-species Complex is now subject to overfishing and now overfished. This determination is based on the most recent assessment, completed in 2019, using data through 2017, which indicates that this complex is overfished because the biomass estimate is less than the threshold and subject to overfishing because the fishing mortality rate is greater than the threshold. In addition, NMFS has determined that the Guam Bottomfish Multi-species Complex is now overfished. This determination is based on the most recent assessment, completed in 2019, using data through 2017, which indicates that this complex is overfished because the biomass estimate is less than the threshold. NMFS has notified the Western Pacific Fishery Management Council of its obligation to end overfishing on the American Samoa Multi-species Complex and rebuild both stock complexes.

Dated: April 30, 2020.

Hélène M.N. Scalliet,

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

[FR Doc. 2020–09622 Filed 5–5–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA132]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Off of Massachusetts, Rhode Island, Connecticut, and New York

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 Vineyard Wind, LLC (Vineyard Wind) to incidentally harass, by Level B harassment only, marine mammals during marine site characterization surveys off the coast of Massachusetts in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0501 and OCS–A 0522) and along potential submarine cable routes to a landfall location in Massachusetts, Rhode Island, Connecticut, and New York.

DATES: This authorization is valid from June 1, 2020 through May 31, 2021.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the applications and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the internet at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* 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 such 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 such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On October 24, 2019, NMFS received a request from Vineyard Wind for an IHA to take marine mammals incidental to marine site characterization surveys offshore of Massachusetts in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0501 and OCS–A 0522) and along potential submarine offshore export cable corridors (OECC) to landfall locations in Massachusetts, Rhode Island, Connecticut, and New York. NMFS deemed that request to be adequate and complete on January 7, 2020. Vineyard Wind's request is for the take of 14 marine mammal species by Level B harassment that would occur, using multiple concurrently operating vessels, over the course of up to 365 calendar days. Neither Vineyard Wind nor NMFS expects serious injury or mortality to result from this activity and the activity is expected to last no more than one year, therefore, an IHA is appropriate.

Description of the Specified Activity

Vineyard Wind plans to conduct high-resolution geophysical (HRG) surveys in support of offshore wind development projects in the areas of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (#OCS–A 0501 and #OCS–A 0522) (Lease Areas) and along potential submarine cable routes to landfall locations in Massachusetts, Rhode Island, Connecticut, and New York.

The purpose of the marine site characterization surveys is to obtain a baseline assessment of seabed/sub-surface soil conditions in the Lease Area and cable route corridors to support the siting of potential future offshore wind projects. Underwater sound resulting from Vineyard Wind's planned site characterization surveys has the potential to result in incidental take of marine mammals in the form of behavioral harassment. The estimated duration of the activity is expected to be up to 365 survey days starting in June, 2020. This schedule is based on 24-hour operations and includes potential down time due to inclement weather. A maximum of 736 vessel days are planned with up to eight survey vessels operating concurrently. Survey vessels will travel at an average speed of 3.5 knots (kn) and total distance covered by each while actively operating HRG equipment is approximately 100 kilometers (km) per day. The notice of proposed IHA incorrectly stated an average speed of 4 kn.

The HRG survey activities planned by Vineyard Wind are described in detail in the notice of proposed IHA (85 FR 7952; February 12, 2020). The HRG equipment planned for use is shown in Table 1.

TABLE 1—SUMMARY OF GEOPHYSICAL SURVEY EQUIPMENT PLANNED FOR USE BY VINEYARD WIND

HRG equipment category	Specific HRG equipment	Operating frequency (kHz)	Beam width (°)	Source level (dB rms)	Peak source level (dB re 1 μPa m)	Pulse duration (ms)	Repetition rate (Hz)
Shallow subbottom profiler	EdgeTech Chirp 216	2–10	65	178	182	2	3.75
	Innomar SES 2000 Medium	85–115	2	241	247	2	40
Deep seismic profiler	Applied Acoustics AA251 Boomer	0.2–15	180	205	212	0.9	2
	GeoMarine Geo Spark 2000 (400 tip).	0.25–5	180	206	214	2.8	1
Underwater positioning (USBL)	SonarDyne Scout Pro	35–50	180	188	191	Unknown	Unknown
	ixBlue Gaps	20–32	180	191	194	1	10

As described above, detailed description of Vineyard Wind's planned surveys is provided in the notice of proposed IHA (85 FR 7952; February 12, 2020). Since that time, no changes have been made to the activities. Therefore, a detailed description is not provided here. Please refer to that notice for the detailed description of the specified activity. Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting below).

Comments and Responses

A notice of proposed IHA was published in the **Federal Register** on February 12, 2020 (85 FR 7952). During the 30-day public comment period, NMFS received comment letters from: (1) The Marine Mammal Commission (Commission); (2) a group of environmental non-governmental organizations (ENGOs) including the Natural Resources Defense Council, Conservation Law Foundation, and National Wildlife Federation; and (3) the Rhode Island Fisherman's Advisory Board (FAB), which manages the state's coastal program under the Coastal Zone Management Act. NMFS has posted the comments online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* A summary of the public comments received from the Commission, the ENGOs, and the FAB as well as NMFS' responses to those comments are below.

Comment 1: The Commission recommended that NMFS incorporate the actual beamwidth of 75° rather than 180° for the Applied Acoustics AA251 boomer for Vineyard Wind and re-

estimate the Level A and B harassment zones accordingly.

Response: None of the HRG sources specified by the Commission's comment were determined to be the dominant source in terms of Level A/B harassment zones and therefore were not used for estimating relevant ensonified zones. Additionally, the Commission's recommendations would result in harassment zone sizes for these particular sources that would be equal to, or lesser than, those described in the proposed IHA, and therefore would not result in a change to the dominant source used to estimate marine mammal exposures. As re-modeling these specific sources would not result in any changes to marine mammal exposure estimates, Level A or Level B harassment take numbers, or our determinations, we have determined that taking these steps is not warranted for this authorization. NMFS will take the Commission's comments into consideration for future ITAs for similar activities and sources.

Comment 2: The Commission recommended that NMFS use the out-of-beam source level of 187 dB re 1 μPa at 1 m from Subacoustech (2018) for the Innomar SES–2000 Medium-100 parametric SBP and re-estimate the Level A and B harassment zones. Otherwise, NMFS should use the in-beam source level and beamwidth to revise the harassment zones accordingly for the parametric SBP.

Response: With respect to the Innomar SES–2000 Medium-100 parametric SBP, NMFS has determined that, based on the very narrow beam width of this source (*i.e.,* 2 degrees), it is extremely unlikely that a marine mammal would be exposed to sound emitted from this particular source. In addition, baleen whales are unlikely to hear signals from this source, which operates at 85–115 kHz. Therefore, we have determined the potential for this source to result in take of marine mammals is so low as to be discountable, and re-modeling harassment isopleths for this source is therefore not warranted.

Comment 3: The Commission recommended that NMFS incorporate water depth when considering the beamwidth for all sources, including in this instance single-beam echosounders, shallow-penetration SBPs, and boomers. The Level A and B harassment zones should be revised accordingly.

Response: NMFS agrees with the Commission that water depth should be incorporated in acoustic modeling for HRG sources and acknowledges that depth was not incorporated in the modeling of HRG sources that was used for modeling exposure estimates in the notice of proposed IHA (85 FR 7952; February 12, 2020). However, NMFS has confirmed using a recently-developed spreadsheet tool that accompanies our interim HRG guidance (NMFS, 2019), which incorporates water depth, that the incorporation of water depth in modeling the HRG sources planned for use by Vineyard Wind would result only in smaller harassment zones for some sources, and would not result in larger zones for any sources. In addition, for the source that was determined to be the dominant source in terms of the Level B harassment zone and was therefore used to model acoustic exposures (the GeoMarine Geo Spark 2000 (400 tip)), using our interim guidance (NMFS, 2019) we determined incorporation of depth resulted in no change to the modeled Level B harassment isopleth. As a result, NMFS will take the Commission's comments into consideration for future ITAs for similar activities and sources to ensure action proponents incorporate depth into acoustic modeling (as we agree is appropriate). However, as taking this step would not change the modeled distances to relevant isopleths for dominant sources, and therefore would result in no change to exposure estimates, authorized take numbers, or our determinations, NMFS has determined that taking this step for this particular authorization is not warranted. We note that the recently-developed spreadsheet tool that accompanies the NMFS interim HRG guidance, referred to above, was not publicly available at the time the Vineyard Wind IHA application was submitted, but is now available to the public upon request. We also note that the NMFS interim HRG guidance did not previously incorporate water depth, but a revised version has been developed since the notice of proposed IHA was published, and this version will be shared with applicants from this point onward. These recent developments will ensure water depth will be incorporated in future IHAs issued for HRG surveys.

Comment 4: The Commission recommended that NMFS and BOEM expedite efforts to develop and finalize, in the next six months, methodological and signal processing standards for HRG sources. Those standards should be used by action proponents that conduct HRG surveys and that either choose to conduct in-situ measurements to inform an authorization application or are required to conduct measurements to fulfill a lease condition set forth by BOEM.

Response: NMFS agrees with the Commission that methodological and signal processing standards for HRG sources is warranted and is working on developing such standards. However, NMFS cannot ensure such standards will be developed within the Commission's preferred time frame.

Comment 5: The Commission recommended that NMFS (1) prohibit Vineyard Wind and other action proponents from using the impulsive Level A harassment thresholds for estimating the extents of the Level A harassment zones for non-impulsive sources (*i.e.,* echosounders, shallow-penetration SBPs, pingers, etc.) and (2) require action proponents to use the correct Level A harassment thresholds in all future applications.

Response: NMFS concurs with the Commission's recommendation. As described in the notice of proposed IHA, NMFS does not agree with Vineyard Wind's characterization of certain HRG sources as impulsive sources. However, this characterization results in more conservative modeling results. Thus, we have assessed the potential for Level A harassment to result from the proposed activities based on the modeled Level A harassment zones with the acknowledgement that these zones are likely conservative. This approach allows us to assess the impacts of the proposed activity conservatively and is appropriate in this case. Therefore, it is unnecessary to make any changes to the analysis for this proposed activity. However, we will proactively work with action proponents to require use of the correct Level A harassment thresholds in all future applications.

Comment 6: The Commission recommended that NMFS (1) re-estimate all of the Level A and Level B harassment zones for Vineyard Wind using its User Spreadsheet that incorporates the operating frequency and beamwidth and (2) provide the spreadsheet to all action proponents that conduct HRG surveys, post it on NMFS's website, and require all action proponents to use it for all future HRG-related authorizations.

Response: NMFS appreciates the Commission's comments and concurs with this recommendation. However, the current Level A harassment User Spreadsheet does not incorporate operating frequency or beam width as inputs for assessing Level A harassment zones. The tool referenced by the Commission is in development and will not be available for use prior to making a decision regarding the issuance of this IHA. In addition, re-estimating the isopleth distances for Level A harassment with the incorporation of

operating frequency and beam width would result in smaller Level A zones and would therefore not result in any change in our determination as to whether Level A harassment is a likely outcome of the activity. Therefore, the Level A harassment zones will not be recalculated. Note that the current User Spreadsheet is available on our website. The current interim guidance for determining Level B harassment zones does incorporate operating frequency and beam width. We strongly recommend that applicants employ these tools, as we believe they are best currently available methodologies. However, applicants are free to develop additional models or use different tools if they believe they are more representative of real-world conditions.

Comment 7: The Commission recommended that NMFS: (1) Continue to prohibit action proponents, including Vineyard Wind, from using a 100-msec integration time to adjust the SPLrms-based source levels when estimating the Level B harassment zones; (2) ensure that the **Federal Register** notice for the final authorization for Vineyard Wind does not incorrectly state that pulse duration was considered in the estimation of the Level B harassment zones: And (3) require action proponents to omit any related discussions regarding integration time from all future applications to avoid unnecessary confusion and errors in future **Federal Register** notices.

Response: As the Commission is aware, NMFS does not have the authority to require action proponents to omit the discussion of particular topics in ITA applications. We will, however, continue to prohibit applicants from using a 100-msec integration time to adjust the SPLrms-based source levels when estimating the Level B harassment zones, as we have done in this IHA. NMFS has removed references to the use of pulse duration for the estimation of Level B harassment zones.

Comment 8: The Commission recommended that NMFS evaluate the impacts of sound sources consistently across all action proponents and deem sources *de minimis* in a consistent manner for all proposed incidental harassment authorizations and rulemakings. This has the potential to reduce burdens on both action proponents and NMFS.

Response: NMFS concurs with the Commission's recommendation and agrees that sound sources should be analyzed in a consistent manner and agrees that sources determined to result in *de minimis* impact should generally be considered unlikely to result in take under the MMPA. As an example, NMFS has determined that most types of geotechnical survey equipment are generally unlikely to result in the incidental take of marine mammals (in the absence of site-specific or species-specific circumstances that may warrant additional analysis). NMFS has not made such a determination with respect to all HRG sources. As NMFS has not made a determination that sound from all HRG sources would be considered *de minimis* we cannot rule out the potential for these sources to result in the incidental take of marine mammals.

Comment 9: The Commission recommended that NMFS consider whether, in such situations involving HRG surveys, incidental harassment authorizations are necessary given the small size of the Level B harassment zones, the proposed shut-down requirements, and the added protection afforded by the lease-stipulated exclusion zones. Specifically, the Commission states that NMFS should evaluate whether taking needs to be authorized for those sources that are not considered *de minimis,* including sparkers and boomers, and for which implementation of the various mitigation measures should be sufficient to avoid Level B harassment takes.

Response: NMFS has evaluated whether taking needs to be authorized for those sources that are not considered *de minimis,* including sparkers and boomers, factoring into consideration the effectiveness of mitigation and monitoring measures, and we have determined that implementation of mitigation and monitoring measures cannot ensure that all take can be avoided during all HRG survey activities under all circumstances at this time. If and when we are able to reach such a conclusion, we will re-evaluate our determination that incidental take authorization is warranted for these activities.

Comment 10: The Commission and ENGOs recommended that NMFS provide justification for reducing the number of Level B harassment takes for North Atlantic right whales.

Response: NMFS understands that the required mitigation and monitoring measures may not be 100 percent effective under all conditions. Due to night time operations over an extended period (736 vessel days), NMFS acknowledges that a limited number of right whales may enter into the Level B harassment zone without being observed. Therefore, NMFS has conservatively authorized take of 10 right whales by Level B harassment. The number of authorized takes was reduced from the calculated take of 30 whales, which does not account for the effectiveness of the required mitigation. There are several reasons justifying this reduction. Vineyard Wind will establish and monitor a shutdown zone at least 2.5 times (500-m) greater than the predicted Level B harassment threshold distance (195 m). Take has also been conservatively calculated based on the largest source, which will not be operating at all times, and take is therefore likely over-estimated to some degree. Furthermore, the potential for incidental take during daylight hours is very low given that two PSOs are required for monitoring.

Additionally, sightings of right whales have been uncommon during previous HRG surveys. Bay State Wind submitted a marine mammal monitoring report on July 19, 2019 describing PSO observations and takes in Lease Area OCS–A500, which is adjacent to part of Vineyard Wind's survey area covered under this IHA. The offshore export cable corridor (OECC) areas for Bay State Wind and Vineyard Wind also overlap. Over 376 vessel days, three separate survey ships recorded a total of 496 marine mammal detections between May 11, 2018 and March 14, 2019. Nevertheless, there were no confirmed observations of right whales on any of the survey ships during the entire survey period. There were a number of unidentifiable whales reported, and it is possible that some of these unidentified animals may have been right whales. Vineyard Wind's marine mammal monitoring report included Lease Areas OCS–A 0501 and OCS–A 0522 from May 31, 2019 through January 7, 2020. No right whales were observed although unidentifiable whales, some of them possibly right whales, were recorded. However, the lack of confirmed observations by both Bay State Wind and Vineyard Wind within or near the Lease Areas included in this issued IHA indicates that right whale sightings have not been common in this region during previous survey work. In summary, the aforementioned factors lead NMFS to conclude that the unadjusted modeled exposure estimate is likely a significant overestimate of actual potential exposure. Accordingly, NMFS has made a reasonable adjustment to conservatively account for these expected impacts on actual taking of right whales.

Comment 11: The Commission recommended that NMFS authorize up to four Level B harassment takes of sei whales, consistent with Table 1 in the draft authorization.

Response: NMFS concurs with the recommendation and has authorized four sei whale takes by Level B

harassment as shown in Table 5 to match the number of takes included in the draft and issued IHA.

Comment 12: The Commission recommended that NMFS require Vineyard Wind to report as soon as possible *and* cease project activities immediately in the event of an unauthorized injury or mortality of a marine mammal from a vessel strike until NMFS's Office of Protected Resources and the New England/Mid-Atlantic Regional Stranding Coordinator determine whether additional measures are necessary to minimize the potential for additional unauthorized takes.

Response: NMFS has imposed a suite of measures in this IHA to reduce the risk of vessel strikes and has not authorized any takes associated with vessel strikes. However, NMFS does not concur and does not adopt the recommendation. NMFS does not agree that a blanket requirement for project activities to cease would be practicable for a vessel that is operating on the open water, and it is unclear what mitigation benefit would result from such a requirement in relation to vessel strike. The Commission does not suggest what measures other than those prescribed in this IHA would potentially prove more effective in reducing the risk of strike. Therefore, we have not included this requirement in the authorization. NMFS retains authority to modify the IHA and cease all activities immediately based on a vessel strike and will exercise that authority if warranted.

Comment 13: The Commission recommended that NMFS refrain from issuing renewals for any authorization and instead use its abbreviated **Federal Register** notice process. That process is similarly expeditious and fulfills NMFS's intent to maximize efficiencies, and that NMFS (1) stipulate that a renewal is a one-time opportunity (a) in all **Federal Register** notices requesting comments on the possibility of a renewal, (b) on its web page detailing the renewal process, and (c) in all draft and final authorizations that include a term and condition for a renewal and, (2) if NMFS refuses to stipulate a renewal being a one-time opportunity, explain why it will not do so in its **Federal Register** notices, on its web page, and in all draft and final authorizations.

Response: NMFS does not agree with the Commission and, therefore, does not adopt the Commission's recommendation. As explained in response to Comment 21, NMFS believes renewals can be issued in certain limited circumstances. NMFS will provide a more detailed explanation of its decision within 120 days, as required by section 202(d) of the MMPA.

Comment 14: The Commission recommends that, for all authorizations and rulemakings, NMFS provide separate, detailed explanations for not following or adopting any Commission recommendation.

Response: NMFS agrees that section 202(d) of the MMPA requires that any recommendations made by the Commission be responded to within 120 days of receipt, and that response to recommendations that are not followed or adopted must be accompanied by a detailed explanation of the reasons why. Therefore, NMFS concurs with the Commission's recommendation that NMFS provide detailed explanations for not following or adopting any Commission recommendation.

However, NMFS disagrees with the Commission's underlying allegation that we have not provided the necessary responses, as required by the MMPA. Section 202(d) requires NMFS to provide detailed explanations of the reasons why recommendations are not adopted within 120 days, however it does not provide the Commission with the authority to assess the adequacy of NMFS' response, and NMFS believes that the explanations provided are sufficient. Regarding certain examples where NMFS does acknowledge having yet to provide the requisite detailed explanation, the Commission notes that it has been ''over a month'' with no response. However, as noted accurately by the Commission, the statute requires only that the explanation be provided within 120 days.

Comment 15: The ENGOs recommended a seasonal restriction on site assessment and characterization activities in the Project Areas with the potential to harass North Atlantic right whales between November 1, 2020 and May 14, 2021.

Response: In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, 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; and (2) the practicability of the measures for applicant implementation, which may consider such things as relative cost and impact on operations.

NMFS is concerned about the status of the North Atlantic right whale population given that an unusual mortality event (UME) has been in effect for this species since June of 2017 and that there have been a number of recent mortalities. While the ensonified areas contemplated for any single HRG vessel are comparatively small and the anticipated resulting effects of exposure relatively lower-level, the potential impacts of multiple HRG vessels (up to 8 according to Vineyard Wind) operating simultaneously in areas of higher right whale density are not well-documented and warrant caution.

NMFS agrees with the recommendation to include a seasonal restriction on survey activity, as described below and determined by NMFS to be both warranted and practicable. NMFS reviewed the best available right whale abundance data for the planned survey area (Roberts *et al.* 2017; Kraus *et al.* 2016). We determined that right whale abundance is significantly higher in the period starting in late winter and extending to late spring in specific sections of the survey area.

Based on this information NMFS has defined seasonal restriction areas that Vineyard Wind must follow when conducting HRG surveys. Survey activities may only occur in the Cape Cod Bay Seasonal Management Area (SMA) and off of the Race Point SMA during the months of August and September to ensure sufficient buffer between the SMA restrictions (January to May 15) and known seasonal occurrence of right whales north and northeast of Cape Cod (fall, winter, and spring).

Vineyard Wind will limit to three the number of survey vessels that will operate concurrently from March through June within the lease areas (OCS–A 0501 and 0487) and OECC areas north of the lease areas up to, but not including, coastal and bay waters. An additional seasonal restriction area has been defined south of Nantucket and will be in effect from December to February in the area delineated by the Dynamic Management Area (DMA) that was effective from January 31, 2020 through February 15, 2020. DMAs have been established during this time frame in this area for the last several years. DMAs are temporary protection zones that are triggered when three or more whales are sighted within 2–3 miles of each other outside of active SMAs. The size of a DMA is larger if more whales are present.

Vineyard Wind is permitted to operate no more than three survey vessels concurrently in the areas described above during the December–February and March–June timeframes when right whale densities are greatest. The seasonal restrictions described above will help to reduce both the

number and intensity of right whale takes. Regarding practicability, the timing of Vineyard Wind's surveys is driven by a complex suite of factors including availability of vessels and equipment (which are used for other surveys and by other companies), other permitting timelines, and the timing of certain restrictions associated with fisheries gear, among other things. Vineyard Wind has indicated that there is enough flexibility to revise their survey plan such that they can both accommodate this measure and satisfy their permitting and operational obligations, and we do not anticipate that these restrictions will impact Vineyard Wind's ability to execute their survey plan within the planned 736 vessel days. Therefore, NMFS determined that this required mitigation measure is sufficient to ensure the least practicable adverse impact on species or stocks and their habitat.

Comment 16: The ENGOs recommended a prohibition on the commencement of geophysical surveys at night or during times of poor visibility. They stated that ramp up should occur during daylight hours only, to maximize the probability that North Atlantic right whales are detected and confirmed clear of the exclusion zone.

Response: We acknowledge the limitations inherent in detection of marine mammals at night. However, no injury is expected to result even in the absence of mitigation, given the very small estimated Level A harassment zones. Any potential impacts to marine mammals authorized for take would be limited to short-term behavioral responses. Restricting surveys in the manner suggested by the commenters may reduce marine mammal exposures by some degree in the short term, but would not result in any significant reduction in either intensity or duration of noise exposure. Vessels would also potentially be on the water for an extended time introducing noise into the marine environment. The restrictions recommended by the commenters could result in the surveys spending increased time on the water, which may result in greater overall exposure to sound for marine mammals; thus the commenters have not demonstrated that such a requirement would result in a net benefit. Furthermore, restricting the ability of the applicant to ramp-up only during daylight hours would have the potential to result in lengthy shutdowns of the survey equipment, which could result in the applicant failing to collect the data they have determined is necessary and, subsequently, the need to conduct additional surveys the following year. This would result in significantly increased costs incurred by the applicant. Thus the restriction suggested by the commenters would not be practicable for the applicant to implement. In consideration of potential effectiveness of the recommended measure and its practicability for the applicant, NMFS has determined that restricting survey start-ups to daylight hours when visibility is unimpeded is not warranted or practicable in this case.

Comment 17: The ENGOs recommended that NMFS require monitoring an exclusion zone (EZ) for North Atlantic right whales of at least 500 meters (m), and ideally 1,000 m, around each vessel conducting activities with noise levels that could result in injury or harassment to this species.

Response: Regarding the recommendation for a 1,000 m EZ specifically for North Atlantic right whales, we have determined that the 500-m EZ, as required in the IHA, is sufficiently protective. We note that the 500-m EZ exceeds the modeled distance to the largest Level B harassment isopleth distance (195 m) by a substantial margin. Thus, we are not requiring shutdown if a right whale is observed beyond 500-m.

Comment 18: The ENGOs recommended a requirement that four PSOs adhere to a two-on/two-off shift schedule to ensure no individual PSO is responsible for monitoring more than 180° of the exclusion zone at any one time.

Response: NMFS typically requires a single PSO to be on duty during daylight hours and 30 minutes prior to and during nighttime ramp-ups for HRG surveys. Vineyard Wind proposed, and has voluntarily committed, to a minimum of two (2) NMFS-approved PSOs on duty and conducting visual observations on all survey vessels at all times when HRG equipment is in use (*i.e.,* daylight and nighttime operations). NMFS adopted Vineyard Wind's PSO proposal. Even in the absence of the mitigation provided by PSOs, the impacts of this survey are quite low and Vineyard Wind has proposed more PSOs monitoring when HRG equipment is in use than NMFS typically requires. We have determined that the PSO requirements in the IHA are sufficient to ensure the least practicable adverse impact on the affected species or stocks and their habitat.

Comment 19: The ENGOs recommended that a combination of visual monitoring by PSOs and passive acoustic monitoring (PAM) should be used at all times. Since PSOs are unable to visually monitor the exclusion area during nighttime hours, the ENGOs also recommended that NMFS require, for efforts that continue into the nighttime, a combination of night-vision, thermal imaging, and PAM.

Response: There are several reasons why we do not agree that use of PAM is warranted for 24-hour HRG surveys such as the one planned by Vineyard Wind. While NMFS agrees that PAM can be an important tool for augmenting detection capabilities in certain circumstances, its utility in further reducing impact for Vineyard Wind's HRG survey activities is limited. First, for this activity, the area expected to be ensonified above the Level B harassment threshold is relatively small (a maximum of 195 m as described in the Estimated Take section)—this reflects the fact that, to start with, the source level is comparatively low and the intensity of any resulting impacts would be lower level and, further, it means that inasmuch as PAM will only detect a portion of any animals exposed within a zone (see below), the overall probability of PAM detecting an animal in the harassment zone is low—together these factors support the limited value of PAM for use in reducing take with smaller zones. PAM is only capable of detecting animals that are actively vocalizing, while many marine mammal species vocalize infrequently or during certain activities, which means that only a subset of the animals within the range of the PAM would be detected (and potentially have reduced impacts). Additionally, localization and range detection can be challenging under certain scenarios. For example, odontocetes are fast moving and often travel in large or dispersed groups which makes localization difficult. In addition, the ability of PAM to detect baleen whale vocalizations is further limited due to being deployed from the stern of a vessel, which puts the PAM hydrophones in proximity to propeller noise and low frequency engine noise which can mask the low frequency sounds emitted by baleen whales, including right whales.

Given that the effects to marine mammals from the types of surveys authorized in this IHA are expected to be limited to low level behavioral harassment even in the absence of mitigation, the limited additional benefit anticipated by adding this detection method (especially for right whales and other low frequency cetaceans, species for which PAM has limited efficacy), and the cost and impracticability of implementing a full-time PAM program, we have determined the current requirements for visual

monitoring are sufficient to ensure the least practicable adverse impact on the affected species or stocks and their habitat. However, we note that Vineyard Wind will voluntarily implement PAM during night operations as an added precautionary measure even though this is not a NMFS requirement.

As stated in the draft IHA, Vineyard Wind is required to use night-vision equipment (*i.e.,* night-vision goggles and/or infrared technology) during night time monitoring.

Comment 20: The ENGOs recommended a requirement that all project vessels (regardless of size) either transiting to/from or operating within the Lease Areas observe a 10 knot speed restriction during times, at minimum, when mother-calf pairs, pregnant females, surface active groups, or aggregations of three or more whales are confirmed or, based on multi-year sightings data, expected to be in the area. The commenters also recommend that a compulsory 10 knot vessel speed restriction should also be required of all project vessels (not just survey vessels) within a DMA established by NMFS. To the extent that any project vessel of any size may exceed a speed of 10 knots, the ENGOs state that this should only be allowed if multiple monitoring measures are in place, including aerial surveys or a combination of vessel-based visual observers and passive acoustic monitoring.

Response: NMFS has analyzed the potential for ship strike resulting from Vineyard Wind's activity and has determined that the mitigation measures specific to ship strike avoidance are sufficient to avoid the potential for ship strike. These include: A requirement that all vessel operators comply with 10 knot (18.5 kilometer (km)/hour) or less speed restrictions in any SMA or DMA; a requirement that all vessel operators reduce vessel speed to 10 knots (18.5 km/hour) or less when any large whale, any mother/calf pairs, pods, or large assemblages of non-delphinoid cetaceans are observed within 100 m of an underway vessel; a requirement that all survey vessels maintain a separation distance of 500-m or greater from any sighted North Atlantic right whale; a requirement that, if underway, vessels must steer a course away from any sighted North Atlantic right whale at 10 knots or less until the 500-m minimum separation distance has been established; and a requirement that, if a North Atlantic right whale is sighted in a vessel's path, or within 500 m of an underway vessel, the underway vessel must reduce speed and shift the engine to neutral. We have determined that the ship strike avoidance measures are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat. As noted previously, occurrence of vessel strike during surveys is extremely unlikely based on the low vessel speed of approximately 3.5 knots (6.5 km/hour) while transiting survey lines. Furthermore, no documented vessel strikes have occurred for any HRG surveys which were issued IHAs from NMFS.

Comment 21: The ENGOs objected to NMFS' process to consider extending any one-year IHA with a truncated 15-day comment period as contrary to the MMPA.

Response: NMFS' IHA Renewal process meets all statutory requirements. All IHAs issued, whether an initial IHA or a Renewal IHA, are valid for a period of not more than one year. And the public has at least 30 days to comment on all proposed IHAs, with a cumulative total of 45 days for IHA Renewals. As noted above, the *Request for Public Comments* section made clear that the agency was seeking comment on both the initial proposed IHA and the potential issuance of a Renewal for this project. Because any Renewal (as explained in the *Request for Public Comments* section) is limited to another year of identical or nearly identical activities in the same location (as described in the *Description of Proposed Activity* section) or the same activities that were not completed within the one-year period of the initial IHA, reviewers have the information needed to effectively comment on both the immediate proposed IHA and a possible one-year Renewal, should the IHA holder choose to request one in the coming months.

While there will be additional documents submitted with a Renewal request, for a qualifying Renewal these will be limited to documentation that NMFS will make available and use to verify that the activities are identical to those in the initial IHA, are nearly identical such that the changes would have either no effect on impacts to marine mammals or decrease those impacts, or are a subset of activities already analyzed and authorized but not completed under the initial IHA. NMFS will also confirm, among other things, that the activities will occur in the same location; involve the same species and stocks; provide for continuation of the same mitigation, monitoring, and reporting requirements; and that no new information has been received that would alter the prior analysis. The Renewal request will also contain a preliminary monitoring report, but that is to verify that effects from the activities do not indicate impacts of a scale or nature not previously analyzed. The additional 15-day public comment period provides the public an opportunity to review these few documents, provide any additional pertinent information and comment on whether they think the criteria for a Renewal have been met. Between the initial 30-day comment period on these same activities and the additional 15 days, the total comment period for a Renewal is 45 days.

In addition to the IHA Renewal process being consistent with all requirements under section 101(a)(5)(D), it is also consistent with Congress' intent for issuance of IHAs to the extent reflected in statements in the legislative history of the MMPA. Through the provision for Renewals in the regulations, description of the process and express invitation to comment on specific potential Renewals in the Request for Public Comments section of each proposed IHA, the description of the process on NMFS' website, further elaboration on the process through responses to comments such as these, posting of substantive documents on the agency's website, and provision of 30 or 45 days for public review and comment on all proposed initial IHAs and Renewals respectively, NMFS has ensured that the public ''is invited and encouraged to participate fully in the agency decision-making process.''

Comment 22: The ENGOs suggested that it should be NMFS' top priority to consider any initial data from State monitoring efforts, passive acoustic monitoring data, opportunistic marine mammal sightings data, satellite telemetry, and other data sources. Further, commenters state that NMFS should take steps now to develop a dataset that more accurately reflects marine mammal presence so that it is in hand for future IHA authorizations and other work.

Response: NMFS will review any recommended data sources and will continue to use the best available information. We welcome future input from interested parties on data sources that may be of use in analyzing the potential presence and movement patterns of marine mammals, including North Atlantic right whales, in New England waters.

Comment 23: The ENGOs stated that the agency's assumptions regarding mitigation effectiveness are unfounded and cannot be used to justify any reduction in the number of takes authorized as was done for right whales. The reasons cited include: (i) The agency's reliance on a 160 dB threshold for behavioral harassment that is not supported by the best available

scientific information in other low- to mid-frequency sources (which commenters assert demonstrates Level B harassment takes will occur with near certainty at exposure levels well below the 160 dB threshold); (ii) the geographic and temporal extent, as well as the 24-hour nature of the survey activities proposed to be authorized; and (iii) the reliance on the assumption that marine mammals will avoid sound despite studies that have found avoidance behavior is not generalizable among species and contexts.

Response: The three comments provided by the ENGOs are addressed individually below.

(i) NMFS acknowledges that the potential for behavioral response to an anthropogenic source is highly variable and context-specific and acknowledges the potential for Level B harassment at exposures to received levels below 160 dB rms. Alternatively, NMFS acknowledges the potential that not all animals exposed to received levels above 160 dB rms will respond in ways constituting behavioral harassment. There are a variety of studies indicating that contextual variables play a very important role in response to anthropogenic noise, and the severity of effects are not necessarily linear when compared to a received level (RL). The studies cited in the comment (Nowacek *et al.,* 2004 and Kastelein *et al.,* 2012 and 2015) showed there were behavioral responses to sources below the 160 dB threshold, but also acknowledge the importance of context in these responses. For example, Nowacek *et al.,* 2004 reported the behavior of five out of six North Atlantic right whales was disrupted at RLs of only 133–148 dB re 1 μPa (returning to normal behavior within minutes) when exposed to an alert signal. However, the authors also reported that none of the whales responded to noise from transiting vessels or playbacks of ship noise even though the RLs were at least as strong, and contained similar frequencies, to those of the alert signal. The authors state that a possible explanation for why whales responded to the alert signal and did not respond to vessel noise is that the whales may have been habituated to vessel noise, while the alert signal was a novel sound. In addition, the authors noted differences between the characteristics of the vessel noise and alert signal which may also have played a part in the differences in responses to the two noise types. Therefore, it was concluded that the signal itself, as opposed to the RL, was responsible for the response. DeRuiter *et al.* (2012) also 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. Finally, Gong *et al.* (2014) highlighted that behavioral responses depend on many contextual factors, including range to source, RL above background noise, novelty of the signal, and differences in behavioral state. Similarly, Kastelein *et al.,* 2015 (cited in the comment) examined behavioral responses of a harbor porpoise to sonar signals in a quiet pool, but stated behavioral responses of harbor porpoises at sea would vary with context such as social situation, sound propagation, and background noise levels.

NMFS uses 160 dB (rms) as the exposure level for estimating Level B harassment takes, while acknowledging that the 160 db rms step-function approach is a simplistic approach. However, there appears to be a misconception regarding the concept of the 160 dB threshold. While it is correct that in practice it works as a step-function, *i.e.,* animals exposed to received levels above the threshold are considered to be ''taken'' and those exposed to levels below the threshold are not, it is in fact intended as a sort of mid-point of likely behavioral responses (which are extremely complex depending on many factors including species, noise source, individual experience, and behavioral context). What this means is that, conceptually, the function recognizes that some animals exposed to levels below the threshold will in fact react in ways that are appropriately considered take, while others that are exposed to levels above the threshold will not. Use of the 160-dB threshold allows for a simplistic quantitative estimate of take, while we can qualitatively address the variation in responses across different received levels in our discussion and analysis.

Overall, we emphasize the lack of scientific consensus regarding what criteria might be more appropriate. Defining sound levels that disrupt behavioral patterns is difficult because responses depend on the context in which the animal receives the sound, including an animal's behavioral mode when it hears sounds (*e.g.,* feeding, resting, or migrating), prior experience, and biological factors (*e.g.,* age and sex). Other contextual factors, such as signal characteristics, distance from the source, and signal to noise ratio, may also help determine response to a given received level of sound. Therefore, levels at which responses occur are not necessarily consistent and can be difficult to predict (Southall *et al.,* 2007; Ellison *et al.,* 2012; Bain and Williams, 2006). Further, we note that the sounds sources and the equipment used in the specified activities are outside (higher than) of the most sensitive range of mysticete hearing.

There is currently no agreement on these complex issues, and NMFS followed the practice at the time of submission and review of this application in assessing the likelihood of disruption of behavioral patterns by using the 160 dB threshold. This threshold has remained in use in part because of the practical need to use a relatively simple threshold based on available information that is both predictable and measurable for most activities. We note that the seminal review presented by Southall *et al.* (2007) did not suggest any specific new criteria due to lack of convergence in the data. NMFS is currently evaluating available information towards development of guidance for assessing the effects of anthropogenic sound on marine mammal behavior. However, undertaking a process to derive defensible exposure-response relationships is complex (*e.g.,* NMFS previously attempted such an approach, but is currently re-evaluating the approach based on input collected during peer review of NMFS (2016)). A recent systematic review by Gomez *et al.* (2016) was unable to derive criteria expressing these types of exposure-response relationships based on currently available data.

NMFS acknowledges that there may be methods of assessing likely behavioral response to acoustic stimuli that better capture the variation and context-dependency of those responses than the simple 160 dB step-function used here, but there is no agreement on what that method should be or how more complicated methods may be implemented by applicants. NMFS is committed to continuing its work in developing updated guidance with regard to acoustic thresholds, but pending additional consideration and process is reliant upon an established threshold that is reasonably reflective of available science.

(ii) Given the geographic and temporal extent of the survey area as well as continuous 24-hour operations, the ENGOs question the effectiveness of the mitigation measures proposed to be authorized. They specifically recommended that seasonal restrictions should be established and consideration should be given to species for which a UME has been declared. Note that NMFS is requiring Vineyard Wind to comply with seasonal restrictions as described in the response to Comment

15. Furthermore, we have established a 500-m shutdown zone for right whales which is precautionary considering the Level B harassment isopleth for the largest source utilized in the specified activities for this IHA is estimated at 195 m. Actual isopleths are no greater than 195 m and are considerably less for a number of other HRG devices employing downward facing beams at various angles. After accounting for these small harassment zones and examining previous marine mammal monitoring reports from nearby areas, the calculated right whale exposures decreased from 30 to 10 animals (as discussed in greater detail in response to Comment 10). At these distances, monitoring by PSOs is expected to be highly effective. Given these factors, we are confident in our decision to authorize 10 takes by Level B harassment. Additionally, similar mitigation measures have been required in several previous HRG survey IHAs and have been successfully implemented.

(iii) The commenters disagreed with NMFS' assumption that marine mammals move away from sound sources. The ENGOs claimed that studies have not found avoidance behavior to be generalizable among species and contexts, and even though avoidance may itself constitute take under the MMPA. Importantly, the commenters mistakenly seem to believe that the NMFS' does not consider avoidance as a take, and that the concept of avoidance is used as a mechanism to reduce overall take—this is not the case. Avoidance of loud sounds is a well-documented behavioral response, and NMFS often accordingly accounts for this avoidance by reducing the number of injurious exposures, which would occur in very close proximity to the source and necessitate a longer duration of exposure. However, when Level A harassment takes are reduced in this manner, they are changed to Level B harassment takes, in recognition of the fact that this avoidance or other behavioral responses occurring as a result of these exposures are still take. NMFS does not reduce the overall amount of take as a result of avoidance.

Comment 24: The ENGOs recommended that the agency must carefully analyze the cumulative impacts from the survey activities and other survey activities contemplated in the other lease areas on the North Atlantic right whale and other protected species.

Response: The MMPA grants exceptions to its broad take prohibition for a ''specified activity.'' 16 U.S.C. 1371(a)(5)(A)(i). Cumulative impacts (also referred to as cumulative effects) is a term that appears in the context of NEPA and the ESA, but it is defined differently in those different contexts. Neither the MMPA nor NMFS's codified implementing regulations address consideration of other unrelated activities and their impacts on populations. However, the preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989) states in response to comments that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the environmental baseline. Accordingly, NMFS here has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline (*e.g.,* as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors (such as incidental mortality in commercial fisheries)).

Comment 25: The FAB indicated that NMFS did not adequately justify authorized take numbers, particularly in allowing incidental take of 10 North Atlantic right whale. They also felt that the other numbers for allowed take are unjustified, referring to them as a percentage of the entire population. As NMFS stated in its Notice for the Proposed IHA, ''[a]n estimate of the number of takes alone is not enough information on which to base an impact determination.''

Response: In the Estimated Take section, NMFS describes in detail how authorized take for each species is calculated using the best available scientific data. Please refer to that section. Justification for the authorized take of ten right whales by Level B harassment as well as the take of other species may be found in the response to Comment 23.

Comment 26: The FAB indicated that the assessment of whether there are ''small numbers'' affected, and whether there is only a ''negligible impact,'' should be assessed in further detail rather than simply listing the percentages of potentially-impacted individuals compared to the species as a whole, particularly for North Atlantic Right Whales.

Response: The Negligible Impact Analysis and Determination section of the proposed IHA (85 FR 7952; February 12, 2020) provides a detailed qualitative discussion supporting NMFS's determination that any anticipated impacts from this action would be negligible. The section contains a number of factors that were considered by NMFS based on the best available scientific data and why we concluded that impacts resulting from the specified activity are not reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA does not define small numbers. NMFS's practice for making small numbers determinations is to compare the number of individuals estimated and authorized to be taken (often using estimates of total instances of take, without regard to whether individuals are exposed more than once) against the best available abundance estimate for that species or stock. In other words, consistent with past practice, when the estimated number of individual animals taken (which may or may not be assumed as equal to the total number of takes, depending on the available information) is up to, but not greater than, one third of the species or stock abundance, NMFS will determine that the numbers of marine mammals taken of a species or stock are small.

In summary, when quantitative take estimates of individual marine mammals are available or inferable through consideration of additional factors, and the number of animals taken is one third or less of the best available abundance estimate for the species or stock, NMFS considers it to be of small numbers. NMFS may appropriately find that one or two predicted group encounters will result in small numbers of take relative to the range and distribution of a species, regardless of the estimated proportion of the abundance. Additional information on NMFS' interpretation of the small numbers finding may be found in the **Federal Register** notice published on December 7, 2018 (83 FR 63268) and we refer the reader to that document.

Comment 27: The FAB stated that a more detailed description of the study equipment planned for use and the potential effects on marine mammals should have been included in the proposed IHA.

Response: The applicant provided detailed descriptions of HRG equipment planned for use. Information pertaining to specific device characteristics necessary to assess impacts to marine mammals including equipment category, source levels, operating frequencies, beam width, pulse duration and repetition rate was provided. Note that the HRG equipment described in the proposed IHA also serves as a proxy for similar equipment types that may be utilized. The potential impacts associated with use of HRG equipment

may be found in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section of the proposed IHA. The commenter did not provide specific recommendations regarding what additional information is necessary.

Comment 28: The FAB argued that the IHA's revocation language requires amendment because *16 U.S.C.* 1539(a)(2)(C) states that NMFS shall revoke the permit if it finds the permittee is not complying with the terms and conditions of the permit; thus, the language of the draft IHA should reflect this instead of saying that ''[t]his Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein. . .''

Response: We do not believe the current discretionary language in the IHA precludes NMFS from complying 16 U.S.C. 1539(a)(2)(C). We also note that the use of the term ''shall'' in a statute can be either mandatory or directory depending on the context and legislative intent.

Comment 29: The FAB indicated that the draft IHA does not adequately discuss whether nighttime survey activity can be effectively monitored by the two required Protected Species Observers using night-vision goggles and/or infrared technology. While these may work under some conditions, the FAB stated it is unlikely they would be sufficient for sea states above a flat calm. Information regarding the efficacy of using night-vision equipment in monitoring marine mammals in the area should be included and addressed.

Response: Currently, there are no existing standards that NMFS could use to approve night vision and infrared equipment. Right whales can be seen at night from a considerable distance, depending on conditions. Note that in a recent IHA monitoring report submitted to NMFS after completion of an HRG survey off the coast of Delaware (Deepwater Wind, 83 FR 28808, June 21, 2018) a single confirmed right whale and a second probable right whale were observed at night by infra-red cameras at distances of 1,251 m and approximately 800 m respectively. Research studies have concluded that the use of IR (thermal) imaging technology may allow for the detection of marine mammals at night as well as improve the detection during all periods through the use of automated detection algorithms (Weissenberger 2011). While we acknowledge that no technology is 100% effective either during daylight or nighttime hours, the equipment used here will enhance PSO's ability to detect marine mammals at night and the fact that not all will be detected is accounted for in the authorized take.

Changes From the Proposed IHA to Final IHA

As described above, the following items have been incorporated in the issued IHA:

- Based on recently analyzed Atlantic Marine Assessment Program for Protected Species (AMAPPS) survey data from 2010 through 2018, NMFS has revised the mean group size for Risso's dolphins to 5.9 dolphins which represent a reduction from 30 dolphins in the proposed IHA (NOAA Fisheries Northeast and Southeast Fisheries Science Centers, 2019, 2018, 2017, 2016, 2015, 2014, 2013, 2012, 2011). Based on this information NMFS has reduced authorized take of Risso's dolphins from 30 to 6.
- NMFS rounded up the calculated take of 3.23 sei whales to an authorized take number of 4 sei whales as shown in Table 5.

None of these modifications affect our negligible impact or small numbers determinations.

Description of Marine Mammals in the Area of Specified Activity

Sections 3 and 4 of the IHA application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*www.fisheries.noaa.gov/find-species*).

Table 2 summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2019). PBR is 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 (as described in NMFS' SARs). While no mortality is anticipated or authorized here, PBR is included here as a gross indicator of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic SARs. All values presented in Table 2 are the most recent available at the time of publication and are available in the 2019 draft Atlantic SARs (Hayes *et al.,* 2019), available online at*: www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.*

TABLE 2—MARINE MAMMALS KNOWN TO OCCUR IN THE PROJECT AREA THAT MAY BE AFFECTED BY VINEYARD WIND'S PLANNED ACTIVITY

Common name (scientific name)	Stock	MMPA and ESA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	Predicted abundance (CV) [3]	PBR [4]	Annual M/SI [4]
Toothed whales (Odontoceti)						
Sperm whale (*Physeter macrocephalus*)	North Atlantic	E; Y	4,349 (0.28; 3,451; n/a)	5,353 (0.12)	6.9	0.0
Long-finned pilot whale (*Globicephala melas*)	W North Atlantic	--; N	39,215 (0.3; 30,627; n/a)	[5] 18,977 (0.11)	306	21
Atlantic white-sided dolphin (*Lagenorhynchus acutus*).	W North Atlantic	--; N	93,233(0.71; 54,443; n/a)	37,180 (0.07)	544	26
Bottlenose dolphin (*Tursiops truncatus*)	W North Atlantic, Offshore	--; N	62,851 (0.23; 51,914; 2011)	[5] 97,476 (0.06)	519	28

TABLE 2—MARINE MAMMALS KNOWN TO OCCUR IN THE PROJECT AREA THAT MAY BE AFFECTED BY VINEYARD WIND'S PLANNED ACTIVITY—Continued

Common name (scientific name)	Stock	MMPA and ESA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	Predicted abundance (CV) [3]	PBR [4]	Annual M/SI [4]
Common dolphin (*Delphinus delphis*)	W North Atlantic	--; N	172,825 (0.21; 145,216; 2011).	86,098 (0.12)	1,452	419
Risso's dolphin (*Grampus griseus*)	W North Atlantic	--; N	35,493 (0.19; 30,289; 2011)	7,732 (0.09)	303	54.3
Harbor porpoise (*Phocoena phocoena*)	Gulf of Maine/Bay of Fundy	--; N	95,543 (0.31; 74,034; 2011)	*45,089 (0.12)	851	217
Baleen whales (Mysticeti)						
North Atlantic right whale (*Eubalaena glacialis*).	W North Atlantic	E; Y	428 (0; 418; n/a)	*535 (0.45)	0.8	6.85
Humpback whale (*Megaptera novaeangliae*)	Gulf of Maine	--; N	1,396 (0; 1,380; n/a)	*1,637 (0.07)	22	12.15
Fin whale (*Balaenoptera physalus*)	W North Atlantic	E; Y	7,418 (0.25; 6,025; n/a)	4,633 (0.08)	12	2.35
Sei whale (*Balaenoptera borealis*)	Nova Scotia	E; Y	6,292 (1.015; 3,098; n/a)	*717 (0.30)	6.2	1.0
Minke whale (*Balaenoptera acutorostrata*)	Canadian East Coast	--; N	24,202 (0.3; 18,902; n/a)	*2,112 (0.05)	8.0	7.0
Earless seals (Phocidae)						
Gray seal [6] (*Halichoerus grypus*)	W North Atlantic	--; N	27,131 (0.19; 23,158; n/a)		1,389	5,410
Harbor seal (*Phoca vitulina*)	W North Atlantic	--; N	75,834 (0.15; 66,884; 2012)		2,006	350

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] Stock abundance as reported in NMFS marine mammal stock assessment reports (SAR) except where otherwise noted. SARs available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks, abundance estimates are actual counts of animals and there is no associated CV. The most recent abundance survey that is reflected in the abundance estimate is presented; there may be more recent surveys that have not yet been incorporated into the estimate. All values presented here are from the 2019 draft Atlantic SARs (Hayes *et al.,* 2019).

[3] This information represents species- or guild-specific abundance predicted by recent habitat-based cetacean density models (Roberts *et al.,* 2016, 2017, 2018). These models provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. Atlantic Ocean, and we provide the corresponding abundance predictions as a point of reference. Total abundance estimates were produced by computing the mean density of all pixels in the modeled area and multiplying by its area. For those species marked with an asterisk, the available information supported development of either two or four seasonal models; each model has an associated abundance prediction. Here, we report the maximum predicted abundance.

[4] Potential biological removal, 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 size (OSP). Annual M/SI, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, subsistence hunting, ship strike). Annual M/SI values often cannot be determined precisely and is in some cases presented as a minimum value. All M/SI values are as presented in the draft 2019 SARs (Hayes *et al.,* 2019).

[5] Abundance estimates are in some cases reported for a guild or group of species when those species are difficult to differentiate at sea. Similarly, the habitat-based cetacean density models produced by Roberts *et al.* (2016, 2017, 2018) are based in part on available observational data which, in some cases, is limited to genus or guild in terms of taxonomic definition. Roberts *et al.* (2016, 2017, 2018) produced density models to genus level for *Globicephala* spp. and produced a density model for bottlenose dolphins that does not differentiate between offshore and coastal stocks.

[6] NMFS stock abundance estimate applies to U.S. population only, actual stock abundance is approximately 505,000.

Four marine mammal species that are listed under the Endangered Species Act (ESA) may be present in the survey area and are included in the take request: The North Atlantic right whale, fin whale, sei whale, and sperm whale. We consulted under section 7 of the ESA with the NMFS Greater Atlantic Regional Fisheries Office (GARFO) on our authorization of take for these species; please see the Endangered Species Act section below.

A detailed description of the species likely to be affected by Vineyard Wind's surveys, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the notice of proposed IHA (85 FR 7952; February 12, 2020). 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 notice for these descriptions. Please also refer to NMFS' website (*www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from Vineyard Wind's survey activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the survey area. The notice of proposed IHA (85 FR 7952; February 12, 2020) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from Vineyard Wind's survey activities 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 the notice of proposed IHA (85 FR 7952; February 12, 2020).

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 would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to HRG sources. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* exclusion

zones and shutdown measures), discussed in detail below in the Mitigation section, Level A harassment is neither anticipated nor authorized.

As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. 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 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—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 160 dB re 1 µPa (rms) for impulsive and/or intermittent sources (*e.g.,* impact pile driving) and 120 dB rms for continuous sources (*e.g.,* vibratory driving). Vineyard Wind's planned activity includes the use of intermittent sources (geophysical survey equipment) therefore use of the 160 dB re 1 µPa (rms) threshold is applicable.

Level A harassment—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). The components of Vineyard Wind's planned activity that may result in the take of marine mammals include the use of impulsive sources. We note that sources that operate with a repetition rate greater than 10 Hz were assessed by Vineyard Wind with the non-impulsive (intermittent) source criteria and sources with a repetition rate equal to or less than 10 Hz were assessed with the impulsive source criteria. This resulted in all echosounders, sparkers, boomers and sub-bottom profilers (with the exception of one: The Innomar SES-2000 Medium-100 parametric sub-bottom profiler) being categorized as impulsive for purposes of modeling Level A harassment zones.

Predicted distances to Level A harassment isopleths, which vary based on marine mammal functional hearing groups were calculated. The updated acoustic thresholds for impulsive sounds (such as HRG survey equipment) contained in the Technical Guidance (NMFS, 2018) were presented as dual metric acoustic thresholds using both SEL_{cum} and peak sound pressure level metrics. As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group.

These thresholds are provided in Table 3 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: *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^2s. 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.

The proposed survey would entail the use of HRG equipment. The distance to the isopleth corresponding to the threshold for Level B harassment was calculated for all HRG equipment with the potential to result in harassment of marine mammals. NMFS has developed an interim methodology for determining the rms sound pressure level (SPL_{rms}) at the 160-dB isopleth for the purposes of estimating take by Level B harassment resulting from exposure to HRG survey equipment (NMFS, 2019). This methodology incorporates frequency and some directionality to refine estimated ensonified zones. Vineyard Wind used the methods specified in the interim methodology (NMFS, 2019) with additional modifications to incorporate a seawater absorption formula and a method to account for energy emitted outside of the primary beam of the source. For sources that operate with different beam widths, the maximum beam width was used. The lowest frequency of the source was used when calculating the absorption coefficient. The formulas used to apply the methodology are described in detail in Appendix B of the IHA application. As described above, NMFS acknowledges that water depth should also be incorporated in modeling of HRG sources but was not incorporated in the modeling of HRG sources in the notice of proposed IHA (85 FR 7952; February 12, 2020). However, also as noted above, NMFS has confirmed using a recently-developed spreadsheet tool that accompanies the NMFS interim HRG guidance (NMFS, 2019), which incorporates water depth, that the incorporation of water depth in modeling the HRG sources proposed for use by Vineyard Wind would result only in smaller harassment zones for some sources, and would not result in larger zones for any sources.

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG equipment and therefore recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate isopleth distances to the Level B harassment threshold. In cases when the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends that either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead. Table 1 shows the HRG equipment types that may be used during the planned surveys and the sound levels associated with those HRG equipment types. Table A–3 in Appendix A of the IHA application shows the literature sources for the sound source levels that were incorporated into the model.

Results of modeling described above indicated that sound produced by the GeoMarine Geo Spark 2000 would propagate furthest to the Level B harassment threshold; therefore, for the purposes of the exposure analysis, it was assumed the GeoMarine Geo Spark 2000 would be active during the entirety of the survey. The distance to the isopleth corresponding to the threshold for Level B harassment for the GeoMarine Geo Spark 2000 (estimated at 195 m; Table 4) was used as the basis of the take calculation for all marine mammals. Note that this likely provides a conservative estimate of the total ensonified area resulting from the planned activities. Vineyard Wind may not operate the GeoMarine Geo Spark 2000 during the entirety of the planned survey, and for any survey segments in which it is not used the distance to the Level B harassment threshold would be less than 195 m and the corresponding ensonified area would also decrease. The model also assumed that the sparker (GeoMarine Geo Spark 2000) is omnidirectional. This assumption, which is made because the beam pattern is unknown, results in precautionary estimates of received levels generally, and in particular is likely to overestimate both SPL and PK. This overestimation of the SPL likely results in an overestimation of the number of takes by Level B harassment for this type of equipment.

TABLE 4—MODELED RADIAL DISTANCES FROM HRG SURVEY EQUIPMENT TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT AND LEVEL B HARASSMENT THRESHOLDS [1]

HRG survey equipment		Level A harassment horizontal impact distance (m)				Level B harassment horizontal impact distance (m)
		Low frequency cetaceans	Mid frequency cetaceans	High frequency cetaceans	Phocid pinnipeds	All
Shallow subbottom profilers	EdgeTech Chirp 216	<1	<1	<1	<1	4
Shallow subbottom profilers	Innomar SES 2000 Medium	<1	<1	60	<1	116
Deep seismic profilers	Applied Acoustics AA251 Boomer	<1	<1	60	<1	178
Deep seismic profilers	GeoMarine Geo Spark 2000 (400 tip).	<1	<1	6	<1	195
Underwater positioning (USBL)	SonarDyne Scout Pro	(*)	(*)	(*)	(*)	24
Underwater positioning (USBL)	ixBlue Gaps	<1 m	<1 m	55	<1 m	35

[1] Note that SEL_{cum} was greater than peak SPL in all instances.

Predicted distances to Level A harassment isopleths, which vary based on marine mammal functional hearing groups (Table 3), were also calculated. The updated acoustic thresholds for impulsive sounds (such as HRG survey equipment) contained in the Technical Guidance (NMFS, 2018) were presented as dual metric acoustic thresholds using both cumulative sound exposure level (SEL_{cum}) and peak sound pressure level metrics. As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* the metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group.

Modeling of distances to isopleths corresponding to the Level A harassment threshold was performed for all types of HRG equipment proposed for use with the potential to result in harassment of marine mammals.

Vineyard Wind used a new model developed by JASCO to calculate distances to Level A harassment isopleths based on both the peak SPL and the SEL_{cum} metric. For the peak SPL metric, the model is a series of equations that accounts for both seawater absorption and HRG equipment beam patterns (for all HRG sources with beam widths larger than 90°, it was assumed these sources were omnidirectional). For the SEL_{cum} metric, a model was developed that accounts for the hearing sensitivity of the marine mammal group, seawater absorption, and beam width for downwards-facing transducers. Details of the modeling methodology for both the peak SPL and SEL_{cum} metrics are provided in Appendix A of the IHA application. This model entails the following steps:

1. Weighted broadband source levels were calculated by assuming a flat spectrum between the source minimum and maximum frequency, weighted the spectrum according to the marine mammal hearing group weighting function (NMFS 2018), and summed across frequency.

2. Propagation loss was modeled as a function of oblique range.

3. Per-pulse SEL was modeled for a stationary receiver at a fixed distance off a straight survey line, using a vessel transit speed of 3.5 knots and source-specific pulse length and repetition rate. The off-line distance is referred to as the closest point of approach (CPA) and was performed for CPA distances between 1 m and 10 km. The survey line length was modeled as 10 km long (analysis showed longer survey lines increased SEL by a negligible amount). SEL is calculated as $SPL + 10 \log_{10} T/15$ dB, where T is the pulse duration.

4. The SEL for each survey line was calculated to produce curves of weighted SEL as a function of CPA distance.

5. The curves from Step 4 above were used to estimate the CPA distance to the impact criteria.

We note that in the modeling methods described above and in Appendix A of the IHA application, sources that operate with a repetition rate greater than 10 Hz were assessed with the non-impulsive (intermittent) source criteria while sources with a repetition rate equal to or less than 10 Hz were assessed with the impulsive source criteria. This resulted in all echosounders, sparkers, boomers and sub-bottom profilers (with the exception of one: The Innomar SES–2000 Medium-100 parametric sub-bottom profiler) being categorized as impulsive for purposes of modeling Level A harassment zones. As noted above, NMFS does not agree with this step in the modeling assessment, which results in nearly all HRG sources being classified as impulsive. However, we note that the classification of the majority of HRG sources as impulsive results in more conservative modeling results. Therefore, we are retaining the analysis of Level A harassment zones from the notice of proposed IHA (85 FR 7952; February 12, 2020), though this analysis does incorporate a 10 Hz repetition rate as a cutoff between impulsive and non-impulse sources. We acknowledge that this modeling approach results in zones are likely conservative for some sources.

Modeled isopleth distances to Level A harassment thresholds for all types of HRG equipment and all marine mammal functional hearing groups are shown in Table 4. The dual criteria (peak SPL and SEL_{cum}) were applied to all HRG sources using the modeling methodology as described above, and the largest isopleth distances for each functional hearing group were then carried forward in the exposure analysis to be conservative. For all HRG sources the SEL_{cum} metric resulted in larger isopleth distances. Distances to the Level A harassment threshold based on the larger of the dual criteria (peak SPL and SEL_{cum}) are shown in Table 4.

Modeled distances to isopleths corresponding to the Level A harassment threshold are very small (<1 m) for three of the four marine mammal functional hearing groups that may be impacted by the proposed activities (*i.e.,* low frequency and mid frequency cetaceans, and phocid pinnipeds; see Table 4). Based on the very small Level A harassment zones for these functional hearing groups, the potential for species within these functional hearing groups to be taken by Level A harassment is considered so low as to be discountable. These three functional hearing groups encompass all but one of the marine mammal species listed in Table 2 that may be impacted by the proposed activities. There is one species (harbor porpoise) within the high frequency functional hearing group that may be impacted by the proposed activities. The largest modeled distance to the Level A harassment threshold for the high frequency functional hearing group was 60 m (Table 4). However, as noted above, modeled distances to isopleths corresponding to the Level A harassment threshold are assumed to be conservative. Level A harassment would also be more likely to occur at close approach to the sound source or as a result of longer duration exposure to the sound source, and mitigation measures—including a 100-m exclusion zone for harbor porpoises—are expected to minimize the potential for close approach or longer duration exposure to active HRG sources. In addition, harbor porpoises are a notoriously shy species which is known to avoid vessels, and would also be expected to avoid a sound source prior to that source reaching a level that would result in injury (Level A harassment). Therefore, we have determined that the potential for take by Level A harassment of harbor porpoises is so low as to be discountable. As NMFS has determined that the likelihood of take of any marine mammals in the form of Level A harassment occurring as a result of the planned surveys is so low as to be discountable, we therefore do not authorize the take by Level A harassment of any marine mammals.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

The habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016, 2017, 2018) represent the best available information regarding marine mammal densities in the planned survey area. The density data presented by Roberts *et al.* (2016, 2017, 2018) incorporates aerial and shipboard line-transect survey data from NMFS and other organizations and incorporates data from 8 physiographic and 16 dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016). In subsequent years, certain models have been updated on the basis of additional data as well as certain methodological improvements. Our evaluation of the changes leads to a conclusion that these represent the best scientific evidence available. More information is available online at *seamap.env.duke.edu/models/Duke-EC-GOM-2015/*. Marine mammal density estimates in the project area (animals/km^2) were obtained using these model results (Roberts *et al.,* 2016, 2017, 2018). The updated models incorporate additional sighting data, including sightings from the NOAA Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys from 2010–2014 (NEFSC & SEFSC, 2011, 2012, 2014a, 2014b, 2015, 2016).

For purposes of the exposure analysis, density data from Roberts *et al.* (2016, 2017, 2018) were mapped using a

geographic information system (GIS). The density coverages that included any portion of the planned project area were selected for all survey months. Monthly density data for each species were then averaged over the year to come up with a mean annual density value for each species. The mean annual density values used to estimate take numbers are shown in Table 5 below.

Roberts *et al.* (2018) produced density models for all seals and did not differentiate by seal species. Because the seasonality and habitat use by gray seals roughly overlaps with that of harbor seals in the survey areas, it was assumed that modeled takes of seals could occur to either of the respective species, thus the total number of modeled takes for seals was applied to each species. This approach represents a double-counting of expected total seal takes and is therefore conservative.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in harassment, radial distances to predicted isopleths corresponding to harassment thresholds are calculated, as described above. Those distances are then used to calculate the area(s) around the HRG survey equipment predicted to be ensonified to sound levels that exceed harassment thresholds. The area estimated to be ensonified to relevant thresholds in a single day is then calculated, based on areas predicted to be ensonified around the HRG survey equipment and the estimated trackline distance traveled per day by the survey vessel. Vineyard Wind estimates that survey vessels will achieve a maximum daily track line distance of 100 km per day during planned HRG surveys. This distance accounts for the vessel traveling at roughly 3.5 kn during active survey periods. Based on the maximum estimated distance to the Level B harassment threshold of 195 m (Table 5) and the maximum estimated daily track line distance of 100 km, an area of 39.12 km^2 would be ensonified to the Level B harassment threshold per day during Vineyard Wind's planned HRG surveys. As described above, this is a conservative estimate as it assumes the HRG sources that result in the greatest isopleth distances to the Level B harassment threshold would be operated at all times during all 736 vessel days.

The number of marine mammals expected to be incidentally taken per day is then calculated by estimating the number of each species predicted to occur within the daily ensonified area (animals/km^2) by incorporating the estimated marine mammal densities as described above. Estimated numbers of each species taken per day are then multiplied by the total number of vessel days (*i.e.,* 736). The product is then rounded, to generate an estimate of the total number of instances of harassment expected for each species over the duration of the survey. A summary of this method is illustrated in the following formula:

Estimated Take = D × ZOI × # of days

Where: D = average species density (per km^2) and ZOI = maximum daily ensonified area to relevant thresholds.

Using this method to calculate take, Vineyard wind estimated that there would be take of several species by Level A harassment including Atlantic White-sided dolphin, bottlenose dolphin, common dolphin, harbor porpoise, gray seal, and harbor seal in the absence of mitigation (see Table 10 in the IHA application for the estimated number of Level A harassment takes for all potential HRG equipment types). However, as described above, due to the very small estimated distances to Level A harassment thresholds (Table 4), and in consideration of the mitigation measures, the likelihood of survey activities resulting in take in the form of Level A harassment is considered so low as to be discountable; therefore, we did not authorize take of any marine mammals by Level A harassment. Authorized take numbers by Level B harassment are shown in Table 5.

TABLE 5—TOTAL NUMBERS OF AUTHORIZED INCIDENTAL TAKES OF MARINE MAMMALS AND TAKES AS A PERCENTAGE OF POPULATION

Species	Annual density mean (km^{-2})	Estimated Level B harassment takes	Authorized takes by Level B harassment	% Population[1]
Fin whale	0.0023	67.28	67	1.4
Humpback whale	0.0016	45.73	46	2.8
Minke whale	0.001	41.20	41	1.9
North Atlantic right whale	0.001	30.32	10	1.9
Sei whale	0.000	3.23	4	0.06
Atlantic white sided dolphin	0.0351	1,011.19	1,011	2.7
Bottlenose dolphin (WNA Offshore)	0.0283	814.91	815	0.8
Pilot whales	0.0049	141.98	142	0.7
Risso's dolphin	0.000	5.74	6	0.08
Common dolphin	0.071	2,035.87	2,036	2.3
Sperm whale	0.000	3.82	4	0.07
Harbor porpoise	0.0363	1,044.87	1,045	2.3
Gray seal	0.1404	4,043.67	4,044	14.9
Harbor seal	0.1404	4,043.67	4,044	5.3

[1] Calculations of percentage of stock taken are based on the best available abundance estimate as shown in Table 23. In most cases the best available abundance estimate is provided by Roberts *et al.* (2016, 2017, 2018), when available, to maintain consistency with density estimates derived from Roberts *et al.* (2016, 2017, 2018). For North Atlantic right whales the best available abundance estimate is derived from the North Atlantic Right Whale Consortium 2019 Annual Report Card (Pettis *et al.,* 2019). For bottlenose dolphins and seals, Roberts *et al.* (2016, 2017, 2018) provides only a single abundance estimate and does not provide abundance estimates at the stock or species level (respectively), so abundance estimates used to estimate percentage of stock taken for bottlenose dolphins, gray and harbor seals are derived from NMFS SARs (Hayes *et al.,* 2019).

For the North Atlantic right whale, NMFS required a 500-m EZ which substantially exceeds the distance to the level B harassment isopleth (195 m). However, Vineyard Wind will be operating up to 24 hours per day for a

total of 736 vessel days. Even with the implementation of mitigation measures (including night-vision goggles and thermal clip-ons) it is reasonable to assume that night time operations for an extended period could result in a limited number of right whales being exposed to underwater sound at Level B harassment levels. Given the fact that take has been conservatively calculated based on the largest source, which will not be operating at all times, and is thereby likely over-estimated to some degree, the fact that Vineyard Wind will implement a shutdown zone 2.5 times the predicted Level B harassment threshold distance (see below) for that largest source (and significantly more than that for the smaller sources), and the fact that night vision goggles with thermal clips will be used for nighttime operations, NMFS predicts that no more than 10 right whales may be taken by Level B harassment.

Additionally, sightings of right whales have been uncommon during previous HRG surveys. Bay State Wind submitted a marine mammal monitoring report HRG survey on July 19, 2019 described PSO observations and takes in Lease Area OCS–A500, which is part of the survey area covered under this IHA as well as along several ECR corridors closer to shore. Over 376 vessel days, three separate survey ships recorded a total of 496 marine mammal detections between May 11, 2018 and March 14, 2019. There were no confirmed observations of right whales on any of the survey ships during the entire survey period. There were a number of unidentifiable whales reported, and it is possible that some of these unidentified animals may have been right whales. However, the lack of confirmed observations indicates that right whale sightings are not common in this region during previous survey work.

Vineyard Wind provided a marine mammal monitoring report associated with survey activity for which Vineyard Wind determined that no take of marine mammals was reasonably anticipated to occur, and therefore no incidental take authorization requested. The survey activity covered the Renewable Lease Numbers OCS–A 0501 and OCS–A 0522 (Lease) and associated potential cable routes located offshore of Massachusetts. These are the same Lease Areas covered by the IHA NMFS has issued to Vineyard Wind. Survey operations began on May 31, 2019 and concluded on January 7, 2020. Six survey vessels were employed and engaged in both day and night survey operations. There was a total of 412 marine mammal sightings but no marine mammals were observed within Level B harassment zones estimated by Vineyard Wind. Similar to the Bay State Wind findings, no confirmed observations of right whales on any of the survey ships occurred during the entire survey period. While some of the unidentified animals could also have been right whales, the absence of verified sightings demonstrates that right whale observations are uncommon.

In summary, given the low observation rate, and expected efficacy of the required mitigation measures, we believe a reduction of 30 calculated right whale exposures down to 10 authorized takes by Level B harassment is reasonable.

Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, 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 Measures

NMFS has required that the following mitigation measures be implemented during Vineyard Wind's planned marine site characterization surveys.

Marine Mammal Exclusion Zones, Buffer Zone and Monitoring Zone

Marine mammal exclusion zones (EZ) would be established around the HRG survey equipment and monitored by protected species observers (PSO) during HRG surveys as follows:

- A 500-m EZ would be required for North Atlantic right whales.
- A 100-m EZ would be required for all other marine mammals (with the exception of certain small dolphin species specified below).

If a marine mammal is detected approaching or entering the EZs during the planned survey, the vessel operator would adhere to the shutdown procedures described below. In addition to the EZs described above, PSOs would visually monitor a 200-m Buffer Zone. During use of acoustic sources with the potential to result in marine mammal harassment (*i.e.,* anytime the acoustic source is active, including ramp-up), occurrences of marine mammals within the Buffer Zone (but outside the EZs) would be communicated to the vessel operator to prepare for potential shutdown of the acoustic source. The Buffer Zone is not applicable when the EZ is greater than 100 meters. PSOs would also be required to observe a 500-m Monitoring Zone and record the presence of all marine mammals within this zone. In addition, observation of any marine mammals within the Level B harassment zone will be documented. The zones described above would be based upon the radial distance from the active equipment (rather than being based on distance from the vessel itself).

Visual Monitoring

NMFS only requires a single PSO to be on duty during daylight hours and 30 minutes prior to and during nighttime ramp-ups for HRG surveys. Vineyard Wind proposed, and has voluntarily committed, to a minimum of two (2) NMFS-approved PSOs on duty and conducting visual observations on all survey vessels at all times when HRG equipment is in use (*i.e.,* daylight and nighttime operations). Visual monitoring would begin no less than 30 minutes prior to ramp-up of HRG

equipment and would continue until 30 minutes after use of the acoustic source ceases or until 30 minutes past sunset. However, as noted, Vineyard Wind has committed to 24-hr use of PSOs. PSOs would establish and monitor the applicable EZs, Buffer Zone and Monitoring Zone as described above. Visual PSOs would coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and would conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs would estimate distances to marine mammals located in proximity to the vessel and/or relevant using range finders. It would be the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate and enforce the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate. Position data would be recorded using hand-held or vessel global positioning system (GPS) units for each confirmed marine mammal sighting.

Pre-Clearance of the Exclusion Zones

Prior to initiating HRG survey activities, Vineyard Wind would implement a 30-minute pre-clearance period. During pre-clearance monitoring (*i.e.,* before ramp-up of HRG equipment begins), the Buffer Zone would also act as an extension of the 100-m EZ in that observations of marine mammals within the 200-m Buffer Zone would also preclude HRG operations from beginning. During this period, PSOs would ensure that no marine mammals are observed within 200 m of the survey equipment (500 m in the case of North Atlantic right whales). HRG equipment would not start up until this 200-m zone (or, 500-m zone in the case of North Atlantic right whales) is clear of marine mammals for at least 30 minutes. The vessel operator would notify a designated PSO of the proposed start of HRG survey equipment as agreed upon with the lead PSO; the notification time should not be less than 30 minutes prior to the planned initiation of HRG equipment order to allow the PSOs time to monitor the EZs and Buffer Zone for the 30 minutes of pre-clearance. A PSO conducting pre-clearance observations would be notified again immediately prior to initiating active HRG sources.

If a marine mammal were observed within the relevant EZs or Buffer Zone during the pre-clearance period, initiation of HRG survey equipment would not begin until the animal(s) has been observed exiting the respective EZ or Buffer Zone, or, until an additional time period has elapsed with no further sighting (*i.e.,* minimum 15 minutes for small odontocetes and seals, and 30 minutes for all other species). The pre-clearance requirement would include small delphinids that approach the vessel (*e.g.,* bow ride). PSOs would also continue to monitor the zone for 30 minutes after survey equipment is shut down or survey activity has concluded.

Ramp-Up of Survey Equipment

When technically feasible, a ramp-up procedure would be used for geophysical survey equipment capable of adjusting energy levels at the start or re-start of survey activities. The ramp-up procedure would be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the Project Area by allowing them to detect the presence of the survey and vacate the area prior to the commencement of survey equipment operation at full power. Ramp-up of the survey equipment would not begin until the relevant EZs and Buffer Zone has been cleared by the PSOs, as described above. HRG equipment would be initiated at their lowest power output and would be incrementally increased to full power. If any marine mammals are detected within the EZs or Buffer Zone prior to or during ramp-up, the HRG equipment would be shut down (as described below).

Shutdown Procedures

If an HRG source is active and a marine mammal is observed within or entering a relevant EZ (as described above) an immediate shutdown of the HRG survey equipment would be required. When shutdown is called for by a PSO, the acoustic source would be immediately deactivated and any dispute resolved only following deactivation. Any PSO on duty would have the authority to delay the start of survey operations or to call for shutdown of the acoustic source if a marine mammal is detected within the applicable EZ. The vessel operator would establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the HRG source(s) to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. Subsequent restart of the HRG equipment would only occur after the marine mammal has either been observed exiting the relevant EZ, or, until an additional time period has elapsed with no further sighting of the animal within the relevant EZ (*i.e.,* 15 minutes for small odontocetes and seals, and 30 minutes for all other species).

Upon implementation of shutdown, the HRG source may be reactivated after the marine mammal that triggered the shutdown has been observed exiting the applicable EZ (*i.e.,* the animal is not required to fully exit the Buffer Zone where applicable) or, following a clearance period of 15 minutes for small odontocetes and seals and 30 minutes for all other species with no further observation of the marine mammal(s) within the relevant EZ. If the HRG equipment shuts down for brief periods (*i.e.,* less than 30 minutes) for reasons other than mitigation (*e.g.,* mechanical or electronic failure) the equipment may be re-activated as soon as is practicable at full operational level, without 30 minutes of pre-clearance, only if PSOs have maintained constant visual observation during the shutdown and no visual detections of marine mammals occurred within the applicable EZs and Buffer Zone during that time. For a shutdown of 30 minutes or longer, or if visual observation was not continued diligently during the pause, pre-clearance observation is required, as described above.

The shutdown requirement would be waived for certain genera of small delphinids (*i.e., Delphinus, Lagenorhynchus,* and *Tursiops*) under certain circumstances. If a delphinid(s) from these genera is visually detected approaching the vessel (*i.e.,* to bow ride) or towed survey equipment, shutdown would not be required. If there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs would use best professional judgment in making the decision to call for a shutdown.

If a species for which authorization has not been granted, or, a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the area encompassing the Level B harassment isopleth (195 m), shutdown would occur.

Vessel Strike Avoidance

Vessel strike avoidance measures would include, but would not be limited to, the following, except under circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- All vessel operators and crew will maintain vigilant watch for cetaceans and pinnipeds, and slow down or stop their vessel to avoid striking these protected species;

• All survey vessels, regardless of size, must observe a 10-knot speed restriction in specific areas designated by NMFS for the protection of North Atlantic right whales from vessel strikes: Any DMAs when in effect, and the Block Island Seasonal Management Area (SMA) (from November 1 through April 30), Cape Cod Bay SMA (from January 1 through May 15), Off Race Point SMA (from March 1 through April 30) and Great South Channel SMA (from April 1 through July 31). Note that this requirement includes vessels, regardless of size, to adhere to a 10 knot speed limit in SMAs and DMAs, not just vessels 65 ft or greater in length.

• All vessel operators will reduce vessel speed to 10 knots (18.5 km/hr) or less when any large whale, any mother/calf pairs, large assemblages of non-delphinoid cetaceans are observed near (within 100 m (330 ft)) an underway vessel;

• All vessels will maintain a separation distance of 500 m (1640 ft) or greater from any sighted North Atlantic right whale;

• If underway, vessels must steer a course away from any sighted North Atlantic right whale at 10 knots (18.5 km/hr) or less until the 500-m (1640 ft) minimum separation distance has been established. If a North Atlantic right whale is sighted in a vessel's path, or within 100 m (330 ft) to an underway vessel, the underway vessel must reduce speed and shift the engine to neutral. Engines will not be engaged until the North Atlantic right whale has moved outside of the vessel's path and beyond 100 m. If stationary, the vessel must not engage engines until the North Atlantic right whale has moved beyond 100 m;

• All vessels will maintain a separation distance of 100 m (330 ft) or greater from any sighted non-delphinoid cetacean. If sighted, the vessel underway must reduce speed and shift the engine to neutral, and must not engage the engines until the non-delphinoid cetacean has moved outside of the vessel's path and beyond 100 m. If a survey vessel is stationary, the vessel will not engage engines until the non-delphinoid cetacean has moved out of the vessel's path and beyond 100 m;

• All vessels will maintain a separation distance of 50 m (164 ft) or greater from any sighted delphinoid cetacean. Any vessel underway remain parallel to a sighted delphinoid cetacean's course whenever possible, and avoid excessive speed or abrupt changes in direction. Any vessel underway reduces vessel speed to 10 knots (18.5 km/hr) or less when pods (including mother/calf pairs) or large assemblages of delphinoid cetaceans are observed. Vessels may not adjust course and speed until the delphinoid cetaceans have moved beyond 50 m and/or the abeam of the underway vessel;

• All vessels will maintain a separation distance of 50 m (164 ft) or greater from any sighted pinniped; and

• All vessels underway will not divert or alter course in order to approach any whale, delphinoid cetacean, or pinniped. Any vessel underway will avoid excessive speed or abrupt changes in direction to avoid injury to the sighted cetacean or pinniped.

Project-specific training will be conducted for all vessel crew prior to the start of survey activities. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew members understand and will comply with the necessary requirements throughout the survey activities.

Seasonal Operating Requirements

Vineyard Wind will conduct HRG survey activities in the Cape Cod Bay SMA and Off Race Point SMA only during the months of August and September to ensure sufficient buffer between the SMA restrictions (January to May 15) and known seasonal occurrence of the NARW north and northeast of Cape Cod (fall, winter, and spring). Vineyard Wind will also limit to three the number survey vessels that will operate concurrently from March through June within the lease areas (OCS–A 0501 and 0487) and OECC areas north of the lease areas up to, but not including, coastal and bay waters. The boundaries of this area are delineated by a polygon with the following vertices: 40.746 N 70.748 W; 40.953 N 71.284 W; 41.188 N 71.284 W; 41.348 N 70.835 W; 41.35 N 70.455 W; 41.097 N 70.372 W; and 41.021 N 70.37 W. This area is delineated by the dashed line shown in Figure 1. Another seasonal restriction area south of Nantucket will be in effect from December to February in the area delineated by the DMA that was effective from January 31, 2020 through February 15, 2020. The winter seasonal restriction area is delineated by latitudes and longitudes of 41.183 N; 40.366 N; 69.533 W; and 70.616 W. This area is delineated by the solid line in Figure 1.

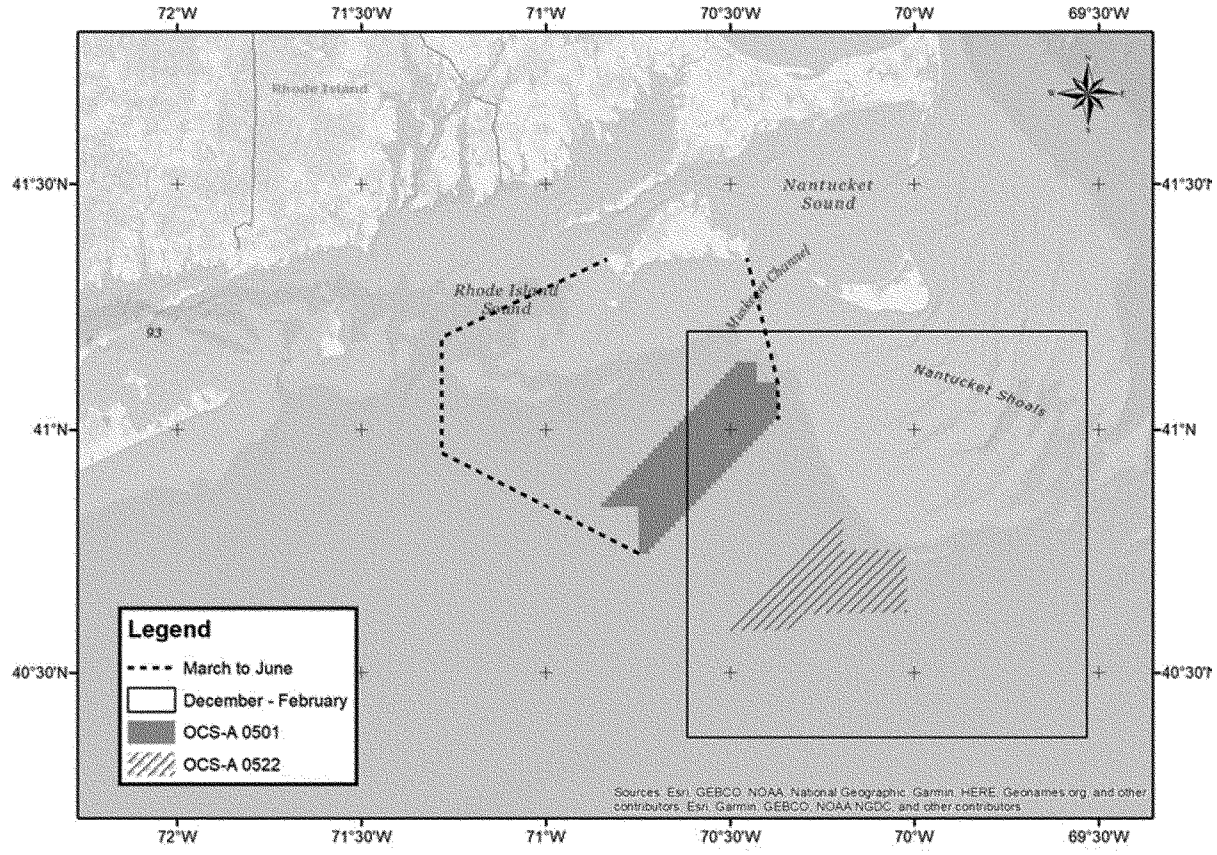

Figure 1. Seasonally Restricted Areas

Vineyard Wind would operate no more than three survey vessels concurrently in the areas described above during the December–February and March–June timeframes when right whale densities are greatest. The seasonal restrictions described above will help to reduce both the number and intensity of right whale takes.

Although not required by NMFS, Vineyard Wind would also employ passive acoustic monitoring (PAM) to support monitoring during night time operations to provide for acquisition of species detections at night.

Based on our evaluation of the applicant's proposed 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.

Monitoring Measures

As described above, visual monitoring would be performed by qualified and NMFS-approved PSOs. Vineyard Wind would use independent, dedicated, trained PSOs, meaning that the PSOs must be employed by a third-party observer provider, must have no tasks other than to conduct observational

effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and must have successfully completed an approved PSO training course appropriate for their designated task. Vineyard Wind would provide resumes of all proposed PSOs (including alternates) to NMFS for review and approval prior to the start of survey operations.

During survey operations (*e.g.,* any day on which use of an HRG source is planned to occur), a minimum of two PSOs must be on duty and conducting visual observations at all times on all active survey vessels when HRG equipment is operating, including both daytime and nighttime operations. Visual monitoring would begin no less than 30 minutes prior to initiation of HRG survey equipment and would continue until one hour after use of the acoustic source ceases. Note that NMFS only requires that a minimum of one PSO must be on duty and conducting visual observations during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset) and during nighttime ramp-ups of HRG equipment. PSOs would coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and would conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours of observation per 24-hour period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals would be communicated to PSOs on all survey vessels.

PSOs would be equipped with binoculars and have the ability to estimate distances to marine mammals located in proximity to the vessel and/or exclusion zone using range finders. Reticulated binoculars will also be available to PSOs for use as appropriate based on conditions and visibility to support the monitoring of marine mammals. Position data would be recorded using hand-held or vessel GPS units for each sighting. Observations would take place from the highest available vantage point on the survey vessel. General 360-degree scanning would occur during the monitoring periods, and target scanning by the PSO would occur when alerted of a marine mammal presence.

During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs would conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the acoustic source and between acquisition periods. Any observations of marine mammals by crew members aboard any vessel associated with the survey would be relayed to the PSO team.

Data on all PSO observations would be recorded based on standard PSO collection requirements. This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal take that occurs (*e.g.,* noted behavioral disturbances).

Reporting Measures

Within 90 days after completion of survey activities, a final technical report will be provided to NMFS that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, summarizes the number of marine mammals estimated to have been taken during survey activities (by species, when known), summarizes the mitigation actions taken during surveys (including what type of mitigation and the species and number of animals that prompted the mitigation action, when known), and provides an interpretation of the results and effectiveness of all mitigation and monitoring. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS.

In the event that Vineyard Wind personnel discover an injured or dead marine mammal, Vineyard Wind shall report the incident to the Office of Protected Resources (OPR), NMFS and to the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

In the event of a ship strike of a marine mammal by any vessel involved in the activities covered by the authorization, the IHA-holder shall report the incident to OPR, NMFS and to the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Species identification (if known) or description of the animal(s) involved;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
- Estimated size and length of animal that was struck;
- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
- Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

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 2, given that NMFS expects the anticipated effects of the planned survey to be similar in nature. As discussed in the ''Potential Effects of the Specified Activity on Marine Mammals and Their Habitat'' section of the proposed notice, PTS, masking, non-auditory physical effects, and vessel strike are not expected to occur.

The majority of impacts to marine mammals are expected to be short-term disruption of behavioral patterns, primarily in the form of avoidance or potential interruption of foraging. Marine mammal feeding behavior is not likely to be significantly impacted.

Regarding impacts to marine mammal habitat, prey species are mobile, and are broadly distributed throughout the Project Area and the footprint of the activity is small; 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 availability of similar habitat and resources in the surrounding area 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. The HRG survey equipment itself will not result in physical habitat disturbance. Avoidance of the area around the HRG survey activities by marine mammal prey species is possible. However, any avoidance by prey species would be expected to be short term and temporary.

ESA-listed species for which takes are authorized are right, fin, sei, and sperm whales, and these effects are anticipated to be limited to lower level behavioral effects. NMFS does not anticipate that serious injury or mortality would occur to any species, even in the absence of mitigation and no serious injury or mortality is authorized. As discussed in the *Potential Effects* section, non-auditory physical effects and vessel strike are not expected to occur. We expect that most potential takes would 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). The planned survey is not anticipated to affect the fitness or reproductive success of individual animals. Since impacts to individual survivorship and fecundity are unlikely, the planned survey is not expected to result in population-level effects for any ESA-listed species or alter current population trends of any ESA-listed species.

The status of the North Atlantic right whale population is of heightened concern and, therefore, merits additional analysis. NMFS has rigorously assessed potential impacts to right whales from this survey. We have established a 500-m shutdown zone for right whales which is precautionary considering the Level B harassment isopleth for the largest source utilized (*i.e.,* GeoMarine Geo Spark 2000 (400 tip) is estimated to be 195 m.

NMFS is also requiring Vineyard Wind to limit the number of survey vessels operating concurrently to no more than three in specified areas during periods when right whale densities are likely to be elevated. This includes a specified area approximately 31 miles due south of Nantucket including Lease Area OCS–A 0522 from December to February as well as Lease Area OCS–A 0501 and surrounding Project Areas south and southwest of Martha's Vineyard from March to June. Numerous right whale aggregations have been reported in these areas during the winter and spring. Furthermore, surveys in right whale critical habitat area will be limited to August and September when the whales are unlikely to be present. Due to the length of the survey and continuous night operations, it is conceivable that a limited number of right whales could enter into the Level B harassment zone without being observed. Any potential impacts to right whales would consist of, at most, low-level, short-term behavioral harassment in a limited number of animals. The authorized takes of right whales would not exacerbate or compound the ongoing UME in any way.

The planned Project Area encompasses or is in close proximity to feeding BIAs for right whales (February–April), humpback whales (March–December), fin whales (March–October), and sei whales (May–November) as well as a migratory BIA or right whales (March–April and November–December. Most of these feeding BIAs are extensive and sufficiently large (705 km^2 and 3,149 km^2 for right whales; 47,701 km^2 for humpback whales; 2,933 km^2 for fin whales; and 56,609 km^2 for sei whales), and the acoustic footprint of the planned survey is sufficiently small that feeding opportunities for these whales would not be reduced appreciably. Any whales temporarily displaced from the planned Project Area would be expected to have sufficient remaining feeding habitat available to them, and would not be prevented from feeding in other areas within the biologically important feeding habitat. In addition, any displacement of whales from the BIA or interruption of foraging bouts would be expected to be temporary in nature. Therefore, we do not expect whales with feeding BIAs to be negatively impacted by the planned survey.

A migratory BIA for North Atlantic right whales (effective March–April and November–December) extends from Massachusetts to Florida (LaBrecque, *et al.,* 2015). Off the south coast of Massachusetts and Rhode Island, this BIA extends from the coast to beyond the shelf break. The fact that the spatial acoustic footprint of the planned survey is very small relative to the spatial extent of the available migratory habitat means that right whale migration is not expected to be impacted by the survey. Required vessel strike avoidance measures will also decrease risk of ship strike during migration. NMFS is expanding the standard avoidance measures by requiring that all vessels, regardless of size, adhere to a 10 knot speed limit in SMAs and DMA. Additionally, limited take by Level B harassment of North Atlantic right whales has been authorized as HRG survey operations are required to shut down at 500 m to minimize the potential for behavioral harassment of this species.

As noted previously, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or distinct population segment (DPS)) remains

healthy. Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales. Elevated North Atlantic right whale mortalities began in June 2017, primarily in Canada. Overall, preliminary findings support human interactions, specifically vessel strikes or rope entanglements, as the cause of death for the majority of the right whales. Elevated numbers of harbor seal and gray seal mortalities were first observed in July, 2018 and have occurred across Maine, New Hampshire and Massachusetts. Based on tests conducted so far, the main pathogen found in the seals is phocine distemper virus although additional testing to identify other factors that may be involved in this UME are underway. The UME for seals does not yet provide cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 75,000 and annual M/SI (345) is well below PBR (2,006) (Hayes *et al.,* 2018). For gray seals, the population abundance in the United States is over 27,000, with an estimated abundance including seals in Canada of approximately 505,000, and abundance is likely increasing in the U.S. Atlantic EEZ as well as in Canada (Hayes *et al.,* 2018).

Direct physical interactions (ship strikes and entanglements) appear to be responsible for many of the UME humpback and right whale mortalities recorded. The HRG survey will require ship strike avoidance measures which would minimize the risk of ship strikes while fishing gear and in-water lines will not be employed as part of the survey. Furthermore, the planned activities are not expected to promote the transmission of infectious disease among marine mammals. The survey is not expected to result in the deaths of any marine mammals or combine with the effects of the ongoing UMEs to result in any additional impacts not analyzed here. Accordingly, Vineyard Wind did not request, and NMFS is not authorizing, take of marine mammals by serious injury, or mortality.

The required mitigation measures are expected to reduce the number and/or severity of takes by giving animals the opportunity to move away from the sound source before HRG survey equipment reaches full energy and preventing animals from being exposed to sound levels that have the potential to cause injury (Level A harassment) and more severe Level B harassment during HRG survey activities, even in the biologically important areas described above. No Level A harassment is anticipated or authorized.

NMFS expects that most takes would primarily be in the form of short-term Level B behavioral harassment in the form of brief startling reaction and/or temporary vacating of the area, or decreased foraging (if such activity were occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity and with no lasting biological consequences. Since both the source and the marine mammals are mobile, only a smaller area would be ensonified by sound levels that could result in take for only a short period. Additionally, required mitigation measures would reduce exposure to sound that could result in more severe behavioral harassment.

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 Level A harassment is anticipated or authorized;
- Any foraging interruptions are expected to be short term and unlikely to cause significant impacts;
- Impacts on marine mammal habitat and species that serve as prey species for marine mammals are expected to be minimal and the alternate areas of similar habitat value for marine mammals are readily available;
- Take is anticipated to be primarily Level B behavioral harassment consisting of brief startling reactions and/or temporary avoidance of the ensonified area;
- Survey activities would occur in such a comparatively small portion of the biologically important areas for North Atlantic right whale migration, including a small area of designated critical habitat, that any avoidance of the Project Area due to activities would not affect migration. In addition, mitigation measures to shut down at 500 m to minimize potential for Level B behavioral harassment would limit both the number and severity of take of the species.
- Similarly, due to the relatively small footprint of the survey activities in relation to the size of a biologically important areas for right, humpback, fin, and sei whales foraging, the survey activities would not affect foraging behavior of this species; and
- Required mitigation measures, including visual monitoring and shutdowns, are expected to minimize the intensity of 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 Vineyard Wind's planned HRG survey activities will have a negligible impact on the 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.

The numbers of marine mammals that we have authorized for take, for all species and stocks, would be considered small relative to the relevant stocks or populations (less than 15 percent for all species and stocks) as shown in Table 5. Based on the analysis contained herein of the planned activity (including the required mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would 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 evaluate our proposed action (*i.e.,* the promulgation of regulations and subsequent issuance of incidental take authorization) and alternatives with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the proposed action qualifies to be categorically excluded from further NEPA review.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (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 NMFS Greater Atlantic Regional Fisheries Office (GARFO), whenever we propose to authorize take for endangered or threatened species.

The NMFS Office of Protected Resources Permits and Conservation Division is authorizing the incidental take of four species of marine mammals which are listed under the ESA: The North Atlantic right, fin, sei and sperm whale. We requested initiation of consultation under Section 7 of the ESA with NMFS GARFO on February 12, 2020, for the issuance of this IHA. BOEM consulted with NMFS GARFO under section 7 of the ESA on commercial wind lease issuance and site assessment activities on the Atlantic Outer Continental Shelf in Massachusetts, Rhode Island, New York and New Jersey Wind Energy Areas. The NMFS GARFO issued a Biological Opinion concluding that these activities may adversely affect but are not likely to jeopardize the continued existence of the North Atlantic right, fin, sei and sperm whale. Upon request from the NMFS Office of Protected Resources, NMFS GARFO issued an amended incidental take statement associated with this Biological Opinion to include the take of the ESA-listed marine mammal species authorized through this IHA in April, 2020.

Authorization

NMFS has issued an IHA to Vineyard Winds for conducting marine site characterization surveys offshore of Massachusetts in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0501 and OCS–A 0522) and along potential submarine offshore export cable corridors (OECC) to landfall locations in Massachusetts, Rhode Island, Connecticut, and New York from June 1, 2020 through May 31, 2021, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: April 30, 2020.

Donna Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–09629 Filed 5–5–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR110]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Chevron Richmond Refinery Long Wharf Maintenance and Efficiency Project in San Francisco Bay, California

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

ACTION: Notice; request for comments on proposed Renewal incidental harassment authorization.

SUMMARY: NMFS received a request from Chevron Products Company (Chevron) for the Renewal of their currently active incidental harassment authorization (IHA) to take marine mammals incidental to the Long Wharf Maintenance and Efficiency Project (LWMEP) in San Francisco Bay, California. These activities consist of activities that are covered by the current authorization but will not be completed prior to its expiration. Pursuant to the Marine Mammal Protection Act, prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the authorization if certain requirements were satisfied. The Renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed Renewal not previously provided during the initial 30-day comment period.

DATES: Comments and information must be received no later than May 21, 2020.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.DeJoseph@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Bonnie DeJoseph, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notices of the proposed and final authorizations for both the 2019 and 2018 IHAs, and the 2019 IHA), 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 Marine Mammal Protection Act (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 is 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 such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of such takings are also required. The meaning of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the 2019 authorization, NMFS described the circumstances under which we would consider issuing a Renewal for this activity, and requested public comment on a potential Renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Description of the Specified Activities and Anticipated Impacts section of this notice is planned or (2) the activities as described in the Description of the Specified Activities and Anticipated Impacts section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed Renewal. A description of the Renewal process may be found on our website at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.* Any comments received on the potential Renewal, along with relevant comments on the 2019 IHA, have been considered in the development of this proposed IHA Renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested Renewal, and agency responses will be summarized in the final notice of our decision.

The NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as it applies to a ''military readiness activity.''

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 would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

History of Request

On June 19, 2019, NMFS issued an IHA to Chevron Products Company to take marine mammals incidental to Chevron Richmond Refinery Long Wharf Maintenance and Efficiency Project (LWMEP) in San Francisco Bay, California (84 FR 28474; June 19, 2019), effective from June 1, 2019 through May 31, 2020. On January 30, 2020, NMFS received a request for the Renewal of this 2019 IHA. As described in the request for Renewal IHA, the activities for which incidental take is requested consist of activities that are covered by the initial 2019 IHA but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report (available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-chevron-long-wharf-maintenance-and-efficiency-project-san-0*) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

Of note, NMFS previously issued an IHA to Chevron for similar work (82 FR 27240; June 14, 2017). However, the construction schedule and scope was revised and no work was conducted under that IHA. NMFS issued a second IHA on June 1, 2018 to Chevron for work not conducted in 2017 (83 FR 27548; June 13, 2018*).* Because the activities addressed in the 2019 IHA were very similar to those analyzed in the 2018 IHA, the **Federal Register** Notices supporting the 2019 IHA refer back to the **Federal Register** Notices supporting the 2018 IHA for more detailed descriptions.

Description of the Specified Activities and Anticipated Impacts

Chevron will be unable to complete all of the planned work in the 2019 IHA at the Richmond Refinery Long Wharf

(Long Wharf) before the expiration date of May 31, 2020 and, therefore, they have requested a Renewal IHA to authorize take of marine mammals for the subset of the initially planned work that could not be completed. These planned construction activities would allow Chevron to comply with Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) and to improve safety and efficiency at the Long Wharf. The work would be identical to a subset of the activities analyzed in the 2019 IHA and include both vibratory and impact pile driving for removal and installation of piles. Chevron installed 46 piles and removed 10 piles (of which 8 were temporary and removed shortly after installation) over approximately 18 construction days under the 2019 IHA, leaving 69 piles remaining to be installed and up to109 piles to be removed in the June 1 to November 30, 2020 construction window. Similarly, the mitigation and monitoring would be identical to that included in the 2019 IHA. All documents associated with the 2019 IHA (*i.e.,* the IHA application, Proposed IHA, Final IHA, public comments, monitoring reports, etc.) can be found on NMFS's website, *https://www.fisheries.noaa.gov/action/incidental-take-authorization-chevron-long-wharf-maintenance-and-efficiency-project-san-0.* All documents associated with the 2018 IHA (which are sometimes referenced in the **Federal Register** Notices supporting the 2019 IHA) can be found at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-chevron-long-wharf-maintenance-and-efficiency-project-san.*

Anticipated impacts, which would include both Level A and Level B harassment of marine mammals, would also be identical to those analyzed and authorized in the 2019 IHA (though fewer, since from a subset of activities). Species with the expected potential to be present during all or a portion of the in-water work window include the Gray whale (*Eschrichtius robustus*), Bottlenose dolphin (*Tursiops truncates*), harbor porpoise (*Phocoena phocoena*), California sea lion (*Zalophus californianus*), Northern fur seal (*Callorhinus ursinus*), Pacific harbor seal (*Phoca vitulina richardii*), and Northern elephant seal (*Mirounga angustirostris*). Monitoring results of the 2019 construction activities (Table 1) indicate that observed exposures above Level A and Level B harassment thresholds (see monitoring report) were below the amount authorized in association with the amount of work conducted; thus, the subset of Level A and Level B take remaining from that authorized under the 2019 IHA will be sufficient to cover the 2020 pile installation and removal activities.

TABLE 1—TAKE AUTHORIZED IN 2019 IHA AND TAKE DOCUMENTED BY SPECIES AND STOCK IN THE 2019 CONSTRUCTION WINDOW

Species	Stock	Authorized Level A takes	Authorized Level B takes	Documented 2019 Level A take	Documented 2019 Level B take
Harbor seal	California	513	6,572	0	[a] 94
California sea lion	Eastern U.S		479	0	[b] 1
Harbor porpoise	San Francisco—Russian River	4	509	0	[c] 2
Northern elephant seal	California Breeding		23	0	0
Gray whale	Eastern North Pacific		2	0	0
Northern fur seal	California		10	0	0
Bottlenose Dolphin	California Coastal		30	0	0

[a] Sum of oberserved (48) and extrapolated (46).
[b] No take extrapolated. Only one sea lion was observed sitting on a moving tug outside of construction activity.
[c] Sum of observed (1) and extrapolated (1).

Detailed Description of the Activity

A detailed description of the construction activities for which take is proposed here may be found in the Notices of the Proposed and Final IHAs for the 2019 authorization. The work would be identical to a subset of the activities analyzed in the 2019 IHA and include both vibratory and impact pile driving for removal and installation of piles.

All piles for which take was authorized in the 2019 IHA were expected to be installed/removed during the 2019 in-water work window from June 1 to November 30, 2019. However, due to construction schedule delays, designated work was only conducted on 18 of the estimated 67 days of pile driving activity planned in the 2019 IHA. Table 2 shows the work completed in 2019 and the remaining subset of work to be covered under this Renewal. Identical to the 2019 IHA, pile driving activities would be timed to occur within the standard NMFS work windows for Endangered Species Act (ESA)-listed fish species (June 1 through November 30). The proposed Renewal would be effective for a period of one year from the date of issuance.

TABLE 2— PILE INSTALLATIONS COMPLETED IN 2019 AND REMAINING SUBSET PLANNED FOR THE 2020 CONSTRUCTION WINDOW

Pile type	Pile driver type	Number of piles 2019 IHA	Number of piles completed in 2019	Number of piles requested in 2020 Renewal application	Number installed/ removed per day 2020	Number of driving days 2020
60-inch steel pipe piles	Impact	8	0	8	1	8
36-inch steel template pile (Installation and removal).	Vibratory	8	8	0		0
20-inch steel template pile (Installation and removal).	Vibratory	8	8	0		0

TABLE 2— PILE INSTALLATIONS COMPLETED IN 2019 AND REMAINING SUBSET PLANNED FOR THE 2020 CONSTRUCTION WINDOW—Continued

Pile type	Pile driver type	Number of piles 2019 IHA	Number of piles completed in 2019	Number of piles requested in 2020 Renewal application	Number installed/ removed per day 2020	Number of driving days 2020
22-inch concrete pile removal	Vibratory	5	2	3	5	1
24-inch square concrete	Impact	39	30	9	2	5
12-inch composite piles	Vibratory	52	0	52	5	11
Timber pile removal	Vibratory	106	0	106	12	9
Total		226	*48	178	NA	34

*46 piles were installed and 2 other piles were removed. Eight of the 46 piles were temporary and removed shortly after installation. Thus, a total of 48 piles were utilized in construction activities during 2019, in which 46 pile installations and 10 pile removals were monitored, as required by the initial IHA.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the Notices of the Proposed and Final IHAs for the 2019 authorization. NMFS has reviewed the monitoring data from the 2019 IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the 2019 IHA. The only change from the 2019 IHA is a reduction of the San Francisco—Russian River harbor porpoise and the U.S. California sea lion estimated stocks from 9,886 to 7,524 and 296,750 to 257,606, respectively (Carretta *et al.* 2019). Preliminary determinations conclude that these updates do not change our findings.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is proposed here may be found in the in the **Federal Register** notice of the issuance of the 2018 IHA for Chevron's Long Wharf Maintenance and Efficiency project (83 FR 27548; June 13, 2018) and the **Federal Register** notice of the proposed IHA (83 FR 18802; April 30, 2018). NMFS has reviewed the monitoring data from the 2019 IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

As stated above in the Description of the Specified Activities and Anticipated Impacts section, the purpose of this Renewal IHA is to authorize take of marine mammals for the subset of the initially planned work that could not be completed before the expiration of the 2019 IHA, May 31, 2020. The subset of work completed in 2019 and that left to be completed during the 2020 construction window is listed in Table 2.

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the Notices of the Proposed and Final IHAs for the 2019 authorization. Specifically, the source levels, in-water construction window, and marine mammal density data applicable to this authorization remain unchanged from the previously issued IHA, just the new, lesser, remaining levels of activity have been applied. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA.

TABLE 3—AUTHORIZED TAKE OF STOCKS, RENEWAL IHA 2020

Species	Stock	Authorized Level A take	Authorized Level B take
Harbor seal	California	*513	5,114
California sea lion	Eastern U.S	.....	302
Harbor porpoise	San Francisco—Russian River	*4	321
Northern elephant seal	California Breeding	.....	11
Gray whale	Eastern North Pacific	.....	2
Northern fur seal	California	.....	10
Bottlenose Dolphin	California Coastal	.....	17

*Level A take is associated with impact pile driving of 60-inch steel pipe, which was not conducted in 2019 as planned and is part of the subset of work to be completed in 2020.

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** Notice announcing the issuance of the 2019 IHA, and the discussion of the least practicable adverse impact included in that document remains accurate. The following measures are proposed for this renewal:

Proposed Mitigation

Time Restrictions—For all in-water pile driving activities, Chevron must

operate only during daylight hours (7 a.m. to 7 p.m.).

Attenuation Devices—Chevron must implement the use of bubble curtains during impact driving of 60-inch steel piles and 24-inch square concrete piles and operate it in a manner consistent with the following performance standards: (1) The bubble curtain must distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column. (2) The lowest bubble ring must be in contact with the mudline for the full circumference of the ring, and the weights attached to the bottom ring must ensure 100 percent mudline contact. No parts of the ring or other objects shall prevent full mudline contact. (3) Air flow to the bubblers must be balanced around the circumference of the pile.

Establishment of Shutdown Zone—For all pile driving and extraction activities Chevron must implement and monitor shutdown zones. See Table 4 for minimum radial distances required for shutdown zones.

TABLE 4—RADIAL DISTANCE TO SHUTDOWN ZONES

Project element requiring pile installation	Shutdown zones meters				
	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
Attenuated Impact Driving (with bubble curtain):					
60-inch steel pipe	840	30	50	30	35
24-inch square concrete	20	10	50	15	10
Impact Pile Proofing (no bubble curtain):					
36-inch steel pipe pile	100	10	80	30	10
Vibratory Driving/Extraction:					
12-inch Composite Barrier Pile	20	10	50	15	10
36-inch steel pipe pile	20	10	50	15	10
20-inch steel pipe pile	10	10	50	10	10
Wood and concrete pile extraction	10	10	50	10	10

Establishment of Monitoring Zones for Level A and Level B—Chevron must establish and monitor Level A harassment zones during impact driving for harbor seal extending to 450 meters and for harbor porpoise extending to 990 meters. Chevron must also establish and monitor Level B harassment zones as depicted in Table 5.

TABLE 5—RADIAL DISTANCES TO MONITORING ZONES

Pile type	Distance to threshold 160/120 dB RMS (Level B) in meters
Attenuated Impact Driving (with bubble curtain):	
60-inch steel pipe (1 per day)	740
24-inch square concrete (1-2 per day)	75
Impact Pile Proofing (no bubble curtain):	
36-inch steel pipe pile (2 total)	1,000
Vibratory Driving/Extraction:	
12-Inch Composite Barrier Piles (5 per day)	15,850
36-inch steel pipe pile (4 per day)	21,545
20-inch steel pipe pile (4 per day)	7,360
Wood and concrete pile extraction (12 per day)	1,360

Soft Start—Chevron must use soft start techniques when impact pile driving. Chevron must provide an initial set of strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced energy strike sets. Soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer.

Pre-Activity Monitoring—Pre-activity monitoring must take place from 30 minutes prior to initiation of pile driving activity and post-activity monitoring must continue through 30 minutes post-completion of pile driving activity. Pile driving may commence at the end of the 30-minute pre-activity monitoring period, provided observers have determined that the shutdown zone is clear of marine mammals, which includes delaying start of pile driving activities if a marine mammal is sighted in the zone, as described below.

If a marine mammal approaches or enters the shutdown zone during activities or pre-activity monitoring, all pile driving activities at that location must be halted or delayed, respectively. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not resume or commence until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes.

10-Meter Shutdown Zone—During the in-water operation of heavy machinery (*e.g.,* barge movements), a 10-m shutdown zone for all marine mammals must be implemented. If a marine mammal comes within 10 m, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions.

Non-authorized Take Prohibited—If a species for which authorization has not been granted or a species for which

authorization has been granted but the authorized takes are met, is observed approaching or within the monitoring zone, pile driving and removal activities must shut down immediately using delay and shut-down procedures. Activities must not resume until the animal has been confirmed to have left the area or an observation time period of 15 minutes without re-sighting has elapsed.

Proposed Monitoring Measures

Visual Marine Mammal Observation—the following visual monitoring measures must be implemented:

Baseline biological monitoring must occur within one week before the project's start date.

Monitoring distances, in accordance with the identified shutdown zones, Level A and Level B zones, must be determined by using a range finder, scope, hand-held global positioning system (GPS) device or landmarks with known distances from the monitoring positions.

Monitoring locations must be established at locations offering best views of the monitoring zone. One protected species observer (PSO) must be stationed at the north end of the wharf monitoring the entire observable area with a special focus on the section between Castro Rocks and the wharf.

At least two PSOs must be actively scanning the monitoring zone during all pile driving activities.

Observers must record all incidents of marine mammal occurrence, regardless of distance from activity, and must document any behavioral reactions in concert with distance from piles being driven or removed.

Monitoring must be continuous unless the contractor takes a break longer than 2 hours from active pile and sheet pile driving, in which case monitoring must be required 30 minutes prior to restarting pile installation.

For in-water pile driving, under conditions of fog or poor visibility that might obscure the presence of a marine mammal within the shutdown zone or Level A zone, the pile in progress must be completed and then pile driving suspended until visibility conditions improve.

Monitoring of pile driving must be conducted by qualified PSOs, who must have no other assigned tasks during monitoring periods. Chevron must adhere to the following conditions when selecting observers: (1) Independent PSOs must be used (*i.e.,* not construction personnel); (2) At least one PSO must have prior experience working as a marine mammal observer during construction activities; (3) Other PSOs may substitute education (degree in biological science or related field) or training for experience; and (4) Chevron must submit PSO CVs for approval by NMFS.

Chevron must ensure that observers have the following additional qualifications: (1) Ability to conduct field observations and collect data according to assigned protocols; (2) Experience or training in the field identification of marine mammals, including the identification of behaviors; (3) Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations; (4) Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and (5) Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Hydroacoustic Monitoring—Sound Source Verification (SSV) testing must be conducted as stipulated in the Hydroacoustic Monitoring Plan. Acoustic monitoring must be conducted on the following: (1) Acoustic monitoring for at least two timber piles (vibratory); (2) Acoustic monitoring for at least four 24-inch square concrete piles (impact); (3) Acoustic monitoring for at least two 20-inch steel piles (vibratory); (4) Acoustic monitoring for at least two 36-inch steel piles (vibratory); (5) Acoustic monitoring for at least two 60-inch steel piles (impact); and (6) Acoustic monitoring of two 12-inch composite piles (vibratory).

Testing must be conducted by an acoustical firm with prior experience conducting SSV testing. Final results must be sent to NMFS and may be used to establish shutdown and monitoring isopleths. Any alterations to the shutdown or monitoring zones based on testing data must be approved by NMFS.

Reporting

Marine Mammal Monitoring—A draft marine mammal monitoring report must be submitted to NMFS within 90 days after the completion of pile driving and removal activities or a minimum of 60 days prior to any subsequent IHAs. A final report must be prepared and submitted to NMFS within 30 days following receipt of comments on the draft report from NMFS.

The report must include an overall description of work completed, a narrative regarding marine mammal sightings, and associated marine mammal observation data sheets. Specifically, the report must include: (1) Dates and times (begin and end) of all marine mammal monitoring; (2) Construction activities occurring during each daily observation period, including how many and what type of piles were removed or driven and by what method (*i.e.,* impact, vibratory, drilling); (3) Weather parameters and water conditions during each monitoring period (*e.g.,* wind speed, percent cover, visibility, sea state); (4) The number of marine mammals observed, by species, relative to the pile location and if pile removal or installation was occurring at time of sighting; (5) Age and sex class, if possible, of all marine mammals observed; (6) PSO locations during marine mammal monitoring; (7) Distances and bearings of each marine mammal observed to the pile being removed or driven for each sighting (if pile removal or installation was occurring at time of sighting); (8) Description of any marine mammal behavior patterns during observation, including direction of travel; (9) Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone, and estimates of number of marine mammals taken, by species; (10) Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any; (11) Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals; and (12) Level B harassment exposures recorded by PSOs must be extrapolated based upon the number of observed takes and the percentage of the Level B harassment zone that was not visible.

Injury, Serious Injury, or Mortality—In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as an injury, serious injury or mortality, Chevron would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS (301–427–8701), and the West Coast Regional Stranding Coordinator (562–980–3230). The report must include the following: (1) Description of the incident; (2)

Environmental conditions (*e.g.,* Beaufort sea state, visibility); (3) Description of all marine mammal observations in the 24 hours preceding the incident; (4) Species identification or description of the animal(s) involved; (5) Fate of the animal(s); and (6) Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with Chevron to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Chevron would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that Chevron discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition as described in the next paragraph), Chevron would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator. The report would include the same information identified in section above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with Chevron to determine whether modifications in the activities are appropriate.

In the event that Chevron discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Chevron would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator within 24 hours of the discovery. Chevron would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Public Comments

As noted previously, NMFS published a notice of a proposed IHA (84 FR 17788; April 26, 2019) and solicited public comments on both our proposal to issue the 2019 IHA for pile driving and extraction activities and on the potential for a Renewal IHA, should certain requirements be met.

All public comments were addressed in the notice announcing the issuance of the 2019 IHA (84 FR 28474; June 19, 2019). Below, we describe how we have addressed, with updated information where appropriate, any comments received that specifically pertain to the Renewal of the 2019 IHA.

Comment: The Commission recommended that NMFS refrain from implementing its proposed renewal process for Chevron's subsequent authorizations. The Commission believes that the renewal process should be used sparingly and selectively, by limiting its use only to those proposed IHAs that are expected to have the lowest levels of impacts to marine mammals and that require the least complex analyses. Also, the Commission recommended that NMFS provide the Commission and other reviewers the full 30-day comment opportunity set forth in section 101(a)(5)(D)(iii) of the MMPA.

Response: The Commission has submitted this comment multiple times, and NMFS has responded multiple times, including, for example, more recently in the notice of issuance of an IHA to Avangrid Renewables (84 FR 31032, June 28, 2019), and we refer the Commission to those responses. We also include NMFS' original response to the comment received on the 2019 Chevron proposed IHA here:

Regarding the Commission's comment that Renewal IHAs should be limited to certain types of projects NMFS has explained on its website and in individual **Federal Register** notices that Renewal IHAs are appropriate where the continuing activities are identical, nearly identical, or a subset of the activities for which the initial 30-day comment period applied. If Chevron seeks to obtain a Renewal IHA in the future, NMFS will determine at that time whether the request meets the necessary conditions under which a Renewal IHA could be considered.

NMFS has taken a number of steps to ensure the public has adequate notice, time, and information to be able to comment effectively on Renewal IHAs within the limitations of processing IHA applications efficiently. **Federal Register** notices for the proposed initial IHAs identified the conditions under which a one-year Renewal IHA might be appropriate. This information is presented in the *Request for Public Comments* section and thus encourages submission of comments on the potential of a one-year renewal as well as the initial IHA during the 30-day comment period. In addition, when we receive an application for a Renewal IHA, we will publish notice of the proposed IHA Renewal in the **Federal Register** and provide an additional 15 days for public comment, making a total of 45 days of public comment. We also directly contact all commenters on the initial IHA by email, phone, or, if the commenter did not provide email or phone information, by postal service to provide them the opportunity to submit any additional comments on the proposed Renewal IHA. Where the commenter has already had the opportunity to review and comment on the potential for a Renewal in the initial proposed IHA for these activities, the abbreviated additional comment period is sufficient for consideration of the results of the preliminary monitoring report and new information (if any) from the past year.

Preliminary Determinations

The proposed action of this Renewal IHA, both vibratory and impact pile driving for removal and installation of piles, would be identical to a subset of the activities analyzed in the 2019 IHA, as listed in Table 2. Based on the analysis detailed in the Notice of the Final IHA for 2019 authorization, of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS found that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the 2019 IHA. This includes consideration of the estimated abundance of harbor porpoise and California sea lion stock decreasing slightly. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will affect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Chevron's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a Renewal IHA to Chevron for conducting vibratory and impact pile driving for removal and installation of piles at the Long Wharf in San Francisco Bay, California during the in-water construction window of June 1 through November 30, 2020, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final 2019 IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* We request comment on our analyses, the proposed Renewal IHA, and any other aspect of this Notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: April 30, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–09630 Filed 5–5–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Clean Cities Vehicle Programs Information Collection, OMB Control Number 1910–5171.

DATES: Comments regarding this proposed information collection must be received on or before June 5, 2020. If you anticipate difficulty in submitting comments within that period, contact the person(s) listed below as soon as possible.

ADDRESSES: Written comments should be sent to the following: DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW, Washington, DC 20503.

And to: Mr. Dennis Smith, Office of Energy Efficiency and Renewable Energy (EE–3V), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0121, or by fax at 202–586–1600, or by email at *Dennis.Smith@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Smith at *Dennis.Smith@ee.doe.gov* or via 202–586–1791. Please put ''2020 DOE Agency Information Collection Renewal-Clean Cities Vehicle Programs'' in the subject line when sending an email.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of DOE, including whether the information shall have practical utility; (b) the accuracy of DOE's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

The Department of Energy is proposing to extend an information collection pursuant to the Paperwork Reduction Act of 1995. The approved collection is being used for three Clean Cities programmatic efforts. The first initiative is the collection of information for a voluntary plug-in electric vehicle (PEV) questionnaire that assists communities and DOE Clean Cities coalitions in assessing the level of readiness of their communities for PEVs. The second effort is intended to develop information that enables DOE to review the progress of DOE's National Clean Fleets Partnership (Partnership). The third effort is referred to as ''Ride and Drive Surveys''. DOE is not proposing to expand the scope of these information collection efforts.

This information collection request contains: (1) *OMB No.:* 1910–5171; (2) *Information Collection Request Title:* Clean Cities Vehicle Programs; (3) *Type of Review:* Renewal; (4) *Purpose:* DOE's Clean Cities initiative has developed three voluntary mechanisms by which communities, certain fleets, and the purchasing public can get a better understanding of their readiness for plug-in electric vehicles (PEVs), and to help DOE's Clean Cities coalitions prepare for the adoption of these vehicles review their progress in doing so. The voluntary PEV Scorecard is intended to assist communities and the coalitions in assessing the level of readiness of their communities for PEVs. The principal objectives of the questionnaire are to provide respondents with an objective assessment and estimate of their respective community's readiness for PEVs as well as understand the respective community's goals related to integrating these vehicles, and allow communities to assess the magnitude of gaps in their readiness to achieve their goals. DOE intends the questionnaire to be completed by a city/county/regional sustainability or energy coordinator. As the intended respondent may not be aware of every aspect of local or regional PEV readiness, coordination among local stakeholders to gather appropriate information may be necessary.

DOE expects a total respondent population of approximately 1,250 respondents. Selecting the multiple-choice answers in completing a questionnaire is expected to take under 30 minutes, although additional time of no more than 20 hours may be needed to assemble information necessary to be able to answer the questions, leading to a total burden of approximately 25,625 hours. Assembling information to update questionnaire answers in the future on a voluntary basis would be expected to take less time, on the order of 10 hours, as much of any necessary time and effort needed to research information would have been completed previously.

For the Clean Fleets Partnership information collection, the Partnership is targeted at large, private-sector fleets that own or have contractual control over at least 50 percent of their vehicles and have vehicles operating in multiple States. DOE expects approximately 50 fleets to participate in the Partnership and, as a result, DOE expects a total respondent population of approximately 50 respondents. Providing initial baseline information for each participating fleet, which occurs only once, is expected to take 60 minutes. Follow-up questions and clarifications for the purpose of ensuring accurate analyses are expected to take up to 90 minutes. The total burden is expected to be 125 hours.

For the DOE Clean Cities initiative that involves the ride-and-drive surveys, DOE has developed a three-part voluntary survey to assist its coalitions and stakeholders in assessing the level of interest, understanding, and acceptance of PEVs and alternative fuel vehicles (AFV) by the purchasing public. DOE intends the surveys to be completed by individuals who are participating in one of many ride-and-drive events. There are three phases to the Survey: (1) Pre Ride-and-Drive; (2) post Ride-and-Drive; and (3) a few months/some time later to discern if the respondent followed through with acquisition of a PEV or another AFV. Respondents provide answers in the first two phases through a user-friendly paper survey and on-line survey, and in the third phase they answer questions via an electronic interface, although a paper survey may be used for those lacking access to an electronic device or computer.

The Surveys' effort relies on responses to questions the respondent chooses to answer. The multiple-choice questions address the following topic areas: (1) Demographics; (2) Current vehicle background; (3) How they learned about ride and drive event; (3) Perceptions of PEVs before and after driving; (4) Post-drive vehicle experience; (5) Purchase expectations; (6) Follow-up survey regarding subsequent behaviors; (7) Purchase information; (8) Barriers; and (9) Future intentions. The survey is expected to take 30 minutes, leading to a total burden of approximately 28,250 hours (an increase 2,500 hours above the total burden in hours for the two currently approved collections).

(5) *Type of Respondents:* Public; (6) *Annual Estimated Number of Respondents for all three information collections:* 16,300; (7) *Annual Estimated Number of Total Responses:* 16,300; (7) *Annual Estimated Number of Burden Hours:* 28,250 (25,625 for PEV Scorecard, 125 for Clean Fleets Partnership, and 2,500 for the Ride and Drive Surveys); and (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* There is no cost associated with reporting and recordkeeping.

Statutory Authority: 42 U.S.C. 13233; 42 U.S.C. 13252 (a)–(b); 42 U.S.C. 13255.

Signing Authority

This document of the Department of Energy was signed on April 30, 2020, by David Howell, Program Director, Vehicle Technologies, Office Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 1, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–09696 Filed 5–5–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC20–103–000]

Locke Lord LLP; Notice of Filing

Take notice that on April 28, 2020, Locke Lord LLP submitted a request for confirmation from the Federal Energy Regulatory Commission (Commission) that the cost of specific electric wind and solar generating equipment is properly booked to Uniform System of Accounts Nos. 343, 344 and 345, which pertain to Production Plant.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 28, 2020.

Dated: April 30, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–09657 Filed 5–5–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–1607–001.

Applicants: PacifiCorp.

Description: Tariff Amendment: Colstrip Trans System LGIA—Concurrence Broadview Solar—Errata Filing to be effective 4/9/2020.

Filed Date: 4/30/20.

Accession Number: 20200430–5287.

Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1710–000.

Applicants: Rochelle Municipal Utilities, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: City of Rochelle submits Revisions to CTOA to be Removed as a TO to be effective 5/28/2020.

Filed Date: 4/30/20.

Accession Number: 20200430–5222.

Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1711–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 5466; Queue No. AC2–176 to be effective 8/13/2019.

Filed Date: 4/30/20.
Accession Number: 20200430–5219.
Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1712–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3668 MRES/Western Minnesota/Fort Pierre/West Central Int Agr to be effective 7/1/2020.
Filed Date: 4/30/20.
Accession Number: 20200430–5223.
Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1713–000.
Applicants: Evergy Kansas Central, Inc.
Description: Compliance filing: Order No. 864 Compliance to be effective 1/27/2020.
Filed Date: 4/30/20.
Accession Number: 20200430–5278.
Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1714–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: DEC Wholesale Contract Rev. Rate Schedule Nos. 328, 329, 330, 332, 336, 337, 338 to be effective 1/1/2020.
Filed Date: 4/30/20.
Accession Number: 20200430–5273.
Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1715–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: DEC—Revision to Rate Schedule No. 326 to be effective 6/1/2020.
Filed Date: 4/30/20.
Accession Number: 20200430–5289.
Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1716–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: DEC—Revisions to Rate Schedule 273 to be effective 6/1/2020.
Filed Date: 4/30/20.
Accession Number: 20200430–5279.
Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1717–000.
Applicants: Duke Energy Progress, LLC.
Description: § 205(d) Rate Filing: DEP—Wholesale Contract Revisions to Rate Schedule No. 182 to be effective 6/1/2020.
Filed Date: 4/30/20.
Accession Number: 20200430–5297.
Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1718–000.
Applicants: New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 205 filing of tariff revisions re: Part A enhancements under BSM to be effective 6/30/2020.
Filed Date: 4/30/20.
Accession Number: 20200430–5302.
Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1719–000.
Applicants: PPL Electric Utilities Corporation, PJM Interconnection, L.L.C.
Description: Compliance filing: PPL submits revisions to PJM Tariff re: Order 864 to be effective 1/27/2020.
Filed Date: 4/30/20.
Accession Number: 20200430–5307.
Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1720–000.
Applicants: Southern California Edison Company.
Description: Compliance filing: SCE Revised TO Tariff Formula Rate—Order No. 864 to be effective 1/27/2020.
Filed Date: 4/30/20.
Accession Number: 20200430–5309.
Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1721–000.
Applicants: Energy Harbor LLC.
Description: § 205(d) Rate Filing: Amendment to Reactive Service Rate Schedule FERC No. 1 to be effective 5/31/2020.
Filed Date: 4/30/20.
Accession Number: 20200430–5311.
Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1722–000.
Applicants: Spring Valley Wind LLC.
Description: § 205(d) Rate Filing: Notice of Change in MBR Status to be effective 5/1/2020.
Filed Date: 4/30/20.
Accession Number: 20200430–5315.
Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1723–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2020–04–30_Revisions to the TOA to Clarify Cost Allocation Methodology to be effective 7/29/2020.
Filed Date: 4/30/20.
Accession Number: 20200430–5325.
Comments Due: 5 p.m. ET 5/21/20.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES20–28–000; ES20–29–000; ES20–30–000; ES20–31–000; ES20–32–000.
Applicants: AEP Generating Company, AEP Texas Inc., Kingsport Power Company, Inc., Southwestern Electric Power Company, Wheeling Power Company.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of AEP Generating Company, et al.
Filed Date: 4/30/20.
Accession Number: 20200430–5254.
Comments Due: 5 p.m. ET 5/21/20.

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: April 30, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–09651 Filed 5–5–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP20–822–000]

Rockies Express Pipeline LLC; Notice of Petition for Declaratory Order

Take notice that on April 29, 2020, pursuant to Rule 207(a)(2) [1] of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, Rockies Express Pipeline LLC filed a petition for declaratory order (Petition) finding that the Commission has concurrent jurisdiction with U.S. Bankruptcy Courts under Sections 4 and 5 of the Natural Gas Act [2] and Part 154 of the Commission's regulations,[3] regarding Rockies Express 'negotiated rate firm transportation service agreement with Ultra Resources, Inc., all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to

[1] 18 CFR 385.207 (2019). As required by Rule 381.302(a), 18 CFR 381.302(a) (2019).

[2] 15 U.S.C. 717c and 717d (2012).

[3] 18 CFR part 154.

become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on May 29, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–09656 Filed 5–5–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC20–59–000.

Applicants: PurEnergy II, LLC, Orion Acquisitions, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of PurEnergy II, LLC, et al.

Filed Date: 4/29/20.

Accession Number: 20200429–5396.

Comments Due: 5 p.m. ET 5/20/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–221–003.

Applicants: San Diego Gas & Electric Company.

Description: Compliance filing: TO5 Compliance Filing to be effective 6/1/2019.

Filed Date: 4/29/20.

Accession Number: 20200429–5307.

Comments Due: 5 p.m. ET 5/20/20.

Docket Numbers: ER19–1939–001.

Applicants: Arizona Public Service Company.

Description: Compliance filing: FERC Order 845 Compliance Filing to be effective 5/22/2019.

Filed Date: 4/30/20.

Accession Number: 20200430–5161.

Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1046–001.

Applicants: GridLiance High Plains LLC.

Description: Compliance filing: GridLiance High Plains LLC Annual Transmission Revenue Requirement Filing to be effective N/A.

Filed Date: 4/29/20.

Accession Number: 20200429–5303.

Comments Due: 5 p.m. ET 5/20/20.

Docket Numbers: ER20–1047–001.

Applicants: GridLiance High Plains LLC.

Description: Compliance filing: GHP Revised Wholesale Distribution Formula Rate Template to be effective 7/1/2020.

Filed Date: 4/29/20.

Accession Number: 20200429–5314.

Comments Due: 5 p.m. ET 5/20/20.

Docket Numbers: ER20–1048–001.

Applicants: GridLiance High Plains LLC.

Description: Compliance filing: GHP Revisions to OATT Formula Rate Template to be effective 7/1/2020.

Filed Date: 4/29/20.

Accession Number: 20200429–5306.

Comments Due: 5 p.m. ET 5/20/20.

Docket Numbers: ER20–1574–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2020–04–30_SA 3473 Ameren IL—Hickory Point Solar Energy Center Sub GIA (J815) to be effective 4/2/2020.

Filed Date: 4/30/20.

Accession Number: 20200430–5162.

Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1693–000.

Applicants: Assembly Solar, LLC.

Description: Baseline eTariff Filing: baseline new to be effective 6/28/2020.

Filed Date: 4/30/20.

Accession Number: 20200430–5000.

Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1694–000.

Applicants: New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: May 2020 Membership Filing to be effective 4/1/2020.

Filed Date: 4/30/20.

Accession Number: 20200430–5079.

Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1695–000.

Applicants: Public Service Company of Colorado.

Description: Notice of Cancellation of Network Operating Agreement of Public Service Company of Colorado.

Filed Date: 4/29/20.

Accession Number: 20200429–5442.

Comments Due: 5 p.m. ET 5/20/20.

Docket Numbers: ER20–1696–000.

Applicants: New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 205: ESR Participation Model Enhancements to be effective 12/31/9998.

Filed Date: 4/30/20.

Accession Number: 20200430–5102.

Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1697–000.

Applicants: Midcontinent Independent System Operator, Inc., AEP Indiana Michigan Transmission Company.

Description: Compliance filing: 2020–04–30_AEP Compliance on Order 864 for ADIT to be effective 1/27/2020.

Filed Date: 4/30/20.

Accession Number: 20200430–5131.

Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1698–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 5619; Queue No. AC1–221/AD1–058 to be effective 4/2/2020.

Filed Date: 4/30/20.

Accession Number: 20200430–5132.

Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1699–000.

Applicants: Johanna Energy Center, LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 5/1/2020.

Filed Date: 4/30/20.

Accession Number: 20200430–5137.

Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1700–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 4512; Queue No. AB1–128 re: Assignment to be effective 7/18/2016.

Filed Date: 4/30/20.

Accession Number: 20200430–5138.

Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1701–000.

Applicants: California Power Exchange Corporation.

Description: § 205(d) Rate Filing: Rate Filing for Rate Period 37 to be effective 7/1/2020.

Filed Date: 4/30/20.

Accession Number: 20200430–5141.

Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1702–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2020–04–30 Split Participation Agreement with Calpine re Sutter Energy Center to be effective 7/1/2020.

Filed Date: 4/30/20.

Accession Number: 20200430–5165.

Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1703–000.

Applicants: Capital Energy PA LLC.

Description: Baseline eTariff Filing: FERC MBR Tariff to be effective 5/15/2020.

Filed Date: 4/30/20.

Accession Number: 20200430–5174.

Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1704–000.

Applicants: Duke Energy Progress, LLC.

Description: § 205(d) Rate Filing: DEP Wholesale Contract Revisions to RS No. 134 to be effective 6/1/2020.

Filed Date: 4/30/20.

Accession Number: 20200430–5177.

Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1705–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: Q1 2020 Quarterly Filing of City and County of San Francisco's WDT SA (SA 275) to be effective 3/31/2020.

Filed Date: 4/30/20.

Accession Number: 20200430–5181.

Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1706–000.

Applicants: Duke Energy Progress, LLC.

Description: § 205(d) Rate Filing: DEP Wholesale Contract Revisions to RS Nos. 184 and 200 to be effective 6/1/2020.

Filed Date: 4/30/20.

Accession Number: 20200430–5188.

Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1707–000.

Applicants: Rochelle Municipal Utilities, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: City of Rochelle submits Revisions to PJM Tariff to be Removed as a TO to be effective 5/28/2020.

Filed Date: 4/30/20.

Accession Number: 20200430–5190.

Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1708–000.

Applicants: California State University Channel Island Site Authority.

Description: Baseline eTariff Filing: Reliablity Must-Run Agreement with CAISO to be effective 5/1/2020.

Filed Date: 4/30/20.

Accession Number: 20200430–5194.

Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1709–000.

Applicants: Duke Energy Florida, LLC.

Description: § 205(d) Rate Filing: DEF 2020 Annual Filing of Cost Factor Updates to be effective 5/1/2020.

Filed Date: 4/30/20.

Accession Number: 20200430–5202.

Comments Due: 5 p.m. ET 5/21/20.

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: April 30, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–09647 Filed 5–5–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2309–031]

PSEG Fossil, LLC, Jersey Central Power & Light Company, Yards Creek Energy, LLC; Notice of Application for Partial Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On March 30, 2020, PSEG Fossil, LLC (PSEG or transferor) and Jersey Central Power & Light Company (JCPL) current co-licensees, and Yards Creek Energy, LLC (YCE or transferee) filed a joint application for a partial transfer of the license for the Yards Creek Pumped Storage Hydroelectric Project No. 2309. The project is located on Yards Creek in Warren County, New Jersey.

The applicants seek Commission approval for a partial transfer of the license for the project to remove PSEG as a co-licensee and to add YCE as co-licensee.

Applicants Contact: For transferor: Cara J. Lewis, Managing Counsel—Federal Regulatory, PSEG Services Corporation, 80 Park Plaza—T5G, Newark, New Jersey 07102, (973) 430–8836, *cara.lewis@pseg.com.*

For Co-Licensee: Anne M. Rericha, FirstEnergy Service Company, 76 S Maine Street, Akron, Ohio 44308, (330) 374–6550, *arericha@firstenergycorp.com.*

For Transferee: Kimberly Ognisty, Winston & Strawn LLC, 1901 L Street NW, Washington, DC 20036, (202) 282–5217, *kognisty@winston.com.*

FERC Contact: Anumzziatta Purchiaroni, (202) 502–6191, *Anumzziatta.purchiaroni@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2309–031.

Dated: April 30, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–09655 Filed 5–5–20; 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 Numbers: RP20–812–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Prepayments to be effective 6/1/2020.
Filed Date: 4/29/20.
Accession Number: 20200429–5029.
Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: RP20–813–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Recontracting to be effective 6/1/2020.
Filed Date: 4/29/20.
Accession Number: 20200429–5030.
Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: RP20–814–000.
Applicants: Bison Pipeline LLC.
Description: Compliance filing 2020 Operational Purchases and Sales Report.
Filed Date: 4/29/20.
Accession Number: 20200429–5045.
Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: RP20–815–000.
Applicants: Cheyenne Plains Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: EPC and FLU Computation Update to be effective 6/1/2020.
Filed Date: 4/29/20.
Accession Number: 20200429–5254.
Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: RP20–816–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—Bay State to UGI Energy 802106 to be effective 5/1/2020.
Filed Date: 4/29/20.
Accession Number: 20200429–5113.
Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: RP20–817–000.
Applicants: Ruby Pipeline, L.L.C.
Description: § 4(d) Rate Filing: Electric Power Charge and FLU Update to be effective 6/1/2020.
Filed Date: 4/29/20.
Accession Number: 20200429–5120.
Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: RP20–818–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: § 4(d) Rate Filing: FLU Recomputation Update to be effective 6/1/2020.
Filed Date: 4/29/20.
Accession Number: 20200429–5216.
Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: RP20–819–000.
Applicants: Panhandle Eastern Pipe Line Company, LP.
Description: § 4(d) Rate Filing: Capacity Release Provision to be effective 5/30/2020.
Filed Date: 4/29/20.
Accession Number: 20200429–5272.
Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: RP20–820–000.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: § 4(d) Rate Filing: Vol. 2—Negotiated Rate Agreements—Scout and Conexus to be effective 5/1/2020.
Filed Date: 4/29/20.
Accession Number: 20200429–5274.
Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: RP20–821–000.
Applicants: Enable Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Filing—May 1 2020 SWEPCO 1006888 to be effective 5/1/2020.
Filed Date: 4/29/20.
Accession Number: 20200429–5344.
Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: RP20–828–000.
Applicants: Cameron Interstate Pipeline, LLC.
Description: Annual Report of Penalty Revenues of Cameron Interstate Pipeline, LLC under RP20–828.
Filed Date: 4/29/20.
Accession Number: 20200429–5438.
Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: RP20–829–000.
Applicants: Cameron Interstate Pipeline, LLC.
Description: Annual Report of Operational Imbalances and Cash-out Activity of Cameron Interstate Pipeline, LLC under RP20–829.
Filed Date: 4/29/20.
Accession Number: 20200429–5440.
Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: RP20–830–000.
Applicants: Cameron Interstate Pipeline, LLC.
Description: Annual Report of Transportation Imbalances and Cash-out Activity of Cameron Interstate Pipeline, LLC under RP20–830.
Filed Date: 4/29/20.
Accession Number: 20200429–5441.
Comments Due: 5 p.m. ET 5/11/20.

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: April 30, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–09648 Filed 5–5–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1699–000]

Johanna Energy Center, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Johanna Energy Center, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 20, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling

link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: April 30, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–09649 Filed 5–5–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1616–000]

Western Spirit Transmission LLC; Supplemental Notice That Facilities Use Agreement Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Western Spirit Transmission LLC's filing of a facilities use agreement includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 18, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: April 30, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–09650 Filed 5–5–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10008–74–Region 10]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for the U.S. Department of Energy—Hanford Operations, Benton County, Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final Order on Petition for objection to Clean Air Act title V operating permit.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an Order, dated February 19, 2020, denying a petition dated July 18, 2019, filed by Mr. Bill Green of Richland, Washington. The Petition requested that the EPA object to a Clean Air Act (CAA) title V operating permit (Permit No. 00–05–006, Renewal 3) issued by the Washington State Department of Ecology (Ecology) to the U.S. Department of Energy—Hanford Operations (DOE) for the Hanford site located in Benton County, Washington.

ADDRESSES: The Petition (without attachments) and final Order are available electronically at: *https://www.epa.gov/title-v-operating-permits/title-v-petition-database.*

Out of an abundance of caution for members of the public and our staff, the EPA Region 10 office is closed to the public to reduce the risk of transmitting COVID–19. Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view copies of the Petition, Order, and other supporting information.

FOR FURTHER INFORMATION CONTACT: Doug Hardesty at telephone number: (208) 378–5759, *Hardesty.doug@epa.gov.*

SUPPLEMENTARY INFORMATION: The CAA affords the EPA a 45-day period to review and object to a title V operating permit proposed by a state permitting authority under title V of the CAA if the EPA determines the permit does not comply with the Act. Section 505(b)(2) of the CAA authorizes any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of the EPA's 45-day review period if the EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues

during the comment period or unless the grounds for the issue arose after this period.

The EPA received the Petition from Mr. Bill Green of Richland, Washington, dated July 18, 2019, requesting that the EPA object to the issuance of title V operating permit no. 00–05–006, Renewal 3, issued by Ecology to DOE for the Hanford site in Benton County, Washington.

The Petition claims that: (1) Ecology exceeded its authority in imposing a monitoring method that had not been approved by the EPA for determining compliance with emission limits for federally-enforceable requirements and that the monitoring method was flawed; (2) the permit failed to include all emission limitations as required by CAA section 504(a), 42 U.S.C. 7661c(a), and 40 CFR 70.6(a)(1) because the permit incorporated some federally-enforceable emission limits by reference and ''does not actually include emission limits;'' (3) the permit did not include the requirements for the control of fugitive dust from a 2003 administrative order of correction issued by the Benton Clean Air Agency; and (4) Ecology did not comply with the public participation requirements of 40 CFR 70.7(h)(2) with respect to several permit terms.

On February 19, 2020, the EPA Administrator issued an Order denying the Petition. The Order explains the basis for the EPA's decision.

Sections 307(b) and 505(b)(2) of the CAA provide that the Order is subject to judicial review for those portions of the Order that deny issues raised in a petition. Any petition for review shall be filed in the United States Court of Appeals for the appropriate circuit no later than July 6, 2020.

Dated: April 30, 2020.

Christopher Hladick,

Regional Administrator, Region 10.

[FR Doc. 2020–09619 Filed 5–5–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1089; FRS 16715]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before July 6, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1089.

Title: Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket Nos. 10–51 & 03–123.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents and Responses: 202,021 respondents; 1,846,406 responses.

Estimated Time per Response: .05 hours (3 minutes) to 300 hours.

Frequency of Response: Annual, monthly, on occasion, on-going, one-time, and quarterly reporting requirements; Recordkeeping requirement; and Third-Party Disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the collection is contained in section 225 of the Communications Act, 47 U.S.C. 225. The law was enacted on July 26, 1990, as Title IV of the Americans with Disabilities Act of 1990 (ADA), Public Law 101–336, 104 Stat. 327, 366–69, and amended by the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 103(a), 124 Stat. 2751, 2755 (2010) (CVAA); Public Law 111–265 (technical amendments to CVAA).

Total Annual Burden: 329,582 hours.

Annual Cost Burden: $261,000.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's updated system of records notice (SORN), FCC/CGB–4, ''Internet-based Telecommunications Relay Service-User Registration Database (ITRS–URD).'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–4 ''Internet-based Telecommunications Relay Service-User Registration Database (ITRS–URD),'' in the **Federal Register** on February 9, 2015 (80 FR 6963) which became effective on March 23, 2015.

Privacy Act Impact Assessment: This information collection affects individuals or households. As required by the Office of Management and Budget Memorandum M–03–22 (September 26, 2003), the FCC is in the process of completing the Privacy Impact Assessment.

Needs and Uses: The telecommunications relay service (TRS) program enables access to the nation's telephone network by persons with hearing and speech disabilities. In 1991, as required by the Americans with Disabilities Act and codified at 47 U.S.C. 225, the Commission adopted rules governing the telecommunications relay services (TRS) program and procedures for each state TRS program to apply for initial Commission certification and renewal of Commission certification of each state program. *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990,* Report and Order and Request for Comments,

document FCC 91–213, published at 56 FR 36729, August 1, 1991 (*1991 TRS Implementation Order*).

Between 2008 and 2011, to integrate internet-based TRS into the North American Numbering plan and facilitate interoperability, universal calling, and 911 emergency services, the Commission adopted rules in three separate orders related to the telephone numbering system and enhanced 911 (E911) services for users of two forms of internet-based TRS: Video Relay Service (VRS) and internet Protocol Relay service (IP Relay). *See* document FCC 08–151, *Report and Order and Further Notice of Proposed Rulemaking,* published at 73 FR 41286, July 18, 2008 (*First Numbering Order*); document FCC 08–275, *Second Report and Order and Order on Reconsideration,* published at 73 FR 79683, December 30, 2008 (*Second Numbering Order*); and document FCC 11–123, *Report and Order,* published at 76 FR 59551, September 27, 2011 (*iTRS Toll Free Order*).

The rules adopted in these three orders have information collection requirements that include requiring VRS and IP Relay providers to: Register each user who selects the provider as his or her default provider, including obtaining a self-certification from each user; verify the accuracy of each user's; provision and maintain their registered users' routing information to the TRS Numbering Directory; place their users' Registered Location and certain callback information in Automatic Location Information (ALI) databases across the country and provide a means for their users to update their Registered Locations; include advisories on their websites and in any promotional materials addressing numbering and E911 services for VRS or IP Relay; verify in the TRS Numbering Directory whether each dial-around user is registered with another provider; and if they provide equipment to a consumer, make available to other VRS providers enough information about that equipment to enable another VRS provider selected as the consumer's default provider to perform all of the functions of a default provider.

On July 28, 2011, the Commission released *Structure and Practices of the Video Relay Service Program,* document FCC 11–118, published at 76 FR 47469, August 5, 2011, and at 76 FR 47476, August 5, 2011 (*VRS Certification Order*), adopting final and interim rules—designed to help prevent waste, fraud, and abuse, and ensure quality service, in the provision of internet-based forms of Telecommunications Relay Services (iTRS). On October 17, 2011, the Commission released *Structure and Practices of the Video Relay Service Program,* Memorandum Opinion and Order, Order, and Further Notice of Proposed Rulemaking, document FCC 11–155, published at 76 FR 67070, October 31, 2011 (*VRS Certification Reconsideration Order*), modifying two aspects of information collection requirements contained in the *VRS Certification Order.* On June 10, 2013, the Commission made permanent the interim rule adopted in the *VRS Certification Order. Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Report and Order and Further Notice of Proposed Rulemaking, document FCC 13–82, published at 78 FR 40582, July 5, 2013 (*2013 VRS Reform Order*).

The *VRS Certification Order* as modified by the *VRS Certification Reconsideration* and, as applicable, made permanent by the (*2013 VRS Reform Order*), amended the Commission's process for certifying internet-based TRS (iTRS) providers as eligible for payment from the Interstate TRS Fund (Fund) for their provision of iTRS to ensure that iTRS providers receiving certification are qualified to provide iTRS in compliance with the Commission's rules and to eliminate waste, fraud and abuse through improved oversight of such providers. They contain information collection requirements including: Submission of detailed information in an application for certification that shows the applicant's ability to comply with the Commission's rules; submission of annual reports that include updates to the provider's information on file with the Commission or a certification that there are no changes to the information; requirements for a senior executive of an applicant for iTRS certification or an iTRS provider, when submitting an annual compliance report, to certify under penalty of perjury that all information required under the Commission's rules and orders has been provided and all statements of fact, as well as all documentation contained in the submission, are true, accurate, and complete; requirements for VRS providers to obtain prior authorization from the Commission for planned interruptions of service, to report to the Commission unforeseen interruptions of service, and to provide notification of temporary service outages, including updates, to consumers on their websites; and requirements for iTRS providers that will no longer be providing service to give their customers at least 30-days notice.

In the *2013 VRS Reform Order,* the Commission also adopted further measures to improve the structure, efficiency, and quality of the video relay service (VRS) program, reducing the noted inefficiencies in the program, as well as reducing the risk of waste, fraud, and abuse, and ensuring that the program makes full use of advances in commercially-available technology. The Commission required reporting of unauthorized and unnecessary us of VRS; established a central telecommunications relay services (TRS) user registration database (TRS–URD) for VRS, which incorporates a centralized eligibility verification requirement to ensure accurate registration and verification of users, as well as per-call validation, to achieve more effective prevention of waste, fraud, and abuse; established procedures to prevent unauthorized changes of a user's default TRS provider; and established procedures to protect TRS users' customer proprietary network information (CPNI) from disclosure.

On March 23, 2017, the Commission released *Structure and Practices of the Video Relay Services Program et al.,* FCC 17–26, published at 82 FR 17754, April 13, 2017 (*2017 VRS Improvements Order*), which among other things, allows VRS providers to assign TRS Numbering Directory 10-digit telephone numbers to hearing individuals for the limited purpose of making point-to-pint video calls, and gives VRS providers the option to participate in an at-home call handling pilot program, subject to certain limitations, as well as recordkeeping and reporting requirements.

On May 15, 2019, the Commission released *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* FCC 19–39, published at 84 FR 26364, June 6, 2019 (*2019 VRS Program Management Order*). The Commission further improved the structure, efficiency, and quality of the VRS program, reduced the risk of waste, fraud, and abuse, and ensured that the program makes full use of advances in commercially-available technology. These improvements include information collection requirements, including: The establishment of procedures to register enterprise and public videophones to the TRS–URD; and permitting Qualified Direct Video Calling (DVC) Entities to access the TRS Numbering Directory and establishing

an application procedure to authorize such access, including rules governing DVC entities and entry of information in the TRS Numbering Directory and the TRS–URD.

On August 2, 2019, the Commission released *Implementing Kari's Law and Section 506 of RAY BAUM's Act; Inquiry Concerning 911 Access, Routing, and Location in Enterprise Communications Systems; Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission's Rules,* FCC 19–76, published at 84 FR 66716, December 5, 2019 (*MLTS 911 and Dispatchable Location Order*). The Commission amended its rules to ensure that the dispatchable location is conveyed to a Public Safety Answering Point (PSAP) with a 911 call, regardless of the technological platform used. Based on the directive in section 506 of RAY BAUM'S Act, the Commission adopted dispatchable location requirements that in effect modified the existing information collection requirements applicable to VRS, IP Relay and covered IP CTS by improving the options for providing accurate location information to PSAPs as part of 911 calls.

Fixed internet-based TRS devices must provide automated dispatchable location. For non-fixed devices, when dispatchable location is not technically feasible, internet-based TRS providers may fall back to Registered Location or provide alternative location information. As a last resort, internet-based providers may route calls to Emergency Relay Calling Centers. after making a good faith effort to obtain location data from all available alternative location sources. Dispatchable location means a location delivered to the PSAP with a 911 call that consists of the validated street address of the calling party, plus additional information such as suite, apartment or similar information necessary to adequately identify the location of the calling party. Automated dispatchable location means automatic generation of dispatchable location. Alternative location information is location information (which may be coordinate-based) sufficient to identify the caller's civic address and approximate in-building location, including floor level, in large buildings.

On January 31, 2020, the Commission released *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* FCC 20–7 (*VRS At-Home Call Handling Order*). The Commission amended its rules to convert the VRS at-home call handling pilot program into a permanent one, thereby allowing CAs to work from home. To ensure user privacy and call confidentiality and to help prevent waste, fraud, and abuse, the modified information collections include requirements for VRS providers to apply for certification to allow their communications assistants to handle calls while working at home; monitoring and oversight requirements; and reporting requirements.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–09621 Filed 5–5–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 010099–068.

Agreement Name: International Council of Containership Operators.

Parties: CMA CGM S.A.; COSCO SHIPPING Co., Ltd.; Crowley Liner Services, Inc.; Evergreen Line Joint Service Agreement; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Maersk A/S; Mediterranean Shipping Company S.A.; Orient Overseas Container Line Limited; Wan Hai Lines Ltd.; Yang Ming Marine Transport Corporation; and Zim Integrated Shipping Services Ltd.

Filing Party: John Longstreth; K&L Gates.

Synopsis: The amendment removes Pacific International Lines (PTE) LTD as a party to the Agreement.

Proposed Effective Date: 4/27/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/1032.

Agreement No.: 201341.

Agreement Name: King Ocean/Seaboard Trinidad Space Charter Agreement.

Parties: King Ocean Services Limited and Seaboard Marine Ltd.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The Agreement authorizes Seaboard to charter space to King Ocean in the trade between Miami and Trinidad.

Proposed Effective Date: 6/12/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/1032.

Agreement No.: 201342.

Agreement Name: MSC/Maersk SAEC Space Charter.

Parties: Maersk A/S and Mediterranean Shipping Company S.A.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The Agreement authorizes MSC to charter space to Maersk in the trade between ports on the U.S. Gulf Coast and ports in Mexico, Panama, Colombia and Brazil.

Proposed Effective Date: 6/14/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/29496.

Agreement No.: 201343.

Agreement Name: Maersk/MSC UCLA Space Charter Agreement.

Parties: Maersk A/S and Mediterranean Shipping Company S.A.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The Agreement authorizes Maersk to charter space to MSC on Maersk's UCLA service in the trade between ports on the U.S. Gulf Coast and ports in Mexico, Panama, Colombia and Brazil.

Proposed Effective Date: 6/14/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/29497.

Dated: May 1, 2020.

Rachel Dickon,

Secretary.

[FR Doc. 2020–09659 Filed 5–5–20; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL MARITIME COMMISSION

[Fact Finding No. 30]

COVID–19 Impact on Cruise Industry; Order

Congress tasked the Federal Maritime Commission (Commission) with administering the Shipping Act of 1984 (Shipping Act), 46 U.S.C. 40101 *et seq.* The Commission also administers Public Law 89–777, 46 U.S.C. 44101 *et seq.,* to ensure that passenger vessel operators (PVOs) satisfy the financial responsibility requirements related to nonperformance of transportation and death or injury to passengers.

The purposes of the Shipping Act include the provision of ''an efficient

and economic transportation system in the ocean commerce of the United States that is, insofar as possible, in harmony with, and responsive to, international shipping practices.'' 46 U.S.C. 40101. Pursuant to the Shipping Act, the Commission regulates ocean common carriage of the United States. When they are engaged in transportation of passengers between the U.S. and a foreign country, PVOs are common carriers under the Shipping Act. *See* 46 U.S.C. 40102(7)(A).

PVOs are also subject to the requirements of 46 U.S.C. chap. 441 and regulations promulgated thereunder in 46 CFR part 540. The purpose of that statute is, among other things, ''to prevent financial loss and hardship to the American traveling public, who, after payment of cruise passage money, are stranded by the abandonment or cancellation of a cruise.'' *Terry Marler and James Beasley dba Titanic Steamship Line,* 22 S.R.R. 359, 369 (ALJ 1983), aff'd, 22 S.R.R. 798 (FMC 1984).

The Commission understands that the current pandemic caused by the novel coronavirus (COVID–19) has severely impacted the cruise industry. On March 14, 2020, the Centers for Disease Control and Prevention (CDC) issued a No Sail Order and Suspension of Further Embarkation causing PVOs to cease all operations. Due to the unpredictable nature of this disease, the CDC has extended the term of the order demonstrating the uncertainty associated with this pandemic. Consequently, questions concerning future travel and passengers' ability to obtain refunds of monies remitted for transportation disrupted by COVID–19 are legion.

The cruise industry plays a unique and important role in the U.S. economy. Given the Commission's mandate to: (1) Ensure an efficient and economic transportation system for ocean commerce for both goods and passengers under the Shipping Act; and (2) ensure that PVOs maintain adequate financial responsibility to indemnify passengers for nonperformance and meet any liability which may be incurred for death or injury to passengers or other persons under 46 U.S.C. chap. 441, the Commission has a clear and compelling responsibility to actively investigate and respond to the current challenges impacting the cruise industry and the U.S. ports that rely on it.[1]

Therefore it is ordered, That, pursuant to 46 U.S.C. 40104, 41101–41109, 41301–41309, 44104–44106 and 46 CFR 502.281 *et seq.,* Commissioner Louis E. Sola engage cruise industry stakeholders, including PVOs, passengers, and marine terminal operators, in public or non-public discussions to identify commercial solutions to COVID–19-related issues that interfere with the operation of the cruise industry;

It is further ordered, That, the Commissioner form one or more teams, composed of leaders from the cruise industry and other stakeholders, to develop commercial solutions to the challenges created by the COVID–19 pandemic;

It is further ordered, That the Commissioner interact with any or all maritime related COVID–19 task forces of which this Commission is affiliated or monitors for the purpose of collecting data related to COVID–19 and its impact on the cruise industry;

It is further ordered, That, the Commissioner provide a preliminary report and periodic updates to the Commission on the results of efforts undertaken by this Order;

It is further ordered, That, the Commissioner have full authority under 46 CFR 502.281–291 to perform such duties as may be necessary in accordance with U.S. law and Commission regulations. The Commissioner will be assisted by staff members as may be assigned by the Chairman;

It is further ordered, That, this Proceeding be discontinued upon the acceptance of a final report and possible recommendations by the Commissioner, unless otherwise ordered by the Commission; and

It is finally ordered, That, notice of this Order be published in the **Federal Register**.

By the Commission.

Rachel Dickon,

Secretary.

[FR Doc. 2020–09623 Filed 5–5–20; 8:45 am]

BILLING CODE 6730–02–P

[1] The provisions of the Shipping Act govern proceedings under 46 U.S.C. chap. 441. *See* 46 U.S.C. 44106.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2020–0050]

Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), National Institute for Occupational Safety and Health (NIOSH); Notice of Meeting and Request for Comment

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting of the Advisory Board on Radiation and Worker Health (ABRWH). This meeting is open to the public, but without a public comment period. The public is welcome to listen to the meeting by joining the audio conference (information below). The audio conference line has 150 ports for callers.

DATES: The meeting will be held on June 24, 2020, 11:00 a.m. to 1:00 p.m., EDT.

Written comments must be received on or before June 18, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0050 by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* National Institute for Occupational Safety and Health, NIOSH Docket Office, 1090 Tusculum Avenue, MS C–34, Cincinnati, Ohio 45226–1998.

Instructions: All information received in response to this notice must include the agency name and docket number [CDC–2020–0050]. All relevant comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. *Instructions:* All submissions received must include the Agency name and Docket Number. All relevant comments received in conformance with the *https://www.regulations.gov* suitability policy will be posted without change to *https://www.regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

Meeting Information: Audio Conference Call via FTS Conferencing. The USA toll-free dial-in number is 1–866–659–0537; the pass code is 9933701.

FOR FURTHER INFORMATION CONTACT: Rashaun Roberts, Ph.D., Designated Federal Officer, NIOSH, CDC, 1090 Tusculum Avenue, Mailstop C–24, Cincinnati, Ohio 45226, Telephone (513) 533–6800, Toll Free 1(800)CDC–INFO, Email *ocas@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC). In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and rechartered under Executive Order 13889 on March 22, 2020, and will terminate on March 22, 2022.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Public Participation

Written Public Comment: The public is welcome to submit written comments in advance of the meeting. Comments should be submitted in writing by mail according to the instructions provided. The deadline for receipt of written public comment is June 18, 2020. All requests must contain the name, address, and organizational affiliation of the individual, as well as the topic being addressed. Written comments should not exceed one single-spaced typed page in length. Written comments received in advance of the meeting will be included in the official record of the meeting.

Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. CDC will carefully consider all comments submitted to the docket.

Matters to be Considered: The agenda will include discussions on: Work Group and Subcommittee Reports; Update on the Status of SEC Petitions; Plans for the August 2020 Advisory Board Meeting; and Advisory Board Correspondence. Agenda items are subject to change as priorities dictate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–09673 Filed 5–5–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB review; 30-Day Comment Request; Office of Minority Health Research Coordination (OMHRC) Research Training and Mentor Programs Applications (National Institute of Diabetes and Digestive and Kidney Diseases)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with 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.

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 recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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: Ms. Winnie Martinez, Project Officer, 6707 Democracy Blvd., 9th Floor, Bethesda, MD, 20892 or call non-toll-free number (301) 435–2988 or Email your request, including your address to: *Winnie.Martinez@nih.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on October 16, 2019, page 55318–55319 (84 FR 55318) 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 Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), National Institutes of Health, 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 Title: Office of Minority Health Research Coordination Training and Mentor Programs Applications in use with OMB Control Number 0925–0748, exp., date 2/28/2023 REVISION, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), National Institutes of Health (NIH).

Need and Use of Information Collection: In 2000, the National Institute of Diabetes and Digestive and Kidney Diseases of the National Institutes of Health established the Office of Minority Health Research Coordination to address the burden of diseases and disorders that disproportionately impact the health of minority populations. One of the major goals of the office is to build and sustain a pipeline of researchers from underrepresented populations in the biomedical, behavioral, clinical, and social sciences, with a focus on NIDDK mission areas. The office accomplishes this goal by administering a variety of programs and initiatives to recruit high school through post-doctoral educational level individuals into OMHRC research training and mentor programs: The Short-Term Research Experience for Underrepresented Persons (STEP–UP), the Diversity Summer Research Training Program (DSRTP) for Undergraduate Students, Network of Minority Health Research Investigators (NMRI), the NIH/National Medical Association (NMA) Academic Career Fellow Travel Awards, and the NIH/National Hispanic Medical Association (NHMA) Academic Career Fellow Travel Awards. Identification of participants to matriculate into the program and initiatives comes from applications and related forms hosted through the NIDDK website. The proposed information collection activity is necessary in order to determine the eligibility and quality of potential awardees for traineeship in these programs and to evaluate the effectives of the OMHRC programs in achieving their missions and goals.

OMB approval is requested for three (3) years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 2,559.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Short-Term Research Experience for Underrepresented Persons (STEP–UP) Application.	Individuals/ Households ...	2,000	1	45/60	1,500
STEP–UP Student Feedback Form	Individuals/ Households ...	200	1	15/60	50
STEP–UP Participant Survey Form	Private Sector	2,200	1	5/60	184
Diversity Summer Research Training Program (DSRTP) Feedback Form.	Individuals/ Households ...	14	1	30/60	7
Network of Minority Health Research Investigators (NMRI) Enrollment Form.	Private Sector	200	1	15/60	50
NMRI Evaluation Form	Private Sector	120	1	30/60	60
NMRI Survey Form	Private Sector	800	1	30/60	400
NMRI Mentor-Mentee Agreement Form	Private Sector	100	1	30/60	50
NIH/National Medical Association (NMA) Academic Career Fellow Travel Awards Application.	Private Sector	200	1	20/60	67
NIH/NMA Feedback Form	Private Sector	40	1	30/60	20
NIH/NMA Academic Career Development Workshop Contact Information and Feedback Form.	Private Sector	1,000	1	5/60	84
NIH/National Hispanic Medical Association (NHMA) Academic Career Fellow Travel Awards Application.	Private Sector	200	1	20/60	67
NIH/NHMA Feedback Form	Private Sector	40	1	30/60	20
Total			7,114		2,559

Dated: April 30, 2020.

Starsky H. Cheng,

NIDDK Project Clearance Liaison, Office of Management and Policy Analysis, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health.

[FR Doc. 2020–09693 Filed 5–5–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; NIA BSR LEADR DP1.

Date: June 17, 2020.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Birgit Neuhuber, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, (301) 480–1266, *neuhuber@ninds.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Epigenomic changes in aging.

Date: June 30, 2020.

Time: 12:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Birgit Neuhuber, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, (301) 480–1266, *neuhuber@ninds.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Lipid signaling in aging and lifespan determination.

Date: July 2, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Maurizio Grimaldi, MD, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, (301) 496–9374, *grimaldim2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 1, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–09689 Filed 5–5–20; 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 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: Center for Scientific Review Special Emphasis Panel Antimicrobial Resistance Rapid, Point-of-Need Diagnostic Test Challenge: Step 3

Date: June 8, 2020.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate prize.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Gagan Pandya, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, RM 3200, MSC 7808, Bethesda, MD 20892, 301–435–1167 *pandyaga@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 1, 2020.

Natasha M. Copeland,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–09687 Filed 5–5–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; R13 Conference Grant Applications.

Date: June 25, 2020.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7111, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Pragmatic Research and Natural Experiments.

Date: June 30, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Fellowships in Digestive Diseases and Nutrition.

Date: July 9–10, 2020.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7111, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS).

Dated: May 1, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–09692 Filed 5–5–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Resource-Related Research Projects (R24 Clinical Trial Not Allowed).

Date: June 2, 2020.

Time: 10:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F52, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Jennifer Hartt Meyers, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F52, Rockville, MD 20852, 301–761–6602, *jennifer.meyers@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 30, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–09691 Filed 5–5–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; AIDSRRC Independent SEP.

Date: May 20, 2020.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F40, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Robert C. Unfer, Ph.D., Scientific Review Officer, Scientific Review Program, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F40, Rockville, MD 20892–9823, 240–669–5035, *unferrc@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 30, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–09690 Filed 5–5–20; 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: Healthcare Delivery and Methodologies Integrated Review Group; Community Influences on Health Behavior Study Section.

Date: June 4–5, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Tasmeen Weik, DRPH, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, Bethesda, MD 20892, (301) 827–6480 *weikts@mail.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review; Group Molecular Neuropharmacology and Signaling Study Section.

Date: June 4–5, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Vanessa S Boyce, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4016F, MSC 7812 Bethesda, MD 20892 (301) 435–0908, *boycevs@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review; Group Biochemistry and Biophysics of Membranes Study Section

Date: June 4–5, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Nuria E Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review National Institutes of Health 6701 Rockledge Drive, Room 4164, MSC 7806 Bethesda, MD 20892 (301) 451–1323 *assamunu@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group Cellular and Molecular Biology of Glia Study Section

Date: June 4–5, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Linda MacArthur, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4187, Bethesda, MD 20892, (301) 537–9986 *macarthurlh@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group; Cellular and Molecular Immunology—B Study Section.

Date: June 4–5, 2020.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Betty Hayden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206,

MSC 7812 Bethesda, MD 20892, (301) 435–1223 *haydenb@csr.nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Kidney, Nutrition, Obesity and Diabetes Study Section.

Date: June 4–5, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Fungai Chanetsa, Ph.D., MPH Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770 Bethesda, MD 20892, (301) 408–9436 *fungai.chanetsa@nih.hhs.gov*.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Clinical Management of Patients in Community-Based Settings Study Section.

Date: June 8–9, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Lauren Fordyce, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214 Bethesda, MD 20892, (301) 827–8269 *fordycelm@mail.nih.gov*.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Addiction Risks and Mechanisms Study Section.

Date: June 8–9, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808 Bethesda, MD 20892, (301) 496–0726 *prenticekj@mail.nih.gov*.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Tumor Progression and Metastasis Study Section.

Date: June 9–10, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Rolf Jakobi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7806 Bethesda, MD 20892, (301) 495–1718 *jakobir@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 1, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–09686 Filed 5–5–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; 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 Center for Advancing Translational Sciences Special Emphasis Panel; R13 Conference Grants Review.

Date: June 24, 2020.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1080, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jing Chen, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1080, Bethesda, MD 20892, *chenjing@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: April 30, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–09688 Filed 5–5–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–NEW]

Agency Information Collection Activities; New Collection: Sponsor Deeming and Agency Reimbursement

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until June 5, 2020.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2019–0026. All submissions received must include the OMB Control Number 1615–NEW in the body of the letter, the agency name and Docket ID USCIS–2019–0026.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Proposed Collection of Information

This information collection allows federal means-tested public benefit agencies who are registered to use the Systematic Alien Verification for Entitlements (SAVE) program, and who

confirm the immigration status of certain persons applying for specified licenses and benefits using sponsorship data, to provide information regarding use of sponsorship data in deeming and reimbursement processes. The purpose for collecting this information is to support Federal means-tested benefit granting agencies in the administration and oversight of their respective benefit programs as they relate to deeming and reimbursement processes in order to better monitor system and information use, and perform actions to ensure compliance regarding SAVE program rules, federal sponsorship requirements, and deeming and reimbursement obligations.

Comments

The information collection notice was previously published in the **Federal Register** on December 18, 2019, at 84 FR 69386, allowing for a 60-day public comment period. USCIS did receive 21 comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2019–0026 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

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

Overview of This Information Collection

(1) *Type of Information Collection Request:* New Collection.

(2) *Title of the Form/Collection:* Sponsor Deeming and Agency Reimbursement.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–1552; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federal Government; or State or local Government). The G–1552 is created to collect information via Systematic Alien Verification for Entitlements (SAVE) program regarding actions that agencies adjudicating federal means-tested public benefits take to (1) deem sponsor income as part of applicant income for purposes of federal means-tested benefits eligibility and (2) seek reimbursement from sponsors for the value of federal means-tested public benefits provided to sponsored applicants.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection G–1552 is 324,737 and the estimated hour burden per response is 0.042 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 13,639 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0.

Dated: May 1, 2020

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2020–09672 Filed 5–5–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[19X.LLMTC03200.L51100000.GA0000. LVEME19CE830 MO #4500133387]

Notice of Availability of the Environmental Assessment for Coyote Creek Mining Company's Lease-by-Application NDM 110277, Mercer County, ND, Notice of Public Hearing, and Request for Comment on Environmental Assessment, Maximum Economic Recovery, and Fair Market Value

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability and public hearing.

SUMMARY: The Bureau of Land Management (BLM), North Dakota Field Office (NDFO) is publishing this notice to announce that an Environmental Assessment (EA) for Coyote Creek Mining Company's (CCMC) Federal Coal Lease-by-Application (LBA), serial number NDM 110277, is available for public review and comment. The BLM is also announcing that it will hold a public hearing by teleconference to receive comments on the EA, Fair Market Value (FMV), and Maximum Economic Recovery (MER) of the coal resources contained in the proposed CCMC LBA lease tracts. The Office of Surface Mining Reclamation and Enforcement (OSMRE) is also accepting comments on the National Environmental Policy Act (NEPA) analysis regarding the potential Federal mine plan decision.

DATES: The public hearing by teleconference will be held from 3:00 p.m. to 5:00 p.m. (Central time zone) on May 20, 2020. Written or electronic comments should be submitted to the NDFO or postmarked no later than May 29, 2020.

ADDRESSES: A public hearing by teleconference will be held by calling 1–800–369–1853 and entering passcode 3787572 when prompted. The teleconference will convene on May 20, 2020, at 3:00 p.m. (Central time zone) and will conclude at 5:00 p.m. (Central time zone). Please note that any details and updates made to any aspect of the hearing will be posted on the BLM ePlanning web page (*https://go.usa.gov/xVyfF*). While the BLM expects the hearing to go forward as set forth above, please monitor the ePlanning website or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to determine if there are any updates. In addition, copies of the EA are available on ePlanning, at the NDFO, and may be

requested by mail, email or phone using the contacts provided in the **FOR FURTHER INFORMATION CONTACT** section. You may submit comments related to the CCMC EA, FMV and MER by any of the following methods:

- *Email: BLM_MT_North_Dakota_CoyoteCreekLBA@blm.gov;*
- *Mail:* Bureau of Land Management North Dakota Field Office, Attention: Joel Hartmann, Project Lead, 99 23rd Avenue West, Suite A, Dickinson, ND 58601.

FOR FURTHER INFORMATION CONTACT: Joel Hartmann, Geologist; telephone: 406–896–5159; or at the address and email provided in the **ADDRESSES** section. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 to contact Mr. Hartmann during normal business hours. The Service is available 24 hours a day, 7 days a week, to leave a message or question for Mr. Hartmann. You will receive a reply during normal business hours. If you have questions regarding the potential Federal mine plan decision, please contact Michelle Fishburne at telephone: 202–208–2982, email: *mfishburne@osmre.gov.* If you have questions regarding attending the hearing by teleconference, please contact Al Nash at telephone: 406–896–5260; email: *knash@blm.gov.*

SUPPLEMENTARY INFORMATION: On December 13, 2017, CCMC submitted an application to lease two 160-acre Federal coal lease tracts comprising 320 acres, located in Mercer County, North Dakota. As project co-leads, the BLM and OSMRE developed the issue-based EA, which analyzed and disclosed potential direct, indirect, and cumulative impacts of leasing and subsequent mining of the proposed lease tracts. The tracts are located at the Coyote Creek Mine and contain about 5.23 million tons of in-place Federal coal resources. The tracts underlie private surface and are described as follows:

Fifth Principal Meridian, North Dakota

T. 143 N., R. 89 W.,
Sec. 24, SW1/4;
Sec. 26, SE1/4.

The areas described aggregate 320.00 acres.

Through this notice, the BLM is inviting the public to provide comments regarding the potential environmental impacts related to the proposed action, and to submit comments on the FMV and the MER for the proposed LBA tract. The BLM usually holds a public hearing in the local community where the tracts are located. However, due to the COVID–19 National Emergency and the uncertainty of Federal, State, and local social distancing guidelines, the BLM and OSRME are holding the public hearing by teleconference to ensure staff and interested community members are able to participate safely. A stenographer will record the presentation and comments received during the teleconference. All public comments, whether written or oral, will receive consideration prior to the BLM's decision regarding the leasing of the Federal coal contained in the tracts.

Public comments on the EA should address the potential environmental impacts of the proposed action. Public comments on the FMV and MER for the proposed lease tracts may address, but do not necessarily have to be limited to, the following:

1. The quantity and quality of the Federal coal resource;
2. The mining method to be employed to obtain the MER of the coal resource, including the name of the coal bed(s) to be mined, timing and rate of production, restriction of mining, and the inclusion of the lease tracts into the existing mining operation;
3. The price that the mined coal would bring when sold;
4. Costs, including mining and reclamation, and the anticipated timing of production;
5. The percentage rate at which anticipated income streams should be discounted, either with inflation, or in the absence of inflation, in which case the anticipated rate of inflation should be given;
6. Depreciation, depletion, amortization and other tax accounting factors;
7. The value of privately held mineral or surface estate in the Coyote Creek Mine area.

Any proprietary information or data that you submit to the BLM must be marked as confidential to ensure the data will be treated in accordance with the applicable laws and regulations governing the confidentiality of such information or data. A copy of the comments submitted by the public on the EA, FMV, and MER for the tracts, except those portions identified as proprietary and that meet one of the exemptions in the Freedom of Information Act, will be available for public inspection at the BLM, NDFO, 99 23rd Avenue West, Suite A, Dickinson, North Dakota, during regular business hours (8:00 a.m.–4:30 p.m. Central time zone), Monday through Friday.

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, the BLM cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1506.6, 43 CFR 3422.1, 3425.3 and 3425.4)

John J. Mehlhoff,

BLM Montana/Dakotas State Director, Billings, Montana.

[FR Doc. 2020–09613 Filed 5–5–20; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTC02200 L14400000.FR0000; MO #4500143799; MTM 109178]

Notice of Availability/Notice of Realty Action: Environmental Assessment of the Direct Sale of the Reversionary Interest on the Miles Community College Patent and Draft Resource Management Plan Amendment to the 2015 Miles City Field Office Resource Management Plan, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability and notice of realty action.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM), Montana Miles City Field Office (MCFO) has prepared an environmental assessment (EA) and proposal to amend the 2015 MCFO Resource Management Plan (RMP), as amended. The EA is in response to Miles Community College's (MCC) request for a direct sale of the United States' (U.S.) reversionary interest in the Recreation and Public Purpose (R&PP) Act Patent No. 25–92–0078 for 11.83 acres at fair market value of $272,000, under the authority of FLPMA. By this notice, the BLM is announcing the opening of the comment period on the EA, realty action, and Draft RMP amendment.

DATES: To ensure that comments are considered, written comments regarding the EA, realty action, and Draft RMP amendment must be submitted to the BLM within 45 days following the date that the Environmental Protection Agency (EPA) publishes its Notice of Availability (NOA) in the **Federal**

Register. The EPA typically publishes its NOAs every Friday.

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

- *Website: https://bit.ly/36pwGth.*
- *Mail:* Bureau of Land Management; Miles City Field Office; Beth Klempel; 111 Garryowen Road, Miles City, MT 59301.

Copies of the EA are available at the MCFO at the above address or may be reviewed at: *https://bit.ly/36pwGth.*

FOR FURTHER INFORMATION CONTACT: Beth Klempel, Assistant Field Manager for the Division of Nonrenewable Resources by telephone at 406–233–2800, or by email at *bklempel@blm.gov.* Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to leave a message or question for Ms. Klempel. The FRS is available 24 hours a day, 7 days a week. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM patented the subject land's surface estate to MCC in 1992 under the R&PP Act for the college's educational purposes, including a rodeo arena for equestrian events, recreation facilities and agriculture related courses and programs. The patent is subject to a reversionary interest which only allows MCC to use the land in accordance with the patent and plan of development. The U.S. retained an interest in the land in which title could revert back to the U.S. if the land is not used for the purposes authorized under the R&PP Act or if the land is transferred to another party without the BLM's approval. In 2016, MCC built an Agricultural Advancement Center (indoor arena) on the subject land. On June 3, 2016, the BLM received a request from MCC to purchase the Federal reversionary interest retained by the U.S. The reversionary interest in the following land is proposed for a direct sale in accordance with Section 203 of the FLPMA, as amended (43 U.S.C. 1713).

Principal Meridian, Montana

T. 7 N., R 47 E.,
Sec. 5, Tract X.

The area described above contains 11.83 acres.

The conveyance document issued would convey only the reversionary interest retained by the U.S. in patent 25–92–0078 and would contain terms, conditions and reservations.

The 2015 RMP, as amended, does not specifically identify Tract X for disposal since it was patented to MCC under the R&PP Act prior to the RMP being issued. A direct sale of the reversionary interest would require a plan amendment to the RMP.

Before including your address, phone number, email address, or other personal identifying information in any comment, be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR 1506, 43 CFR 1610.2, and 43 CFR 2711 *et seq.*)

John Mehlhoff,

State Director, Montana/Dakotas.

[FR Doc. 2020–09616 Filed 5–5–20; 8:45 am]

BILLING CODE 4310–DN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1119]

Certain Infotainment Systems, Components Thereof, and Automobiles Containing the Same; Notice of a Commission Determination Finding No Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm, with modified reasoning, the final initial determination's (''FID'') finding that no violation of section 337 has occurred. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC. 20436, telephone (202) 205–3228. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone 202–205–1810.

SUPPLEMENTARY INFORMATION: On June 12, 2018, the Commission instituted this investigation based on a complaint filed by Broadcom Corporation (''Broadcom'') of San Jose, California. 83 FR 27349 (June 12, 2018). The complaint alleged a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337'') in the importation into the United States, sale for importation, or sale in the United States after importation of certain infotainment systems, components thereof, and automobiles containing same that allegedly infringe one or more claims of U.S. Patent Nos. 6,937,187 (''the '187 patent''); 8,902,104 (''the '104 patent''); 7,512,752 (''the '752 patent''); 7,530,027 (''the '027 patent''); 8,284,844 (''the '844 patent''); and 7,437,583 (''the '583 patent'') (collectively, ''the Asserted Patents''). The notice of investigation named 15 respondents, including Toyota Motor Corporation of Aichi, Japan; Toyota Motor North America, Inc. of Plano, TX; Toyota Motor Sales, U.S.A., Inc. of Plano, TX; Toyota Motor Engineering & Manufacturing North America, Inc. of Plano, TX; Toyota Motor Manufacturing, Indiana, Inc. of Princeton, IN; Toyota Motor Manufacturing, Kentucky, Inc. of Erlanger, KY; Toyota Motor Manufacturing, Mississippi, Inc. of Tupelo, MS; and Toyota Motor Manufacturing, Texas, Inc. of San Antonio, TX (collectively, ''Toyota''); Panasonic Corporation of Osaka, Japan and Panasonic Corporation of North America of Newark, NJ (collectively, ''Panasonic''); DENSO TEN Limited of Kobe City, Japan and DENSO TEN AMERICA Limited of Torrance, CA (collectively, ''DENSO TEN''); Renesas Electronics Corporation of Tokyo, Japan and Renesas Electronics America, Inc. of Milpitas, CA (collectively, ''Renesas''); and Japan Radio Co., Ltd. of Tokyo, Japan. *Id.* at 27349–50. The Office of Unfair Import Investigations was not named as a party. *Id.* at 27351.

The complaint and notice of investigation were later amended to add ten more respondents, including Pioneer Corporation of Tokyo, Japan and Pioneer Automotive Technologies, Inc. of Farmington Hills, MI (collectively, ''Pioneer''); DENSO Corporation of Aichi, Japan; DENSO International America, Inc. of Southfield, MI; DENSO Manufacturing Tennessee, Inc. of Maryville, TN; and DENSO Wireless Systems America, Inc. of Vista, CA (collectively, ''DENSO Corp.''); u-blox AG of Thalwil, Switzerland; u-blox America, Inc. of Reston, VA; u-blox San Diego, Inc. of San Diego, CA; and Socionext Inc. of Kanagawa, Japan. Order No. 14 (Oct. 3,

2018), *not rev'd in relevant part,* Comm'n Notice (Nov. 1, 2018).

Certain patent claims were subsequently withdrawn and terminated from the investigation. *See* Order No. 20 (Jan. 31, 2019), *not rev'd,* Comm'n Notice (Feb. 19, 2019); Order No. 48 (June 5, 2019), *not rev'd,* Comm'n Notice (June 18, 2019); Order No. 49 (June 13, 2019), *not rev'd,* Comm'n Notice (June 28, 2019). At the time of the FID, the claims at issue were claims 1–3, 5, and 9 of the '187 patent; claim 12 of the '104 patent; claims 1–2 and 4–8 of the '752 patent; claims 11 and 20 of the '027 patent; claims 11 and 13 of the '844 patent; and claims 17–18 and 25–26 of the '583 patent. *See* Comm'n Notice (June 28, 2019).

On November 13, 2019, the ALJ issued an FID finding no violation of section 337. *See* FID. On November 15, 2019, the ALJ issued a Notice of Correction to Conclusions of Law in Initial Determination on Violation of Section 337 and a corrected FID issued on November 18, 2019. The corrected FID fixes a typographical error in the conclusions of law and correctly identifies Respondents found to infringe the '583 patent. *See* FID at p. 272.

The FID also contains the ALJ's recommended determination recommending, if a violation is found, that the Commission issue a limited exclusion order prohibiting the importation of infringing infotainment systems, components thereof, and automobiles containing same that infringe. as well as cease and desist orders directed to certain domestic respondents.

On November 26, 2019, Broadcom filed a petition for review of the FID and the respondents filed a contingent petition for review. On December 4, 2019, Broadcom and the respondents filed responses to each other's petitions.

On December 16, 2019, Broadcom filed a submission on the public interest pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)). That same day, Toyota, Renesas, and Tier 1 Suppliers (DENSO Corp., DENSO TEN, Panasonic, and Pioneer) filed their submissions on the public interest pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)). On December 18, 2019, two non-parties, Peter Morici and the Reshoring Initiative, filed submissions on the public interest in response to the Commission's notice requesting such responses. 84 FR 64104 (Nov. 20, 2019).

On March 3, 2020, the Commission determined to review the FID in part and requested briefing on certain issues. 85 FR 12576–78 (March 3, 2020). Specifically, the Commission determined to review the FID's findings on: (1) The claim construction of the limitation ''at least one processor'' recited in claims 25 and 26 of the '583 patent; (2) infringement of the asserted claims of the '583 patent; (3) technical prong of the domestic industry requirement as to the '583 patent; (4) invalidity of the asserted claims of the '752 patent; and (5) whether the accused Pioneer head units meet the limitations of claims 2 and 5 of the '752 patent. *Id.* The Commission requested briefing on some of the issues under review, and remedy, bonding, and the public interest. *Id.* On March 11, 2020, the parties filed their written responses to the Commission's request for briefing. On March 18, 2020, the parties filed their reply submissions.

On March 11, 2020, additional submissions on remedy, bonding, and the public interest were received from the following non-parties: Representatives and Senators from Kentucky; Representatives and Senators from Texas; Harman International Industries, Incorporated; and the Alliance for Automotive Innovation.

Having examined the record of this investigation, including the FID, the petitions for review, and the responses thereto, and filings in response to the Commission's request for briefing, the Commission has determined to affirm, with modified reasoning, the FID's finding of no violation of section 337. Specifically, the Commission affirms, with modified reasoning as explained in the Commission opinion, that: (1) Claims 25 and 26 of the '583 patent are not infringed by any Respondent; (2) the technical prong of the domestic industry requirement is not met for the '583 patent; (3) the Pioneer head units do not meet the limitations of claims 2 and 5 of the '752 patent; and (4) claims 1, 2, 4, 5, 7, and 8 of the '752 patent are invalid as anticipated and obvious. The Commission affirms the FID's infringement finding as to claims 17 and 18 of the '583 patent.

The investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 30, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–09636 Filed 5–5–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CHEDE–8

Notice is hereby given that, on April 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''), CHEDE–8 (''CHEDE–8'') 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, DENSO Corporation, Aichi-Ken, JAPAN, 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 CHEDE–8 intends to file additional written notifications disclosing all changes in membership.

On December 4, 2019, CHEDE–8 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 30, 2019 (84 FR 71977).

The last notification was filed with the Department on March 2, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 20, 2020 (85 FR 16132).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2020–09624 Filed 5–5–20; 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 Spectrum Consortium

Notice is hereby given that, on April 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''), National Spectrum Consortium (''NSC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its

membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Integration Innovation Inc. (i3), Huntsville, AL; Indiana Tool & Mfg. Co., Inc. DBA ITAMCO, Plymouth, IN; Knowledge Management Inc., Tyngsboro, MA; Simba Chain, Inc., Plymouth, IN; Summation Research, Inc., Melbourne, FL; AVANTech Inc., Columbia, SC; Cobalt Solutions Inc., Austin, TX; Zylinium Research LLC, Atlanta, GA; Augmntr, Inc., Grass Valley, CA; Electronic Design and Development Corp. (ED2), Tucson, AZ; Strategic Data Systems, Inc., Keller, TX; Systems & Technology Research, LLC, Woburn, MA; University at Buffalo, Buffalo, NY; Mavenir Systems, Inc., Richardson, TX; Institute for Building Technology and Safety (IBTS), Ashburn, VA; CIPHIR–TM, LLC, Albany, OR; CommScope Technologies LLC, Hickory, NC; XCOM–LABS, INC., San Diego, CA; Iron Bow Technologies, LLC, Herndon, VA; L3 Communications Systems-East, Camden, NJ; Logistics Management Institute (LMI), Tysons, VA; Ansys, Inc., Canonsburg, PA; Hanwha International LLC, Arlington, VA; CesiumAstro, Austin, TX; Conductive Composites Company, Heber City, UT; National Instruments Corporation, Austin, TX; Shipcom Federal Solutions, LLC, Belcamp, MD; Qorvo Texas, LLC, Richardson, TX; Technology Service Corporation (TSC), Arlington, VA; Huckworthy LLC, Washington, DC; AVT Simulation, Orlando, FL; Consolidated Resource Imaging LLC (CRI), Grand Rapids, MI; Global Technical Systems, Virginia Beach, VA; McKean Defense Group, Philadelphia, PA; PlusN, LLC, Elmsford, NY; and University of Virginia, Charlottesville, VA have been added as parties to this venture.

Also, Expedition Technology, Inc., Dulles, VA; Telspan Data, LLC, Concord, CA; and Red Balloon Security, Inc., New York, NY have withdrawn as parties from this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open and NSC intends to file additional written notifications disclosing all changes in membership.

On September 24, 2014, NSC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 4, 2014 (72 FR 65424).

The last notification was filed with the Department on January 21, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 27, 2020 (85 FR 11396).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2020–09664 Filed 5–5–20; 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—Undersea Technology Innovation Consortium

Notice is hereby given that, on April 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''), Undersea Technology Innovation Consortium (''UTIC'') 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, Altron Inc., Mount Pleasant, SC; Aretec Inc., Providence, RI; BAE Systems Land & Armaments L.P., Minneapolis, MN; BoxBoat Technologies LLC, Bethesda, MD; Btech Acoustics LLC, Barrington, RI; Cardinal Point Captains Inc., San Diego, CA; Cesium GS Inc., Philadelphia, PA; Consolidated Ocean Technologies Inc., Ventura, CA; Coulometrics LLC, Chattanooga, TN; DeepWater Buoyancy Inc., Biddeford, ME; Dynexus Technology Inc., Niwot, CO; GE Research, Niskayuna, NY; Hefring LLC, Boston, MA; iArchimedes Inc., Arlington, VA; Kenautics Inc., Encinitas, CA; KULR Technology Corporation, Campbell, CA; Maritime Arresting Technologies, Tarpon Springs, FL; Michigan Tech. University, Houghton, MI; Mistral Inc., Bethesda, MD; RJE International Inc., Irvine, CA; SAILDRONE INC., Alameda, CA; Sellers and Associates LLC (S&A), Chesapeake, VA; Torch Technologies Inc., Huntsville, AL; University of Dayton, Dayton, OH; University of Houston Cullen College of Engineering, Houston, TX; University of South Alabama, Mobile, AL; and Venator Solutions LLC, San Diego, CA have been added as parties to this venture.

Also, Adolf Meller Co. dba Meller Optics, Providence, RI; Analytical Graphics Inc., Exton, PA; AVL Powertrain Engineering Inc., Plymouth, MI; Carillon Technologies Management, Arlington, VA; DLT Solutions, Herndon, VA; Falmouth Scientific Inc., Cataumet, MA; Manufacturing Techniques Inc., Kilmarnock, VA; Planck Aerosystems Inc., San Diego, CA; Presco Engineering, Woodbridge, CT; Riptide Autonomous Solutions LLC, Plymouth, MA; RPI Group Inc., Fredericksburg, VA; Scientific Solutions Inc., Nashua, NH; Tampa Deep Sea Xplorers LLC, Tampa, FL; URSA Inc., Exeter, NH; Welkins LLC, Downers Grove, IL; and XST Inc., San Diego, CA have withdrawn as parties from this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and UTIC intends to file additional written notifications disclosing all changes in membership.

On October 9, 2018, UTIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 2, 2018 (83 FR 55203).

The last notification was filed with the Department on January 21, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 27, 2020 (85 FR 11397).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2020–09661 Filed 5–5–20; 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; Student Safety Assessment of Job Corps Centers

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval 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 June 5, 2020.

ADDRESSES: Written comments and recommendations for the proposed

information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie by telephone at 202–693–0456 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Department of Labor's Office of Job Corps (OJC) is seeking approval from the Office of Management and Budget (OMB) for a new Student Safety Assessment of Job Corps Centers. The collection of information through this assessment is necessary for program evaluation to gauge active students' sense of safety and security at centers on a monthly basis. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 5, 2019 (84 FR 32221).

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 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 OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Student Safety Assessment of Job Corps Centers.

OMB Control Number: 1205–0NEW.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 11,663.

Total Estimated Number of Responses: 139,956.

Total Estimated Annual Time Burden: 34,989 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: April 29, 2020.

Anthony May,

Acting Departmental Clearance Officer.

[FR Doc. 2020–09615 Filed 5–5–20; 8:45 am]

BILLING CODE 4510–FT–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–125 and CP2020–133]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 8, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
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I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–125 and CP2020–133; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 145 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 30, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 *et seq.,* and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* May 8, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–09680 Filed 5–5–20; 8:45 am]

BILLING CODE P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88783; File No. SR–CboeEDGX–2020–017]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Provide Members Certain Optional Risk Settings Under Proposed Interpretation and Policy .03 of Rule 11.10

April 30, 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 April 23, 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 the Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (''EDGX'' or the ''Exchange'') proposes to provide Members certain optional risk settings under proposed Interpretation and Policy .03 of Rule 11.10. 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 purpose of the proposed rule change is to provide Members[5] the option to utilize certain risk settings under proposed Interpretation and Policy .03 of Rule 11.10.[6] In order to help Members manage their risk, the Exchange proposes to offer optional risk settings that would authorize the Exchange to take automated action if a designated limit for a Member is breached. Such risk settings would provide Members with enhanced abilities to manage their risk with respect to orders on the Exchange. Paragraph (a) of proposed Interpretation and Policy .03 of Rule 11.10 sets forth the specific risk controls the Exchange proposes to offer. Specifically, the Exchange proposes to offer two credit risk settings as follows:

- The ''Gross Credit Risk Limit'', which refers to a pre-established maximum daily dollar amount for purchases and sales across all symbols, where both purchases and sales are counted as positive values. For purposes of calculating the Gross Credit Risk Limit, only executed orders are included; and
- The ''Net Credit Risk Limit'', which refers to a pre-established maximum daily dollar amount for purchases and sales across all symbols, where purchases are counted as positive values and sales are counted as negative values. For purposes of calculating the Net Credit Risk Limit, only executed orders are included.

The Gross Credit and Net Credit risk settings are similar to credit controls measuring both gross and net exposure provided for in paragraph (h) of Interpretation and Policy .01 of Rule 11.10, but with certain notable differences. Importantly, the proposed risk settings would be applied at a Market Participant Identifier (''MPID'') level, while the controls noted in paragraph (h) of Interpretation and Policy .01 are applied at the logical port level.[7] Therefore, the proposed risk management functionality would allow a Member to manage its risk more comprehensively, instead of relying on the more limited port level functionality offered today. Further, the proposed risk settings would be based on a notional execution value, while the controls noted in paragraph (h) of Interpretation and Policy .03 are applied based on a combination of outstanding orders on the Exchange's book and notional execution value. The Exchange notes that the current gross and net notional controls noted in paragraph (h) of Interpretation and Policy .03 will continue to be available in addition to the proposed risk settings.

Paragraph (c) of proposed Interpretation and Policy .03 of Rule 11.10 provides that a Member that does not self-clear may allocate and revoke[8] the responsibility of establishing and adjusting the risk settings identified in proposed paragraph (a) to a Clearing Member that clears transactions on behalf of the Member, if designated in a manner prescribed by the Exchange. The Exchange proposes to harmonize Exchange Rule 11.13(a) with BZX and Cboe BYX Exchange, Inc. (''BYX'') Rules 11.15(a). Specifically, in proposed Rule 11.13(a), the Exchange proposes to (i) define the term ''Clearing Member'';[9] (ii) memorialize in its rules the process by which a Clearing Member shall affirm its responsibility for clearing any and all trades executed by the Member designating it as its Clearing Firm; and (iii) memorialize the fact that the rules of a Qualified Clearing Agency shall govern with respect to the clearance and settlement of any transactions executed by the Member on the Exchange. While the foregoing proposed changes to Rule 11.13(a) were not previously memorialized in Exchange Rules, they were contemplated in Exhibit F of the Exchange's original Form 1 application.[10] As such, the proposed changes to Rule 11.13(a) involve no substantive changes.

By way of background, Exchange Rule 11.13(a) requires that all transactions passing through the facilities of the

[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] *See* Exchange Rule 1.5(n).

[6] The proposed rule changes are substantially similar to a recent rule amendment by Cboe BZX Exchange, Inc. (''BZX''). *See* Securities Exchange Act No. 88599 (April 8, 2020) 85 FR 20793 (April 14, 2020) (the ''BZX Approval'').

[7] A logical port represents a port established by the Exchange within the Exchange's System for trading and billing purposes. Each logical port established is specific to a Member or non-Member and grants that Member or non-Member the ability to accomplish a specific function, such as order entry, order cancellation, or data receipt.

[8] As discussed below, if a Member revokes the responsibility of establishing and adjusting the risk settings identified in proposed paragraph (a), the settings applied by the Member would be applicable.

[9] As proposed, the term ''Clearing Member'' refers to a Member that is a member of a Qualified Clearing Agency and clears transactions on behalf of another Member. *See* proposed Rule 11.13(a).

[10] Specifically, see item 3 entitled ''Clearing Letter of Guarantee'' included in Exhibit F of the Exchange's original Form 1 application.

Exchange shall be cleared and settled through a Qualified Clearing Agency using a continuous net settlement system.[11] As reflected in the proposed changes to Rule 11.13(a) above, this requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a corresponding clearing arrangement with another Member that clears through a Qualified Clearing Agency (*i.e.,* a Clearing Member). If a Member clears transactions through another Member that is a Clearing Member, such Clearing Member shall affirm to the Exchange in writing, through letter of authorization, letter of guarantee or other agreement acceptable to the Exchange, its agreement to assume responsibility for clearing and settling any and all trades executed by the Member designating it as its clearing firm.[12] Thus, while not all Members are Clearing Members, all Members are required to either clear their own transactions or to have in place a relationship with a Clearing Member that has agreed to clear transactions on their behalf in order to conduct business on the Exchange. Therefore, the Clearing Member that guarantees the Member's transactions on the Exchange has a financial interest in the risk settings utilized within the System [13] by the Member.

Paragraph (c) is proposed by the Exchange in order to offer Clearing Members an opportunity to manage their risk of clearing on behalf of other Members, if authorized to do so by the Member trading on the Exchange. Specifically, the Exchange believes such functionality would help Clearing Members to better monitor and manage the potential risks that they assume when clearing for Members of the Exchange. A Member may allocate or revoke the responsibility of establishing and adjusting the risk settings identified in proposed paragraph (a) to its Clearing Member via the risk management tool available on the web portal at any time. By allocating such responsibility, a Member would thereby cede all control and ability to establish and adjust such risk settings to its Clearing Member unless and until such responsibility is revoked by the Member, as discussed in further detail below. Because the Member is responsible for its own trading activity, the Exchange will not provide a Clearing Member authorization to establish and adjust risk settings on behalf of a Member without first receiving consent from the Member. The Exchange would consider a Member to have provided such consent if it allocates the responsibility to establish and adjust risk settings to its Clearing Member via the risk management tool available on the web portal. By allocating such responsibilities to its Clearing Member, the Member consents to the Exchange taking action, as set forth in proposed paragraph (d) of Interpretation and Policy .03, with respect to the Member's trading activity. Specifically, if the risk setting(s) established by the Clearing Member are breached, the Member consents that the Exchange will automatically block new orders submitted and cancel open orders until such time that the applicable risk setting is adjusted to a higher limit by the Clearing Member. A Member may also revoke responsibility allocated to its Clearing Member pursuant to this paragraph at any time via the risk management tool available on the web portal.

Paragraph (b) of proposed Interpretation and Policy .03 of Rule 11.10 provides that either a Member or its Clearing Member, if allocated such responsibility pursuant to paragraph (c) of the proposed Interpretation and Policy, may establish and adjust limits for the risk settings provided in proposed paragraph (a) of Interpretation and Policy .03. A Member or Clearing Member may establish and adjust limits for the risk settings through the Exchange's risk management tool available on the web portal. The risk management web portal page will also provide a view of all applicable limits for each Member, which will be made available to the Member and its Clearing Member, as discussed in further detail below.

Proposed paragraph (d) of Interpretation and Policy .03 of Rule 11.10 would provide optional alerts to signal when a Member is approaching its designated limit. If enabled, the alerts would generate when the Member breaches certain percentage thresholds of its designated risk limit, as determined by the Exchange. Based on current industry standards, the Exchange anticipates initially setting these thresholds at fifty, seventy, or ninety percent of the designated risk limit. Both the Member and Clearing Member [14] would have the option to enable the alerts via the risk management tool on the web portal and designate email recipients of the notification.[15] The proposed alert system is meant to warn a Member and Clearing Member of the Member's trading activity, and will have no impact on the Member's order and trade activity if a warning percentage is breached. Proposed paragraph (e) of Interpretation and Policy .03 of Rule 11.10 would authorize the Exchange to automatically block new orders submitted and cancel all open orders in the event that a risk setting is breached. The Exchange will continue to block new orders submitted until the Member or Clearing Member, if allocated such responsibility pursuant to paragraph (c) of proposed Interpretation and Policy .03, adjusts the risk settings to a higher threshold. The proposed functionality is designed to assist Members and Clearing Members in the management of, and risk control over, their credit risk. Further, the proposed functionality would allow the Member to seamlessly avoid unintended executions that exceed their stated risk tolerance.

The Exchange does not guarantee that the proposed risk settings described in proposed Interpretation and Policy .03, are sufficiently comprehensive to meet all of a Member's risk management needs. Pursuant to Rule 15c3–5 under the Act,[16] a broker-dealer with market access must perform appropriate due diligence to assure that controls are reasonably designed to be effective, and otherwise consistent with the rule.[17] Use of the Exchange's risk settings included in proposed Interpretation and Policy .03 will not automatically constitute compliance with Exchange or federal rules and responsibility for compliance with all Exchange and SEC rules remains with the Member.

Lastly, as the Exchange currently has the authority to share any of a Member's risk settings specified in Interpretation and Policy .01 of Rule 11.10 under Exchange Rule 11.13(f) with the Clearing Member that clears transactions on behalf of the Member,

[11] The term ''Qualified Clearing Agency'' means a clearing agency registered with the Commission pursuant to Section 17A of the Act that is deemed qualified by the Exchange. *See* Exchange Rule 1.5(w). The rules of any such clearing agency shall govern with the respect to the clearance and settlement of any transactions executed by the Member on the Exchange.

[12] A Member can designate one Clearing Member per Market Participant Identifier (''MPID'') associated with the Member.

[13] System is defined as ''the electronic communications and trading facility designated by the Board through which securities orders of Members are consolidated for ranking, execution and, when applicable, routing away.'' *See* Exchange Rule 1.5(cc).

[14] A Clearing Member would have the ability to enable alerts regardless of whether it was allocated responsibilities pursuant to proposed paragraph (c).

[15] The Member and Clearing Member may input any email address for which an alert will be sent via the risk management tool on the web portal.

[16] 17 CFR 240.15c3–5.

[17] *See* Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Risk Management Controls for Brokers or Dealers with Market Access, *available at https://www.sec.gov/divisions/marketreg/faq-15c-5-risk-management-controls-bd.htm.*

the Exchange also seeks such authority as it pertains to risk settings specified in proposed Interpretation and Policy .03. Existing Rule 11.13(f) provides the Exchange with authority to directly provide Clearing Members that clear transactions on behalf of a Member, to share any of the Member's risk settings set forth under Interpretation and Policy .01 to Rule 11.10.[18] The purpose of such a provision under Rule 11.13(f) was implemented in order to reduce the administrative burden on participants on the Exchange, including both Clearing Members and Members, and to ensure that Clearing Members receive information that is up to date and conforms to the settings active in the System. Further, the provision was implemented because the Exchange believed such functionality would help Clearing Members to better monitor and manage the potential risks that they assume when clearing for Members of the Exchange. Now, the Exchange also proposes to amend paragraph (f) of Exchange Rule 11.13 to authorize the Exchange to share any of a Member's risk settings specified in proposed Interpretation and Policy .03 to Rule 11.10 with the Clearing Member that clears transactions on behalf of the Member and to update the term clearing firm to the proposed defined term Clearing Member. The Exchange notes that the use by a Member of the risk settings offered by the Exchange is optional. By using these proposed optional risk settings, a Member therefore also opts-in to the Exchange sharing its designated risk settings with its Clearing Member. The Exchange believes that its proposal to offer additional risk settings will allow Members to better manage their credit risk. Further, by allowing Members to allocate the responsibility for establishing and adjusting such risk settings to its Clearing Member, the Exchange believes Clearing Members may reduce potential risks that they assume when clearing for Members of the Exchange. The Exchange also believes that its proposal to share a Member's risk settings set forth under proposed Interpretation and Policy .03 to Rule 11.10 directly with Clearing Members reduces the administrative burden on participants on the Exchange, including both Clearing Members and Members, and ensures that Clearing Members are receiving information that is up to date and conforms to the settings active in the System.

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.[19] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [20] 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.

Specifically, the Exchange believes the proposed amendment will remove impediments to and perfect the mechanism of a free and open market and a national market system because it provides additional functionality for a Member to manage its credit risk. In addition, the proposed risk settings could provide Clearing Members, who have assumed certain risks of Members, greater control over risk tolerance and exposure on behalf of their correspondent Members, if allocated responsibility pursuant to proposed paragraph (c), while also providing an alert system that would help to ensure that both Members and its Clearing Member are aware of developing issues. As such, the Exchange believes that the proposed risk settings would provide a means to address potentially market-impacting events, helping to ensure the proper functioning of the market.

In addition, the Exchange believes that the proposed rule change is designed to protect investors and the public interest because the proposed functionality is a form of risk mitigation that will aid Members and Clearing Members in minimizing their financial exposure and reduce the potential for disruptive, market-wide events. In turn, the introduction of such risk management functionality could enhance the integrity of trading on the securities markets and help to assure the stability of the financial system.

Further, the Exchange believes that the proposed rule will foster cooperation and coordination with persons facilitating transactions in securities because the Exchange will provide alerts when a Member's trading activity reaches certain thresholds, which will be available to both the Member and Clearing Member. As such, the Exchange may help Clearing Members monitor the risk levels of correspondent Members and provide tools for Clearing Members, if allocated such responsibility, to take action.

The proposal will permit Clearing Members who have a financial interest in the risk settings of Members to better monitor and manage the potential risks assumed by Clearing Members, thereby providing Clearing Members with greater control and flexibility over setting their own risk tolerance and exposure. To the extent a Clearing Member might reasonably require a Member to provide access to its risk settings as a prerequisite to continuing to clear trades on the Member's behalf, the Exchange's proposal to share those risk settings directly reduces the administrative burden on participants on the Exchange, including both Clearing Members and Members. Moreover, providing Clearing Members with the ability to see the risk settings established for Members for which they clear will foster efficiencies in the market and remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposal also ensures that Clearing Members are receiving information that is up to date and conforms to the settings active in the System. The Exchange believes that the proposal is consistent with the Act, particularly Section 6(b)(5),[21] because it will foster cooperation and coordination with persons engaged in facilitating transactions in securities and more generally, will protect investors and the public interest, by allowing Clearing Members to better monitor their risk exposure and by fostering efficiencies in the market and removing impediments to and perfect the mechanism of a free and open market and a national market system.

Finally, the Exchange believes that the proposed rule change does not unfairly discriminate among the Exchange's Members because use of the risk settings is optional and are not a prerequisite for participation on the Exchange. The proposed risk settings are completely voluntary and, as they relate solely to optional risk management functionality, no Member

[18] By using the optional risk settings provided in Interpretation and Policy .01, a Member opts-in to the Exchange sharing its risk settings with its Clearing Member. Any Member that does not wish to share such risk settings with its Clearing Member can avoid sharing such settings by becoming a Clearing Member. *See* Securities Exchange Act Release No. 80607 (May 5, 2017) 82 FR 22027 (May 11, 2017) (SR–BatsEDGX–2017–16).

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78f(b)(5).

is required or under any regulatory obligation to utilize them.

The proposed amendments to Rule 11.13(a) will harmonize Exchange Rules with BZX and BYX Rules 11.15(a). While the proposed changes to Rule 11.13(a) were not previously memorialized in Exchange Rules, they were contemplated in Exhibit F of the Exchange's original Form 1 application. As such, the proposed changes to Rule 11.13(a) involve no substantive changes.

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. In fact, the Exchange believes that the proposal may have a positive effect on competition because it would allow the Exchange to offer risk management functionality that is comparable to functionality that has been adopted by other national securities exchanges.[22] Further, by providing Members and their Clearing Members additional means to monitor and control risk, the proposed rule may increase confidence in the proper functioning of the markets and contribute to additional competition among trading venues and broker-dealers. Rather than impede competition, the proposal is designed to facilitate more robust risk management by Members and Clearing Members, which, in turn, could enhance the integrity of trading on the securities markets and help to assure the stability of the financial system.

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[23] and Rule 19b–4(f)(6) thereunder.[24]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[25] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[26] 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 the Exchange may implement the proposed risk controls on the anticipated launch date of April 24, 2020. The Exchange states that waiver of the operative delay would allow Members to immediately utilize the proposed functionality to manage their risk. For this reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission 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–CboeEDGX–2020–017 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2020–017. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2020–017, and should be submitted on or before May 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–09639 Filed 5–5–20; 8:45 am]

BILLING CODE 8011–01–P

[22] *Supra* note 6.

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 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.

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 240.19b–4(f)(6)(iii).

[27] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88787; File No. SR–CboeEDGX–2020–019]

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

April 30, 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 April 24, 2020, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

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 May 4, 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 May 4, 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 November 2, 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

[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 Nos. 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) (''Notice''); 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); *and* 88054 (January 27, 2020), 85 FR 5761 (January 31, 2020) (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) (SR–CboeEDGX–2020–002).

[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.

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 six 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 extend the terms of the Pilot Programs to November 2, 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

[8] *See* Cboe Options Rule 4.13.13.

[9] *See supra* note 5.

[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).

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 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–2020–019 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–2020–019. 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

[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, 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).

submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2020–019 and should be submitted on or before May 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–09634 Filed 5–5–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–10780; 34–88790; File No. 265–28]

Investor Advisory Committee Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of public meeting of Securities and Exchange Commission Investor Advisory Committee.

SUMMARY: The Securities and Exchange Commission Investor Advisory Committee, established pursuant to Section 911 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, is providing notice that it will hold a public meeting. The public is invited to submit written statements to the Committee.

DATES: The meeting will be held on Thursday, May 21, 2020 from 10:00 a.m. until 4:00 p.m. (ET). Written statements should be received on or before May 21, 2020.

ADDRESSES: The meeting will be conducted by remote means and/or at the Commission's headquarters, 100 F St NE, Washington, DC 20549. The meeting will be webcast on the Commission's website at *www.sec.gov.* Written statements may be submitted by any of the following methods. To help us process and review your statement more efficiently, please use only one method. At this time, electronic statements are preferred.

Electronic Statements

- Use the Commission's internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email message to *rules-comments@sec.gov.* Please include File No. 265–28 on the subject line; or

Paper Statements

- Send paper statements to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. 265–28. This file number should be included on the subject line if email is used.

Statements also will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Room 1503, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. For up-to-date information on the availability of the Public Reference Room, please refer to *https://www.sec.gov/fast-answers/answerspublicdocshtm.html* or call (202) 551–5450.

All statements 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.

FOR FURTHER INFORMATION CONTACT: Marc Oorloff Sharma, Chief Counsel, Office of the Investor Advocate, at (202) 551–3302, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public, except during that portion of the meeting reserved for an administrative work session during lunch. Persons needing special accommodations to take part because of a disability should notify the contact person listed in the section above entitled **FOR FURTHER INFORMATION CONTACT**.

The agenda for the meeting includes: Welcome remarks; approval of previous meeting minutes, discussion of subcommittee recommendations, panel discussion regarding index funds, a non-public administrative session, panel discussion regarding credit rating agencies, and subcommittee reports.

Dated: May 1, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–09662 Filed 5–5–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88786; File No. SR–CBOE–2020–042]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 6.9 To Permit In-Kind Transfers of Positions Off of the Exchange in Connection With Unit Investment Trusts (''UITs'')

April 30, 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 April 28, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend Rule 6.9 to permit in-kind transfers of positions off of the Exchange in connection with unit investment trusts (''UITs''). The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 6.9. In-Kind Exchange of Options Positions and ETF Shares *and UIT Units*

Notwithstanding the prohibition set forth in Rule 5.12, positions in options listed on the Exchange may be transferred off the Exchange by a Trading Permit Holder in connection with transactions *(a)* to purchase or redeem creation units of ETF shares between an authorized participant and the issuer of such ETF shares *or (b) to create or redeem units of a unit investment trust (''UIT'') between a broker-dealer and the issuer of such UIT units,* which transfers would occur at the price(s) used to calculate

[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).

the net asset value of such ETF shares *or UIT units, respectively.* For purposes of this Rule:

(a) An ''authorized participant'' is an entity that has a written agreement with the issuer of ETF shares or one of its service providers, which allows the authorized participant to place orders for the purchase and redemption of creation units (*i.e.,* specified numbers of ETF shares); [and]

(b) an ''issuer of ETF shares'' is an entity registered with the Commission as an open-end management investment company under the Investment Company Act of 1940[.]*; and*

(c) an ''*issuer of UIT units*'' *is a trust registered with the Commission as a unit investment trust under the Investment Company Act of 1940.*

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.9, which permits off-Exchange, in-kind transfers of options positions in connection with ETFs organized as open-end management investment companies under the Investment Company Act of 1940 (the ''1940 Act''), to also permit in-kind transfers of options positions in connection with entities registered as UITs under the 1940 Act.

Rule 6.9 is an exception to the Exchange's general requirement that transfers of options contracts listed on the Exchange be effected on an exchange, as set forth in Rule 5.12.[5] Specifically, Rule 6.9 permits positions in options listed on the Exchange to be transferred off the Exchange by a Trading Permit Holder in connection with transactions to purchase or redeem ''creation units'' of ETF shares between an authorized participant and the issuer of such ETF shares. Such transfers pursuant to Rule 6.9 occur between two different parties, off the Exchange, and are considered position transfers, as opposed to transactions.[6] Each of these transfers occurs at the price used to calculate the net asset value (''NAV'') of such ETF shares. Rule 6.9 also currently defines an ''authorized participant'' as an entity that has a written agreement with the issuer of ETF shares or one of its service providers, which allows the authorized participant to place orders for the purchase and redemption of creation units (*i.e.,* specified numbers of ETF shares), and an ''issuer of ETF shares'' as an entity registered with the Commission as an open-end management investment company under the 1940 Act. The ability to effect in-kind transfers is a key component of the operational structure of an ETF and the exception under Rule 6.9 allows options-based ETFs to be more tax-efficient investment vehicles, to the benefit of their shareholders, and potentially result in transaction cost savings, which may be passed along to investors. The Exchange now proposes to expand Rule 6.9 to provide the same exemption from Rule 5.12 to off-floor, in-kind transfers in connection with the creation or redemption of units issued by a UIT, another type of investment company registered under the 1940 Act. Although UITs operate differently than ETFs in certain respects, as described below, the anticipated potential benefits to UIT investors (*i.e.,* greater tax efficiencies and transaction cost savings) from the proposed exemption would be similar as discussed below.

Specifically, under the 1940 Act,[7] a UIT is an investment company organized under a trust indenture or similar instrument that issues redeemable securities, each of which represents an undivided interest in a unit of specified securities.[8] A UIT's investment portfolio is relatively fixed, and, unlike an ETF, a UIT has a fixed life (a termination date for the trust is established when the trust is created). Similar to other types of investment companies (including ETFs), UITs invest their assets in accordance with their investment objectives and investment strategies, and UIT units represent interests in a UIT's underlying assets. Like ETFs, UITs do not sell or redeem individual shares, but instead, through the creation and redemption process, a UIT's sponsor (a broker-dealer) may purchase and redeem shares directly from the UIT's trustee in aggregations known as ''units.'' A broker-dealer purchases a unit of UIT shares from the UIT's trustee by depositing a basket of securities and/or other assets identified by the UIT. These transactions are largely effected by ''in-kind'' transfers, or the exchange of securities, non-cash assets, and/or other non-cash positions. The basket deposited by the broker-dealer is generally expected to be representative of the UIT's units and will be equal in value to the aggregate NAV of the shares of the UIT comprising a unit. [9] The UIT then issues units that are publicly offered and sold. Unlike ETFs, UITs typically do not continuously offer their shares for sale, but rather, make a one-time or limited public offering of only a specific, fixed number of units like a closed-end fund (*i.e.,* the primary period, which may range from a single day to a few months). Similar to the process for ETFs, UITs allow investor-owners of units to redeem their units back to the UIT's trustee on a daily basis and, upon redemption, such investor-owners are entitled to receive the redemption price at the UIT's NAV. While UITs provide for daily redemptions directly with the UIT's trustee, UIT sponsors frequently maintain a secondary market for units,

[5] *See* Rule 5.12(a) (Transactions Off the Exchange), which generally requires transactions of option contracts listed on the Exchange for a premium in excess of $1.00 to be effected on the floor of the Exchange or on another exchange.

[6] While the prices of options transactions effected on the Exchange are disseminated to OPRA, back-office transfers of options positions in clearing accounts held at The Options Clearing Corporation (''OCC'') (in accordance with OCC Rules) are not disseminated to OPRA or otherwise publicly available, as they are considered position transfers, rather than executions. OCC has represented to the Exchange that it has the operational capabilities to effect the position transfers and all transfers pursuant to Rule 6.9 are required to comply with OCC rules. *See* Rule 8.2 (which requires all TPHs that are members of OCC to comply with OCC's Rules).

[7] 15 U.S.C. 80a–4(2).

[8] The Exchange also notes that, though a majority of ETFs are structured as open-ended funds (*i.e.,* those ETFs currently covered by Rule 6.9), some ETFs are structured as UITs, and currently represent a significant amount of assets within the ETF industry. These include, for example, SPDR S&P 500 ETF Trust (''SPY'') and PowerShares QQQ Trust, Series 1 (''QQQ'').

[9] The NAV is an investment company's total assets minus its total liabilities. UITs must calculate their NAV at least once every business day, typically after market close. *See* § 270.2a–4(c), which provides that any interim determination of current net asset value between calculations made as of the close of the New York Stock Exchange on the preceding business day and the current business day may be estimated so as to reflect any change in current net asset value since the closing calculation on the preceding business day. This, however, is notwithstanding the requirements of § 270.2a–4(a), which provides for other events that would trigger computation of a UIT's NAV.

also like that of ETFs, and will buy back units at the applicable redemption price per unit. To satisfy redemptions, a UIT typically sells securities and/or other assets, which results in negative tax implications and an incurrence of trading costs borne by remaining unit holders.

Although ETFs and UITs operate differently in certain respects, the ability to effect in-kind transfers is significant to both types of investment vehicles. Currently, in-kind transfers of options pursuant to Rule 6.9 protect ETF shareholders from certain undesirable tax consequences and improve the overall tax efficiency of the products. Indeed, by effecting redemptions on an in-kind basis, as permitted by Rule 6.9, there is no need for an ETF to sell assets and potentially realize capital gains that would be distributed to shareholders. Additionally, by transacting on an in-kind basis, ETFs may currently avoid certain transaction costs they would otherwise incur in connection with purchases and sales of securities and other assets (including options). As stated, Rule 6.9 does not currently permit these in-kind transfers for UITs, as they are still generally required to sell options on an exchange to obtain the requisite cash when effecting redemption transactions with broker-dealers. Thus, the Exchange proposes to extend the Rule 6.9 exemption to UITs. As described above, UITs and ETFs are situated in substantially the same manner; the key differences being a UIT's fixed duration, and that a UIT generally makes a one-time public offering of only a specific, fixed number of units. Negative tax implication and trading costs for remaining unit holders would be mitigated by allowing a UIT sponsor or another broker-dealer to receive an in-kind distribution of options upon redemption. Therefore, permitting off-exchange in-kind transfers for UITs would benefit investors by potentially providing tax efficiencies and transaction cost savings similar to those that investors in ETFs may enjoy today. The Exchange does not believe the proposed extension of Rule 6.9 to UITs will adversely impact investors or the maintenance of a fair and orderly market as it does not circumvent the prohibition under Rule 5.12(a) nor does it compromise price discovery or transparency. To note, Rule 6.9 is already applicable to options in connection with ETF creations and redemptions, previously approved by the Commission.[10] Although options positions in connection with ETF and UIT (as proposed) creations and redemptions are transferred off of the Exchange, they are not closed or ''traded'', and instead, merely reside in a different clearing account until closed in a trade on the Exchange or until they expire. The Exchange also notes that Rule 6.9 will continue to be clearly delineated and limited in scope, given that the exception will continue to apply only to transfers of options effected in connection with the creation and redemption process, and for certain investment companies registered under the 1940 Act. Moreover, the Exchange notes that transfers of options in connection with the creation or redemption of open-end fund ETFs constitute a minimal percentage of the total average daily volume (''ADV'') of options and the Exchange expects options transfers in connection with UITs to comprise a similar minimal percentage of ADV. Additionally the options transfers that would be permitted by the exemption are generally expected to include corresponding transactions by a broker-dealer that would occur on an exchange and would be reported to OPRA.[11]

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.[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.

The Exchange believes that permitting off-floor transfers in connection with the in-kind UIT creation and redemption process promotes just and equitable principles of trade and helps remove impediments to and perfect the mechanism of a free and open market and a national market system, as it would permit UITs that invest in options traded on the Exchange to transfer options off of the Exchange in connection with their in-kind creation and redemption process as ETFs are currently able to do under Rule 6.9, as previously approved by the Commission.[14] Further, the Exchange believes that permitting a comparable investment vehicle, also registered as an investment company under the 1940 Act, to be included in the Rule 6.9 exemption, removes impediments to and perfect the mechanism of a free and open market and national market system as it would enable UITs to compete more effectively with other investment vehicles that, based on their portfolio holdings, may effect in-kind creations and redemptions without restriction. The Exchange notes that the ability to effect in-kind transfers is significant to both ETFs and UITs as investment vehicles. By permitting UITs that invest in options traded on the Exchange to benefit from potential tax efficiencies and transaction cost savings similar to those that ETFs may currently enjoy, the proposed rule change would protect investors and the public interest by passing along such potential benefits to investors that participate in UITs. The Exchange does not believe that the proposed rule change affects the protection of investors or the maintenance of a fair and orderly market because the Rule 6.9 exception would continue to be clearly delineated and limited in scope. Rule 6.9 already applies to ETFs, which operate in a similar manner as UITs, and the proposed rule change to make the transfer exemption available to UITs is based on a similar rationale and does not raise any new or novel issues. In this regard, as with in-kind, off-exchange transfers of options in connection with ETFs, those transfers in connection with UITs would also occur at a price related to the NAV of the applicable UIT units, which removes the need for price discovery on an

[10] *See* Securities Exchange Act Release No. 87340 (October 17, 2019), 84 FR 56877 (October 23, 2019) Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, To Adopt Rule 6.9 (In-Kind Exchange of Options Positions and ETF Shares)) (SR–CBOE–2019–048).

[11] The Exchange notes that in conjunction with depositing options with a UIT's trustee and creating units, the necessary options positions will be acquired in an on-exchange transaction that is reported to OPRA. In conjunction with redemptions, the sponsor or other broker-dealer will generally acquire both the units redeemed by a redeeming unit holder and an options position to offset the position that it will receive as proceeds for the redemption. Such an options position is likely acquired in an on-exchange transaction that would be reported to OPRA. Thus, while the transfer of options positions between the sponsor or other broker-dealer and the UIT would not necessarily be reported, there are generally corresponding transactions that would be reported, providing transparency into the transactions.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See supra* note 10.

exchange. As stated above, the Exchange expects that off-exchange options transfers in connection with the creation and redemption process for UITs will comprise a minimal percentage of ADV, just as such transfers currently permissible in connection with ETFs comprise a minimal percentage of ADV. Further, the general price at which UIT-related transfers are effected will be publicly available as they are based on the disseminated closing prices and are generally expected to include corresponding, transactions by a broker-dealer that would occur on an exchange and be reported to OPRA.[15]

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 does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because invoking the exception under Rule 6.9 in connection with UITs is voluntary and the proposed exception for UITs is not intended as a competitive trading tool. Instead, it is intended as an alternative to the normal auction process to provide market participants with an efficient and effective means to transfer option positions as part of the UIT creation and redemption process under the same specified circumstances currently applicable to ETFs in connection with creating and redeeming units of UITs. The proposed expansion of the Rule 6.9 exception to UITs would enable this investment vehicle, which is comparable to ETFs, to enjoy the potential benefits of off-exchange, in-kind transfers of option positions in connection with creating and redeeming, and to pass these benefits along to investors. Use of the in-kind, off-exchange transfer process in connection with creating UIT units and the redemption process would be voluntary and would apply in the same manner to all broker-dealers choosing to invoke such process.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the in-kind transfer rule would continue to provide a clearly delineated and limited exception to the requirement that options positions in connection with certain entities registered as a type of investment company under the 1940 Act be transferred on the floor of an exchange. The proposed rule change merely extends the Rule 6.9 exemption (and any potential benefits) to UITs. The Exchange again notes that Rule 6.9 was previously approved by the Commission[16] and is currently applicable to ETFs that are similarly situated and also in invest in options. Also, as indicated above, in light of the significant benefits provided (*e.g.,* potential tax efficiencies and transaction cost savings), the proposed exception may lead to further development of UITs that invest in options, thereby fostering competition and resulting in additional choices for investors, which ultimately benefits the marketplace and the public. Other options exchanges in their discretion may pursue the adoption of similar exceptions.

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 written 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[17] and subparagraph (f)(6) of Rule 19b–4 thereunder.[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–CBOE–2020–042 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2020–042. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2020–042, and should be submitted on or before May 27, 2020.

[15] *See supra* note 11.

[16] *See supra* note 10.

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 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, 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.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–09638 Filed 5–5–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88778; File No. SR–CboeBZX–2020–034]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Applicable to Securities Listed on the Exchange, Which Are Set Forth in BZX Rule 14.13 (Company Listing Fees)

April 30, 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 April 16, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the fees applicable to securities listed on the Exchange, which are set forth in BZX Rule 14.13, Company Listing Fees. 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

On August 30, 2011, the Exchange received approval of rules applicable to the qualification, listing, and delisting of companies on the Exchange,[3] which it modified on February 8, 2012 in order to adopt pricing for the listing of exchange-traded products (''ETPs'')[4] on the Exchange.[5] On July 3, 2017, the Exchange made certain changes to Rule 14.13 such that there were no entry fees or annual fees for ETPs listed on the Exchange.[6] Effective January 1, 2019, the Exchange made certain changes to Rule 14.13 in order to charge an entry fee for ETPs that are not Generically-Listed ETPs[7] and to add annual listing fees for ETPs listed on the Exchange.[8] The Exchange then made certain additional modifications to Rule 14.13 in May 2019 related to listings that are transferring to the Exchange and to make certain changes to the fees associated with Linked Securities.[9] [10] Finally, on August 30, 2019, the Exchange amended Rule 14.13(b)(2) in order to create annual pricing cap for Outcome Strategy Series[11] that are listed on the Exchange.[12] Now, the Exchange submits this proposal in order to amend Rule 14.13(b)(1)(C)(i) to exclude generically-listed Exchange-Traded Fund Shares from entry fees.

By way of background, on April 6, 2020, the Exchange received approval by the Commission to generically list and trade Exchange-Traded Fund Shares that are permitted to operate in reliance of Rule 6c–11 (''Rule 6c–11'') under the Investment Company Act of 1940 (the ''1940 Act'').[13] The Commission recently adopted Rule 6c–11 to permit exchange-traded funds (''ETFs'') that satisfy certain conditions to operate without obtaining an exemptive order from the Commission under the 1940 Act.[14] Since the first ETF was approved by the Commission in 1992, the Commission has routinely granted exemptive orders permitting ETFs to operate under the 1940 Act because there was no ETF specific rule in place and they have characteristics that distinguish them from the types of structures contemplated and included in the 1940 Act. After such an extended period operating without a specific rule set and only under exemptive relief, Rule 6c–11 is designed to provide a consistent, transparent, and efficient regulatory framework for ETFs.[15] Given

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[4] As defined in Rule 11.8(e)(1)(A), the term ''ETP'' means any security listed pursuant to Exchange Rule 14.11.

[5] *See* Securities Exchange Act Release No. 66422 (February 17, 2012), 77 FR 11179 (February 24, 2012) (SR–BATS–2012–010).

[6] *See* Securities Exchange Act Release No. 81152 (July 14, 2017), 82 FR 33525 (July 20, 2017) (SR–BatsBZX–2017–45).

[7] As defined in Rule 14.13(b)(1)(C)(i), the term ''Generically-Listed ETPs'' means Index Fund Shares, Portfolio Depositary Receipts, Managed Fund Shares, Linked Securities, and Currency Trust Shares that are listed on the Exchange pursuant to Rule 19b–4(e) under the Exchange Act and for which a proposed rule change pursuant to Section 19(b) of the Exchange Act is not required to be filed with the Commission.

[8] *See* Securities Exchange Act Release No. 83597 (July 5, 2018), 83 FR 32164 (July 11, 2018) (SR–CboeBZX–2018–46).

[9] As defined in Rule 14.11(d), the term ''Linked Securities'' includes any product listed pursuant to Rule 14.11(d), but specifically includes Equity Index-Linked Securities, Commodity-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities.

[10] *See* Securities Exchange Act Release No. 85881 (May 16, 2019), 84 FR 23607 (May 22, 2019) (SR–CboeBZX–2019–042).

[11] As defined in Rule 14.13(b)(2)(C)(iv), an Outcome Strategy Series is a series of ETPs that are each designed to (i) a pre-defined set of returns; (ii) over a specified outcome period; (iii) based on the performance of the same underlying instrument; and (iv) each employ the same outcome strategy for achieving the predefined set of returns (each an ''Outcome Strategy ETP'' and, collectively, an ''Outcome Strategy Series'').

[12] *See* Securities Exchange Act No. 86956 (September 12, 2019) 84 FR 49128 (September 18, 2019) (SR–CboeBZX–2019–081).

[13] 15 U.S.C. 80a–1.

[14] *See* Release Nos. 33–10695; IC–33646; File No. S7–15–18 (Exchange-Traded Funds) (September 25, 2019), 84 FR 57162 (October 24, 2019) (the ''Rule 6c–11 Release'').

[15] In approving the rule, the Commission stated that the ''rule will modernize the regulatory framework for ETFs to reflect our more than two decades of experience with these investment products. The rule is designed to further important Commission objectives, including establishing a consistent, transparent, and efficient regulatory framework for ETFs and facilitating greater competition and innovation among ETFs.'' Rule 6c–11 Release, at 57163. The Commission also stated the following regarding the rule's impact: ''We believe rule 6c–11 will establish a regulatory

this, the Exchange adopted Rule 14.11(l) to similarly promote consistency, transparency, and efficiency surrounding the exchange listing process for ETF Shares in a manner that is consistent with the Act.

Like Index Fund Shares and Managed Fund Shares listed under generic listing standards in Rules 14.11(c) and 14.11(i), respectively, series of Exchange-Traded Fund Shares that are permitted to operate in reliance on Rule 6c–11 are permitted to be listed and traded on the Exchange without a prior Commission approval order or notice of effectiveness pursuant to Section 19(b) of the Act.[16] Given this, the Exchange proposes to include generically-listed Exchange-Traded Fund Shares in the list of Generically-Listed ETPs set forth in Rule 14.13(b)(1)(C)(i) that are excepted from entry fees. Specifically, where generically-listed Exchange-Traded Fund Shares do not require a proposed rule change pursuant to section 19(b) of the Exchange Act to be filed with the Commission prior to listing and trading on the Exchange, the Exchange proposes to exempt such Exchange-Traded Fund Shares from entry fees. Such treatment is consistent with the treatment of other ETPs (such as Index Fund Shares and Managed Fund Shares) that also generally do not require a proposed rule change pursuant to section 19(b) of the Exchange Act to be filed with the Commission prior to listing and trading on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,[17] in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5),[18] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its issuers. The Exchange also notes that its ETP listing business operates in a highly-competitive market in which ETP issuers can readily transfer their listings if they deem fee levels or any other factor at a particular venue to be insufficient or excessive. The proposed rule change reflects a competitive pricing structure designed to incentivize issuers to list new products and transfer existing products to the Exchange, which the Exchange believes will enhance competition both among ETP issuers and listing venues, to the benefit of investors.

The Proposed Entry Fee Exemption Is an Equitable Allocation of Fees

The Exchange believes the proposal is equitable because it is available to all issuers and applies equally to all generically-listed Exchange-Traded Fund Shares. The Exchange only recently amended its Rules to allow for the generic listing of Exchange-Traded Fund Shares. The Exchange believes that providing an exemption to entry fees for such ETPs is a reasonable and equitable approach as they do not require a proposed rule change pursuant to Section 19(b) of the Exchange Act to be filed with the Commission in order to list and trade on the Exchange.

The Exchange notes that the proposed entry fee exemption will only act to leave static or reduce fees for ETPs listed on the Exchange. Further, this proposal will decrease the fees associated with generically-listed Exchange-Traded Fund Shares on the Exchange, which will reduce the barriers to entry into the space and incentivize enhanced competition among issuers of Exchange-Traded Fund Shares, to the benefit of investors.

The Proposed Entry Fee Exemption Is Not Unfairly Discriminatory

The Exchange also believes that the proposed entry fee exemption for generically-listed Exchange-Traded Fund Shares is not unfairly discriminatory because it does not require a proposed rule change pursuant to Section 19(b) of the Exchange Act to be filed with the Commission in order to list and trade on the Exchange. As noted above, Exchange-Traded Funds only recently became available to list and trade generically on the Exchange. Other similar types of ETPs (*e.g.,* Managed Fund Shares and Index Fund Shares) that are listed on the Exchange generically are exempted from entry fees under Rule 14.13(b)(1)(C)(i) because they do not require a proposed rule change pursuant to Section 19(b) of the Exchange Act to be filed with the Commission in order to list and trade on the Exchange. As such, the Exchange believes it is not unfairly discriminatory of the Exchange to similarly exempt generically-listed Exchange-Traded Fund Shares from such entry fees.

The Exchange notes that the proposed entry fee exemption will only act to leave static or reduce fees for ETPs listed on the Exchange. This proposal will decrease the fees associated with generically listing Exchange-Traded Fund Shares, which will reduce the barriers to entry into the space and incentivize enhanced competition among issuers of Exchange-Traded Fund Shares, also to the benefit of investors.

The Proposed Entry Fee Exemption Is Reasonable

The Exchange believes that the proposed entry fee exemption for generically-listed Exchange-Traded Fund Shares is a reasonable means to incentivize issuers to list (or transfer) such Exchange-Traded Fund Shares on the Exchange. The marketplace for listings is extremely competitive and there are several other national securities exchanges that offer ETP listings. Transfers between listing venues occur frequently for numerous reasons, including listing fees. The proposed rule change reflects a competitive pricing structure designed to incentivize issuers to list new products and transfer existing products to the Exchange, which the Exchange believes will enhance competition both among ETP issuers and listing venues, to the benefit of investors. Based on the foregoing, the Exchange believes that the proposed rule changes are consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed change burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of BZX as a listing venue by providing better pricing for generically-listed Exchange-Traded Fund Shares. The marketplace for listings is extremely competitive and there are several other national securities exchanges that offer ETP listings. Transfers between listing venues occur frequently for numerous reasons, including listing fees. This

framework that: (1) Reduces the expense and delay currently associated with forming and operating certain ETFs unable to rely on existing orders; and (2) creates a level playing field for ETFs that can rely on the rule. As such, the rule will enable increased product competition among certain ETF providers, which can lead to lower fees for investors, encourage financial innovation, and increase investor choice in the ETF market.'' Rule 6c–11 Release, at 57204.

[16] Rule 19b–4(e)(1) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') is not deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class. As noted in the Approval Order, Exchange Rule 14.11(l) establishes generic listing standards for ETFs that are permitted to operate in reliance on Rule 6c–11. An ETF listed under proposed Rule 14.11(l) would therefore not need a separate proposed rule change pursuant to Rule 19b–4 before it can be listed and traded on the Exchange.

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78f(b)(4) and (5).

proposal is intended to help the Exchange compete as an ETP listing venue. Accordingly, the Exchange does not believe that the proposed change will impair the ability of issuers or competing ETP listing venues to maintain their competitive standing. The Exchange also notes that the proposed change represents a competitive pricing structure designed to incentivize issuers to list new products and transfer existing products to the Exchange, which the Exchange believes will enhance competition both among ETP issuers and listing venues, to the benefit of investors. The Exchange believes that such proposed changes will directly enhance competition among ETP listing venues by reducing the costs associated with listing on the Exchange for generically-listed Exchange-Traded Fund Shares. Similarly, the Exchange believes that exempting entry fees on such ETPs will enhance competition both among listing venues of Exchange-Traded Fund Shares and among issuers through an overall reduction of fees for listing such products. As such, the proposal is a competitive proposal designed to enhance pricing competition among listing venues and implement pricing for listings that better reflects the revenue and expenses associated with listing ETPs on the Exchange. The Exchange does not believe the proposed amendments would burden intramarket competition as they would be available to all issuers uniformly.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

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 [19] and paragraph (f) of Rule 19b–4 [20] 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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2020–034 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–2020–034. 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–2020–034 and should be submitted on or before May 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–09637 Filed 5–5–20; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88782; File No. SR–CBOE–2020–039]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Operation of Its Flexible Exchange Options (''FLEX Options'') PM Exercise Settlement Pilot Program for FLEX Index Options

April 30, 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 April 16, 2020, Cboe Exchange, Inc. (''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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 Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to extend the operation of its Flexible Exchange Options (''FLEX Options'') pilot program regarding permissible exercise settlement values for FLEX Index Options. The text of the proposed rule change is provided below.

(additions are *in italics;* deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 4.21. Series of FLEX Options

(a) No change.

[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).

(b) *Terms.* When submitting a FLEX Order for a FLEX Option series to the System, the submitting FLEX Trader must include one of each of the following terms in the FLEX Order (all other terms of a FLEX Option series are the same as those that apply to non-FLEX Options), which terms constitute the FLEX Option series:

(1)–(4) No change.

(5) settlement type:

(A) No change.

(B) *FLEX Index Options.* FLEX Index Options are settled in U.S. dollars, and may be:

(i) No change.

(ii) p.m.-settled (with exercise settlement value determined by reference to the reported level of the index derived from the reported closing prices of the component securities), except for a FLEX Index Option that expires on any business day that falls on or within two business days of a third Friday-of-the-month expiration day for a non-FLEX Option (other than a QIX option) may only be a.m.-settled; however, for a pilot period ending the earlier of [May 4]*November 2,* 2020 or the date on which the pilot program is approved on a permanent basis, a FLEX Index Option with an expiration date on the third-Friday of the month may be p.m.-settled;

(iii)–(iv) No change.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 28, 2010, the Securities and Exchange Commission (the ''Commission'') approved a Cboe Options rule change that, among other things, established a pilot program regarding permissible exercise settlement values for FLEX Index Options.[5] The Exchange has extended the pilot period numerous times, which is currently set to expire on the earlier of May 4, 2020 or the date on which the pilot program is approved on a permanent basis.[6] The purpose of this rule change filing is to extend the pilot program through the earlier of November 2, 2020 or the date on which the pilot program is approved on a permanent basis. This filing simply seeks to extend the operation of the pilot program and does not propose any substantive changes to the pilot program.

Under Rule 4.21(b), *Series of FLEX Options* (regarding terms of a FLEX Option),[7] a FLEX Option may expire on any business day (specified to day, month and year) no more than 15 years from the date on which a FLEX Trader submits a FLEX Order to the System.[8] FLEX Index Options are settled in U.S. dollars, and may be a.m.-settled (with exercise settlement value determined by reference to the reported level of the index derived from the reported opening prices of the component securities) or p.m.-settled (with exercise settlement value determined by reference to the reported level of the index derived from the reported closing prices of the component securities).[9] Specifically, a FLEX Index Option that expires on, or within two business days of, a third Friday-of-the-month expiration day for a non-FLEX Option (other than a QIX option), may only be a.m. settled.[10] However, under the exercise settlement values pilot, this restriction on p.m.-settled FLEX Index Options was eliminated.[11] As stated, the exercise settlement values pilot is currently set to expire on the earlier of May 4, 2020 or the date on which the pilot program is approved on a permanent basis.

Cboe Options is proposing to extend the pilot program through the earlier of November 2, 2020 or the date on which the pilot program is approved on a permanent basis. Cboe Options believes the pilot program has been successful

[5] Securities Exchange Act Release No. 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010) (SR–CBOE–2009–087) (''Approval Order''). The initial pilot period was set to expire on March 28, 2011, which date was added to the rules in 2010. *See* Securities Exchange Act Release No. 61676 (March 9, 2010), 75 FR 13191 (March 18, 2010) (SR–CBOE–2010–026).

[6] *See* Securities Exchange Act Release Nos. 64110 (March 23, 2011), 76 FR 17463 (March 29, 2011) (SR–CBOE–2011–024) (extending the pilot program through the earlier of March 30, 2012 or the date on which the pilot program is approved on the permanent basis); 66701 (March 30, 2012), 77 FR 20673 (April 5, 2012) (SR–CBOE–2012–027) (extending the pilot through the earlier of November 2, 2012 or the date on which the pilot program is approved on a permanent basis); 68145 (November 2, 2012), 77 FR 67044 (November 8, 2012) (SR–CBOE–2012–102) (extending the pilot program through the earlier of November 2, 2013 or the date on which the pilot program is approved on a permanent basis); 70752 (October 24, 2013), 78 FR 65023 (October 30, 2013) (SR–CBOE–2013–099) (extending the pilot program through the earlier of November 3, 2014 or the date on which the pilot program is approved on a permanent basis); 73460 (October 29, 2014), 79 FR 65464 (November 4, 2014) (SR–CBOE–2014–080) (extending the pilot program through the earlier of May 3, 2016 or the date on which the pilot program is approved on a permanent basis); 77742 (April 29, 2016), 81 FR 26857 (May 4, 2016) (SR–CBOE–2016–032) (extending the pilot program through the earlier of May 3, 2017 or the date on which the pilot program is approved on a permanent basis); 80443 (April 12, 2017), 82 FR 18331 (April 18, 2017) (SR–CBOE–2017–032), 83 FR 21808 (May 10, 2018) (extending the pilot program through the earlier of May 3, 2018 or the date on which the pilot program is approved on a permanent basis); 83175 (May 4, 2018), 83 FR 21808 (May 10, 2018) (SR–CBOE–2018–037); 84537 (November 5, 2018), 83 FR 56113 (November 9, 2018) (SR–CBOE–2018–071); 85707 (April 23, 2019), 84 FR 18100 (April 29, 2019) (SR–CBOE–2019–021); and 87515 (November 13, 2020), 84 FR 63945 (November 19, 2019) (SR–CBOE–2019–108). At the same time the permissible exercise settlement values pilot was established for FLEX Index Options, the Exchange also established a pilot program eliminating the minimum value size requirements for all FLEX Options. *See* Approval Order, *supra* note 2. The pilot program eliminating the minimum value size requirements was extended twice pursuant to the same rule filings that extended the permissible exercise settlement values (for the same extended periods) and was approved on a permanent basis in a separate rule change filing. *See id; and* Securities Exchange Act Release No. 67624 (August 8, 2012), 77 FR 48580 (August 14, 2012) (SR–CBOE–2012–040).

[7] On October 7, 2019, the Exchange migrated its trading platform to the same system used by the Cboe Affiliated Exchanges (Cboe C2 Exchange, Inc. (''C2''), Cboe EDGX Exchange, Inc. (''EDGX''), Cboe BZX Exchange, Inc. (''BZX''), Cboe BYX Exchange, Inc. (''BYX''), Cboe EDGA Exchange, Inc. (''EDGA'')). In connection with this migration the Exchange restructured its Rulebook. Prior Rule 24A.4.01, covering the pilot program, was relocated to current Rule 4.21(b)(5). *See* Securities Exchange Act Release No. 87235 (October 4, 2019), 84 FR 54671 (October 10, 2019) (SR–CBOE–2019–084).

[8] Except an Asian-settled or Cliquet-settled FLEX Option series, which must have an expiration date that is a business day but may only expire 350 to 371 days (which is approximately 50 to 53 calendar weeks) from the date on which a FLEX Trader submits a FLEX Order to the System.

[9] *See* Rule 4.21(b)(5)(B); *see also* Securities Exchange Act Release No. 87235 (October 4, 2019), 84 FR 54671 (October 10, 2019) (SR–CBOE–2019–084). The rule change removed the provision regarding the exercise settlement value of FLEX Index Options on the NYSE Composite Index, as the Exchange no longer lists options on that index for trading, and included the provisions regarding how the exercise settlement value is determined for each settlement type, as how the exercise settlement value is determined is dependent on the settlement type.

[10] For example, notwithstanding the pilot, the exercise settlement value of a FLEX Index Option that expires on the Tuesday before the third Friday-of-the-month could be a.m. or p.m. settled. However, the exercise settlement value of a FLEX Index Option that expires on the Wednesday before the third Friday-of-the-month could only be a.m. settled.

[11] No change was necessary or requested with respect to FLEX Equity Options. Regardless of the expiration date, FLEX Equity Options are settled by physical delivery of the underlying.

and well received by its Trading Permit Holders and the investing public for the period that it has been in operation as a pilot. In support of the proposed extension of the pilot program, and as required by the pilot program's Approval Order, the Exchange has submitted to the Commission pilot program reports regarding the pilot, which detail the Exchange's experience with the program. Specifically, the Exchange provided the Commission with annual reports analyzing volume and open interest for each broad-based FLEX Index Options class overlying a third Friday-of-the-month expiration day, p.m.-settled FLEX Index Options series.[12] The annual reports also contained information and analysis of FLEX Index Options trading patterns. The Exchange also provided the Commission, on a periodic basis, interim reports of volume and open interest. In providing the pilot reports to the Commission, the Exchange has previously requested confidential treatment of the pilot reports under the Freedom of Information Act (''FOIA'').[13]

The Exchange believes there is sufficient investor interest and demand in the pilot program to warrant its extension. The Exchange believes that, for the period that the pilot has been in operation, the program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange believes that it has not experienced any adverse market effects with respect to the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement (as discussed below).

In that regard, based on the Exchange's experience in trading FLEX Options to date and over the pilot period, Cboe Options continues to believe that the restrictions on exercise settlement values are no longer necessary to insulate Non-FLEX expirations from the potential adverse market impacts of FLEX expirations.[14] To the contrary, Cboe Options believes that the restriction actually places the Exchange at a competitive disadvantage to its OTC counterparts in the market for customized options, and unnecessarily limits market participants' ability to trade in an exchange environment that offers the added benefits of transparency, price discovery, liquidity, and financial stability.

The Exchange also notes that certain position limit, aggregation and exercise limit requirements continue to apply to FLEX Index Options in accordance with Rules 8.35, *Position Limits for FLEX Options,* 8.42(g) *Exercise Limits* (in connection with FLEX Options) and 8.43(j), *Reports Related to Position Limits* (in connection with FLEX Options). Additionally, all FLEX Options remain subject to the general position reporting requirements in Rule 8.43(a).[15] Moreover, the Exchange and its Trading Permit Holder organizations each have the authority, pursuant to Rule 10.9, *Margin Required is Minimum,* to impose additional margin as deemed advisable. Cboe Options continues to believe these existing safeguards serve sufficiently to help monitor open interest in FLEX Option series and significantly reduce any risk of adverse market effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement.

Cboe Options is also cognizant of the OTC market, in which similar restrictions on exercise settlement values do not apply. Cboe Options continues to believe that the pilot program is appropriate and reasonable and provides market participants with additional flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. Cboe Options continues to believe that market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to, enhanced efficiency in initiating and closing out positions, increased market transparency, and heightened contra-party creditworthiness due to the role of the Options Clearing Corporation as issuer and guarantor of FLEX Options.

If, in the future, the Exchange proposes an additional extension of the pilot program, or should the Exchange propose to make the pilot program permanent, the Exchange will submit, along with any filing proposing such amendments to the pilot program, an annual report (addressing the same areas referenced above and consistent with the pilot program's Approval Order) to the Commission at least two months prior to the expiration date of the program. The Exchange will also continue, on a periodic basis, to submit interim reports of volume and open interest consistent with the terms of the exercise settlement values pilot program as described in the pilot program's Approval Order. Additionally, the Exchange will provide the Commission

[12] The annual reports also contained certain pilot period and pre-pilot period analyses of volume and open interest for third Friday-of-the-month expiration days, a.m.-settled FLEX Index series and third Friday-of-the-month expiration day Non-FLEX Index series overlying the same index as a third Friday-of-the-month expiration day, p.m.-settled FLEX Index option.

[13] 5 U.S.C. 552; *see infra* note 12.

[14] In further support, the Exchange also notes that the p.m. settlements are already permitted for FLEX Index Options on any other business day except on, or within two business days of, the third Friday-of-the-month. The Exchange is not aware of any market disruptions or problems caused by the use of these settlement methodologies on these expiration dates (or on the expiration dates addressed under the pilot program). The Exchange is also not aware of any market disruptions or problems caused by the use of customized options in the over-the-counter (''OTC'') markets that expire on or near the third Friday-of-the-month and are p.m. settled. In addition, the Exchange believes the reasons for limiting expirations to a.m. settlement, which is something the SEC has imposed since the early 1990s for Non-FLEX Options, revolved around a concern about expiration pressure on the New York Stock Exchange (''NYSE'') at the close that are no longer relevant in today's market. Today, the Exchange believes stock exchanges are able to better handle volume. There are multiple primary listing and unlisted trading privilege (''UTP'') markets, and trading is dispersed among several exchanges and alternative trading systems. In addition, the Exchange believes that surveillance techniques are much more robust and automated. In the early 1990s, it was also thought by some that opening procedures allow more time to attract contra-side interest to reduce imbalances. The Exchange believes, however, that today, order flow is predominantly electronic and the ability to smooth out openings and closes is greatly reduced (*e.g.,* market-on-close procedures work just as well as openings). Also, other markets, such as the NASDAQ Stock Exchange, do not have the same type of pre-opening imbalance disseminations as NYSE, so many stocks are not subject to the same procedures on the third Friday-of-the-month. In addition, the Exchange believes that NYSE has reduced the required time a specialist has to wait after disseminating a pre-opening indication. So, in this respect, the Exchange believes there is less time to react in the opening than in the close. Moreover, to the extent there may be a risk of adverse market effects attributable to p.m. settled options that would otherwise be traded in a non-transparent fashion in the OTC market, the Exchange continues to believe that such risk would be lessened by making these customized options eligible for trading in an exchange environment because of the added transparency, price discovery, liquidity, and financial stability available.

[15] Rule 8.43(a) provides that ''[i]n a manner and form prescribed by the Exchange, each Trading Permit Holder shall report to the Exchange, the name, address, and social security or tax identification number of any customer who, acting alone, or in concert with others, on the previous business day maintained aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of option contracts dealt in on the Exchange. The report shall indicate for each such class of options, the number of option contracts comprising each such position and, in the case of short positions, whether covered or uncovered.'' For purposes of Rule 8.43, the term ''customer'' in respect of any Trading Permit Holder includes ''the Trading Permit Holder, any general or special partner of the Trading Permit Holder, any officer or director of the Trading Permit Holder, or any participant, as such, in any joint, group or syndicate account with the Trading Permit Holder or with any partner, officer or director thereof.'' Rule 8.43(d).

with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the pilot program is consistent with the Exchange Act. The Exchange is in the process of making public on its website all 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.[16]

As noted in the pilot program's Approval Order, any positions established under the pilot program would not be impacted by the expiration of the pilot program.[17]

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.[18] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[19] 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)[20] 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 the proposed extension of the pilot program, which permits an additional exercise settlement value, would provide greater opportunities for investors to manage risk through the use of FLEX Options. Further, the Exchange believes that it has not experienced any adverse effects from the operation of the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and are p.m.-settled. The Exchange also believes that the extension of the exercise settlement values pilot does not raise any unique regulatory concerns. In particular, although p.m. settlements may raise questions with the Commission, the Exchange believes that, based on the Exchange's experience in trading FLEX Options to date and over the pilot period, market impact and investor protection concerns will not be raised by this rule change. The Exchange also believes that the proposed rule change would continue to provide Trading Permit Holders and investors with additional opportunities to trade customized options in an exchange environment (which offers the added benefits of transparency, price discovery, liquidity, and financial stability as compared to the over-the-counter market) and subject to exchange-based rules, and investors would benefit as a result.

B. Self-Regulatory Organization's Statement on Burden on Competition

Cboe Options does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes there is sufficient investor interest and demand in the pilot program to warrant its extension. The Exchange believes that, for the period that the pilot has been in operation, the program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange believes that it has not experienced any adverse market effects with respect to the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-Flex expirations and use a p.m. settlement. Cboe Options believes that the restriction actually places the Exchange at a competitive disadvantage to its OTC counterparts in the market for customized options, and unnecessarily limits market participants' ability to trade in an exchange environment that offers the added benefits of transparency, price discovery, liquidity, and financial stability. Therefore, the Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[21] and Rule 19b–4(f)(6) thereunder.[22]

A proposed rule change filed under Rule 19b–4(f)(6)[23] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[24] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that such waiver will allow the Exchange to extend the pilot program and maintain the status quo, thereby reducing market disruption.

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 program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[25]

[16] Available at *https://www.cboe.com/aboutcboe/legal-regulatory/national-market-system-plans/pm-settlement-flex-pm-data.*

[17] For example, a position in a p.m.-settled FLEX Index Option series that expires on the third Friday-of-the-month in January 2020 could be established during the exercise settlement values pilot. If the pilot program were not extended (or made permanent), then the position could continue to exist. However, the Exchange notes that any further trading in the series would be restricted to transactions where at least one side of the trade is a closing transaction. *See* Approval Order at footnote 3, *supra* note 2.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] *Id.*

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 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.

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6)(iii).

[25] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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–CBOE–2020–039 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2020–039. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2020–039 and should be submitted on or before May 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–09632 Filed 5–5–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88788; File No. SR–CboeBZX–2020–038]

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

April 30, 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 April 24, 2020, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

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 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 May 4, 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 May 4, 2020 (the ''Nonstandard Expirations Pilot Program'', and together with the XSPPM Pilot Program, the ''Pilot

[26] 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).

[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 Nos. 84480 (October 24, 2018), 83 FR 54635 (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–CboeBZX–2018–066) (''Notice''); 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); *and* 88052 (January 27, 2020), 85 FR 5753 (January 31, 2020) (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) (SR–CboeBZX–2020–004).

Programs''). The Exchange proposes to extend the Pilot Programs through November 2, 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 May 4, 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 six 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.

[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.

[10] *See* Cboe Options Rule 4.13(e); and Phlx Rule 1101A(b)(5).

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 November 2, 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]

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,

[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, 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).

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–2020–038 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–2020–038. 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–2020–038, and should be submitted on or before May 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–09635 Filed 5–5–20; 8:45 am]

BILLING CODE 8011–01–P

[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).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2020–0015]

Request for Comments Concerning the Extension of Particular Exclusions Granted Under the $200 Billion Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: Effective September 24, 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately $200 billion as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The U.S. Trade Representative initiated an exclusion process for the $200 billion action in June 2019, and as of March 26, 2020, has issued 11 product exclusion notices under this action. The product exclusions granted under these notices are scheduled to expire on August 7, 2020. The U.S. Trade Representative has decided to consider a possible extension for up to 12 months of particular exclusions granted under these initial 11 product exclusion notices. The Office of the U.S. Trade Representative (USTR) invites public comment on whether to extend particular exclusions.

DATES:

May 1, 2020: The public docket on the web portal at *https://comments.USTR.gov* will open for parties to submit comments on the possible extension of particular exclusions.

June 8, 2020 at 11:59 p.m. ET: To be assured of consideration, submit written comments on the public docket by this deadline.

ADDRESSES: You must submit all comments through the online portal: *https://comments.USTR.gov.*

FOR FURTHER INFORMATION CONTACT: Associate General Counsel Philip Butler or Assistant General Counsel Benjamin Allen at (202) 395–5725.

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see prior notices including 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 47974 (September 21, 2018), 83 FR 49153 (September 28, 2018), 83 FR 65198 (December 19, 2018), 84 FR 7966 (March 5, 2019), 84 FR 20459 (May 9, 2019), 84 FR 29576 (June 24, 2019), 84 FRN 38717 (August 7, 2019), 84 FR 46212 (September 3, 2019), 84 FR 49591 (September 20, 2019), 84 FR 57803 (October 28, 2019), 84 FR 61674 (November 13, 2019), 84 FR 65882 (November 29, 2019), 84 FR 69012 (December 17, 2019), 85 FR 549 (January 6, 2020), 85 FR 6674 (February 5, 2020), 85 FR 9921 (February 20, 2020), 85 FR 15015 (March 16, 2020), and 85 FR 17158 (March 26, 2020).

Effective September 24, 2018, the U.S. Trade Representative imposed additional 10 percent duties on goods of China classified in 5,757 full and partial subheading of the Harmonized Tariff Schedule of the United States (HTSUS) with an approximate annual trade value of $200 billion. *See* 83 FR 47974, as modified by 83 FR 49153. In May 2019, the U.S. Trade Representative increased the additional duty to 25 percent. *See* 84 FR 20459. On June 24, 2019, the Trade Representative established a process by which U.S. stakeholders could request exclusion of particular products classified within an 8-digit HTSUS subheading covered by the $200 billion

action from the additional duties. *See* 84 FR 29576 (the June 24 notice).

The June 24 notice required submission of requests for exclusion from the $200 billion action no later than September 30, 2019, and noted that the U.S. Trade Representative periodically would announce decisions. As of March 26, 2020, the U.S. Trade Representative has issued 11 notices of product exclusions under the $200 billion action. These exclusions are scheduled to expire on August 7, 2020.

B. Possible Extensions of Particular Product Exclusions

The U.S. Trade Representative has decided to consider a possible extension for up to 12 months of particular exclusions granted under the initial 11 product exclusion notices under the $200 billion action. At this time, USTR is not considering product exclusion notices issued after March 26, 2020. Accordingly, USTR invites public comments on whether to extend particular exclusions granted under the following notices of product exclusions:

- 84 FR 38717 (August 7, 2019)
- 84 FR 49591 (September 20, 2019)
- 84 FR 57803 (October 29, 2019)
- 84 FR 61674 (November 13, 2019)
- 84 FR 65882 (November 29, 2019)
- 84 FR 69012 (December 17, 2019)
- 85 FR 549 (January 6, 2020)
- 85 FR 6674 (February 5, 2020)
- 84 FR 9921 (February 20, 2020)
- 85 FR 15015 (March 16, 2020)
- 85 FR 17158 (March 26, 2020)

For exclusions amended or corrected by a later issued notice, parties should provide their extension comments on the docket corresponding to the initial notice of product exclusions.

USTR will evaluate the possible extension of each exclusion on a case-by-case basis. The focus of the evaluation will be whether, despite the first imposition of these additional duties in September 2018, the particular product remains available only from China. In addressing this factor, commenters should address specifically:

- Whether the particular product and/or a comparable product is available from sources in the United States and/or in third countries.
- Any changes in the global supply chain since September 2018 with respect to the particular product or any other relevant industry developments.
- The efforts, if any, the importers or U.S. purchasers have undertaken since September 2018 to source the product from the United States or third countries.

In addition, USTR will continue to consider whether the imposition of additional duties on the products covered by the exclusion will result in severe economic harm to the commenter or other U.S. interests.

C. Procedures To Comment on the Extension of Particular Exclusions

To submit a comment regarding the extension of a particular exclusion granted under the above referenced product exclusion notices under the $200 billion action, commenters must first register on the portal at *https://comments.USTR.gov.* As noted above, the public docket on the portal will be open from May 1, 2020, to June 8, 2020. After registration, the commenter may submit an exclusion extension comment form to the public docket.

Fields on the comment form marked with an asterisk (*) are required fields. Fields with a gray (BCI) notation are for business confidential information and the information entered will not be publicly available. Fields with a green (public) notation will be publicly available. Additionally, parties will be able to upload documents and indicate whether the documents are BCI or public. Commenters will be able to review the public version of their comments before they are posted.

In order to facilitate the preparation of comments prior to the May 1 opening of the public docket, a facsimile of the exclusion extension comment form to be used on the portal is annexed to this notice. Please note that the color-coding of the public and BCI fields is not visible on the annex, but will be apparent on the actual comment form used on the portal.

Set out below is a summary of the information to be entered on the exclusion extension comment form.

- Contact information, including the full legal name of the organization making the comment, whether the commenter is a third party (*e.g.,* law firm, trade association, or customs broker) submitting on behalf of an organization or industry, and the name of the third party organization, if applicable.
- The number for the exclusion on which you are commenting as provided in the annex of the **Federal Register** notice granting the exclusion and the description. For descriptions, amended or corrected by a later issued notice of product exclusions, parties should use the amended or corrected description.
- Whether the product or products covered by the exclusion are subject to an antidumping or countervailing duty order issued by the U.S. Department of Commerce.
- Whether you support or oppose extending the exclusion and an explanation of your rationale. Commenters must provide a public version of their rationale, even if the commenter also intends to submit a more detailed BCI rationale.
- Whether the products covered by the exclusion or comparable products are available from sources in the U.S. or in third countries. Please include information concerning any changes in the global supply chain since September 2018 with respect to the particular product.
- The efforts you have undertaken since September 2018 to source the product from the United States or third countries.
- The value and quantity of the Chinese-origin product covered by the specific exclusion request purchased in 2018 and 2019. Whether these purchases are from a related company, and if so, the name of and relationship to the related company.
- Whether Chinese suppliers have lowered their prices for products covered by the exclusion following the imposition of duties.
- The value and quantity of the product covered by the exclusion purchased from domestic and third country sources in 2018 and 2019.
- If applicable, the commenter's gross revenue for 2018 and 2019.
- Whether the Chinese-origin product of concern is sold as a final product or as an input.
- Whether the imposition of duties on the products covered by the exclusion will result in severe economic harm to the commenter or other U.S. interests.
- Any additional information in support of or in opposition to extending the exclusion.

Commenters also may provide any other information or data that they consider relevant.

D. Submission Instructions

To be assured of consideration, you must submit your comment between the opening of the public docket on the portal on May 1, 2020 and the June 8, 2020 submission deadline. Parties seeking to comment on more than one exclusion must submit a separate comment for each exclusion.

By submitting a comment, the commenter certifies that the information provided is complete and correct to the best of their knowledge.

E. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 and its implementing regulations, the Office of Management and Budget has

assigned control number 0350–0015, which expires January 31, 2023.

Joseph Barloon,

General Counsel, Office of the U.S. Trade Representative.

BILLING CODE 3290–F0–P

ANNEX

OMB Control Number: 0350-0015 Expiration Date: January 31, 2023

Exclusion Extension Comment Form

1. Submitter Information

Full Organization Legal Name **(Public)**	
Commenter First Name **(BCI)**	
Commenter Last Name **(BCI)**	
Commenter Phone Number **(BCI)**	
Commenter Mailing Address **(BCI)**	
Contact Email Address **(BCI)**	

Are you a third party, such as a law firm, trade association, or customs broker, submitting on behalf of an organization or industry? (Public)

Note: If you are submitting on behalf of an organization/industry, the information below is required.

Third Party Firm/Association Name **(Public)**	
Third Party First Name **(BCI)**	
Third Party Last Name **(BCI)**	
Third Party Phone Number **(BCI)**	
Third Party Mailing Address **(BCI)**	
Third Party Email Address **(BCI)**	

2. a) From the Annex of the Federal Register Notice granting the exclusion, please provide the number and product description for the exclusion you are commenting on. For descriptions subsequently amended or corrected by a later notice, parties should use the amended or corrected description. Click the magnifying glass in the box below to search for and select the number and product description applicable to your comment. You may search by the HTS code or key words in the exclusion. (Public)

b) Is this product subject to an antidumping or countervailing duty order issued by the U.S. Department of Commerce? (Public)

3. Do you support extending the exclusion (yes or no)? Please explain your rationale. (You must provide a public version of your rationale.) (Public)

4. **Please explain whether the products covered by the exclusion, or comparable products, are available from sources in the United States? (Please include information concerning any changes in the global supply chain since September 2018 with respect to the particular product or any other relevant industry developments.)** (Public)

5. **Please explain whether the products covered by the exclusion, or a comparable products, are available from sources in third countries? (Please include information concerning any changes in the global supply chain since September 2018 with respect to the particular product.)** (Public)

6. **a.) Please provide the value in USD and quantity (with units) of the Chinese-origin product covered by the specific exclusion that you purchased in 2018 and 2019. Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable.** (BCI)

2018 Value:		**2018 Quantity:**	
2019 Value:		**2019 Quantity:**	

Are the provided figures estimates? (BCI)

Are any of these purchases from a related company? (BCI)

Please list the name and relationship of the related company. (BCI)

Name:		**Relationship:**	

b.) Please discuss whether Chinese suppliers have lowered their prices for products covered by the exclusion following imposition of the duties. (BCI)

7. **Please provide the value in USD and quantity (with units) of the product covered by the specific exclusion that you purchased from any third-country source in 2018 and 2019. Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable.** (BCI)

2018 Value:		**2018 Quantity:**	
2019 Value:		**2019: Quantity:**	

Are the provided figures estimates? (BCI)

8. Please provide the value in USD and quantity (with units) of the product covered by the specific exclusion that you purchased from domestic sources in 2018 and 2019. Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable. (BCI)

2018 Value:		**2018 Quantity:**	
2019 Value:		**2019 Quantity:**	

Are the provided figures estimates? (BCI)

9. Please discuss any efforts you have undertaken since September 2018 to source this product from United States or third countries. (BCI)

10. Please provide information regarding your company's gross revenue in USD for 2018 and 2019. (BCI)

2018 Gross Revenue:	
2019 Gross Revenue:	

Are the provided gross revenue figures estimates? (BCI)

11. Is the Chinese-origin product of concern sold as a final product or as an input used in the production of a final product or products? (BCI)

12. Please comment on whether the imposition of additional duties on the product(s) covered by the exclusion you are seeking an extension for, will result in severe economic harm to your company or other U.S. interests. (BCI)

13. Please provide any additional information in support of your comment, taking account of the instructions provided in Section B of the Federal Register notice. (BCI)

14. You may upload additional attachments in support of your comment. Please specify whether the attachment is Public or contains Business Confidential Information. (Submitter Determines Public or BCI)

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0177]

Crash Preventability Determination Program

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: On July 27, 2017, FMCSA announced a demonstration program to evaluate the preventability of eight categories of crashes through submissions of Requests for Data Review to its national data correction system known as DataQs. On August 5, 2019, based on experiences with the demonstration program, FMCSA proposed a Crash Preventability Determination Program with a streamlined process. FMCSA proposed to modify the Safety Measurement System to exclude crashes with not preventable determinations from the prioritization algorithm and proposed noting the not preventable determinations in the Pre-Employment Screening Program. This notice responds to comments received on the proposal and announces the start of the Agency's new Crash Preventability Determination Program.

FOR FURTHER INFORMATION CONTACT: Mr. Catterson Oh, Compliance Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366–6160, *Catterson.Oh@dot.gov.* If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Background

Since its implementation in 2010, FMCSA's Safety Measurement System (SMS) has used safety performance information in the Behavior Analysis and Safety Improvement Categories (BASICs), in addition to recordable crashes involving commercial motor vehicles (CMVs), to prioritize carriers for safety interventions (75 FR 18256). The Crash Indicator BASIC uses crashes from the previous 24 months to calculate percentiles for motor carriers. In addition, the public SMS website lists motor carriers' recordable crashes. Although the Crash Indicator BASIC percentiles have never been publicly available, stakeholders have expressed concern that the use of all crashes in SMS, without an indication of preventability, may give an inaccurate impression about the risk posed by the company.

In response to this concern, FMCSA announced a demonstration program on July 27, 2017, to evaluate the preventability of certain categories of crashes (82 FR 35045). Based on its experience in conducting the demonstration program, and the strong support for continuing and expanding this program, FMCSA is initiating the Crash Preventability Determination Program (CPDP) as described in this notice. Through this program, motor carriers and drivers may submit eligible crashes for preventability determinations through FMCSA's DataQs system. FMCSA will remove crashes that were not preventable by the motor carrier or driver from the SMS prioritization algorithm. FMCSA will also note the not preventable determinations in the driver's Pre-Employment Screening Program (PSP) record and will note not preventable, preventable, and undecided determinations in the motor carrier's list of crashes on the public SMS website.

Implementation Proposal

General Comments

FMCSA received 111 comments to this docket. More than 90 commenters supported the proposal and the Agency's plan to continue the program. Many noted their support of the expansion of eligible crash types. Gregory Cohen advised that Greyhound Lines, Inc., participated in the demonstration program and supports

the continuation of the program. Dave Guyer, Cindy Staten, Dave Fisher, Scott Conklin, and several anonymous commenters advised the program should be maintained. Associations including the Owner Operator Independent Drivers Association (OOIDA), the American Trucking Associations, the International Foodservice Distributors Association, National School Transportation Association, and Truckload Carriers Association supported the proposal.

Thirteen commenters, including the Motor Carrier Regulatory Reform Coalition (MCRRC) and the National Association of Small Trucking Companies (NASTC), opposed the program. Both MCRRC and NASTC requested that the proposed changes be made through notice and comment rulemaking. MCRRC detailed this request by additional letters to FMCSA's Administrator dated June 14 and September 5, 2019, and requested an extension of the comment period by letter dated September 13, 2019. FMCSA posted these letters to this docket and considered the June 14 letter as part of MCRRC's comments. MCRRC and NASTC expressed concern that preventability would be conflated with fault, and that this confusion may cause negative impacts to insurance rates and outcomes in private litigation. MCCRC and NASTC stated that the program would cause unfair harm to small carriers.

The Commercial Vehicle Safety Alliance (CVSA) expressed multiple concerns, including issues with the new crash types, reviewers' qualifications, Federalism impacts, and the impact of an FMCSA not preventable determination on a State's criminal charges. The Insurance Institute of Highway Safety (IIHS) indicated the program does not improve safety and recommended FMCSA incentivize best practices and reward carriers' investments in safety.

The other commenters either asked questions or provided comments that made it difficult to discern their position on the proposal.

FMCSA Response

FMCSA declined to extend the comment period in response to MCRRC's September 13, 2019, request because MCRRC failed to show good cause for its request. FMCSA has provided ample notice and opportunities to comment throughout the development of this program, from the publication of its initial crash weighting analysis in 2015 (80 FR 3719), through the announcement of the demonstration program in 2017 (82 FR 35045), and the 2019 proposal to implement this program (84 FR 38087). At each stage, FMCSA has solicited, considered, and responded to public comments.

This program does not amend any prior legislative rules nor does it provide a basis for any new enforcement actions, and does not require a notice and comment rulemaking under the Administrative Procedure Act (49 U.S.C. 551, 553). This program does not alter FMCSA's safety fitness standard under 49 U.S.C. 31144 and 49 CFR part 385. As expressly stated on the SMS website, FMCSA uses SMS data to prioritize motor carriers for further monitoring, and data ''is not intended to imply any federal safety rating of the carrier pursuant to 49 U.S.C. 31144.'' This program does not impact preventability determinations made through FMCSA safety investigations conducted under 49 CFR part 385, nor the preventability standard contained therein.

The crash preventability determinations made under this program thus will not affect any carrier's safety rating or ability to operate. FMCSA will not issue penalties or sanctions on the basis of these determinations, and the determinations do not establish any obligations or impose legal requirements on any motor carrier. These determinations also will not change how the Agency will make enforcement decisions.

FMCSA emphasizes that these determinations do not establish legal liability, fault, or negligence by any party. Fault is generally determined in the course of civil or criminal proceedings and results in the assignment of legal liability for the consequences of a crash. By contrast, a preventability determination is not a proceeding to assign legal liability for a crash. Under 49 U.S.C. 504(f), FMCSA's preventability determinations may not be admitted into evidence or used in a civil action for damages and are not reliable for that purpose.

In response to MCRRC's and NASTC's concerns about the potential conflation of preventability and fault, and CVSA's concern about the impact on State criminal proceedings, FMCSA added a disclaimer to the SMS website that states:

> A crash preventability determination does not assign fault or legal liability for the crash. These determinations are made on the basis of information available to FMCSA by persons with no personal knowledge of the crash and are not reliable evidence in a civil or criminal action. Under 49 U.S.C. 504(f), these determinations are not admissible in a civil action for damages. The absence of a not preventable determination does not indicate that a crash was preventable.

In addition, FMCSA will continue to include the following text in its determination notifications to submitters, which it included during the demonstration program:

> FMCSA made this crash preventability determination on the basis of information available to the Agency at the time of the determination, and it is not appropriate for use by private parties in civil litigation. This determination does not establish legal liability, fault, or negligence by any party and was made by persons with no personal knowledge of the crash. This crash preventability determination will not affect any motor carrier's safety rating or ability to operate. FMCSA will not issue penalties or sanctions on the basis of this determination. This crash preventability determination does not establish any obligations or impose any legal requirements on any motor carrier.

FMCSA addresses the impact of the program on small carriers in the ''Effectiveness Analysis'' section below. In response to IIHS's comments, FMCSA acknowledges that the demonstration program was a first step in examining the impacts of preventability determinations on SMS with a small data set. Continuing the program and expanding crash types will allow FMCSA to continue to conduct analysis with more crashes.

Regarding reviewer qualifications, FMCSA reviewed nearly 15,000 police accident reports (PAR) during the demonstration program. Eligible crashes will continue to reviewed by two reviewers and 10 percent of the crashes will also be reviewed for quality control. FMCSA recognizes that the law enforcement who respond to the crash have the most information on the event. That is why the CPDP requirements include submission of the PAR. Additionally, the Agency notes that the eligble crash types for the CPDP continue to be generally less complex crash events.

In response to IIHS' suggestion to incentivize best practices, the Agency notes that its preventability standard at 49 CFR 385, Appendix B, assesses if a driver exercising normal judgment and foresight could have avoided the crash by taking steps within his/her control without causing another kind of mishap.

The CPDP already takes into account whether the driver or vehicle was operating in violation of an out of service regulation at the time of the crash, which encourages carrier-wide best practices. The PAR generally does not contain sufficient information to account for best practices in the manufacturing of vehicles at this time.

Changes to Eligible Crash Types

FMCSA proposed two changes to the original eight crash types. First, FMCSA would combine the crash type involving infrastructure failures and debris with the crash type for CMVs struck by cargo and equipment. The distinction between these two crash types did not result in different determinations and, in some cases, required submitters to resubmit their Requests for Data Review (RDRs) under the other crash type. In addition, FMCSA proposed changing the ''Motorist Under the Influence'' crash type to ''Individual Under the Influence'' to include crashes involving pedestrians, bicyclists and others.

In the August 2019 notice, FMCSA proposed to test the eight additional crash types. These crashes were frequently submitted during the demonstration program, but did not qualify for one of the original crash types.

Comments

Victor Van Kuilenburg asked that the Agency review all crashes. Some commenters provided additional crash types for consideration in the program. The National Motor Freight Traffic Association and United Motorcoach Association noted that the proposal made it unclear if unoccupied vehicles were still being included in the crash type that includes parked vehicles.

CVSA expressed concern about expanding the crash types because of concerns about the reviewers' training and experience. Specifically, CVSA said that the additional crash types require higher standards of training and education. CVSA noted the extensive training that crash reconstructionists receive. CVSA also requested clarification of the ''under the influence'' standard.

An anonymous commenter asked if the crash type of ''When the CMV is struck by a driver who experiences a medical issue which causes the crash'' includes when the CMV driver has the medical issue.

OOIDA recommended adding a ''Rare or Unusual Crash'' type and noted the recent crash between a CMV and a skydiver.

FMCSA Response

FMCSA supports OOIDA's proposal for a ''Rare or unusual crash'' type and added this type to DataQs. However, the Agency expects that most crashes submitted to this type will not meet the standard and will be common, recurring crash types. When this occurs, the RDR will be found to be not eligible and closed upon review. The Agency does not support further expanding the crash types in the program at this time. The proposed new types are a reasonable extension of the demonstration program based on the volume of not eligible crashes submitted and reviewed, and the Agency's expected ability to determine preventability based on the documentation received from submitters.

FMCSA acknowledges that the text to include unattended vehicles was inadvertently omitted from the August 2019 notice and the final list of crashes has been revised to reflect this.

In addition, as FMCSA noted in the August 2019 notice, all not preventable crashes will be removed from the calculation of the Crash Indicator BASIC. However, the Agency will analyze the new crash types for 24 months but may announce changes earlier if certain crash types cannot be consistently reviewed. If the new crash types are able to be consistently reviewed, the Agency may consider expanding the program to include additional crash types in the future.

Regarding reviewer qualifications, FMCSA is building on its experience in reviewing nearly 15,000 PARs during the demonstration program. Because the eligible crash types are, by design, less complex crash events, FMCSA does not believe these reviews require extensive expertise. In addition, FMCSA has built in a quality control process to ensure the consistency and quality of these reviews. Eligible crashes will continue to be reviewed by two reviewers, and 10 percent of the crashes will also be reviewed for quality control. FMCSA will also require the submission of the PAR because FMCSA recognizes that the law enforcement official who responds to the crash will have the most information on the event.

Regarding the ''under the influence'' standard used, FMCSA is requiring the PAR or other document submitted to demonstrate that the other driver was charged with or arrested for driving under the influence (or a related charge such as operating while intoxicated), document a failed field sobriety test, document a blood alcohol level of .08 for non-CMV drivers or .04 for a CMV driver, or documentation of a refusal to test.

To respond to the anonymous question about medical issues, the crash is not eligible if the submitter's driver was the person with the medical condition.

SMS and PSP Changes

During the demonstration program, notations of the preventability determinations were made in the motor carrier's list of crashes on the publicly available SMS website. Crashes were not removed from the calculation of the Crash Indicator BASIC in SMS but the motor carrier was provided an alternative measure and percentile without not preventable crashes.

FMCSA proposed that for eligible crashes occurring on or after August 1, 2019, FMCSA would continue to display the crashes with preventability notations in the carrier's list of crashes on the public SMS website, but would remove crashes with not preventable determinations from the SMS Crash Indicator BASIC calculation. FMCSA would also note the not preventable determinations in the driver's record in PSP.

Comments

Numerous commenters supported both the removal of not preventable crashes from SMS entirely and the notation of these crashes on PSP. Lori Fisher, Jeff Loggins, Larry Nestor, and Stacey Johnson and OOIDA all supported removing the not preventable crashes from the SMS calculation.

MCRRC and NASTC opposed this change, noting that all other crashes will be ''presumed preventable.''

FMCSA Response

FMCSA is implementing the associated changes to these information systems. The SMS public display is being revised to list not preventable crashes occurring on or after August 1, 2019, separately from other crashes to make it clear they are not included in the Crash Indicator BASIC. The carrier's list of crashes and the notations associated with not preventable crashes will remain publicly available. Crashes deemed not preventable will not be used to prioritize motor carriers for safety interventions. FMCSA will continue to display one of three determinations for the eligible crashes that it reviews:

1. *Reviewed—Not Preventable*—''FMCSA reviewed this crash and determined that it was not preventable.''

2. *Reviewed —Preventable*—''FMCSA reviewed this crash and determined that it was preventable.''

3. *Reviewed —Undecided*—''FMCSA reviewed this crash and could not make a preventability determination based on the evidence provided.''

Crashes with ''Reviewed—Preventable'' and ''Reviewed—Undecided'' will continue to be included in the Crash Indicator BASIC. The absence of a not preventable determination does not indicate that a crash was preventable. The Crash Indicator BASIC percentiles will remain

available only to motor carriers who log in to view their own data, as well as to FMCSA and law enforcement users.

Determination notations for crashes reviewed in the previous demonstration program will remain in SMS for 2 years from the date of the crash. The Agency previously announced that crashes reviewed during the demonstration program would not be removed from the Crash Indicator BASIC, and some carriers may have decided not to participate on that basis. Therefore, crashes reviewed during the demonstration program will not be removed from calculation of the SMS Crash Indicator BASIC but motor carriers will still have access to the alternative measures and percentiles.

Crashes remain in SMS for 2 years from the date of the crash and remain in PSP for 5 years from the date of the crash. As a result, FMCSA will not review crashes that are more than 5 years old.

End of Demonstration Program and Start of New Program

The demonstration program accepted crashes in the eight original eligible crash types that occurred from June 1, 2017, through July 31, 2019. RDRs for these crashes were accepted through September 30, 2019.

Comments

There were no comments specifically about the end of the demonstration program or start date for the CPDP. With the publication of this notice, FMCSA's DataQs sytem is available to accept RDRs for the expanded list of eligible crashes occurring on or after August 1, 2019.

Public Input Changes

FMCSA proposed to cease the 30-day public input period and cease the practice of publishing preliminary not preventable determinations. This change allows RDRs to be closed with not preventable determinations without the 30-day delay and will reduce resources to take additional action on the RDR. In addition, FMCSA proposed to stop publishing a list of not preventable determinations on the Agency's website. The Agency will continue to publish quarterly statistics, as was done during the demonstration program.

Comments

Angela Petry, Doug Anonymous, and Greyhound Lines commented that the 30-day public input period should be eliminated. No commenters opposed this change.

FMCSA Response

FMCSA will discontinue the 30-day public input period in the CPDP. However, as reflected in the August 2019 notice, the Agency will continue to accept information about any crash by email to *crash.preventability@dot.gov.* Any information received will be fully considered and could result in a change in the determination.

Document Requirement

FMCSA proposed requiring submitters to provide the complete PAR to participate in the program.

Comments

MCRRC objected to the Agency's reliance on PARs in the CPDP because PARs are hearsay that are entitled to little or no weight in a fault or legal liability determination. Alex Scott of Michigan State University stated that the program contradicts FMCSA's previous position on the sufficiency and reliability of the information in PARs.

FMCSA Response

The demonstration program did not require any specific documents be submitted with the RDR so that the Agency could determine which documents were the strongest for future use. Based on the more than 14,000 RDRs reviewed, FMCSA determined that the PAR is the best single source of crash information. FMCSA's experience thoughout the demonstration program was that the majority of PARs submitted contained sufficient detail to complete a preventability review. As noted above, preventability determinations do not assign fault or legal liability for a crash. In addition, FMCSA notes that previous studies of PAR accuracy were based on fatal crashes and were not limited to the generally less complex crash types in the demonstration program. The reviewers will continue to rely on PARs and other documents submitted to conduct the review.

Therefore, when submitting RDRs to the CPDP, the submitter must provide the PAR and is encouraged to submit other documentation providing compelling evidence that the crash is eligible and was not preventable. The DataQs system continues to accept documents, photos, and videos that do not exceed 5 MB in formats including MP4, MPG, MKV, AVI, MPEG, and WMV file types.

If only the PAR is submitted and it contains conflicting information about the crash (*e.g.,* the narrative is different than the diagram or point of impact information), the crash may found to be not eligible or the determination may be undecided.

Process Information

FMCSA proposed to develop the functionality in DataQs to allow FMCSA to change the crash type on behalf of the submitter to another eligible crash type, when appropriate. The Agency also proposed streamlining the review process and using only one stage of contract reviewers to provide a recommendation. In addition, FMCSA proposed allowing the contract reviewers to close RDRs for crashes that are not one of the eligible crash types.

FMCSA proposed to rely on the Motor Carrier Management Information System (MCMIS) crash report to confirm the driver's license and medical certification status as part of implementation.

FMCSA proposed to continue reviewing post-crash inspection reports and if the inspection shows that the CMV or driver was in violation of an out of service (OOS) regulation under the North American Standard OOS Criteria prior to the crash or that the driver was not properly licensed, the crash will be deemed preventable. In addition, FMCSA proposed to continue to request post-crash drug and alcohol test results when the crash results in a fatality.

Comments

Several commenters noted that it took longer than expected for RDRs to be reviewed in the demonstration program and supported changes to improve the process.

FMCSA Response

As a result, FMCSA is implementing these process improvements. However, FMCSA is making one clarification regarding the use of MCMIS to confirm proper licensing on the date of the crash. If this information is missing from the MCMIS report or MCMIS indicates the wrong license class for the vehicle being operated, the Commercial Driver's License Information System report will be used to verify the driver's license. If the driver has renewed his/her license and/or medical certificate since the date of the crash, evidence of licensing and/or medical certification on the date of the crash will be requested from the submitter. Failure to provide this information will continue to preclude a not preventable determination and will result in an undecided determination. If documentation shows that the driver was not qualified, the crash will be deemed preventable.

If drug and alcohol testing results, or the required explanation of why the tests were not completed, are not submitted, this will also preclude a not

preventable determination and will result in an undecided determination. If the drug and/or alcohol test results were positive, the crash will be deemed preventable.

FMCSA will continue to make preventable determinations if there is evidence that the driver and/or carrier was legally prohibited from operating the CMV at the time of the crash. Specfically, if a post-crash inspection identifies a driver or vehicle violation of an OOS regulation and the violation existed before the crash and was not attributed to the crash, or if the MCMIS crash report or other documents reviewed as part of the determination indicate that the driver was not qualified to drive on the date of the crash, the crash is not eligible for a not preventable determination because the driver and/or carrier were legally prohibited from operating the CMV at the time of the crash.

Also, to improve program efficiencies and facilitate postings with SMS, the updated DataQs system will not allow a submitter to complete the process if there is not a MCMIS crash report submitted by the State. However, the submitter may enter the required information and save the RDR in DataQs and then submit once the crash is in MCMIS. A State's delay in submitting the crash to FMCSA does not delay the removal of a not preventable crash from SMS because SMS uses only crashes that are in MCMIS.

Effectiveness Analysis

During the demonstration program, 4,089 unique motor carriers submitted more than 14,700 RDRs. FMCSA conducted an analysis of the 2-year demonstration program and a copy is in the docket. For purposes of the updated analysis, FMCSA looked at the data for the 2,124 participating carriers that had at least one crash determined to be not preventable. The report includes three primary analyses: (1) Summary of safety profiles of carriers that participate in the program; (2) impact on carriers' Crash Indicator BASIC percentiles; and (2) impact on SMS effectiveness.

The first analysis found that participating carriers are more likely to be large combination carriers (greater than 51 Power Units (PU)), have more inspections per PU, and have a crash risk that does not differ from non-participants. The second analysis found that, on average, carriers with not preventable crashes removed have a percentile drop of 9 points in the recalculated Crash Indicator BASIC. Only a small number of carriers change alert status in the Crash Indicator BASIC—out of both participating and non-participating carriers, 134 carriers gain alert status and 136 carriers lose alert status as a result of excluding not preventable crashes from the Crash Indicator BASIC. The third analysis found that removing not preventable crashes from the Crash Indicator BASIC should not have an impact on the effectiveness of FMCSA's prioritization programs (SMS, High-Risk). This is due to the relatively low number (about 2%) of crashes determined to be not preventable and removed from the calculation.

In conclusion, the evaluation of the effectiveness of the demonstration program found that while carriers who have had not preventable crashes removed via the demonstration program saw a reduction on their Crash BASIC percentiles, there was negligible impact on the overall SMS effectiveness.

On average, carriers that had not preventable crashes removed from the calculation of their Crash Indicator BASIC had a percentile drop of 9 points in that BASIC. The decrease in percentiles was slightly greater for smaller carriers, primarily due to the low participation by carriers in smaller safety event groups. In addition, after the removal of not preventable crashes, small carriers were less likely have a sufficient number of crashes to be evaluated in the BASIC under the data sufficiency standards used in SMS.

To evaluate the impact of these changes on FMCSA's ability to identify high risk motor carriers for safety interventions, the analysis compared the future crash rate of the group of carriers in alert status before and after the removal of the not preventable crashes from the Crash Indicator BASIC. Although the group of carriers in alert status after removal of the not preventable crashes had a slightly higher future crash rate than the group in alert status before removal of the not preventable crashes, the analysis team found a negligible impact on the ability of the Crash Indicator BASIC to identify high risk carriers. The effectiveness analysis determined that when not preventable crashes were removed, the group of carriers identified in SMS, when considering all BASICs, had a future crash rate 97% higher than the group of carriers not identified.

The lack of an impact on SMS effectiveness is mainly a result of the relatively small number of carriers that participated in the demonstration program. Only 169 and 208 carriers were projected to gain and lose alerts in the Crash Indicator BASIC, respectively, which is a small fraction (2 percent) of the 8,634 carriers identified in the Crash Indicator BASIC.

Comments

Alex Scott of Michigan State University indicated that the program is biased to large carriers, does not improve identification of high risk carriers, and does not provide any evidence it improves crash predictability.

Justin Smoot, MCRRC, and NASTC also expressed concern that large carriers were over represented in the demonstration program.

FMCSA Response

FMCSA notes that participation by small carriers with fewer than 15 power units in the demonstration program was only 6 percent of the submissions. However, overall DataQs use by this same population is 45.5 percent. As a result, the Agency expects that the new program, and the removal of crashes from the SMS Crash Indicator BASIC, will result in an increased use by small carriers with eligible crashes.

Because SMS segments carriers into safety event groups, SMS does not directly compare the crash records of large carriers to those of small carriers. The greater participation by large carriers in the demonstration program therefore had no impact on the percentiles of small carriers.

The Agency's effectiveness analysis discussed above concluded that removing the not preventable crashes does not impede the Agency's ability to identify high risk carriers. This program offers all carriers and drivers the opportunity to request and obtain the removal of eligible not preventable crashes from their SMS calculations to more accurately reflect their crash history.

Lastly, FMCSA has never indicated that SMS predicts crashes. FMCSA uses SMS to identify and prioritize motor carriers for safety interventions before crashes occur, using risk management techniques for high consequence, low likelihood events and considering carrier exposure across carriers of all sizes. Therefore, there was no expectation that this program would improve crash prediction.

Impact of SMS Changes

Although the removal of not preventable crashes from the Crash Indicator BASIC will not impact the Agency's ability to identify high risk carriers, some carriers will see changes to their Crash Indicator BASIC percentiles. The Agency points out again that because SMS is a relative system, the removal of not preventable crashes will decrease the Crash Indicator BASIC percentiles of some

carriers and may increase the Crash Indicator BASIC percentiles of other carriers in the same safety event group. As a result, a motor carrier that does not have any additional crashes may see its Crash Indicator BASIC percentile increase because its peers submitted RDRs and the not preventable crashes were removed from the calculations. In addition, even a motor carrier that has not preventable crashes removed may see its Crash Indicator BASIC percentile increase if its peers had a greater number of not preventable crashes removed.

The Crash Indicator BASIC percentiles have never been publicly available and will remain available only to motor carriers who log in to view their own data, as well as to FMCSA and law enforcement users. This program will not change any carrier's safety fitness rating or ability to operate, nor will it establish any obligations or impose legal requirements on any motor carrier. This program also will not change how the Agency makes enforcement decisions.

National Academy of Sciences' (NAS) Correlation Study

FMCSA is making these changes to SMS separately from its ongoing work in response to the June 27, 2017, NAS report, ''Improving Motor Carrier Safety Measurement.'' The NAS report noted that the crash preventability program was of interest but did not issue a recommendation directly relating to the program.

Implementation

Preventability Standard

The standard for making a preventability determination is provided in 49 CFR part 385, Appendix B, section II.B(e): ''If a driver, who exercises normal judgment and foresight could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable.'' This continues to be the standard used by the Agency for all preventability reviews. The burden continues to be on the submitter to show by compelling evidence that the crash was not preventable.

Crash Types

FMCSA is implementing all crash types proposed in the August 2019 notice and adding a ''Rare or unusual crash'' type. However, to help submitters find the correct eligible crash type, FMCSA rearranged the order of crashes to group like crash events together. As a result, the final list of eligible crash types is:

Struck in the Rear type of crash when the CMV was struck:

- In the rear; or
- on the side at the rear.

Wrong Direction or Illegal Turns type of crash when the CMV was struck:

- By a motorist driving in the wrong direction; or
- by another motorist in a crash when a driver was operating in the wrong direction; or
- by a vehicle that was making a U-turn or illegal turn.

Parked or Legally Stopped type of crash when the CMV was struck:

- While legally stopped at a traffic control device (*e.g.,* stop sign, red light or yield); or while parked, including while the vehicle was unattended.

Failure of the other vehicle to Stop type of crash when the CMV was struck:

- By a vehicle that did not stop or slow in traffic; or
- by a vehicle that failed to stop at a traffic control device.

Under the Influence type of crash when the CMV was struck:

- By an individual under the influence (or related violation, such as operating while intoxicated), according to the legal standard of the jurisdiction where the crash occurred; where the individual was charged or arrested, failed a field sobriety or other test, or refused to test; or
- by another motorist in a crash where an individual was under the influence (or related violation such as operating while intoxicated), according to the legal standard of the jurisdiction where the crash occurred where the individual was charged or arrested, failed a field sobriety test or other tests, or refused to test.

Medical Issues, Falling Asleep or Distracted Driving type of crash when the CMV was struck:

- By a driver who experienced a medical issue which contributed to the crash; or
- by a driver who admitted falling asleep or admitted distracted driving (*e.g.,* cellphone, GPS, passengers, other).

Cargo/Equipment/Debris or Infrastructure Failure type of crash when the CMV:

- Was struck by cargo, equipment or debris (*e.g.,* fallen rock, fallen trees, unidentifiable items in the road); or crash was a result of an infrastructure failure.

Animal Strike type of crash when the CMV:

- Struck an animal

Suicide type of crash when the CMV:

- Struck an individual committing or attempting to commit suicide

Rare or Unusual type of crash when the CMV:

- Was involved in a crash type that seldom occurs and does not meet another eligible crash type (*e.g.,* being struck by an airplane or skydiver or being struck by a deceased driver).

DataQs

With publication of this notice, DataQs is available to accept RDRs for eligible crashes occurring on or after August 1, 2019. Submitters must provide a PAR and are encouraged to provide other documents, photos, and videos to present compelling evidence that the crash is eligible and not preventable. FMCSA may request additional information on the crash, which may include any documentation the carrier is required to maintain under the Agency's regulations. Failure to submit documents requested by the Agency may cause the RDR to be closed without a preventability determination or with an undecided determination.

Only eligible crashes submitted to FMCSA's CPDP will be reviewed. RDRs for crash preventability reviews should not be submitted to the States or other organizations through DataQs and will be closed.

As during the demonstration program, if a submitter receives a determination that the crash was preventable or undecided, or if the RDR is closed for failure to submit additional requested documents, the RDR may be re-opened once. FMCSA will reconsider the request if the submitter provides additional documentation to support the request.

Agency Websites

FMCSA established a new website for the CPDP at *www.fmcsa.dot.gov/crash-preventability-determination-program.* This website includes frequently asked questions and tools to help submitters complete the RDR process in DataQs. This website will be updated quarterly to provide information on the RDRs received and reviewed by the Agency.

The website for the demonstration program will continue to be available at *www.fmcsa.dot.gov/crash-preventability-demonstration-program.*

The Agency's Motor Carrier Safety Planner at *https://www.fmcsa.dot.gov/safety/carrier-safety/motor-carrier-safety-planner* also includes information about the CPDP.

James A. Mullen,

Acting Administrator.

[FR Doc. 2020–09679 Filed 5–5–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0069]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel STELLAR (Jetboat); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 5, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0069 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0069 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0069, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel STELLAR is:

—*Intended Commercial Use of Vessel:* ''Hauling passengers for recreation on rivers and near coastal waters of Southcentral and Interior Alaska. Alaska Backcountry Access jetboats are primarily utilized to carry sightseeing passengers on the Twentymile and Glacier Rivers near Portage Alaska. Vessel is NOT utilized in Southeast Alaska.''

—*Geographic Region Including Base of Operations:* ''Alaska excluding Southeast Alaska'' (Base of Operations: Anchorage, AK)

—*Vessel Length and Type:* 20' jetboat

The complete application is available for review identified in the DOT docket as MARAD–2020–0069 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2020–0069 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 5103, 46 U.S.C. 12121)

Dated: May 1, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–09646 Filed 5–5–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2020–0010; Notice 1]

Mercedes-Benz USA, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Mercedes-Benz AG (''MBAG'') and Mercedes-Benz USA, LLC (''MBUSA'') (collectively, ''Mercedes-Benz'') has determined that certain model year (MY) 2019–2020 Mercedes-Benz CLA-Class, A-Class, GLA-Class, and GLB-Class motor vehicles do not fully comply with Federal motor vehicle safety standard (FMVSS) No. 135, *Light Vehicle Brake Systems.* Mercedes-Benz filed a noncompliance report dated January 27, 2020, and subsequently petitioned NHTSA on February 10, 2020, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces receipt of Mercedes-Benz's petition.

DATES: Send comments on or before June 5, 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 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 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.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

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).

SUPPLEMENTARY INFORMATION:

I. Overview: Mercedes-Benz has determined that certain MY 2019–2020 Mercedes-Benz CLA-Class, A-Class, GLA-Class, and GLB-Class motor vehicles do not fully comply with the requirements of paragraph S5.5.5 of FMVSS No. 135, *Light Vehicle Brake Systems* (49 CFR 571.135). Mercedes-Benz filed a noncompliance report dated January 27, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports,* and subsequently petitioned NHTSA on February 10, 2020, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of Mercedes-Benz's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any Agency decision or other exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Approximately 27,375 of the following MY 2019–2020 Mercedes-Benz CLA-Class, A-Class, GLA-Class, and GLB-Class motor vehicles manufactured between August 20, 2018, and January 16, 2020, are potentially involved:

- Mercedes-Benz A220
- Mercedes-Benz A220 4MATIC
- Mercedes-Benz A35 AMG 4MATIC
- Mercedes-Benz CLA250
- Mercedes-Benz CLA250 4MATIC
- Mercedes-Benz CLA35 AMG 4MATIC
- Mercedes-Benz CLA45 AMG 4MATIC
- Mercedes-Benz GLA250 4MATIC
- Mercedes-Benz GLB250
- Mercedes-Benz GLB250 4MATIC

III. Noncompliance: Mercedes-Benz explains that the noncompliance is that the instrument panel in the subject vehicles displays the braking indicators in a slightly smaller size than required by paragraph S5.5.5 of FMVSS No. 135. Specifically, the size of the text for the brake indicators in the subject vehicles ranges between 2.92 mm to 3.17 mm when the minimum required is 3.2 mm.

IV. Rule Requirements: Paragraph S5.5.5 of FMVSS No. 135, includes the requirements relevant to this petition. Each visual indicator shall display a word or words in accordance with the requirements of FMVSS No. 101 and S5.5 of FMVSS 135, which shall be legible to the driver under all daytime and nighttime conditions when activated. Unless otherwise specified, the words shall have letters not less than 3.2 mm (⅛ inch) high.

V. Summary of Mercedes-Benz's Petition: The following views and arguments presented in this section, V. Summary of Mercedes-Benz's petition, are the views and arguments provided by Mercedes-Benz. They have not been evaluated by the Agency and do not reflect the views of the Agency. Mercedes-Benz described the subject noncompliance and stated their belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Mercedes-Benz submitted the following reasoning:

1. Mercedes-Bends believes that the letter height of the braking indicators, in this instance is slightly smaller than the requirement, does not expose an occupant to any greater risk of injury than an occupant in a vehicle with slightly larger font size.

2. Mercedes-Benz alleges that the purpose of the standardized size requirement for the brake system warning indicators is to ensure they are visually perceptible to drivers under all operating conditions. Mercedes-Benz says

that the Agency has a long and consistent history of granting petitions for inconsequentiality for discrepancies involving a letter height requirement where the text appeared somewhat smaller than required. In fact, NHTSA has granted petitions where the indicators displayed included lettering that was as much as a full millimeter less than the minimum size. *See* 47 FR 31347 (July 19, 1982) (granting a petition of Subaru of America, Inc., where the brake system indicator lettering was only 2.2 mm high, but the ISO symbol indicators were located within the driver's line of sight and continued to be ''easily identifiable and very readable'').

3. Mercedes-Benz asserts that in addressing similar noncompliances in the past, the Agency has determined that ''it is very unlikely that a vehicle user would either fail to see or fail to understand the meaning of the brake . . . warning light'' where the ''information presented by the telltales is correct.'' *See* 81 FR 92963 (December 20, 2016) (granting General Motors' petition of over 46,000 vehicles where the ''Park'' indicator displayed at 2.44 mm). In the General Motors decision, the Agency found the discrepancy ''pose[d] little, if any, risk to motor vehicle safety'' where all other braking indicator requirements were met and the indicators were located in the instrument cluster, adjacent to the speedometer and in direct view of the driver); 69 FR 41568 (July 9, 2004) (granting a petition of Hyundai Motor Company involving more than 237,000 vehicles, where the FMVSS No. 105 braking system indicator letter height varied from 2.5 mm to 3.1 mm).

4. In this case, the letter height for the braking indicators is only slightly smaller than the 3.2 mm minimum. Depending on the particular indicator, the text size can be smaller by a range of 0.03 mm up to a maximum of .28 mm. The electronic instrument cluster is located within the driver's direct field of vision, and the braking indicators are located adjacent to the speedometer and, therefore, remain within the driver's direct line of sight. This slight difference in size is not visually perceptible and does not affect the driver's ability to read or understand the indicators. Indeed, the indicators are clearly illuminated and remain visible under all driving conditions.

5. Mercedes-Benz stated that all of the indicators at issue here are accurately depicted and are displayed in the correct colors, consistent with FMVSS No. 101, Table 1. Thus, there should not be any confusion about the meaning of the indicators, and the standard symbol that is displayed continues to convey the intended meaning of the indicator. Further, although the lettering that appears below the ISO symbols is slightly smaller than 3.2 mm minimum height, the overall height of the ABS and Parking Brake symbols is more than 3.2 mm and exceeds the height requirement of the standard. Finally, the functionality of the brake indicators themselves is not affected by the software issue. The indicators properly display during both the instrument cluster warning lamp operation check and in the event a brake malfunction were to occur.

6. Mercedes-Benz says that it has not received any reports related to the performance of the indicators included on the 10.25-inch displays in the subject vehicles. Nor has it received any reports related to customers' inability to read or decipher the brake telltales.

Mercedes-Benz's complete petition and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov* and by following the online search instructions to locate the docket number as listed in the title of this notice.

Mercedes-Benz concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition request to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Mercedes-Benz no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Mercedes-Benz notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8).

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2020–09694 Filed 5–5–20; 8:45 am]

BILLING CODE 4910–59–P

FEDERAL REGISTER

Vol. 85 Wednesday,
No. 88 May 6, 2020

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 219

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Southeast Fisheries Science Center Fisheries Research; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 219

[Docket No. 200409–0108]

RIN 0648–BG44

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Southeast Fisheries Science Center Fisheries Research

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

ACTION: Final rule, notification of issuance.

SUMMARY: NMFS's Office of Protected Resources (OPR), upon request from NMFS's Southeast Fisheries Science Center (SEFSC), hereby issues regulations to govern the unintentional taking of marine mammals incidental to fisheries research conducted in the Atlantic Ocean along the southeastern U.S. coast and select estuaries, the Gulf of Mexico and select estuaries, and the Caribbean Sea over the course of 5 years. These regulations, which allow for the issuance of Letters of Authorization (LOA) for the incidental take of marine mammals during the described activities and specified timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

DATES: Effective from June 5, 2020, through June 5, 2025.

ADDRESSES: A copy of the SEFSC's application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-noaa-fisheries-afsc-fisheries-and-ecosystem-research.* In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Regulatory Action

These regulations, issued under the authority of the MMPA (16 U.S.C. 1361 *et seq.*), establishes a framework for authorizing the take of marine mammals incidental to fisheries-independent research conducted by the SEFSC (in the Atlantic Ocean and associated estuaries, Gulf of Mexico and associated estuaries, and Caribbean Sea). SEFSC fisheries research has the potential to take marine mammals due to possible physical interaction with fishing gear (*e.g.,* trawls, gillnets, hook-and-line gear) and exposure to noise generated by SEFSC sonar devices (*e.g.,* echosounders, side-scan sonar). The SEFSC submitted an application to NMFS requesting 5-year regulations and a letter of authorization (LOA) to take multiple species and stocks of marine mammals in the three specified research areas (Atlantic, Gulf of Mexico, and Caribbean). The SEFSC requested, and NMFS has authorized, take, by mortality, serious injury, and Level A harassment, incidental to the use of various types of fisheries research gear and Level B harassment incidental to the use of active acoustic survey sources. The regulations are valid from June 5, 2020, through June 5, 2025.

Legal Authority for the Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce 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 for up to 5 years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity, as well as monitoring and reporting requirements.

Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing these final rules containing 5-year regulations and subsequent Letters of Authorization. As directed by this legal authority, these final rules contain mitigation, monitoring, and reporting requirements.

Summary of Major Provisions Within the Regulations

Following is a summary of the major provisions for the SEFSC within the final rulemaking. The SEFSC is required to:

- Delay setting or haul in gear if marine mammal interaction may occur.
- Monitor prior to and during sets for signs of potential marine mammal interaction.
- Implement the ''move-on rule'' mitigation strategy during select surveys (note: this measure does not apply to bottlenose dolphins).
- Limit gear set times (varies based on gear type).
- Haul gear immediately if marine mammals may interact with gear.
- Utilize dedicated marine mammal observations during select surveys.
- Prohibit chumming.
- Continue investigation on the effectiveness of modifying lazy lines to reduce bottlenose dolphin entanglement risk.
- Establish and convene the South Carolina Department of Natural Resources (SCDNR) Working Group to better understand bottlenose dolphin entanglement events and apply effective mitigation strategies.

We note that in the proposed rule (84 FR 6576, February 27, 2019), we proposed regulations that would have applied separately both to the SEFSC and Texas Parks and Wildlife Department (TPWD). Since that time, new information has emerged regarding TPWD's activity that NMFS is considering before making final decisions regarding the take of marine mammals incidental to TPWD's gillnet fishing. Here, we announce issuance of regulations for SEFSC only.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On May 4, 2015, NMFS OPR received an application from the SEFSC for a rulemaking and associated 5-year Letter of Authorization (LOA) to take marine mammals incidental to fisheries research activities conducted by the SEFSC and 18 cooperating research partners in the Atlantic Ocean Research Area (ARA), Gulf of Mexico Research Area (GOMRA), and Caribbean Research Area (CRA). The SEFSC submitted a revised draft in October 2015, followed by another revision on April 6, 2016, which we deemed adequate and complete. On April 22, 2016 (81 FR 23677), we published a notice of receipt of the SEFSC's application and, subsequently, on February 27, 2019, a notice of proposed rulemaking in the **Federal Register** (84 FR 6576) that requested comments and information related to the SEFSC's request for 30 days. The SEFSC request is for the take of 15 species of marine mammals by mortality, serious injury, and Level A harassment (hereafter referred to as ''M/SI'') and 34 species of marine mammals by Level B harassment.

Description of the Specified Activity

Overview

The SEFSC is the research arm of NMFS in the Southeast Region. The SEFSC plans, develops, and manages a multidisciplinary program of basic and applied research to generate the information necessary for the conservation and management of the region's living marine resources, including the region's marine and anadromous fish and invertebrate populations to ensure they remain at sustainable and healthy levels. The SEFSC collects a wide array of information necessary to evaluate the status of exploited fishery resources and the marine environment from fishery independent (*i.e.,* non-commercial or recreational fishing) platforms. Surveys are conducted from NOAA-owned and operated vessels, NOAA chartered vessels, or research partner-owned or chartered vessels in the state and Federal waters of the Atlantic Ocean south of Virginia, Gulf of Mexico, and Caribbean Sea. All work will occur within the Exclusive Economic Zone (EEZ), except for two surveys which may occur outside the EEZ.

The SEFSC plans to administer, fund, or conduct 74 fishery-independent survey programs over the 5-year period the regulations are effective (see Table 1–1 in the SEFSC's application). The SEFSC works with 18 Federal, state, or academic partners to conduct these surveys (see Table 1–1 in SEFSC's application for a list of cooperating research partners). Of the 74 surveys, only 38 involve gear and equipment with the potential to take marine mammals. Gear types include towed trawl nets fished at various levels in the water column, seine nets, traps, longline and other hook and line gear. Surveys using any type of seine net (*e.g.,* gillnets), trawl net, or hook and line (*e.g.,* longlines) have the potential for marine mammal interaction (*e.g.,* entanglement, hooking) resulting in M/SI harassment. In addition, the SEFSC conducts hydrographic, oceanographic, and meteorological sampling concurrent with many of these surveys which requires the use of active acoustic devices (*e.g.,* side-scan sonar, echosounders). These active sonars result in elevated sound levels in the water column, resulting in the potential to behaviorally disturb marine mammals resulting in Level B harassment.

Many SEFSC surveys only occur at certain times of the year to align with the target species and age class being researched (see Table 1–1 in SEFSC's application). However, in general, the SEFSC conducts some type of sampling year round in various locations. Specific dates and duration of individual surveys are inherently uncertain because they are based on congressional funding levels, weather conditions, and ship contingencies. For example, some surveys are only conducted every 2 or 3 years or when funding is available. Timing of the surveys is a key element of their design. Oceanic and atmospheric conditions, as well as ship contingencies, often dictate survey schedules even for routinely-conducted surveys. In addition, cooperative research is designed to provide flexibility on a yearly basis in order to address issues as they arise. Some cooperative research projects last multiple years or may continue with modifications. Other projects only last one year and are not continued. Most cooperative research projects go through an annual competitive selection process to determine which projects should be funded based on proposals developed by many independent researchers and fishing industry participants. The exact location of survey effort also varies year to year (albeit in the same general area) because they are often based on randomized sampling designs. Year-round, in all research areas, one or more of the surveys planned has the potential to take marine mammals.

Specified Geographic Region

The SEFSC conducts research in three research areas: The Atlantic Ocean from North Carolina to Florida and associated estuaries (ARA), the Gulf of Mexico and associated estuaries (GOMRA), and the Caribbean around Puerto Rico and the US Virgin Islands (CRA). Research surveys occur both inside and outside the U.S. Exclusive Economic Zone (EEZ), and sometimes span across multiple ecological, physical, and political boundaries (see Figure1–2 in the SEFSC's application for map). With respect to gear, Appendix B in the NMFS PEA includes a table and figures showing the spatial and temporal distribution of fishing gear used during SEFSC research.

The three research areas fully or partially encompass four Large Marine Ecosystems (LMEs): The Northeast U.S. Continental Shelf LME (NE LME), the Southeast U.S. Continental Shelf LME (SE LME), the Gulf of Mexico LME, (GOM LME), and the Caribbean Sea LME (CS LME). LMEs are large areas of coastal ocean space, generally include greater than 200,000 square kilometers (km^2) of ocean surface area and are located in coastal waters where primary productivity is typically higher than in open ocean areas. LME physical boundaries are based on four ecological criteria: Bathymetry, hydrography, productivity, and trophic relationships. NOAA has implemented a management approach designed to improve the long-term sustainability of LMEs and their resources by using practices that focus on ensuring the sustainability of the productive potential for ecosystem goods and services. Figure 2–1 in the SEFSC's application shows the location and boundaries of the three research areas with respect to LME boundaries. We note here that, while the SEFSC specified geographical region extends outside of the U.S. EEZ, into the Mexican EEZ (not including Mexican territorial waters), the MMPA's authority does not extend into foreign territorial waters. A complete description of the SEFSC's three research areas is provided in the proposed rule (84 FR 6576, February 27, 2019) and Chapter 3 of the Final PEA.

Detailed Description of Activities

To carry out this research, the SEFSC proposes to administer or conduct 74 survey programs during the 5-year period the proposed regulations would be effective. However, only 44 surveys have the potential to take marine mammals from gear interaction or acoustic harassment. Surveys would be carried out by SEFSC scientists alone or in combination with Federal, state, or academic partners while some surveys would be carried out solely by cooperating research partners. Surveys not conducted by SEFSC staff are included here because they are funded or have received other support (*e.g.,* gear) by the SEFSC. SEFSC scientists conduct fishery-independent research onboard NOAA-owned and operated vessels or chartered vessels while partners conduct research aboard NOAA, their own or chartered vessels. Table 1 provides a summary of annual projects including survey name, entity conducting the survey, location, gear type, and effort. The information presented here augments the more detailed table included in the SEFSC's application. In the subsequent section, we describe relevant active acoustic devices, which are commonly used in SEFSC survey activities. Appendix A of the SEFSC's application contains detailed descriptions, pictures, and diagrams of all research gear and vessels used by the SEFSC and partners under this rulemaking. We provided a detailed description of the SEFSC planned research activities, gear types, fishing methods, and active acoustic sound sources used in the notice of rulemaking (84 FR 6576; February 27, 2019) and do not repeat that information here. There are no changes to the specified activities, gear types, fishing methods, or active acoustic sound sources described in that document.

TABLE 1—SUMMARY DESCRIPTION OF FISHERIES AND ECOSYSTEM RESEARCH ACTIVITIES CONDUCTED OR FUNDED BY THE SEFSC IN THE GOMRA, ARA, AND CRA

Survey name (research agency)	General area of operation	Season, frequency, yearly days at sea (DAS)	Vessel used	Gear used	Number of stations
Gulf of Mexico Research Area					
HMS–GOM Shark Pupping & Nursery Survey (GULFSPAN), (SEFSC, USM/GCRL, UWF, FSU/CML) [1]* UWF is inactive.	SEFSC—FL Panhandle in St. Andrew Bay and St. Joseph Bay, 1–10 m depths.	Annual Apr–Oct, 30 DAS, (approximately 4 days/month), daytime operations only.	USCG Class I: R/V *Mokarran,* R/V *Pristis*.	Set gillnet	SEFSC—16–20 sets/month, up to 120 sets total.
	Mississippi Sound, 1–9 m depths.	Annual Apr–Oct, 8 DAS (1/month), daytime operations only.	USCG Class I: *Small vessel*.	Set gillnet	3 sets/month 21 sets total.
	Perdido Bay, Pensacola Bay, Choctawhatchee Bay, and Santa Rosa Sound, 1.5–6 m depths.	Annual May–Sep, 10 DAS (2/month), daytime operations only.	USCG Class I: State vessel.	Set gillnet	10 sets/month 50 sets total.
	Northwest FL state waters, 0.7–7 m depths.	Annual	USCG Class I: R/V *Naucrates*.	Set gillnet	74 sets/yr total. (A) 24 sets. (B) 50 sets.
	(A) Apalachee Bay (B) Alligator Pt.—Anclote Keys.	(A) Jan–Dec, 12 DAS (1/month). (B) June & July, 20 DAS, daytime operations only.		Bottom longline	74 sets/yr total. (A) 24 total. (B) 50 total.
	State waters of southwest FL within Pine Island Sound in the Charlotte Harbor estuary. Depth ranges 0.6–4.6 m depth.	Annual May–Sep, 15 DAS, daytime operations only.	USCG Class I: State vessel.	Set gillnet	16 sets/month (within two designated 10 km^2 grids), 80 sets total.
IJA Coastal Finfish Gillnet Survey, (MDMR) [1].	Mississippi Sound and estuaries; 0.2–2 m depths.	Annual, Jan–Dec, 24 DAS, daytime operations only.	USCG Class I: Small vessel.	Sinking gillnet, shallow deployment.	8 sets/month, 96 sets total.
Smalltooth Sawfish Abundance Survey, (SEFSC) [1].	Ten Thousand Islands, FL backcountry region, including areas in Everglades National Park and Ten Thousand Island National Wildlife Refuge in 0.2–1.0 m depths.	Annual, Mar–Nov, 56 DAS (6–7 DAS/trip), daytime operations only.	USCG Class I: R/V *Pristis*.	Set gillnet, shallow deployment.	~20 sets/month, 180–200 sets total.
Pelagic Longline Survey-GOM, (SEFSC) [1].	U.S. GOM	Intermittent, Feb–May, 30 DAS, 24 hour operations (set/haul anytime day or night).	USCG R/V: R/V *Oregon II*.	Pelagic longline CTD profiler	100–125 sets. 100–125 casts.
Shark and Red Snapper Bottom Longline Survey-GOM, (SEFSC) [1].	Randomly selected sites from FL to Brownsville, TX between bottom depths 9–366 m.	Annually, July–Sep, 60 DAS, 24 hour operations (set/haul anytime day or night).	USCG R/V: R/V *Oregon II, R/V Gordon Gunter;*. USCG Small R/V: R/V Caretta, R/V Gandy.	Bottom longline CTD profiler and rosette water sampler.	175 sets. 175 casts.
SEAMAP—GOM Bottom Longline Survey (ADCNR, USM–GCRL, LDWF, TPWD) [1].	AL—MS Sound, Mobile Bay, and near Dauphin Island. MS—MS Sound, south of the MS Barrier Islands, Chandeleur, and Breton Sound, and the area east of the Chandeleur Islands.	Annually, Apr–May, June–July, Aug–Sep;. AL—8 DAS, day operations only. MS—16 DAS, day operations only.	USCG Class III: R/V E.O. Wilson, R/V Alabama Discovery, R/V Defender I, R/V Tom McIlwain, RV Jim Franks, R/V Nueces, R/V SanJacinto; USCG R/V: R/V Blazing Seven (2011–2014).	Bottom longline CTD Profiler	AL—32 sets. MS—40. LA—98. TX—20. AL—32 casts. LA—40.

TABLE 1—SUMMARY DESCRIPTION OF FISHERIES AND ECOSYSTEM RESEARCH ACTIVITIES CONDUCTED OR FUNDED BY THE SEFSC IN THE GOMRA, ARA, AND CRA—Continued

Survey name (research agency)	General area of operation	Season, frequency, yearly days at sea (DAS)	Vessel used	Gear used	Number of stations
	LA—LA waters west of the MS River. TX—near Aransas Pass and Bolivar Roads Ship Channel.	LA—30 DAS, day operations only. TX—10 DAS, day operations only.	.....	Water quality and chemistry (YSI instruments, Niskin bottles, turbidity meter).	MS—40 casts. TX—20.
IJA Biloxi Bay Beam Trawl Survey (MDMR) [1].	MS state waters in Biloxi Bay, 1–2 m depths.	Annually, Jan–Dec, 25 DAS, day operations only.	USCG Class I: R/V Grav I, R/V Grav II, R/V Grav IV.	Modified beam trawl	11 trawls/month, 132 trawls total.
IJA Inshore Finfish Trawl Survey (MDMR)[1].	MS state waters from Bay St. Louis, to approximately 2 miles south Cat Island, 1–8 m depths.	Annually, Jan–Dec, 12 DAS, day operations only.	USCG Class I: Small vessel R/V Geoship.	Otter trawl	72 trawls.
IJA Open Bay Shellfish Trawl Survey (TPWD) [1].	TX state waters in Galveston, Matagorda, Aransas, and Corpus Christi Bays and the lower Laguna Madre, 1–10 m depths.	Annually, Jan–Dec, 120 DAS, day operations only.	USCG Class I: Small vessel. USCG Class II: R/V Trinity Bay, R/V Copano Bay, R/V RJ Kemp.	Otter trawl ..... Water quality and chemistry (YSI instruments, Niskin bottles, turbidity meter).	90 trawls/month, 1080 trawls total.
Oceanic Deep-water Trawl—GOM, (SEFSC) [1].	U.S. GOM waters >500 m deep.	Intermittent due to funding, 20 DAS, 24 hour operations, * conducted in 2009 & 2010 and in the future as funding allows.	USCG R/V: R/V Gunter, R/V Pisces.	High Speed Midwater Trawl, Aleutian Wing Trawl. CTD profiler and rosette water sampler.	60 trawls (2–3 per day). 60 casts. Tow speed: 0. Duration: 60–90 min.
St. Andrew Bay Juvenile Reef Fish Trawl Survey, (SEFSC) [1].	St. Andrew Bay, FL, up to 2 m depths.	Annually, May–Nov, 28 DAS, day operations only, (one day/week).	USCG Class I: Boston Whaler.	Benthic Trawl	13 trawls per week, 24 weeks, 312 trawls total.
Small Pelagics Trawl Survey, (SEFSC) [1].	U.S. GOM in depths of 50–500 m.	Annually, Oct–Nov, 40 DAS, 24 hour operations (set/haul anytime day or night).	USCG R/V: R/V Gordon Gunter, R/V Pisces.	High-opening bottom trawl. Simrad ME70 Multi-Beam echosounder. EK60 Multi-frequency single-beam active acoustics. ADCP ..... CTD profiler and rosette water sampler.	150–200 trawls. Continuous. Continuous. Continuous. 250 casts.
SEAMAP–GOM Shrimp/ Groundfish Trawl Survey (SEFSC, FFWCC, ADCNR, USM/GCRL, LDWF) [1].	U.S. GOM from FL to Mexico in depths of 9–110–360 m.	Annually, summer (June & July) and fall (Oct–Nov), effort evenly divided between seasons unless noted; all surveys have 24 hour operations-set/haul anytime day or night;. SEFSC—80 DAS ..... FL—20 DAS (summer only). AL—6 DAS ..... MS—6 DAS ..... LA—5 DAS	USCG Class II: R/V Trinity Bay, R/V Copano Bay, R/V RJ Kemp. USCG Class III: R/V A.E. Verrill, R/V Alabama Discovery, R/V Sabine Lake, R/V Nueces, R/V San Jacinto, R/V San Antonio, R/V Matagorda Bay. USCG R/V: R/V *Oregon II,* R/V *Tommy Munro,* R/V *Weatherbird II,* R/V *Pelican,* R/V *Blazing Seven* (2011–2014), R/V *Point Sur*.	Otter trawl ..... CTD profiler and rosette water sampler\uses YSI Datasonde 6600 v2–4.	Effort evenly divided between seasons unless noted. SEFSC—345 trawls (summer), 325 (fall). FL—160 (summer only). AL—16–24. MS—60. LA—32. SEFSC—395 casts (summer), 305 (fall). FL—200 (summer only). AL—20. MS—81. LA—39.
SEFSC BRD Evaluations (SEFSC) [1].	State and Federal nearshore and offshore waters off FL, AL, MS, and LA at depths of 10–35 m. Also Mississippi Sound at depths of 3–6 m.	Annually, May & Aug (one week/month), 14 DAS, night operations only.	USCG Class III: R/V *Caretta*.	Western jib shrimp trawls	20 paired trawls each season, 40 paired trawls total.
SEFSC–GOM TED Evaluations, (SEFSC) [1].	State and Federal nearshore and offshore waters off FL, AL, MS, and LA at depths of 10–35 m. Also Mississippi Sound at depths of 3–6 m.	Annually, May, Aug, & Sep (one week/month), 21 DAS, day operations only.	USCG Class I & II: NOAA small boats. USCG Class III: R/V *Caretta*.	Western jib shrimp trawls	30 paired trawls per season, 90 paired trawls total.
SEFSC Skimmer Trawl TED Testing (SEFSC) [1].	Conducted in Mississippi Sound, Chandeleur Sound, and Breton Sound at depths of 2–6 m.	Annually until 2016 (tentative depending on funding and need) May–Dec, 5–15 DAS/ month, 60 DAS total, 24 hour operations-set/ haul anytime day or night.	USCG Class III: R/V *Caretta*.	Skimmer trawls	600 paired trawls.

TABLE 1—SUMMARY DESCRIPTION OF FISHERIES AND ECOSYSTEM RESEARCH ACTIVITIES CONDUCTED OR FUNDED BY THE SEFSC IN THE GOMRA, ARA, AND CRA—Continued

Survey name (research agency)	General area of operation	Season, frequency, yearly days at sea (DAS)	Vessel used	Gear used	Number of stations
SEFSC Small Turtle TED Testing and Gear Evaluations (SEFSC) [1].	State waters in St. Andrews Bay, FL and off Shell Island and/or Panama City Beach, FL at depths of 7–10 m.	Annually, 21 DAS, day operations only.	USCG Class III: R/V *Caretta.*	Western jib shrimp trawls are utilized during TED evaluations.	100 paired trawls.
IJA Biloxi Bay Seine Survey, (MDMR)[1].	MS state waters in Biloxi Bay, 1–2 m depths.	Annually, Jan–Dec, 25 DAS, day operations only.	USCG Class I & II: R/V *Grav I,* R/V *Grav II,* R/V *Grav IV,* small vessel.	Bag seine	11 sets/month, 132 sets total.
IJA Oyster Dredge Monitoring Survey, (MDMR).	MS state waters, at commercially important oyster reefs: Pass Christian Complex, Pass Marianne Reef, Telegraph Reef and St. Joe Reef, in 5–15 ft depths.	Annually, Jan-Dec, 12 DAS, day operations only.	USCG Class I: R/V *Rookie* USCG Class II: R/V *Silvership.*	Oyster dredge	38 tows.
IJA Shoreline Shellfish Bag Seine Survey, (TPWD) [1].	TX state waters in Galveston, Matagorda, Aransas, and Corpus Christi Bays and the lower Laguna Madre, 0–6 ft depths.	Annually, Jan–Dec, 120 DAS, day operations only.	N/A	Bag seine	100 sets/month, 1200 total.
Marine Mammal and Ecosystem Assessment Survey-GOM, (SEFSC) [1].	Northern GOM	Every three years, June-Sep, 60 DAS, 24 hour operations (set/haul anytime day or night).	USCG R/V: R/V *Gordon Gunter.*	CTD profiler and rosette water sampler. Expendable bathythermographs. ADCP ..... Simrad ME70 Multi-Beam echosounder. EK60 Multi-frequency single-beam active acoustics. Passive acoustic arrays	60 casts. 300 units. Continuous. Continuous. Continuous. Continuous.
Northeast GOM MPA Survey, (SEFSC) * Currently Inactive.	Madison-Swanson, Steamboat Lumps, and The Edges marine reserves on the West Florida Shelf.	Annually, Feb–Mar, 60 DAS, day operations only.	USCG Class III: R/V *Caretta.*	4-camera array ..... CTD Profiler	100–200 deployments. 100–200 casts.
Panama City Laboratory Reef Fish (Trap/Video) Survey, (SEFSC).	Penscecola, FL to Cedar Key, FL.	Annually, May–Sep, 40 DAS, day operations only.	USCG Class II: R/V Harold B, USCG Class III: R/V Caretta , R/V Defender, R/V Apalachee.	4-camera array ..... Chevron fish trap outfitted with one GoPro video camera. CTD profiler	200 deployments. 100 sets. 200 casts.
SEAMAP–GOM Finfish Vertical Line Survey, (ADCNR, LDWF, USM/GCRL).	State and Federal waters off Alabama at sampling depths from 60 to 500 ft and LA waters west of the Mississippi River across three depth strata (60–120 ft, 120–180 ft, and 180–360 ft) and selected areas of Texas at three depth strata (33–66 ft, 66–132 ft, and 132–495 ft). Stations are sampled during daylight hours.	AL: Annually, two intervals: Spring (Apr/May) and summer (July–Sep), 9 DAS, day operations only LA and TX: Annually, April–Oct.	USCG Class III: R/V *Escape,* R/V *Lady Ann,* R/V *Defender I* USCG R/V: R/V *Blazing Seven* (2011–2014), *Poseidon, Trident R/V Sabine, San Jacinto, San Antonio, Nueces, Laguna.*	Bandit gear	AL: 120 sets per season, 240 sets total. LA: 100 sets total. TX: 165 sets total.
	State and Federal waters off MS. Sampling depths 5–55 fathoms. Stations are sampled during daylight hours.	Annually, Mar–Oct, 16 DAS (4 days/month), day operations only.	USCG Class III: R/V *Jim Franks.*	Bandit gear	15 stations/season—45 stations total, 3 sets per station, 135 sets total.
SEAMAP–GOM Plankton Survey, (ADCNR, LDWF, USM/GCRL).	State and Federal waters off the coast of AL, MS, LA, and FL.	AL: Annually, Aug–Sep, 2 DAS, day operations only.	USCG Class III: R/V *A.E. Verrill,* R/V *Alabama Discovery,* R/V *Acadiana.*	Bongo net	AL: 6 tows. LA: 9 tows. MS: 20 tows.
	LA: Annually, June, Sep, 2 DAS, day operations only.	USCG R/V: R/V *Blazing Seven* (2011–2014), R/V *Point Sur;* R/V *Defender.*	Neuston net	AL: 6 tows. ..... LA: 9 tows. ..... MS/FL: 20 tows..	
			MS: Annually, May and Sep, 4 DAS, 24 hour operations.	CTD Profiler	AL: 6 casts. LA: 9 casts. MS/FL: 20 casts.

TABLE 1—SUMMARY DESCRIPTION OF FISHERIES AND ECOSYSTEM RESEARCH ACTIVITIES CONDUCTED OR FUNDED BY THE SEFSC IN THE GOMRA, ARA, AND CRA—Continued

Survey name (research agency)	General area of operation	Season, frequency, yearly days at sea (DAS)	Vessel used	Gear used	Number of stations
SEAMAP–GOM Plankton Survey, (SEFSC).	Coastal, shelf and open ocean waters of the GOM.	Annually, Feb–Mar (winter), 30 DAS;. Apr–May (spring), 60 DAS. Aug–Sep (fall), 36 DAS .. 24 hour operations (set/haul anytime day or night).	USCG R/V: R/V *Oregon II,* R/V *Gordon Gunter,* R/V *Pisces*.	Bongo net ..... Neuston net ..... MOCNESS ..... Methot juvenile fish net .. CTD profiler and rosette water sampler.	650 tows. 650 tows. 378 tows. 126 tows. 756 casts.
SEAMAP–GOM Reef Fish Monitoring, (FFWCC).	West FL shelf from 26°N to Dry Tortugas, FL.	Annual, July–Sep, 50 DAS, daylight hours.	USCG Class I & II: R/V *No Frills,* R/V *Gulf Mariner,* R/V *Sonic,* R/V *Johnson,* chartered fishing vessels.	2-camera array	150 deployments.
			USCG Small R/V: R/V *Bellows,* R/V *Apalachee* USCG R/V:.	Chevron fish trap	300–450 sets.
			R/V *Weatherbird*	CTD profiler	300 casts.
SEAMAP–GOM Reef Fish Survey, (SEFSC).	Gulf-wide survey from Brownsville, TX to Key West, FL, in depths of 15–500 ft. Approximately 7.0% of this survey effort (458 stations) occurs within the Florida Garden Banks NMS.	Annual, Apr–July, 60 DAS, 24 hour operations on large vessels (cameras, traps, bandit—daytime only), 12 hour operations on small vessels (daytime only).	USCG Class III: R/V *Caretta,* R/V *Gandy*. USCG R/V: R/V *Pisces,* R/V *Oregon II*. USCG R/V: *Southern Journey*. NOAA Ship: *Gordon Hunter*.	4-camera array ..... Chevron trap (discontinued use in 2013). CTD Profiler ..... Bandit Reels ..... Acoustic Doppler Current Profiler. Simrad ME70 Multi-beam echosounder. EK60 Multi-frequency single-beam active acoustics.	400–600 deployments. 50–100 sets. 400–600 casts. 120 sets. Continuous. Continuous. Continuous.
IJA Oyster Visual Monitoring Survey, (MDMR).	MS state waters, 5–15 ft depths.	Annually, Sep/Oct to Apr/May of following year, 12 DAS, day operations only.	USCG Class I & II: R/V *Silvership,* R/V *Rookie*.	SCUBA divers	~20 dives.
Reef Fish Visual Census Survey—Dry Tortugas, Flower Gardens (SEFSC).	Dry Tortugas area in the GOM, <33m deep.	Biannually, May–Sept, 25 DAS, day operations only.	USCG Class II & III: Chartered dive vessel.	SCUBA divers with meter sticks, 30 cm rule and digital camera.	300 stations (4dives per station).
Tortugas Ecological Reserve Survey, (SEFSC) *. * Currently inactive since 2015.	Tortugas South Ecological Reserve, Florida Keys National Marine Sanctuary.	Biannually, summer (June or July), 6 days, day and night 12 hour operations. * Survey has been discontinued since 2015.	USCG Class II & III: Chartered vessel.	SCUBA divers, transect tape, clipboards/pencils.	16 stations, each station done 2–3 times.
Atlantic Research Area					
ACFCMA American Eel Fyke Net Survey, (SCDNR).	Goose Creek Reservoir or the Cooper River, near Charleston, SC, 1–7 ft depths.	Annually, Feb–Apr, 32 DAS, day operations only.	USCG Class A: John Boat—no motor, walk/wade to work net.	Fyke net	1 station per day, 40 collections total.
				Thermometer	32 casts.
ACFCMA American Shad Drift Gillnet Survey, (SCDNR) [1].	Santee, Edisto, Waccamaw, Combahee Rivers, SC.	Annual, Jan–Apr, (2–3 trips/week), 40 DAS, day operations only.	USCG Class I: R/V *Bateau,* R/V *McKee Craft*.	Drift gillnet	4–5 sets/trip, 120 sets total.
RecFIN Red Drum Trammel Net Survey, (SCDNR).	Coastal estuaries and rivers of SC in depths of 6 ft or less along shoreline.	Annually, Jan–Dec, 120–144 DAS (14–18 days/month), day operations only.	USCG Class I: Florida Mullet Skiffs.	Trammel net	1000 sets/yr covering 225 stations/yr. Operates in 7–9 strata/month.
HMS Chesapeake Bay and Coastal Virginia Bottom Longline Shark Survey, (VIMS) [1].	Chesapeake Bay and state and Federal waters off Virginia.	Annually, May–Oct (5 days/month), 30 DAS, day operations only.	USCG Class III: R/V *Bay Eagle*.	Bottom longline	50 sets.
				Hydrolab MS5 Sonde	50 casts.
MARMAP Reef Fish Long Bottom Longline Survey, (SCDNR) [1].	South Atlantic Bight (between 27° N and 34° N, but mostly off GA and SC). Sampling occurs in Federal waters. Depths from ~500 to 860 ft.	Annually 1996–2012 *, Aug–Oct, 10–20 DAS, day operations only. *Halted in 2012 but will resume annually if funding obtained.	USCG Small R/V: R/V *Lady Lisa*.	Bottom longline ..... CTD profiler	60 sets. 60 casts.
MARMAP/SEAMAP–SA Reef Fish Survey, (SCDNR) [1] * Inactive 2012–2014.	South Atlantic Bight (between 27° N and 34° N).	Annually, year-round but primarily Apr–Oct, 70–120 DAS, day operations only.	USCG R/V: R/V *Palmetto*	Chevron fish trap outfitted with two cameras. Bottom longline ..... Bandit reels ..... CTD profiler	600 sets. 60 sets. 400 sets. 300 casts.

TABLE 1—SUMMARY DESCRIPTION OF FISHERIES AND ECOSYSTEM RESEARCH ACTIVITIES CONDUCTED OR FUNDED BY THE SEFSC IN THE GOMRA, ARA, AND CRA—Continued

Survey name (research agency)	General area of operation	Season, frequency, yearly days at sea (DAS)	Vessel used	Gear used	Number of stations
Pelagic Longline Survey-SA, (SEFSC) [1]. (See also effort conducted in the GOMRA).	Cape Hatteras, NC to Cape Canaveral, FL.	Intermittent, Feb–May, 30 DAS, 24 hour operations (set/haul anytime day or night).	USCG R/V: R/V *Oregon II*.	Pelagic Longline ..... CTD profiler	100–125 sets. 100–125 casts.
Shark and Red Snapper Bottom Longline Survey-SA, (SEFSC) [1]. (See also effort conducted in the GOMRA).	Cape Hatteras, NC to Cape Canaveral, FL between bottom depths 9–183 m.	Annually, July–Sep, 60 DAS, 24 hour operations (set/haul anytime day or night).	USCG Class III: R/V *Caretta*. USCG R/V: R/V *Oregon II,* R/V *Gordon Gunter*.	Bottom longline ..... CTD profiler and rosette water sampler. Neuston and bongo effort if needed to augment SEAMAP plankton objectives.	70 sets. 70 casts. 0–20 tows.
SEAMAP–SA Red Drum Bottom Longline Survey, (NCDEQ, SCDNR, GDNR) [1].	NC: Pamlico Sound or in the nearshore waters of Ocracoke Inlet. SC: Estuaries out to 10 miles in Winyah Bay, Charleston Harbor, St. Helena Sound, and Port Royal Sound. GA: State and Federal waters off the coast of GA and NE FL, (~32°05′ N latitude to the north, 29°20′ N latitude to the south, 80°30′ W longitude to the east, and the coastline to the west).	Annually ..... NC: mid–July to mid–Oct (2 days/week for 12 weeks), 24 DAS, 12 hour operations, beginning at dusk. SC: Aug–Dec, day operations only. 36 DAS ..... GA: Apr–Dec (6 days/month), 54 DAS, day operations only.	USCG Class II: 26 ft outboard. USCG Class III: R/V *Marguerite,*R/V *Silver Crescent*.	Bottom longline ..... YSI (Dissolved oxygen, salinity, temperature).	NC: 75–100 sets total. SC: 360 sets. GA: 200–275 sets. NC: 75–100 casts. SC: 360 casts. GA: 200–275 casts.
ACFCMA Ecological Monitoring Trawl Survey, (GDNR) [1].	Georgia state waters out to 3 nm, 10–35 ft depths.	Annually, Jan–Dec (7 days/month), 84 DAS, day operations only.	USCG Class III: R/V *Anna*.	Otter trawl ..... YSI 85 (Dissolved oxygen, salinity, temperature).	42 trawls/month, 504 trawls total. 504 casts total.
ACFCMA Juvenile Stage Trawl Survey, (GDNR) [1].	Creeks and rivers of three Georgia sound systems (Ossabaw, Altamaha, and St. Andrew).	Annually, Dec–Jan (3 days/month), 36 DAS, day operations only.	USCG Class I: 19 ft Cape Horn; 25 ft Parker.	Otter trawl ..... YSI 85 (Dissolved oxygen, salinity, temperature).	18 trawls/month, 216 trawls total. 216 casts total.
Atlantic Striped Bass Tagging Bottom Trawl Survey, (USFWS) [1].	North of Cape Hatteras, NC, in state and Federal waters, 30–120 ft depths.	Annually, Jan–Feb, 14 DAS, 24 hour operations (set/haul anytime day or night).	USCG R/V: R/V *Oregon II,* R/V *Cape Hatteras,* R/V *Savannah*.	65 ft high-opening bottom trawls.	200–350 trawls.
Juvenile Sport Fish Trawl Monitoring in Florida Bay, (SEFSC) [1].	Florida Bay, FL	Annually, May–Nov, 35 DAS, day operations only.	USCG Class I: R/V *Batou*.	Otter trawl	~500 trawls.
Oceanic Deep-water Trawl Survey (SEFSC) [1] * Currently Inactive.	Southeastern U.S. Atlantic waters >500 m deep.	Intermittent due to funding, 20 DAS, 24 hour operations (trawls may be set and retrieved day or night). * conducted as funding allows.	USCG R/V: NOAA ships	High Speed Midwater Trawl, Aleutian Wing Trawl. CTD profiler and rosette water sampler.	60 trawls (2–3 per day). 60 casts.
SEAMAP–SA NC Pamlico Sound Trawl Survey, (NCDENR) [1].	Pamlico Sound and the Pamlico, Pungo, and Neuse rivers in waters ≥6 ft deep.	Annually, June & Sep, 20 DAS (10 days/month), day operations only.	USCG Class III: R/V *Carolina Coast*.	Otter trawl: Paired mongoose-type Falcon bottom trawls. Ponar grab ..... YSI 556 (Dissolved oxygen, salinity, temperature). Secchi disk	54 trawls each month, 108 trawls total. 54 casts each month, 108 total. 54 casts each month, 108 total. 54 casts each month, 108 total.
SEAMAP–SA Coastal Trawl Survey, (SCDNR) [1].	Cape Hatteras, NC to Cape Canaveral, FL in nearshore oceanic waters of 15–30 ft depth.	Annually, Apr–May (spring), July–Aug (summer), and Oct–Nov (fall), 60–65 DAS, day operations only.	USCG Small R/V: R/V *Lady Lisa*.	Otter trawl: Paired mongoose-type Falcon bottom trawls. SEABIRD electronic CTD	300–350 trawls total, evenly divided between seasons. 300–350 casts.
SEFSC–SA TED Evaluations, (SEFSC) [1].	State and Federal waters off Georgia and eastern FL.	Annually, Nov–Apr, 10 DAS, 24 hour operations—set/haul anytime day or night.	USCG Class III: R/V *Georgia Bulldog*.	Otter trawl: Mongoose shrimp trawls.	50 paired trawls.
In-Water Sea Turtle Research (SCDNR) [1].	Winyah Bay, SC to St. Augustine, FL in water depths of 15–45 ft.	Annually, mid-May through late Jul to early Aug, 24–30 DAS, day operations only.	USCG Class III: R/V *Georgia Bulldog*. USCG Small R/V: R/V *Lady Lisa*.	Paired flat net bottom trawls (NMFS Turtle Nets per Dickerson et al. 1995) with tickler chains.	400–450 trawls.

TABLE 1—SUMMARY DESCRIPTION OF FISHERIES AND ECOSYSTEM RESEARCH ACTIVITIES CONDUCTED OR FUNDED BY THE SEFSC IN THE GOMRA, ARA, AND CRA—Continued

Survey name (research agency)	General area of operation	Season, frequency, yearly days at sea (DAS)	Vessel used	Gear used	Number of stations
ACFCMA American Eel Pot Survey for Yellow-phase Eels, (GADNR).	Georgia state waters in the Altamaha River System. Sampling is conducted during daylight hours. Depth ranges from 2 to 20 ft.	Annually. Sampling monthly Nov–Apr. based on water temp. 36 DAS (6 days/month), day operations only.	USCG Class I: 19 ft Cape Horn, 18 ft skiff.	Eel traps/pots with float ..	30 stations (180 sets/month; 30 traps set each of 6 days).
Beaufort Bridgenet Plankton Survey, (SEFSC).	Pivers Island Bridge, NOAA Beaufort facility, Beaufort, NC.	Annually, Nov–May (some years monthly Jan–Dec), night operations only sampling occurs once per week, n+4 tows per night.	None	Plankton net	125 tows.
Integrated Biscayne Bay Ecological Assessment and Monitoring Project (IBBEAM) Project, (SEFSC).	Western shoreline of Biscayne Bay, FL.	Twice annually, May–Oct (wet season) and Nov–Apr (dry season), 14 DAS, day operations only.	USCG Class II & III vessels.	Human divers	100 dives.
				Throw trap	372 casts.
Intraspecific Diversity in Pink Shrimp Survey, (SEFSC) * Currently inactive.	Florida Bay, Whitewater Bay, Fakahatchee Bay, Biscayne Bay, Sanibel shrimp fishery, Tortugas shrimp fishery.	Annually, June–Aug, 16 DAS, day operations only.	USCG Class I: R/V *Privateer*.	Miniature roller-frame trawl.	40 trawls.
				Dip net	40 samples.
				Bag seine	40 sets.
Marine Mammal and Ecosystem Assessment Survey–SA (SEFSC) [1].	Southeastern U.S. Atlantic.	Every three years, June–Sep, 60 DAS, 24 hour operations.	USCG R/V: R/V *Gordon Gunter*.	CTD profiler and rosette water sampler.	60 casts.
				Expendable bathythermographs.	300 units.
				Acoustic Doppler Current Profiler.	Continuous.
				Simrad ME70 Multi-Beam echosounder.	Continuous.
				EK60 Multi-frequency single-beam active acoustics.	Continuous.
				Passive acoustic arrays	Continuous.
RecFIN Red Drum Electrofishing Survey, (SCDNR).	Coastal estuaries and rivers of SC in depths of 6 ft or less in low salinity waters (0–12 ppt).	Annually, Jan–Dec, 60–72 DAS (5–6 days/month), day operations only.	USCG Class I: Small vessels.	18 ft elecrofishing boat ...	360 stations per year (30 sites/month).
St. Lucie Rod-and-Reel Fish Health Study, (SEFSC) [1] * Currently inactive.	Nearshore reef, inlet, and estuary of St. Lucie River, FL inlet system (Jupiter or Ft. Pierce, FL).	Annually, Jan–Dec, weekly, 156 DAS, day operations only.	USCG Class I: Small vessels.	Rod and reel gear	468 stations per year: 3/day × 3 day/wk.
SEAMAP–SA Gag Ingress Study, (SCDNR) * Inactive since 2016.	In the vicinity of Swansboro, NC; Wilmington, NC; Georgetown, SC; Charleston, SC; Beaufort, SC; Savannah, GA; and Brunswick, GA.	Annually, Mar–June, 100 DAS, day operations only.	USCG Class I: Small vessels.	Witham collectors	15 sets (4 collectors at each set), 60 sets total.
Southeast Fishery Independent Survey (SEFIS) (SEFSC) [1].	Cape Hatteras, NC, to St. Lucie Inlet, FL. Fifteen survey stations occur within Gray's Reef NMS.	Annually, Apr–Oct, 30–80 DAS, 24 hour operations (cameras & traps—daytime operations, acoustics—anytime day or night).	USCG R/V: R/V *Nancy Foster,* R/V *Pisces,* R/V *Savannah*.	Chevron fish trap outfitted with 2 high-definition video cameras..	1,000 deployments.
				CTD profiler	100–200 casts.
				Simrad ME70 Multi-Beam echosounder.	Continuous.
				Multi-frequency single-beam active acoustics.	Continuous.
U.S. South Atlantic MPA Survey, (SEFSC) [1].	Jacksonville, FL to Cape Fear, NC on or near the continental shelf edge at depths between 80 and 600 m.	Annually, May–Aug, 14 DAS, 24 hour operations (ROV daytime operations, acoustics—anytime day or night).	USCG R/V: R/V *Pisces,* R/V *Nancy Foster,* R/V *Spree*.	ROV Phantom S2 vehicle with tether attached to CTD cable.	10–40 deployments.
				CTD profiler	28 casts.
				Simrad ME70 Multi-Beam echosounder.	Every other night for 6–12 hrs.
				EK60 Multi-frequency single-beam active acoustics.	Every other night for 6–12 hrs.
FL/Dry Tortugas Coral Reef Benthic Survey, (SEFSC).	Survey area encompasses Federal and territorial waters from Dry Tortugas to Martin County, FL. Surveys occur within the Florida Keys NMS (150 stations).	Quarterly–annually, May–Oct, 100 DAS.	USCG Class I & II: Small vessels.	SCUBA divers with measuring devices, cameras, and hand tools.	300 dives.

TABLE 1—SUMMARY DESCRIPTION OF FISHERIES AND ECOSYSTEM RESEARCH ACTIVITIES CONDUCTED OR FUNDED BY THE SEFSC IN THE GOMRA, ARA, AND CRA—Continued

Survey name (research agency)	General area of operation	Season, frequency, yearly days at sea (DAS)	Vessel used	Gear used	Number of stations
Demographic Monitoring of *Acropora* Species, (SEFSC).	Florida Keys National Marine Sanctuary.	3 × per year, ~35 DAS ...	USCG Class I	SCUBA divers	30 fixed plots.
Reef Fish Visual Census Survey—Florida Keys/SE Florida Shelf, (SEFSC).	Florida Keys NMS and SE Florida Shelf, <33 m deep.	Annually, May–Sep, 25 DAS, day operations only.	USCG Class I: R/V *Aldo Leopold*.	SCUBA divers with meter sticks, 30 cm rule and digital camera.	300 dives.
Caribbean Research Area					
Caribbean Plankton Recruitment Experiment, (SEFSC).	Caribbean and Mexican waters.	Bi-annually, Feb or June, 15 DAS, 24 hour operations, anytime day or night.	USCG R/V: R/V *Gordon Gunter,* R/V *Nancy Foster*.	Bongo net	75 tows.
				MOCNESS	75 tows.
				CTD profiler and rosette water sampler.	75 casts.
Caribbean Reef Fish Survey, (SEFSC) [1].	PR and USVI, continental shelf waters.	Every two years, Mar–June, 40 DAS, 24 hour operations.	USCG R/V: R/V *Pisces,* R/V *Oregon II*.	Bandit Reels	300 sets.
				4-camera array	150 deployments.
				Chevron traps	100 sets.
				CTD profiler	300 casts.
				Simrad ME70 Multi-Beam echosounder.	Continuous.
				Acoustic Doppler Current Profiler.	Continuous.
				EK60 Multi-frequency single-beam active acoustics.	Continuous.
Marine Mammal and Ecosystem Assessment Survey-C, (SEFSC) [1].	U.S. Caribbean Sea	Every three years, June–Sep, 60 DAS, 24 hour operations-acoustics-anytime day or night.	USCG R/V: R/V *Gordon Gunter*.	CTD profiler and rosette water sampler.	60 casts.
				Expendable bathythermographs.	300 units.
				Acoustic Doppler Current Profiler.	Continuous.
				Simrad ME70 Multi-Beam echosounder.	Continuous.
				EK60 Multi-frequency single-beam active acoustics.	Continuous.
				Passive acoustic arrays	Continuous.
SEAMAP–C Reef Fish Survey (PR–DNER, USVI–DFW).	USVI and PR territorial and Federal waters at 15–300 ft depths.	Annually, Jan–Dec, (Day operations only).	USCG Class I & III: *Three chartered vessels*.	Camera array—two GoPro cameras and four lasers set on an aluminum frame.	PR: 120 per coast total of 240.
* Began 2017		PR: 70 DAS for each coast.			USVI: 72 per island, 144 total.
		USVI: ~30 DAS.			
SEAMAP–C Lane Snapper Bottom Longline Survey, (PR–DNER) [1].	East, west, and south coasts of PR in territorial and Federal waters at depths ranging from 15–300 ft.	Annually beginning July 2015, (summer, winter, fall, spring), 120 DAS (30 days/season), night operations only.	USCG Class III: *Two chartered vessels*.	Bottom longline	45 sets/season, 180 sets total.
SEAMAP–C Yellowtail Snapper Rod-and-Reel Survey, (PR–DNER) [1].	East, west, and south coasts of PR in territorial and Federal waters at depths ranging from 15–300 ft.	Annually beginning 2014, (4 sampling seasons), 120 DAS, night operations only.	USCG Class I & III: *Three chartered vessels*.	Rod-and-reel gear	120 stations (360 lines total).
Caribbean Coral Reef Benthic Survey, (SEFSC).	Federal and territorial waters around PR, USVI, and Navassa.	Annual to triennial, May–Oct, 30 DAS, day operations only.	USCG Class I & II: Small vessel <28 ft.	SCUBA divers with measuring devices and hand tools.	300 dives.
Reef Fish Visual Census Survey-U.S. Caribbean, (SEFSC).	PR and USVI waters < 100 ft deep.	Annually, May-Sept, 25 DAS, day operations only.	USCG Class I & II: Small vessel <24 ft.	SCUBA divers with meter sticks, 30 cm rule and digital camera.	300 dives.
SEAMAP–C Queen Conch Visual Survey, (PR–DNER, USVI–DFW).	PR and USVI territorial waters in 10–90 ft depths, some sampling occurs in Federal waters.	Annually, ...	USCG Class I & III: *Three chartered vessels*.	SCUBA divers, SCUBA gear and underwater scooters.	PR: 100 dives
		PR: July–Nov, 35 DAS ...			USVI: 62 dives.
		USVI: June–Oct, 62 DAS, day operation only.			
SEAMAP–C Spiny Lobster Post Larvae Settlement Surveys, (PR–DNER).	PR territorial waters in 6–90 ft depths.	Every four years	USCG Class I & III: *Three chartered vessels*.	Fifty-six modified Witham pueruli collectors.	6 stations along the west coast platform per depth and distance from the shoreline.
		West cost of PR: Jan–Dec, 84 DAS.	R/V Erdman		
SEAMAP–C Spiny Lobster Artificial Habitat Survey, (PR–DNER, USVI–DFW).	PR and USVI territorial waters in 6–90 ft depths.	Annually, ...	USCG Class I & III: *Three chartered vessels*.	Juvenile lobster artificial shelters.	10 shelters, continuous deployment.
		PR: Jan–Dec, 84 DAS ...		SCUBA divers, SCUBA gear and underwater scooters.	PR: 60 dives
		USVI: Jan–Dec, 20 DAS, day operations only.			USVI: 20 dives.

[1] These surveys have the potential to take marine mammals through M/SI and/or Level B harassment.

* Inactive projects are currently not conducted but could resume if funds became available.

Description of Fishing Gear—A complete description of fishery-independent survey gear and vessels used by the SEFSC is provided in the proposed rule (84 FR 6576, February 27, 2019) and Appendix A of the PEA. We refer the reader to those documents for a detailed description of gear and fishing methods.

Description of Active Acoustic Sound Sources—A wide range of active acoustic devices are used in SEFSC fisheries surveys for remotely sensing bathymetric, oceanographic, and biological features of the environment. A complete description of acoustic sources used by the SEFSC is provided in the proposed rule (84 FR 6576, February 27, 2019) and the PEA. We refer the reader to those documents for a detailed description of gear, fishing methods, and acoustic source characteristics. A summary table of source operational parameters is below (Table 2).

TABLE 2—OPERATING CHARACTERISTICS OF SEFSC ACTIVE ACOUSTIC SOURCES

Active acoustic system	Operating frequencies (kHz)	Maximum source level (dB re: 1μPa @1 m)	Nominal beamwidth	Effective exposure area: Sea surface to 200 m depth (km^2)	Effective exposure area: Sea surface to 160 dB threshold depth (km^2)
Simrad EK60 narrow beam echosounder	18, 38, 70, 120, *200, *333	224	11° @18 kHz 7° @38 kHz ...	0.0142	0.1411
Simrad ME70 multibeam echosounder	70–120	205	140°	0.0201	0.0201
Teledyne RD Instruments ADCP, Ocean Surveyor	75	223.6	N/A	0.0086	0.0187
Simrad EQ50	50, *200	210	16 @50kHz .... 7 @200kHz	0.0075	0.008
Simrad ITI Trawl Monitoring System	27–33	<200	40° × 100°	0.0032	0.0032

*Devices working at this frequency is outside of known marine mammal hearing range and is not considered to have the potential to result in marine mammal harassment.

Comments and Responses

NMFS published a notice of proposed rulemaking in the **Federal Register** on February 27, 2019 (84 FR 6576) and requested comments and information from the public. During the 30-day public comment period, we received letters from the Marine Mammal Commission (Commission) and comments from four public citizens. We provide a summary of the comments and our full responses here and have posted the public comments on our website: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* and on the Federal e-Rulemaking Portal at *www.regulations.gov* (enter 0648–BG44 in the ''Search'' box and scroll down to the Comments section).

Comment 1: The Commission recommends that NMFS revise Table 3a in the **Federal Register** notice to include fin, sei, and Bryde's whales as marine mammals that potentially occur in the CRA and revise its analyses and take estimates as necessary.

NMFS Response: Fin, sei and Bryde's whales are extralimital or rarely sighted in the CRA. While Bryde's whales routinely occur in the southern Caribbean off (*e.g.,* off the coast of Venezuela), they are rare in the SEFSC's CRA in the northern Caribbean. There is one record from Puerto Rico (Mignucci-Giannoni *et al.* 1998) and one from Cuba (Whitt *et al.* 2011). The Commission cited Erdman *et al.,* 1973 and Ward *et al.,* 2001 when claiming Bryde's whales also have been observed in waters off Puerto Rico and the U.S. Virgin Islands and generally occur in nearshore and shelf edge waters. However, both NMFS and the SEFSC reviewed the referenced documents and cannot find this information. Whitt *et al.* (2011) confirmed one (likely extralimital) northeastern Caribbean stranding record from the Dominican Republic in July 1974 (Mead, 1977). Sightings designated as sei whales in the northeastern Caribbean (Erdman, 1970; Erdman *et al.,* 1973; Mignucci-Giannoni, 1989) are not confirmed records. Neither photos nor clear diagnostic features were provided for these unconfirmed records; the species identification was based on behavioral characteristics. Likewise, there are no confirmed records of sei whales in Cuban waters. There is also no indication that fin whales are not rare in the CRA. Based on this review, NMFS determined the Commission's recommendation was not supported and we did not include take of fin, sei, and Bryde's whales in the final rule.

Comment 2: The Commission provides general recommendations—not specific to the proposed SEFSC rulemaking—that NMFS provide interim guidance based on various criteria (*e.g.,* source level, peak frequency, bandwidth, signal duration and duty cycle, affected species or stocks) for determining when prospective applicants should request taking by Level B harassment resulting from the use of echosounders, other sonars, and subbottom profilers.

NMFS Response: NMFS is currently in the process of developing guidance to assist potential applicants in assessing whether a take is likely to result from particular activities. In the meanwhile, we provide assistance and guidance as requested to interested parties on a case-by-case basis.

Comment 3: The Commission recommends that NMFS require SEFSC to estimate the numbers of marine mammals taken by Level B harassment incidental to the use of active acoustic sources (*e.g.,* echosounders) based on the 120-decibel (dB) rather than the 160-dB root mean square (rms) sound pressure level (SPL) threshold. They alternatively suggest that NMFS require the SEFSC to estimate take based on acoustic thresholds developed by the U.S. Navy, including the Navy's unweighted 120 dB re 1 μPa threshold for harbor porpoises and the various biphasic dose response functions for the other marine mammal species.

Response: The Commission repeats a recommendation made in prior letters concerning the proposed authorization of take incidental to use of scientific sonars (such as echosounders). As we have described in responding to those prior comments (*e.g.,* 83 FR 36370), our evaluation of the available information leads us to disagree with this recommendation. We provide a full

response to this comment in our notice of issuance of an IHA to Alaska Fisheries Science Center Final Rule (84 FR 46788, September 5, 2019) with a summary here. First, the Commission misinterprets how NMFS characterizes scientific sonars and claims that we are using an incorrect threshold because scientific sonars do not produce impulse noise. Sound sources can be divided into broad categories based on various criteria or for various purposes. As discussed by Richardson *et al.* (1995), source characteristics include strength of signal amplitude, distribution of sound frequency and, importantly in context of these thresholds, variability over time. With regard to temporal properties, sounds are generally considered to be either continuous or transient (*i.e.,* intermittent). Continuous sounds, which are produced by the industrial noise sources for which the 120-dB behavioral harassment threshold was selected, are simply those whose sound pressure level remains above ambient sound during the observation period (ANSI, 2005). Intermittent sounds are defined as sounds with interrupted levels of low or no sound (NIOSH, 1998). Simply put, a continuous noise source produces a signal that continues over time, while an intermittent source produces signals of relatively short duration having an obvious start and end with predictable patterns of bursts of sound and silent periods (*i.e.,* duty cycle) (Richardson and Malme, 1993). It is this fundamental temporal distinction that is most important for categorizing sound types in terms of their potential to cause a behavioral response.

The Commission relies heavily on the use of examples pertaining to the most sensitive species, which does not support an argument that the 120-dB threshold should be applied to all species. NMFS has acknowledged that the scientific evidence indicates that certain species are, in general, more acoustically sensitive than others. In particular, harbor porpoise and beaked whales are considered to be behaviorally sensitive, and it may be appropriate to consider use of lower behavioral harassment thresholds for these species. NMFS is considering this issue in its current work of developing new guidelines for assessing behavioral harassment. However, until this work is completed and new guidelines are identified (if appropriate), the existing generic thresholds are retained. Moreover, as is discussed above for other reasons, the majority of examples cited by the Commission are of limited relevance in terms of comparison of sound sources. In support of their statement that numerous researchers have observed marine mammals responding to sound from sources claimed to be similar to those considered herein, the Commission indeed cites numerous studies. However, the vast majority of these address responses of harbor porpoise or beaked whales to various types of acoustic alarms or deterrent devices.

With respect to the Commission's recommendation that the SEFSC adopt the Navy's dose-response models to estimate take, we find several reasons why this suggestion should not be implemented. First, the data on which the Navy's dose-response curves are based are primarily from marine mammal exposure to military tactical sonar, a source not relevant to the SEFSC. Second, for reasons referenced above, we do not agree that a 120 dB threshold is appropriate, especially the step-function created for harbor porpoise considering that this species is non-existent in the GOMRI and CRA and limited in the ARA. Lastly, NMFS does not require applicants to adopt another applicant's model, especially complex biphastic models, when the proposed take estimate approach is appropriate, which it was in this case. Therefore, NMFS did not adopt the Navy's dose-response model to estimate take.

Finally, we acknowledge that the Commission presents legitimate points in support of defining a threshold specific to non-impulsive, intermittent sources and that, among the large number of cited studies, there are a few that show relevant results of individual animals responding to exposure at lower received levels in ways that could be considered harassment. As noted in a previous comment response, NMFS is currently engaged in an ongoing effort towards developing updated guidance regarding the effects of anthropogenic sound on marine mammal behavior. However, prior to conclusion of this effort, NMFS will continue using the historical Level B harassment thresholds (or derivations thereof) and will appropriately evaluate behavioral harassment due to intermittent sound sources relative to the 160-dB threshold.

Comment 4: The Commission notes that NMFS has delineated two categories of acoustic sources, largely based on frequency, with those sources operating at frequencies greater than the known hearing ranges of any marine mammal (*i.e.,* >180 kilohertz (kHz)) lacking the potential to disturb marine mammals by causing disruption of behavioral patterns. The Commission describes the recent scientific literature on acoustic sources with frequencies above 180 kHz (*i.e.,* Deng *et al.,* 2014; Hastie *et al.,* 2014) and recommends that we estimate numbers of takes associated with those acoustic sources (or similar acoustic sources) with frequencies above 180 kHz that have been shown to elicit behavioral responses above the 120-dB threshold.

Response: As the Commission acknowledges, we considered the cited information in our Notice of Proposed Rulemaking. NMFS' response regarding the appropriateness of the 120-dB versus 160-dB rms thresholds was provided above in the response to Comment #3. In general, the referenced literature indicates only that sub-harmonics could be detectable by certain species at distances up to several hundred meters. As we have noted in previous responses, behavioral response to a stimulus does not necessarily indicate that Level B harassment, as defined by the MMPA, has occurred. Source levels of the secondary peaks considered in these studies—those within the hearing range of some marine mammals—mean that these sub-harmonics would either be below the threshold for Level B harassment or would attenuate to such a level within a few meters. Beyond these important study details, these high-frequency (*i.e.,* Category 1) sources and any energy they may produce below the primary frequency that could be audible to marine mammals would be dominated by a few primary sources (*e.g.,* EK60) that are operated near-continuously—much like other Category 2 sources considered in our assessment of potential incidental take from SEFSC's use of active acoustic sources—and the potential range above threshold would be so small as to essentially discount them. Further, recent sound source verification testing of these and other similar systems did not observe any sub-harmonics in any of the systems tested under controlled conditions (Crocker and Fratantonio, 2016). While this can occur during actual operations, the phenomenon may be the result of issues with the system or its installation on a vessel rather than an issue that is inherent to the output of the system. There is no evidence to suggest that Level B harassment of marine mammals should be expected in relation to use of active acoustic sources at frequencies exceeding 180 kHz.

Comment 5: The Commission recommended that, in the preamble to the final rule, NMFS (1) specify in Table 11 which species were lacking density data and clarify whether densities were available for blue, sei, and killer whales in ARA and humpback and minke

whales in the GOMRA and (2) ensure Tables 13 and 18 include all species and stocks proposed to be taken by SEFSC's proposed activities. The Commission understands that NMFS did not intentionally omit this information.

NMFS Response: Species for which density data are not available were included in a footnote in Table 11 in the proposed rule. However, NMFS has updated that footnote to include blue whales, sei whales, and killer whales in the ARA and humpback whales and minke whales in the GOMRA. NMFS also updated the relevant tables in this final rule to ensure all species for which take is authorized are included in both tables. While these changes provide clarity, NMFS did not change species taken or amount of take from the proposed rule. Therefore, there is no modification to our analysis or determinations.

Comment 6: The Commission recommends that NMFS ensure that the final rule includes details similar to those specified in the preamble for the various mitigation, monitoring, and reporting measures.

NMFS Response: NMFS has included all the mitigation, monitoring and reporting measures in the regulatory text as discussed in the preamble in this final rule.

Comment 7: The Commission recommends that NMFS authorize taking by M/SI only for those stocks for which a negligible impact determination can be made when looking at overall removals from each stock as a whole. The Commission is concerned that it appears that removal of an animal from some bottlenose dolphin stocks meet or exceed PBR and that any additional mortalities from those stocks should not be considered as having negligible impact. Specifically, the Commission indicates the proposed number of takes that could result in M/SI for SEFSC would not equal or exceed PBR for most stocks. However, the proposed takes by M/SI for SEFSC would equal PBR for the Northern South Carolina Estuarine (NSCE) stock of bottlenose dolphins and would exceed PBR for the Mobile Bay, Bonsecour Bay (Mobile Bay) stock and the MS Sound stock. Although NMFS proposed to authorize the taking by M/SI of only one bottlenose dolphin during the proposed 5-year period (or 0.2 dolphins per year) from each of the three stocks, when considered in light of other known causes of mortality, PBR would either be met or exceeded.

NMFS Response: The Commission appears to assert that NMFS cannot make a negligible impact determination when the proposed or authorized M/SI take from a marine mammal stock, when considered in light of other known causes of mortality, meets or exceeds PBR. As described in more detail in the Negligible Impact Analysis and Determination section later in this document, consistent with the interpretation of PBR across the rest of the agency, NMFS' Permits and Conservation Division has been using PBR as a tool to inform the negligible impact analysis under section 101(a)(5)(A), recognizing that it is not a dispositive threshold that automatically determines whether a given amount of M/SI either does or does not exceed a negligible impact on the affected species or stock. In 1999, NMFS published criteria for making a negligible impact determination pursuant to section 101(a)(5)(E) of the MMPA in a notice of proposed permits for certain fisheries (64 FR 28800; May 27, 1999). Criterion 2 stated ''If total human-related serious injuries and mortalities are greater than PBR, and fisheries-related mortality is less than 0.1 PBR, individual fisheries may be permitted if management measures are being taken to address non-fisheries-related serious injuries and mortalities. When fisheries-related serious injury and mortality is less than 10 percent of the total, the appropriate management action is to address components that account for the major portion of the total.'' This criterion addresses when total human-caused mortality is exceeding PBR, but the activity being assessed is responsible for only a small portion of the mortality. Accordingly, we applied a similar criterion in our negligible impact analysis under section 101(a)(5)(A) to evaluate the relative role of an applicant's incidental take when other sources of take are causing PBR to be exceeded, but the take of the specified activity is comparatively small. Where this occurs, we may find that the impacts of the taking from the specified activity may (those impacts alone, before we have considered the combined effects from any harassment take) be negligible even when total human-caused mortality from all activities exceeds PBR if (in the context of a particular species or stock) the authorized mortality or serious injury would be less than or equal to 10 percent of PBR and management measures are being taken to address serious injuries and mortalities from the other activities (*i.e.,* other than the specified activities covered by the incidental take authorization under consideration). Here, pursuant to the criteria, the authorized mortality or serious injury would be less than or equal to 10 percent of PBR, and management measures are being taken to address serious injuries and mortalities from the other activities (*i.e.,* other than the specified activities covered by the incidental take authorization under consideration). We must also determine, though, that impacts on the species or stock from other types of take (*i.e.,* harassment) caused by the applicant do not combine with the impacts from mortality or serious injury to result in adverse effects on the species or stock through effects on annual rates of recruitment or survival. Wade *et al.* (1998), authors of the paper from which the current PBR equation is derived, note that ''Estimating incidental mortality in one year to be greater than the PBR calculated from a single abundance survey does not prove the mortality will lead to depletion; it identifies a population worthy of careful future monitoring and possibly indicates that mortality-mitigation efforts should be initiated.''

In addition to a quantitative approach comparing the issued M/SI against PBR, a number of other factors influence our negligible impact determination. These are described in detail in our Negligible Impact Analysis and Determination section below, but we also summarize them here. First, the amount of M/SI take authorized for estuarine bottlenose dolphins stocks is the lowest amount possible (one over 5 years). Therefore, in 4 of those 5 years, no effect to rates of recruitment or survival would occur. Second, literature suggests the interaction with fishing gear (including trawls which account for the majority of SEFSC fisheries research) is biased towards males. The loss of a male from the population is less likely, if at all, to have an effect on population rates of recruitment or survival. Third, there are a number of ongoing management actions, including development and implementation of a Gulf-wide strategic framework to restore for injuries associated with the Deepwater Horizon (DWH) oil spill under a Natural Resource Damage Assessment (NRDA). This framework is designed to reduce human-induced causes of mortality and serious injury other than SEFSC fisheries research over the 5 years the LOA would be effective.

Comment 8: One commenter noted the SEFSC has taken substantial measures to minimize the impacts on marine mammals. However, the commenter recommended prohibiting long-lining, trawling, or gill netting due to the associated high bycatch rates and the impacts of these fishing methods on cetacean populations. The commenter recommended strict monitoring

protocols and that the SEFSC use active acoustics (*i.e.,* sonar) and other detection methods to ensure the avoidance of taking marine mammals.

NMFS Response: Issuance of an incidental take authorization allows for the taking of marine mammals incidental to a specified activity, it does not authorize or permit the activity itself. Therefore NMFS cannot require an applicant to not conduct an activity. To issue an authorization, NMFS must prescribe, among other things, mitigation and monitoring measures effecting the least practicable adverse impact on a species or stock. In this case, the commenter agrees NMFS has taken substantial measures to minimize impacts on marine mammals. However, to restrict fishing using the proposed methods would be impracticable and outside of NMFS' authority under the MMPA.

Regarding impacts to cetacean populations, the commenter appears to be associating bycatch rates of commercial fisheries to those from research surveys. As described in the proposed rule, the taking of marine mammals incidental to SEFSC fisheries research is very low and NMFS has authorized only one marine mammal mortality per stock over the course of 5 years (with the exception of coastal bottlenose dolphins wherein we are authorizing the take, by serious injury or mortality, of three animals over 5 years) in its final rule. The rule also has a suite of mitigation and monitoring measures designed to further reduce risk of netting or hooking an animal. The rule does not require SEFSC use active acoustics to detect and deter marine mammals, as use of those sources in that manner would be a source of harassment in itself.

Comment 9: One commenter suggested the lack of acknowledgement towards the plankton populations is capricious and recommended an environmental assessment be completed.

NMFS Response: All impacts from the SEFSC's fishery-independent research activities, including those on plankton, have been analyzed in a PEA which was made available to the public for comment on April 20, 2016 and finalized prior to issuing this rule. See **ADDRESSES** section. As described in those documents, the SEFSC's primary survey methods use fishing gear to capture fish and invertebrates for stock assessment or other research purposes. However, some collection of plankton and oceanographic and acoustic data to characterize the marine environment does occur. As described in the SEFSC's application, proposed rule, and LOA, plankton is sampled in very small quantities, is minor relative to that taken through commercial fisheries, and is an even smaller percentage of total biomass available as marine mammal prey.

Comment 10: One commenter was concerned the proposed rule would result in fish catch limits.

NMFS Response: This rule, issued pursuant to the MMPA, has no connection to the Magnuson-Stevens Fishery Management Act process by which fish limits are determined.

Comment 11: One commenter believed the major provisions in the proposed regulation seem adequate and that the regulations can be implemented well and with no complications.

NMFS Response: NMFS agrees that all practicable mitigation measures have been incorporated into the proposed rule and will continue to work with the SEFSC to ensure the SEFSC and all partners are aware of and understand the monitoring, mitigation, and reporting measures.

Changes From Proposed to Final Rule

The most substantive change from the proposed to final rule is the baseline evaluation of the Mobile Bay stock of bottlenose dolphins. In the proposed rule, NMFS used outdated (1992) survey data which indicated the Mobile Bay stock abundance was approximately 122 dolphins. However, we determined a more accurate representative abundance estimate is 1,393 based on more recent DWH oil spill injury assessments (DHW MMIQT, 2015). We also updated the final regulations to reflect the entirety of the mitigation, monitoring, and reporting measures described in the preamble of the proposed rule as some were inadvertently not replicated in the regulatory text. We also updated a discussion regarding the consideration of PBR in our negligible impact determination to more fully reflect how the metric is appropriately considered in the negligible impacts determination for a specified activity. We also updated a previous dolphin gear interaction table and related discussion to reflect the entanglement of a single bottlenose dolphin on October 13, 2019, by the South Carolina Department of Natural Resources (SCDNR). None of these modifications affect our negligible impact or small numbers determinations.

Description of Marine Mammals in the Area of the Specified Activity

We presented a detailed discussion of marine mammals, their occurrence, and important habitat (*e.g.,* Biologically Important Areas) in the planned action area detailed in the **Federal Register** notice of proposed rulemaking (84 FR 6576; February 27, 2019). Please see that notice of proposed rulemaking or the SEFSC's application for more information (see **ADDRESSES**). We provide a summary of marine mammal occurrence in the study areas in Table 3.

Species that could occur in a given research area but are not expected to have the potential for interaction with SEFSC research gear or that are not likely to be harassed by SEFSC's use of active acoustic devices are listed here but omitted from further analysis. These include extralimital species, which are species that do not normally occur in a given area but for which there are one or more occurrence records that are considered beyond the normal range of the species. Extralimital or rarely sighted species within the SEFSC's ARA include the North Atlantic bottlenose whale (*Hyperoodon ampullatus*), Bryde's whale (*B. edeni*), Atlantic white-sided dolphins (*Lagenorhynchus acutus*), white-beaked dolphins (*Lagenorhynchus albirostris*), Sowerby's beaked whale (*Mesoplodon bidens*), harp seal (*Pagophilus groenlandicus*), and hooded seal (*Cystophora cristata*). Extralimital or rarely sighted species in the GOMRA include the North Atlantic right whale (*Eubalaena glacialis*), blue whale, fin whale (*B. physalus*), sei whale, minke whale (*B. acutorostrata*), humpback whale (*Megaptera novaeangliae*), and Sowerby's beaked whale. In the CRA, extralimital or rarely sighted species include blue whale, fin whale, sei whale, Bryde's whale, minke whale, harbor seal (*Phoca vitulina*), gray seal (*Halichoerus grypus*), harp seal, and hooded seal. In addition, Caribbean manatees (*Trichechus manatus*) may be found in all three research areas. However, manatees are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

TABLE 3a—MARINE MAMMALS POTENTIALLY PRESENT IN THE ATLANTIC, GULF OF MEXICO, AND CARIBBEAN RESEARCH AREAS DURING FISHERY RESEARCH

Common name	Scientific name	MMPA stock	Research area			ESA status (L/NL), MMPA Strategic (Y/N) [1]	Stock abundance (CV, N_{min}) [2]	PBR [3]	Annual M/SI [4]
			ARA	GOM	CRA				
Order Cetartiodactyla—Cetacea—Suborder Mysticeti (baleen whales)									
Family Balaenopteridae (rorquals):									
North Atlantic right whale.	*Eubalaena glacialis.*	Western North Atlantic.	X	.....	.....	L, Y	451 (0, 445)	0.9	5.56.
Humpback whale.	*Megaptera novaeangliae.*	Gulf of Maine [5]	X	X	X	NL, Y	896 (0, 896)	14.6	9.8.
Blue whale	*Balaenoptera musculus.*	Western North Atlantic.	X	.....	.....	L, Y	unk (unk, 440, 2010).	0.9	unk.
Fin whale	*Balaenoptera physalis.*	Western North Atlantic.	X	.....	.....	L, Y	1,618 (0.33, 1,234).	2.5	2.65.
Minke whale ..	*Balaenoptera acutorostrata.*	Canadian East Coast.	X	X	X	NL, N	2,591 (0.81, 1,425).	14	7.5.
Bryde's whale	*Balaenoptera edeni.*	Northern Gulf of Mexico.	.....	X	.....	L, Y	33 (1.07, 16)	0.03	0.7.
Sei whale	*Balaenoptera borealis.*	Nova Scotia	X	.....	.....	L, Y	357 (0.52, 236) ...	0.5	0.6.
Order Cetartiodactyla—Cetacea—Suborder Odontoceti (toothed whales)									
Family Physeteridae:									
Sperm whale	*Physeter macrocephalus.*	North Atlantic	X	.....	.....	L, Y	2,288 (0.28,1,815)	3.6	0.8.
		Northern Gulf of Mexico.	.....	X	.....	L, Y	763 (0.38, 560) ...	1.1	0.
		Puerto Rico and U.S. Virgin Islands.	.....	.....	X	L, Y	unk	unk	unk.
Family Kogiidae:									
Pygmy sperm whale.	*Kogia breviceps* ..	Western North Atlantic.	X	.....	X	NL, N	3,785 (0.47, 2,598) [6].	21	3.5.
		Northern Gulf of Mexico.	.....	X	.....	NL, N	186 (1.04, 90) [7] ...	0.9	0.3.
Dwarf sperm whale.	*K. sima*	Western North Atlantic.	X	.....	X	NL, N	3,785 (0.47, 2,598) [6].	21	3.5.
		Northern Gulf of Mexico.	.....	X	.....	NL, N	186 (1.04, 90) [8] ...	0.9	0.
Family Ziphiidae (beaked whales):									
Cuvier's beaked whale.	*Ziphius cavirostris*	Western North Atlantic.	X	.....	.....	NL, N	6,532 (0.32, 5,021).	50	0.4.
		Northern Gulf of Mexico.	.....	X	.....	NL, N	74 (1.04, 36)	0.4	0.
		Puerto Rico and U.S. Virgin Islands.	.....	.....	X	NL, N	Unk	unk	unk.
Blainville's beaked whale.	*Mesoplodon densirostris.*	Western North Atlantic.	X	.....	X	NL, N	7,092 (0.54, 4,632) [8].	46	0.2.
		Northern Gulf of Mexico.	.....	X	.....	NL, N	149 (0.91, 77)	0.8	0.
Gervais' beaked whale.	*Mesoplodon europaeus.*	Western North Atlantic.	X	.....	X	NL, N	7,092 (0.54, 4,632) [8].	46	0.
		Northern Gulf of Mexico.	.....	X	.....	NL, N	149 (0.91, 77)	0.8	0.
Sowerby's beaked whale.	*Mesoplodon bidens.*	Western North Atlantic.	X	.....	X	NL, N	7,092 (0.54, 4,632) [8].	46	0.
True's beaked whale.	*Mesoplodon mirus*	Western North Atlantic.	X	.....	X	NL, N	7,092 (0.54, 4,632) [8].	46	0.
Family Delphinidae (dolphins):									
Melon-headed whales.	*Peponocephala electra.*	Western North Atlantic.	X	.....	X	NL, N	Unk	unk	0.
		Northern Gulf of Mexico.	.....	X	.....	NL, N	2,235 (0.75, 1,274).	13	0.
Risso's dolphin.	*Grampus griseus*	Western North Atlantic.	X	.....	X	NL, N	18,250 (0.46, 12,619).	126	49.9.

TABLE 3a—MARINE MAMMALS POTENTIALLY PRESENT IN THE ATLANTIC, GULF OF MEXICO, AND CARIBBEAN RESEARCH AREAS DURING FISHERY RESEARCH—Continued

Common name	Scientific name	MMPA stock	Research area			ESA status (L/NL), MMPA Strategic (Y/N) [1]	Stock abundance (CV, N_{min}) [2]	PBR [3]	Annual M/SI [4]
			ARA	GOM	CRA				
		Northern Gulf of Mexico.	.....	X	.....	NL, N	2,442 (0.57, 1,563).	16	7.9.
Short-finned pilot whales.	*Globicephala macrorhynchus.*	Western North Atlantic.	X	.....	.....	NL, N	28,924 (0.24, 23,637).	236	168.
		Northern Gulf of Mexico.	.....	X	.....	NL, N	2,415 (0.66, 1,456).	15	0.5.
		Puerto Rico and U.S. Virgin Islands.	.....	.....	X	NL, N	unk	unk	unk.
Long-finned pilot whales.	*Globicephala melas.*	Western North Atlantic.	X	.....	.....	NL, N	5,636 (0.63, 3,464).	35	27.
Bottlenose dolphin.	*Tursiops truncatus*	See table 3b.							
Common dolphin.	*Delphinus delphis*	Western North Atlantic.	X	.....	.....	NL, N	70,184 (0.28, 55,690).	557	406.
Atlantic spotted dolphin.	*Stenella frontalis*	Western North Atlantic.	X	.....	.....	NL, N	44,715 (0.43, 31,610).	316	0.
		Northern Gulf of Mexico.	.....	X	.....	NL, N	unk	unk	42.
		Puerto Rico and U.S. Virgin Islands.	.....	.....	X	NL, N	unk	unk	unk.
Pantropical spotted dolphin.	*Stenella attenuata*	Western North Atlantic.	X	.....	X	NL, N	3,333 (0.91, 1,733).	17	0.
		Northern Gulf of Mexico.	.....	X	.....		50,880 (0.27, 40,699).	407	4.4.
Striped dolphin.	*Stenella coeruleoalba.*	Western North Atlantic.	X	.....	X	NL, N	54,807 (0.3, 42,804).	428	0.
		Northern Gulf of Mexico.	.....	X	.....	NL, N	1,849 (0.77, 1,041).	10	0.
Fraser's dolphin.	*Lagenodelphis hosei.*	Western North Atlantic.	X	.....	X	NL, N	unk	unk	0.
		Gulf of Mexico	.....	X	.....	NL, N	unk	undet	0.
Rough-toothed dolphin.	*Steno bredanensis.*	Western North Atlantic.	X	.....	X	NL, N	136 (1.0, 67)	0.7	0.
		Northern Gulf of Mexico.	.....	X	.....	NL, N	624 (0.99, 311) ...	2.5	0.8.
Clymene dolphin.	*Stenella clymene*	Western North Atlantic.	X	.....	X	NL, N	unk	undet	0.
		Northern Gulf of Mexico.	.....	X	.....	NL, N	129 (1.0, 64)	0.6	0.
Spinner dolphin.	*Stenella longirostris.*	Western North Atlantic.	X	.....	.....	NL, N	unk	unk	0.
		Northern Gulf of Mexico.	.....	X	.....	NL, N	11,441 (0.83, 6,221).	62	0.
		Puerto Rico and U.S. Virgin Islands.	.....	.....	X	NL, N	unk	unk	unk.
Killer whale ...	*Orcinus orca*	Western North Atlantic.	X	.....	X	NL, N	unk	unk	0.
		Northern Gulf of Mexico.	.....	X	.....	NL, N	28 (1.02, 14)	0.1	0.
Pygmy killer whale.	*Feresa attenuata*	Western North Atlantic.	X	.....	X	NL, N	unk	unk	0.
		Northern Gulf of Mexico.	.....	X	.....	NL, N	152 (1.02, 75)	0.8	0.
False killer whale.	*Pseudorca crassidens.*	Western North Atlantic.	X	.....	X	NL, N	442 (1.06, 212) ...	2.1	unk.
		Northern Gulf of Mexico.	.....	X	.....	NL, N	unk	undet	0.
Family Phocoenidae (porpoises):									
Harbor porpoise.	*Phocoena phocoena vomerina.*	Gulf of Maine/Bay of Fundy.	X	.....	.....	NL, N	79,833 (0.32, 61,415).	706	255.
Order Carnivora—Superfamily Pinnipedia									
Family Phocidae (earless seals):									
Harbor seal ...	*Phoca vitulina richardii.*	Western North Atlantic.	X	.....	.....	NL, N	75,834 (0.15, 66,884).	2,006	345.

TABLE 3a—MARINE MAMMALS POTENTIALLY PRESENT IN THE ATLANTIC, GULF OF MEXICO, AND CARIBBEAN RESEARCH AREAS DURING FISHERY RESEARCH—Continued

Common name	Scientific name	MMPA stock	Research area			ESA status (L/NL), MMPA Strategic (Y/N) [1]	Stock abundance (CV, N_{min}) [2]	PBR [3]	Annual M/SI [4]
			ARA	GOM	CRA				
Gray seal	*Halichoerus grypus.*	Western North Atlantic.	X	.....	.....	NL, N	27,131 (0.19, 23,158).	1,389	5,688.

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). NL indicates that the species is not listed under the ESA and is not designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] PBR indicates Potential Biological Removal as referenced from the SARs. PBR is 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. It is the product of minimum population size, one-half the maximum net productivity rate and a recovery factor for endangered, depleted, threatened stocks, or stocks of un known status relative to OSP.

[4] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, subsistence hunting, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value. All M/SI values are as presented in the draft 2019 SARs.

[5] Humpback whales present off the southeastern U.S. are thought to be predominantly from the Gulf of Maine stock. However, these could include animals from Canadian stocks (*e.g.,* Nova Scotia) (NMFS, 2017). Here we provide estimates for the Gulf of Maine stock only as a conservative value.

[6] This estimate includes both dwarf and pygmy sperm whales in the N. Atlantic stock.

[7] This estimate includes both dwarf and pygmy sperm whales in the Gulf of Mexico stock.

[8] This estimate includes all species of *Mesoplodon* in the N. Atlantic stock.

TABLE 3b—BOTTLENOSE DOLPHIN STOCKS POTENTIALLY PRESENT IN THE ATLANTIC, GULF OF MEXICO, AND CARIBBEAN RESEARCH AREAS AND TEXAS DURING FISHERY RESEARCH

Stock	MMPA status	Stock abundance (CV, N_{min}) [1]	PBR	Annual M/SI
Atlantic Research Area				
Western North Atlantic, Offshore	Not Strategic	77,532 (0.40, 56,053)	561	39.4.
Northern Migratory Coastal	Depleted	6,639 (0.41, 4,759)	48	6.1–13.2.
Southern Migratory Coastal	Depleted	3,751 (0.06, 2,353)	23	0–14.3.
South Carolina & Georgia Coastal	Depleted	6,027 (0.34, 4,569)	46	1.4–1.6.
Northern Florida Coastal	Depleted	877 (0.0.49, 595)	6	0.6.
Central Florida Coastal	Depleted	1,218 (0.71, 2,851)	9.1	0.4.
Northern North Carolina Estuarine System	Strategic	823 (0.06, 782)	7.8	0.8–18.2.
Southern North Carolina Estuarine System	Strategic	unk	undet	0.4–0.6.
Northern South Carolina Estuarine System	Strategic	unk	undet	0.2.
Charleston Estuarine System	Strategic	unk	undet	unk.
Northern Georgia/Southern South Carolina Estuarine System.	Strategic	unk	undet	1.4.
Central Georgia Estuarine System	Strategic	192 (0.04, 185)	1.9	unk.
Southern Georgia Estuarine System	Strategic	194 (0.05, 185)	1.9	unk.
Jacksonville Estuarine System	Strategic	unk	undet	1.2.
Indian River Lagoon	Strategic	unk	undet	4.4.
Biscayne Bay	Strategic	unk	undet	unk.
Florida Bay	Not Strategic	unk	undet	unk.
Gulf of Mexico Research Area				
Oceanic	Not Strategic	5,806 (0.39, 4,230)	42	6.5.
Continental Shelf	Not Strategic	51,192 (0.1, 46,926)	469	0.8.
Western Coastal	Not Strategic	20,161 (0.17, 17,491)	175	0.6.
Northern Coastal	Not Strategic	7,185 (0.21, 6,004)	60	0.4.
Eastern Coastal	Not Strategic	12,388 (0.13, 11,110)	111	1.6.
Northern Gulf of Mexico Bay, Sound, and Estuary [2 3]				
Laguna Madre	Strategic	80 (1.57, unk)	undet	0.4.
Nueces Bay, Corpus Christi Bay	Strategic	58 (0.61, unk)	undet	0.
Copano Bay, Aransas Bay, San Antonio Bay, Redfish Bay, Espirtu Santo Bay.	Strategic	55 (0.82, unk)	undet	0.2.
Matagorda Bay, Tres Palacios Bay, Lavaca Bay.	Strategic	61 (0.45, unk)	undet	0.4.
West Bay	Strategic	48 (0.03, 46)	0.5	0.2.
Galveston Bay, East Bay, Trinity Bay	Strategic	152 (0.43, unk)	undet	0.4.
Sabine Lake	Strategic	0 (-,-)	undet	0.2.
Calcasieu Lake	Strategic	0 (-,-)	undet	0.2.
Vermillion Bay, West Cote Blanche Bay, Atchafalaya Bay.	Strategic	0 (-,-)	undet	0.
Terrebonne Bay, Timbalier Bay	Strategic	3,870 (0.15, 3,426)	27	0.2.
Barataria Bay	Strategic	2306 (0.09, 2,138)	17	160.
Mississippi River Delta	Strategic	332 (0.93, 170)	1.4	0.2.

TABLE 3b—BOTTLENOSE DOLPHIN STOCKS POTENTIALLY PRESENT IN THE ATLANTIC, GULF OF MEXICO, AND CARIBBEAN RESEARCH AREAS AND TEXAS DURING FISHERY RESEARCH—Continued

Stock	MMPA status	Stock abundance (CV, N_{min}) [1]	PBR	Annual M/SI
Mississippi Sound, Lake Borgne, Bay Boudreau.	Strategic	3,046 (0.06, 2,896)	23	310.
Mobile Bay, Bonsecour Bay	Strategic	1,393 (unk, unk)	undet	1.
Perdido Bay	Strategic	0 (-,-)	undet	0.6.
Pensacola Bay, East Bay	Strategic	33 (	undet	unk.
Choctawhatchee Bay	Strategic	179 (0.04, unk)	undet	0.4.
St. Andrews Bay	Strategic	124 (0.57, unk)	undet	0.2.
St. Joseph Bay	Strategic	152 (0.08, unk)	undet	unk.
St. Vincent Sound, Apalachicola Bay, St. Georges Sound.	Strategic	439 (0.14,-)	undet	0.
Apalachee Bay	Strategic	491 (0.39, unk)	undet	0.
Waccasassa Bay, Withlacoochee Bay, Crystal Bay.	Strategic	unk	undet	0.
St. Joseph Sound, Clearwater Harbor	Strategic	unk	undet	0.4.
Tampa Bay	Strategic	unk	undet	0.6.
Sarasota Bay, Little Sarasota Bay	Strategic	158 (0.27, 126)	1.3	0.6.
Pine Island Sound, Charlotte Harbor, Gasparilla Sound, Lemon Bay.	Strategic	826 (0.09, -)	undet	1.6.
Caloosahatchee River	Strategic	0 (-,-)	undet	0.4.
Estero Bay	Strategic	unk	undet	0.2.
Chokoloskee Bay, Ten Thousand Islands, Gullivan Bay.	Strategic	unk	undet	0.
Whitewater Bay	Strategic	unk	undet	0.
Florida Keys (Bahia Honda to Key West)	Strategic	unk	undet	0.
Carribean Research Area				
Puerto Rico and U.S. Virgin Islands	Strategic	unk	undet	unk.

[1] CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance).
[2] Details for these 25 stocks are included in the report: Common bottlenose dolphin (*Tursiops truncatus truncatus*), Northern Gulf of Mexico Bay, Sound, and Estuary Stocks.
[3] The total annual human-caused mortality and serious injury for these stocks of common bottlenose dolphins is unknown because these stocks may interact with unobserved fisheries. Also, for Gulf of Mexico BSE stocks, mortality estimates for the shrimp trawl fishery are calculated at the state level and have not been included within mortality estimates for individual BSE stocks. Therefore, minimum counts of human-caused mortality and serious injury for these stocks are presented.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

We provided a summary and discussion of the potential effects of the specified activity on marine mammals and their habitat in our **Federal Register** notice of proposed rulemaking (84 FR 6576; February 27, 2019). In the *Potential Effects of Specified Activities on Marine Mammals and Their Habitat* section of the proposed rule, NMFS provided a description of the ways marine mammals may be affected by these activities in the form of serious injury or mortality, physical trauma, sensory impairment (permanent and temporary threshold shifts and acoustic masking), physiological responses (particular stress responses), behavioral disturbance, or habitat effects. We also describe historical taking by the SEFSC and the circumstances surrounding those takes. We do not reprint the information here but refer the reader to that document. For additional summary and discussion of recent scientific studies not included in the proposed rulemaking, we direct the reader to the NMFS PEA.

Since 2002, NMFS Science Centers have been documenting and recording all fishery research related incidental takes of marine mammals in PSIT database. There is also a documented take on record from 2001. We present all takes documented by the SEFSC in Table 4.

TABLE 4—SEFSC RESEARCH GEAR INTERACTIONS WITH MARINE MAMMALS SINCE 2001

Survey name (lead organization)	Species taken (stock)	Gear type	Date taken	Number killed [1]	Number released alive [2]	Total taken
Atlantic research area						
SEAMAP–SA Coastal Trawl Survey_Fall (SCDNR).	Bottlenose dolphin (South Carolina/ Georgia coastal).	Bottom trawl.	13 Oct 2019	0	1	1
SEFSC In-Water Sea Turtle Research (SCDNR [3]).	Bottlenose dolphin (South Carolina/ Georgia coastal).	Bottom trawl.	20 July 2016	1	0	1
SEAMAP–SA Coastal Trawl Survey_Spring (SCDNR).	Bottlenose dolphin (Northern Florida coastal).	Bottom trawl.	11 April 2014	1	0	1

TABLE 4—SEFSC RESEARCH GEAR INTERACTIONS WITH MARINE MAMMALS SINCE 2001—Continued

Survey name (lead organization)	Species taken (stock)	Gear type	Date taken	Number killed [1]	Number released alive [2]	Total taken
SEAMAP–SA Coastal Trawl Survey_Summer (SCDNR).	Bottlenose dolphin (South Carolina/Georgia coastal).	Bottom trawl.	2 Aug 2012	1	0	1
In-Water Sea Turtle Trawl Survey (SCDNR).	Bottlenose dolphin (South Carolina/Georgia coastal).	Bottom trawl.	11 July 2012	0	1	1
SEAMAP–SA Coastal Trawl Survey_Fall (SCDNR).	Bottlenose dolphin (southern migratory).	Bottom trawl.	5 October 2006	1	0	1
SEAMAP–SA Coastal Trawl Survey_Summer (SCDNR).	Bottlenose dolphin (South Carolina/Georgia coastal).	Bottom trawl.	28 July 2006	1	0	1
RecFIN Red Drum Trammel Net Survey (SCDNR).	Bottlenose dolphin (Charleston Estuarine System).	Trammel net.	22 August 2002	2	0	2
In-Water Sea Turtle Trawl Survey (SCDNR).	Bottlenose dolphin (unk).	Bottom Trawl.	2001 [3]	0	1	1
ARA Total				7	3	10
Gulf of Mexico Research Area						
Gulf of Mexico Shark Pupping and Nursery GULFSPAN (SEFSC).	Bottlenose dolphin (Sarasota Bay).	Gillnet	3 July 2018	0	1	1
Gulf of Mexico Shark Pupping and Nursery GULFSPAN (USA/DISL[2]).	Bottlenose dolphin (northern Gulf of Mexico).	Gillnet	15 July 2016	1	0	1
Skimmer Trawl TED Testing (SEFSC).	Bottlenose dolphin (MS Sound, Lake Borgne, Bay Boudreau).	Skimmer trawl.	1 October 2014	1	0	1
Skimmer Trawl TED Testing (SEFSC).	Bottlenose dolphin (MS Sound, Lake Borgne, Bay Boudreau).	Skimmer trawl	23 October 2013	0	1	1
SEAMAP–GOM Bottom Longline Survey (ADCNR).	Bottlenose dolphin (Mobile Bay, Bonsecour Bay).	Bottom longline.	6 August 2013	0	1 (SI)	1
Gulf of Mexico Shark Pupping and Nursery GULFSPAN (USA/DISL).	Bottlenose dolphin (MS Sound, Lake Borgne, Bay Boudreau).	Gillnet	18 April 2011	1	0	1
GOMRA Total				3	3	6
Total all areas [3].				10	6	16

[1] If there was question over an animal's fate after it was released (*e.g.,* it was struggling to breath/swim), it was considered ''killed''. Serious injury determinations were not previously made for animals released alive, but they are now part of standard protocols for released animals and will be reported in stock assessment reports.
[2] Animals released alive but considered seriously injured aew marked as SI.
[3] This take occurred prior to development of the PSIT database, but we include it here because it is documented.
[4] There have been no SEFSC fishery research-related takes of marine mammals in the CRA.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of whether the number of takes is ''small'' and the negligible impact determination. When discussing take, we consider three manners of take: Mortality, serious injury, and harassment. Serious injury is defined as an injury that could lead to mortality, while injury refers to injury that does not lead to mortality. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

As previously described, the SEFSC has a history of take of marine mammals incidental to fisheries research. The degree of take resulting from gear interaction can range from mortality, serious injury, Level A harassment (injury), or released unharmed with no observable injury. However, given that we cannot predict the degree of take, we

conservatively assume that any interaction may result in mortality or serious injury and have issued take as such. In the case of the Mississippi Sound stock, we have also authorized a single take from Level A harassment (injury) only. The amount of research conducted in Mississippi Sound using gear with the potential for marine mammal interaction increases the potential for interaction above other estuarine systems. However, there is evidence that, even without the proposed prescribed mitigation and monitoring measures, take may not result in mortality or serious injury (*e.g.,* the October 13, 2013 skimmer trawl take which did not result in serious injury or mortality). The proposed mitigation and monitoring measures described in this proposed rulemaking are designed to further reduce risk of take and degree of take.

Estimated Take Due to Gear Interaction

Given the complex stock structure of bottlenose dolphins throughout the ARA and GOMRA, as well as the vulnerability of this species to be taken incidental to fishery research, we have partitioned this section into two categories to present requested and proposed take in an organized manner. Below we present our analysis informing the proposed take of estuarine and coastal bottlenose dolphins followed by pelagic marine mammals which includes all relevant non-bottlenose dolphin species and open ocean stocks of bottlenose dolphins.

Estuarine and Coastal Bottlenose Dolphin Take—SEFSC

In order to estimate the number of potential bottlenose dolphin takes in estuarine and coastal waters, we considered the SEFSC's record of such past incidents and other sources of take (*e.g.,* commercial fisheries and non-SEFSC affiliated research). We consulted the SARs, marine mammal experts at the SEFSC, and information emerging from the BDTRT to identify these other sources of mortality. We then assessed the similarities and differences between fishery research and commercial fisheries gear and fishing practices. Finally, we evaluated means of affecting the least practicable adverse impact on bottlenose dolphins through the proposed mitigation and additional mitigation developed during the proposed rulemaking process.

In total, since 2001 and over the course of thousands of hours of research effort, 16 marine mammals (all bottlenose dolphins) have been entangled in SEFSC-affiliated research gear. All takes occurred between April through October. However, this is likely a result of research effort concentrated during this time period and there does not appear to be any trend in increased vulnerability throughout the year.

In the ARA, the SEFSC has 10 documented takes of bottlenose dolphins (in 9 instances) from fishing gear (Table 5) and 1 take of an Atlantic spotted dolphin since 2001. The Atlantic spotted dolphin take was a calf struck by a propeller during a marine mammal research cruise. Given the anomalous nature of the incident and proposed mitigation measures, NMFS is not proposing to authorize take by ship strike. Therefore, this take is not discussed further. Of the 10 gear-related takes, two animals were taken at once in a trammel net by the SCDNR in 2002. However, the SCDNR has since changed fishing methods and implemented monitoring and mitigation measures essentially eliminating the potential for take during this survey. No other trammel net-related takes have occurred since these changes were implemented. Therefore, we believe the potential for a take in SCDNR trammel nets is discountable. The remaining eight gear-related takes have been a result of interaction with bottom trawl gear during SEAMAP and TED research surveys, resulting in an average 0.42 takes per year (8 takes/19 years).

To further assess the potential for take in any given year, we considered where takes have occurred and the possible stock origin from which an animal was taken. The July 2006 take occurred offshore of Fripp Island, SC; the October 2006 take occurred Oak Island, NC; the July 2012 take occurred off Little Tybee Island, GA; the August 2012 take occurred off Pawley's Island, SC; the April 2014 take occurred just off the coast of Florida between St. Augustine and Daytona Beach; the July 2016, take occurred off Sea Island, Georgia which is nestled between Little St. Simon's Island and St. Simon's Island; and the October 2019 take occurred approximately 10 km off Dewey's Island, South Carolina. Therefore, the dolphins taken could have originated from any of the five coastal stocks (the Northern Migratory and Southern Migratory stock, South Carolina/Georgia Coastal stock, Northern Florida Coastal stock and a Central Florida stock), although they were assigned to the stock based on the location where the take occurred. Taking the average rate of 0.42 animals per year across five stocks equates to an average taking of 0.08 animals per stock per year. This average would be even less if one considers an estuarine stock may be the stock of origin (although unlikely).

According to the SEFSC's application, three trawl surveys and two bottom longline surveys conducted by the SEFSC or research partner overlap spatially with the NNCES stock (Table 1). These are the Atlantic Striped Bass Tagging Bottom Trawl Survey (USFWS), SEAMAP–SA Coastal Trawl Survey (SCDNR), SEAMAP–SA North Carolina Pamlico Sound Trawl Survey (NCDENR), Shark and Red Snapper Bottom Longline Survey (SEFSC), and the SEAMAP–SA Red Drum Bottom Longline Survey (NCDNR). No gillnet surveys would take place in waters overlapping with this stock. Based on data in the PSIT database, no dolphins from the NNCES stock have been taken from SEFSC or partner fishery research surveys, including those described above which have taken place for many years.

Despite the lack of historical take, we further investigated the potential for future interaction. Based on commercial fishery and SEFSC fishery survey bycatch rates of marine mammals, we would expect the trawl surveys to be more likely to take a dolphin than the bottom longline surveys. An evaluation of each occurring survey type is provided below to more thoroughly evaluate the potential for taking a bottlenose dolphin belonging to the NNCES stock.

The Atlantic Striped Bass Bottom Trawl Survey (conducted by the USFWS) is limited to 2 weeks (200–350 trawls) during January and February in coastal waters north of Cape Hatteras ranging from 30 to 120 ft (9–37 m) in depth. The USFWS uses dual 65-ft trawl nets with 3.75 in. stretch nylon multifilament mesh codend. Tow speed is 3 kts and tow time does not exceed 30 minutes at depth. Trawl operations are conducted day and night from the R/V Oregon II, R/V Oregon, or R/V Savannah (please refer to the PEA for detailed vessel descriptions). The winter operations of this survey overlaps in time with when some animals move out of Pamlico Sound and into coastal waters. However, photo-ID studies, available tag data and stable isotope data indicate that the portion of the stock that moves out of Pamlico Sound into coastal waters remain south of Cape Hatteras during cold water months (Waring *et al.* 2016). The USFWS has historically conducted surveys north of Cape Hatteras. However, the survey is currently inactive due to funding constraints. If funding becomes available, they may undertake this survey. However, the spatial and temporal specifications described above greatly reduce the likelihood of a take from the NNCES stock. In addition,

given the short duration of the survey (2 weeks) and short tow time durations (up to 30 minutes), the chance of marine mammal interaction is limited. This logic is supported by the lack of take from this survey. At this time, for the reasons described above, we believe the likelihood of an animal from the NNCES stock being taken during Atlantic Striped Bass Bottom Trawl Survey is unlikely.

The SEAMAP–SA Pamlico Sound Trawl Survey (NCDENR) is conducted to support stock assessments and management of finfish, shrimp, and crab species in Pamlico Sound and its bays and rivers. The otter trawl survey takes place for 10 days in June and 10 days in September during daylight hours. Up to 54 trawls are completed each month (total = 108 trawls) aboard the R/V Carolina Coast. The general area of operation is Pamlico Sound and the Pamlico, Pungo, and Neuse rivers in waters greater than or equal to 6 ft. Despite spatial and temporal overlap with the NNCES stock, this survey has no record of interacting with a marine mammal. Given the lack of historical interaction, limited number of tows, and implementation of the proposed monitoring and mitigation measures, we do not believe there is reasonable likelihood that of take from this survey.

The SEAMAP–SA Coastal Trawl Survey (SCDNR) operates 300–350 trawls annually from Cape Hatteras, NC to Cape Canaveral, FL in nearshore oceanic waters of 15–30 ft (4–10 m) depth. Its goal is to collect long-term fishery independent data on ecologically, commercially, and recreationally important fish and invertebrates, including shrimp and blue crab. Tow time is approximately 20 minutes. This survey is not associated with sea turtle research surveys, which have longer tow times. SCDNR uses the R/V Lady Lisa outfitted with an otter trawl comprised of paired mongoose-type Falcon bottom trawls. All takes of dolphins have occurred in coastal waters (none from estuarine waters), and all assigned takes have been from coastal stocks. However, because estuarine stocks may venture into coastal waters, there is a small possibility that takes from this survey could have been from the SNCES (n = 1), Northern South Carolina Estuarine System (n = 1), Northern Georgia/Southern South Carolina Estuarine System (n = 2), and Southern Georgia Estuarine System (n = 1) (Table 5). This is the only survey which may potentially overlap with the NNCES and SNCES stock, but it does so in coastal waters where coastal stocks overlap in time and space. It is most likely that a take from this survey would be from a coastal stock. Therefore, we are not proposing to authorize take from the NNCES or SNCES stock.

TABLE 5—POSSIBLE STOCK ORIGIN OF BOTTLENOSE DOLPHINS TAKEN IN THE ARA

Date	Location taken	Possible stocks	
		Coastal	Estuarine
2001	Unknown	Unknown	unknown
July 2006	Off Fripp Island, GA	W.N. Atlantic South Carolina-Georgia Coastal.	Northern Georgia/Southern South Carolina Estuarine System.
October 2006	Off Oak Island, NC	Southern Migratory	Southern North Carolina Estuarine System.
July 2012	Off Little Tybee Island, GA	W.N. Atlantic South Carolina-Georgia Coastal.	Northern Georgia/Southern South Carolina Estuarine System.
August 2012	Off Pawley's Island, SC	W.N. Atlantic South Carolina-Georgia Coastal.	Northern South Carolina Estuarine System:
April 2014	off the coast of Florida between St. Augustine and Daytona Beach.	W.N. Atlantic Northern Florida Coastal	W.N. Atlantic Central Florida Coastal.
July 2016	off Sea Island, Georgia	W.N. Atlantic South Carolina-Georgia Coastal.	Southern Georgia Estuarine System.
October 2019	10 kms off Dewey's Island, SC	W.N. Atlantic South Carolina-Georgia Coastal.	N/A—too far offshore.

The only survey overlapping with the Indian River Lagoon (IRL) stock is the St. Lucie Rod-and-Reel Fish Health Study. There are no documented instances of the SEFSC taking a dolphin from this survey. Therefore, we believe the likelihood of take is low and mitigation measures (*e.g.* quickly reeling in line if dolphins are likely to interact with gear) would be effective at further reducing take potential to discountable. In consideration of this, we are not proposing to issue take of the IRL stock.

In summary, we are not proposing to authorize requested take in the ARA for the NNCES, SNCES, and Indian River Lagoon stocks due to low to discountable potential for take. For all other estuarine stocks for which take was requested (n = 7), we are proposing to authorize the requested one take over 5 years by M/SI (Table 7). We are proposing to issue the requested three M/SI takes per stock of each of the coastal stocks and the offshore stock in the ARA over 5 years (Table 7).

In the GOMRA, the SEFSC is requesting to take one dolphin from each of the 21 estuarine stocks, three dolphins from the Mississippi Sound stock, and three dolphins per year from the coastal stocks (Table 7). Similar to the ARA, NMFS examined the SEFSC's request and assessed authorizing take based on fishing effort and stock spatial and temporal parameters, the potential for take based on fishing practices (*e.g.,* gear description, tow/soak times). In addition, the SEFSC has provided supplemental information indicating some surveys are discontinued or currently inactive and are not likely to take place during the proposed 5-year regulations. For example, at time of the application, only one survey conducted by TPWD was planned to occur in Sabine Lake. However, that specific survey has been discontinued. Therefore, no fisheries research by SEFSC or its partners would occur in Sabine Lake. Therefore, no take is expected to occur, and we did not include take of dolphins in Sabine Lake in the rule.

When examining the survey gear used and fishing methods, we determined that the IJA Open Bay Shellfish Trawl Survey (conducted by TPWD) has a very low potential to take dolphins. This survey has no documented dolphin/gear interactions despite high fishing effort (90 trawls for month/1080 trawls per year). This is likely because TPWD uses

a very small (20 ft (6 m) wide) otter shrimp trawl which is towed for only 10 minutes in 3–30 ft (1–10 m) of water. The nets can be retrieved within 1 to 2 minutes. The IJA Open Bay Shellfish Trawl Survey is the only survey conducted by the SEFSC that overlaps with the following BSE bottlenose dolphin stocks: Laguna Madre; Nueces Bay, Corpus Christi Bay; Copano Bay, Aransas Bay, San Antonio Bay, Redfish Bay, Espirtu Santo Bay; Matagorda Bay, Tres Palacios Bay, Lavaca Bay; West Bay, and Galveston Bay, East Bay, Trinity Bay. TPWD has no documented take of dolphins from the IJA Open Bay Shellfish Trawl Survey despite years of research effort. Due to the discountable potential for take from the IJA Open Bay Shellfish Trawl Survey, we are not proposing to authorize take of these Texas bottlenose dolphin stocks to the SEFSC.

Another stock with a discountable potential for take is the Barataria Bay stock. This stock's habitat includes Caminada Bay, Barataria Bay east to Bastian Bay, Bay Coquette, and Gulf coastal waters extending 1 km from the shoreline. The SEFSC has committed to avoiding conducting fisheries independent monitoring in these waters. Hence, we find the potential for take from the Barataria Bay stock is discountable and we are not proposing to authorize the requested take.

On December 22, 2017, the SEFSC indicated the Gulfspan shark survey conducted by University of West Florida (UWF) is considered inactive as of 2017 and would not likely take place over the course of the regulations due to staffing changes. This is the only survey overlapping with the Perdido Bay, Pensacola Bay, Choctawhatchee Bay stocks. Therefore, we find the potential for take from these stocks is discountable, and we are not proposing to authorize the requested take.

There are nine surveys in the GOMRA overlapping with the Mississippi Sound, Lake Borgne, Bay Boudreau stock (MS Sound stock): four trawl, three gillnet, and two hook and line. While there are three documented takes from this stock since 2011 (from gillnet and trawl surveys), there are none none prior to that year. The SEFSC requested three M/SI takes from the MS Sound stock due to the amount of fishing effort in this waterbody. However, we find two takes are warranted over the life of the 5-year regulations given the lack of take prior to 2011 and implementation of the mitigation and monitoring measures. Further, previous takes indicate there is potential that a marine mammal may not die or be seriously injured in fishing gear but be injured. Therefore, we are proposing to authorize one take by M/SI and one take by Level A harassment for the Mississippi Sound stock over the 5-year regulations (Table 6). No takes of bottlenose dolphins by the SEFSC have been documented in the CRA. However, we authorize one take over 5 years at the request of the SEFSC.

TABLE 6—SEFSC TOTAL REQUESTED AND AUTHORIZED TAKE OF BOTTLENOSE DOLPHINS IN ARA, GOMRA, AND CRA OVER THE LIFE OF THE PROPOSED 5-YEAR REGULATIONS

Stock	Total requested take (M/SI or level A)	Total authorized take (M/SI or level A)
Northern North Carolina Estuarine System Stock	1	0[1]
Southern North Carolina Estuarine System Stock	1	0[1]
Northern South Carolina Estuarine Stock	1	1
Charleston Estuarine System Stock	1	1
Northern Georgia/Southern South Carolina Estuarine System Stock	1	1
Central Georgia Estuarine System	1	1
Southern Georgia Estuarine System Stock	1	1
Jacksonville Estuarine System Stock	1	1
Indian River Lagoon Estuarine System Stock	1	0[1]
Biscayne Bay Stock	0	0
Florida Bay Stock	1	1
Western North Atlantic South Carolina/Georgia Coastal Stock	3	3
Western North Atlantic Northern Florida Coastal Stock	3	3
Western North Atlantic Central Florida Coastal Stock	3	3
Western North Atlantic Northern Migratory Coastal Stock	3	3
Western North Atlantic Southern Migratory Coastal Stock	3	3
Western North Atlantic Offshore Stock	3	3
Puerto Rico and US Virgin Islands Stock	1	1
Laguna Madre	1	0[1]
Nueces Bay, Corpus Christi Bay	1	0[1]
Copano Bay, Aransas Bay, San Antonio Bay, Redfish Bay, Espirtu Santo Bay	1	0[1]
Matagorda Bay, Tres Palacios Bay, Lavaca Bay	1	0[1]
West Bay	1	0[1]
Galveston Bay, East Bay, Trinity Bay	1	0[1]
Sabine Lake	1	0[1]
Calcasieu Lake	0	0
Atchalfalaya Bay, Vermilion Bay, West Cote Blanche Bay	0	0
Terrabonne Bay, Timbalier Bay	1	1
Barataria Bay Estuarine System	1	0[2]
Mississippi River Delta	1	1
Mississippi Sound, Lake Bornge, Bay Boudreau	3	1 M/SI, 1 Level A[3]
Mobile Bay, Bonsecour Bay	1	1
Perdido Bay	1	0[2]
Pensacola Bay, East Bay	1	0[2]
Choctwhatchee Bay	1	0[2]
St. Andrew Bay	1	1
St. Joseph Bay	1	1
St. Vincent Sound, Apalachiola Bay, St. George Sound	1	1
Apalachee Bay	1	1

TABLE 6—SEFSC TOTAL REQUESTED AND AUTHORIZED TAKE OF BOTTLENOSE DOLPHINS IN ARA, GOMRA, AND CRA OVER THE LIFE OF THE PROPOSED 5-YEAR REGULATIONS—Continued

Stock	Total requested take (M/SI or level A)	Total authorized take (M/SI or level A)
Waccasassa Bay, Withlacoochee Bay, Crystal Bay	1	1
St. Joseph Sound, Clearwater Harbor	0	0
Tampa Bay	0	0
Sarasota Bay, Little Sarasota Bay	0	0
Pine Island Sound, Charlotte Harbor, Gasparilla Sound, Lemon Bay	1	1
Caloosahatchee River	0	0
Estero Bay	0	0
Chokoloskee Bay, Ten Thousand Islands, Gullivan Bay	1	1
Whitewater Bay	0	0
Florida Keys-Bahia Honda to Key West	0	0
Northern Gulf of Mexico Western Coastal Stock	3	3
Northern Gulf of Mexico Northern Coastal Stock	3	3
Northern Gulf of Mexico Eastern Coastal Stock	3	3

[1] Surveys overlapping these stocks have a low to discountable potential to take marine mammals due to temporal and spatial overlap with stock, fishing methods, and/or gear types. The SEFSC has no history of taking individuals from these stocks.
[2] No surveys are proposed that overlap with these stocks.
[3] The SEFSC has the potential to take one marine mammal by M/SI or Level A harassment and one marine mammal by Level A harassment (injury) only for the Mississippi Sound stock.

Pelagic Marine Mammals Take—SEFSC

Since systematic record keep began in 2002, the SEFSC and affiliated research partners have taken no marine mammals species other than bottlenose dolphins by gear interaction. However, NMFS has assessed other sources of M/SI for these species (*e.g.,* commercial fishing) to inform the potential for incidental takes of marine mammals in the ARA, GOMRA, and CRA under this rule. These species have not been taken historically by SEFSC research activities but inhabit the same areas and show similar types of behaviors and vulnerabilities to such gear used in other contexts. To more comprehensively identify where vulnerability and potential exists for take between SEFSC research and other species of marine mammals, we compared with similar commercial fisheries by way of the 2017 List of Fisheries (LOF) and the record of interactions from non-SEFSC affiliated research.

NMFS LOF classifies U.S. commercial fisheries into one of three categories according to the level of incidental marine mammal M/SI that is known to have occurred on an annual basis over the most recent 5-year period (generally) for which data has been analyzed: Category I, frequent incidental M/SI; Category II, occasional incidental M/SI; and Category III, remote likelihood of or no known incidental M/SI. In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or gear owner or operator (in the case of non-vessel fisheries), participating in a fishery listed on the LOF must report to NMFS all incidental mortalities and injuries of marine mammals that occur during commercial fishing operations, regardless of the category in which the fishery is placed. The LOF for 2016 was based on, among other things, stranding data; fisher self-reports; and SARs, primarily the 2014 SARs, which are generally based on data from 2008–2012. Table 7 indicates which species (other than bottlenose dolphins) have been known to interact with commercial fishing gear in the three research areas based on the 2016 LOF (81 FR 20550; April 8, 2016). More information on the 2016 LOF can be found at *http://www.nmfs.noaa.gov/pr/interactions/fisheries/lof.html.*

TABLE 7—GEAR TYPES IMPLICATED FOR INTERACTION WITH MARINE MAMMALS IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN COMMERCIAL FISHERIES

Species	Fishery by gear type [1]			
	Gillnet fisheries	Trawl fisheries	Trap/pot	Longline
N. Atlantic right whale	Y		Y	
Humpback whale	Y		Y	
Fin whale	Y		Y	
Minke whale	Y	Y	Y	Y
Risso's dolphin	Y	Y		Y
Cuvier's beaked whale				Y
Gervais beaked whale				Y
Beaked whale (*Mesoplodon spp*)				Y
False killer whale				Y
Killer whale				Y
Pygmy sperm whale				Y
Sperm Whale				Y
Long-finned pilot whale	Y	Y		Y
Short-finned pilot whale				Y
White-sided dolphin	Y	Y		

TABLE 7—GEAR TYPES IMPLICATED FOR INTERACTION WITH MARINE MAMMALS IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN COMMERCIAL FISHERIES—Continued

Species	Fishery by gear type [1]			
	Gillnet fisheries	Trawl fisheries	Trap/pot	Longline
Atlantic spotted dolphin	.....	Y	.....	Y
Pantropical spotted dolphin	Y	.....	.....	Y
Common dolphin	Y	Y	.....	Y
Harbor porpoise	Y	Y	.....	.....
Harbor seal	Y	Y	Y	.....
Gray seal	.....	Y	.....	.....

[1] Only fisheries with gear types used by the SEFSC during the course of the regulations are included here. For example, purse seine and aquaculture fisheries are also known to interact with marine mammals in the specified geographic region. However, the SEFSC would not use those gears during their research.

In addition to examining known interaction, we also considered a number of activity-related factors (*e.g.,* gear size, set duration, etc.) and species-specific factors (*e.g.,* species-specific knowledge regarding animal behavior, overall abundance in the geographic region, density relative to SEFSC survey effort, feeding ecology, propensity to travel in groups commonly associated with other species historically taken) to determine whether a species may have a similar vulnerability to certain types of gear as historically taken species. For example, despite known take in commercial trap/pot fisheries, here we rule out the potential for traps/pots to take marine mammals incidental to SEFSC research for a number of reasons. Commercial fisheries often involve hundreds of unattended traps that are located on a semi-permanent basis, usually with long, loose float lines, in shallow waters close to shore. In contrast, SEFSC research gear is fished in deeper waters, and typically only one pot is fished at a time and monitored continuously for short soak times (*e.g.,* one hour). These differences in fishing practices, along with the fact no marine mammals have been taken in a SEFSC trap/pot, negate the potential for take to a level NMFS does not believe warrants authorization of take, and there is no historical documentation of take from this gear incidental to SEFSC surveys. Therefore, we do not expect take incidental to SEFSC research activities using trap/pot gear.

It is well documented that multiple marine mammal species are taken in commercial longline fisheries (Table 8). We used this information to help make an informed decision on the probability of specific cetacean and large whale interactions with longline gear and other hook-and-line gear while taking into account many other factors affecting the vulnerability of a species to be taken in SEFSC research surveys (*e.g.,* relative survey effort, survey location, similarity in gear type, animal behavior, prior history of SEFSC interactions with longline gear etc.). First we examined species known to be taken in longline fisheries but for which the SEFSC has not requested take. For example, the SEFSC is not requesting take of large whales in longline gear. Although large whale species could become entangled in longline gear, the probability of interaction with SEFSC longline gear is extremely low considering a far lower level of survey effort relative to that of commercial fisheries, as well as much shorter set durations, shorter line lengths, and monitoring and mitigation measures implemented by the SEFSC (*e.g.,* the move-on rule). Although data on commercial fishing efforts comparable to the known SEFSC research protocols (net size, tow duration and speed, and total number of tows) are not publically available, based on the amount of fish caught by commercial fisheries versus SEFSC fisheries research, the ''footprint'' of research effort compared to commercial fisheries is very small (see Section 9 in the SEFSC's application). As such, the SEFSC has not requested, nor is NMFS proposing, to authorize take of large whales (*i.e.,* mysticetes) incidental to longline research. There are situations with hook-and-line (*e.g.,* longline) fisheries research gear when a caught animal cannot be identified to species with certainty. This might occur when a hooked or entangled dolphin frees itself before being identified or when concerns over crew safety, weather, or sea state conditions necessitate quickly releasing the animal before identification is possible. The top priority for live animals is to release them as quickly and safely as possible. The SEFSC ship's crew and research personnel make concerted efforts to identify animals incidentally caught in research gear whenever crew and vessel safety are not jeopardized.

With respect to trawling, both commercial fisheries and non-SEFSC affiliated research trawls in the Gulf of Mexico have taken pelagic marine mammals. For example, a mid-water research trawl conducted to monitor the effects of the Deepwater Horizon oil spill in the Gulf of Mexico took three pantropical spotted dolphins in one trawl in 2012. Additionally, an Atlantic spotted dolphin was taken in non-SEFSC research bottom trawl in 2014. Known takes in commercial trawl fisheries in the ARA and GOMRA include a range of marine mammal species (Table 8). NMFS examined the similarities between species known to be taken in commercial and non-SEFSC research trawls with those species that overlap in time and space with SEFSC research trawls in the open ocean. Because some species exhibit similar behavior, distribution, abundance, and vulnerability to research trawl gear to these species, NMFS proposes to authorize take of eight species of pelagic cetaceans and two pinniped species in the ARA and nine species of cetaceans in the GOMRA (Table 9). In addition, NMFS provides allowance of one take of an unidentified species in the ARA, GOMRA, and CRA over the life of these regulations to account for any animal that cannot be identified to a species level. Takes would occur incidental to trawl and hook and line (including longline) research in the ARA and GOMRA. However, because the SEFSC does not use trawl gear in the CRA, take is incidental to hook and line gear in the Caribbean (see Tables 6.4–6.6 in SEFSC's application for more detail). We are proposing to authorize the amount of take requested by the SEFSC's for these stocks listed in Table 8.

TABLE 8—TOTAL TAKE, BY SPECIES AND STOCK, OF PELAGIC MARINE MAMMALS IN THE ARA AND GOMRA INCIDENTAL TO TRAWL AND HOOK AND LINE RESEARCH AND, IN THE CRA, INCIDENTAL TO HOOK AND LINE RESEARCH ACTIVITIES OVER THE 5 YEAR REGULATIONS

Species	Stock	Total M&SI take
Risso's dolphin	Western North Atlantic	1
	N. Gulf of Mexico	1
Melon headed whale	N. Gulf of Mexico	3
Short-finned pilot whale	Western North Atlantic	1
	N. Gulf of Mexico	1
Long-finned pilot whale	Western North Atlantic	1
Short-beaked common dolphin	Western North Atlantic	4
Atlantic spotted dolphin	Western North Atlantic	4
	N. Gulf of Mexico	4
Pantropical spotted dolphin	Western North Atlantic	1
	N. Gulf of Mexico	4
Striped dolphin	Western North Atlantic	3
	N. Gulf of Mexico	3
Spinner dolphin	N. Gulf of Mexico	3
Rough-toothed dolphin	N. Gulf of Mexico	1
Bottlenose dolphin	Western North Atlantic Oceanic	4
	N. Gulf of Mexico Oceanic	4
	N. Gulf of Mexico Continental Shelf	4
	Puerto Rico/USVI	1
Harbor porpoise	Gulf of Maine/Bay of Fundy	1
Undetermined delphinid	Western North Atlantic	1
	N. Gulf of Mexico	1
Harbor seal	Western North Atlantic	1
Gray seal	Western North Atlantic	1

Estimated Take Due to Acoustic Harassment

As described previously (*Potential Effects of Specified Activities on Marine Mammals and their Habitat*), we believe that SEFSC use of active acoustic sources has, at most, the potential to cause Level B harassment of marine mammals. In order to attempt to quantify the potential for Level B harassment to occur, NMFS (including the SEFSC and acoustics experts from other parts of NMFS) developed an analytical framework considering characteristics of the active acoustic systems described previously under *Description of Active Acoustic Sound Sources,* their expected patterns of use, and characteristics of the marine mammal species that may interact with them. This quantitative assessment benefits from its simplicity and consistency with current NMFS acoustic guidance regarding Level B harassment but we caution that, based on a number of deliberately precautionary assumptions, the resulting take estimates may be seen as an overestimate of the potential for Level B harassment to occur as a result of the operation of these systems. Additional details on the approach used and the assumptions made that result in these estimates are described below.

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 (Level A harassment). We note NMFS has begun efforts to update its behavioral thresholds, considering all available data, and is formulating a strategy for updating those thresholds for all types of sound sources considered in incidental take authorizations. It is NMFS intention to conduct both internal and external review of any new thresholds prior to finalizing. In the interim, we apply the traditional thresholds.

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.,* 2011). Based on what the best 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 Level B 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. Neither threshold is used for military sonar due to the unique source characteristics.

The Marine Mammal Commission (Commission) has previously suggested NMFS apply the 120 dB continuous threshold to scientific sonar such as the ones proposed by the SEFSC. NMFS has responded to this comment in multiple **Federal Register** notices of issuance for other NMFS science centers. However, we provide more clarification here on why the 160 dB threshold is appropriate when estimating take from acoustic sources used during SEFSC research activities. NMFS has historically referred to the 160 dB threshold as the impulsive threshold, and the 120 dB threshold as the continuous threshold, which in and of itself is conflicting as one is referring to pulse characteristics and the other is referring to the temporal component. A more accurate term for

the impulsive threshold is the intermittent threshold. This distinction is important because, when assessing the potential for hearing loss (PTS or TTS) or non-auditory injury (*e.g.,* lung injury), the spectral characteristics of source (impulsive vs. non-impulsive) is critical to assessing the potential for such impacts. However, for behavior, the temporal component is more appropriate to consider. Gomez *et al.* (2016) conducted a systematic literature review (370 papers) and analysis (79 studies, 195 data cases) to better assess probability and severity of behavioral responses in marine mammals exposed to anthropogenic sound. They found a significant relationship between source type and behavioral response when sources were split into broad categories that reflected whether sources were continuous, sonar, or seismic (the latter two of which are intermittent sources). Moreover, while Gomez *et al.* (2017) acknowledges acoustically sensitive species (beaked whales and harbor porpoise), the authors do not recommend an alternative method for categorizing sound sources for these species when assessing behavioral impacts from noise exposure.

To apply the continuous 120 dB threshold to all species based on data from known acoustically sensitive species (one species of which is the harbor porpoise which is likely to be rarely encountered in the ARA and do not inhabit the GOMRA or CRA) is not warranted as it would be unnecessarily conservative for non-sensitive species. Qualitatively considered in our effects analysis below is that beaked whales and harbor porpoise are more acoustically sensitive than other cetacean species, and thus are more likely to demonstrate overt changes in behavior when exposed to such sources. Further, in absence of very sophisticated acoustic modeling, our propagation rates are also conservative. Therefore, the distance to the 160 dB threshold is likely much closer to the source than calculated. In summary, the SEFSC's proposed activity includes the use of intermittent sources (scientific sonar). Therefore, the 160 dB re 1 µPa (rms) threshold is applicable when quantitatively estimating take by Level B harassment incidental to SEFSC scientific sonar for all marine mammal species.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (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). However, as described in greater detail in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section, given the highly directional beam, NMFS does not anticipate animals would be exposed to noise levels resulting in PTS. Therefore, the Level A criteria do not apply here and are not discussed further; NMFS is proposing take by Level B harassment only.

The operating frequencies of active acoustic systems used by the SEFSC sources range from 18–333 kHz (see Table 2). These frequencies are within the very upper hearing range limits of baleen whales (7 Hz to 35 kHz). The Simrad EK60 may operate at frequency of 18 kHz which is the only frequency that might be detectable by baleen whales. However, the beam pattern is extremely narrow (11 degrees) at that frequency. The Simrad ME70 echosounder, EQ50, and Teledyne RD ADCP operate at 50–200 kHz which are all outside of baleen whale hearing capabilities. Therefore, we would not expect any exposures to these signals to result in Level B harassment. The Simrad EK60 lowest operating frequency (18 kHz) is within baleen whale hearing capabilities.

The assessment paradigm for active acoustic sources used in SEFSC fisheries research mirrors approaches by other NMFS Science Centers applying for regulations. It is relatively straightforward and has a number of key simple and conservative assumptions. NMFS' current acoustic guidance requires in most cases that we assume Level B harassment occurs when a marine mammal receives an acoustic signal at or above a simple step-function threshold. For use of these active acoustic systems used during SEFSC research, NMFS uses the threshold is 160 dB re 1 µPa (rms) as the best available science indicates the temporal characteristics of a source are most influential in determining behavioral impacts (Gomez *et al.,* 2016), and it is NMFS' long standing practice to apply the 160 dB threshold to intermittent sources. Estimating the number of exposures at the specified received level requires several determinations, each of which is described sequentially below:

(1) A detailed characterization of the acoustic characteristics of the effective sound source or sources in operation;

(2) The operational areas exposed to levels at or above those associated with Level B harassment when these sources are in operation;

(3) A method for quantifying the resulting sound fields around these sources; and

(4) An estimate of the average density for marine mammal species in each area of operation.

Quantifying the spatial and temporal dimension of the sound exposure footprint (or ''swath width'') of the active acoustic devices in operation on moving vessels and their relationship to the average density of marine mammals enables a quantitative estimate of the number of individuals for which sound levels exceed the relevant threshold for each area. The number of potential incidents of Level B harassment is ultimately estimated as the product of the volume of water ensonified at 160 dB rms or higher and the volumetric density of animals determined from simple assumptions about their vertical stratification in the water column. Specifically, reasonable assumptions based on what is known about diving behavior across different marine mammal species were made to segregate those that predominately remain in the upper 200 m of the water column, versus those that regularly dive deeper during foraging and transit. Methods for estimating each of these calculations are described in greater detail in the following sections, along with the simplifying assumptions made, and followed by the take estimates.

Sound source characteristics—An initial characterization of the general source parameters for the primary active acoustic sources operated by the SEFSC was conducted, enabling a full assessment of all sound sources used by the SEFSC and delineation of Category 1 and Category 2 sources, the latter of which were carried forward for analysis here. This auditing of the active acoustic sources also enabled a determination of the predominant sources that, when operated, would have sound footprints exceeding those from any other simultaneously used sources. These sources were effectively those used directly in acoustic propagation modeling to estimate the zones within which the 160 dB rms received level would occur.

Many of these sources can be operated in different modes and with different output parameters. In modeling their potential impact areas, those features among those given previously in Table 2 (*e.g.,* lowest operating frequency) that would lead to the most precautionary estimate of maximum received level ranges (*i.e.,* largest ensonified area) were used. The effective beam patterns took into account the normal modes in which these sources are typically operated. While these signals are brief and

intermittent, a conservative assumption was taken in ignoring the temporal pattern of transmitted pulses in calculating Level B harassment events. Operating characteristics of each of the predominant sound sources were used in the calculation of effective line-kilometers and area of exposure for each source in each survey (Table 9).

TABLE 9—EFFECTIVE EXPOSURE AREAS FOR PREDOMINANT ACOUSTIC SOURCES ACROSS TWO DEPTH STRATA

Active acoustic system	Effective exposure area: Sea surface to 200 m depth (km^2)	Effective exposure area: Sea surface to depth at which 160-dB threshold is reached (km^2)
Simrad EK60 narrow beam echosounder	0.0142	0.1411
Simrad ME70 multibeam echosounder	0.0201	0.0201
Teledyne RD Instruments ADCP, Ocean Surveyor	0.0086	0.0187
Simrad ITI trawl monitoring system	0.0032	0.0032

Calculating effective line-kilometers—As described below, based on the operating parameters for each source type, an estimated volume of water ensonified at or above the 160 dB rms threshold was calculated. In all cases where multiple sources are operated simultaneously, the one with the largest estimated acoustic footprint was considered to be the effective source. Two depth zones were defined for each research area: a Continental Shelf Region defined by having bathymetry 0–200 m and an Offshore Region with bathymetry >200 m. Effective line distance and volume insonified was calculated for each depth stratum (0–200 m and > 200 m), where appropriate (*i.e.* in the Continental Shelf region, where depth is <200 m, only the exposure area for the 0–200 m depth stratum was calculated). In some cases, this resulted in different sources being predominant in each depth stratum for all line km when multiple sources were in operation. This was accounted for in estimating overall exposures for species that utilize both depth strata (deep divers). For each ecosystem area, the total number of line km that would be surveyed was determined, as was the relative percentage of surveyed linear km associated with each source. The total line km for each vessel, the effective portions associated with each of the dominant sound types, and the effective total km for operation for each sound type is given in Tables 6–8a and 6–8b in SEFSC's application. In summary, line transect kms range from 1149 to 3352 in the ARA and 16,797 to 30,146 km with sources operating 20–100 percent of the time depending on the source.

Calculating volume of water ensonified—The cross-sectional area of water ensonified to a 160 dB rms received level was calculated using a simple spherical spreading model of sound propagation loss (20 log R) such that there would be 60 dB of attenuation over 1000 m. The spherical spreading model accounted for the frequency dependent absorption coefficient and the highly directional beam pattern of most of these sound sources. For absorption coefficients, the most commonly used formulas given by Francois and Garrison (1982) were used. The lowest frequency was used for systems that are operated over a range of frequencies. The vertical extent of this area is calculated for two depth strata (surface to 200 m, and for deep water operations >200 m, surface to range at which the on-axis received level reaches 160 dB RMS). This was applied differentially based on the typical vertical stratification of marine mammals (see Tables 6–9 and 6–10 in SEFSC's application).

For each of the three predominant sound sources, the volume of water ensonified is estimated as the cross-sectional area (in square kilometers) of sound at or above 160 dB rms multiplied by the total distance traveled by the ship (see Table 6a and 6b in SEFSC's application). Where different sources operating simultaneously would be predominant in each different depth strata (*e.g.,* ME70 and EK60 operating simultaneously may be predominant in the shallow stratum and deep stratum, respectively), the resulting cross-sectional area calculated took this into account. Specifically, for shallow-diving species this cross-sectional area was determined for whichever was predominant in the shallow stratum, whereas for deeper-diving species, this area was calculated from the combined effects of the predominant source in the shallow stratum and the (sometimes different) source predominating in the deep stratum. This creates an effective total volume characterizing the area ensonified when each predominant source is operated and accounts for the fact that deeper-diving species may encounter a complex sound field in different portions of the water column.

Marine mammal densities—One of the primary limitations to traditional estimates of Level B harassment from acoustic exposure is the assumption that animals are uniformly distributed in time and space across very large geographical areas, such as those being considered here. There is ample evidence that this is in fact not the case, and marine species are highly heterogeneous in terms of their spatial distribution, largely as a result of species-typical utilization of heterogeneous ecosystem features. Some more sophisticated modeling efforts have attempted to include species-typical behavioral patterns and diving parameters in movement models that more adequately assess the spatial and temporal aspects of distribution and thus exposure to sound (*e.g.,* Navy, 2013). While simulated movement models were not used to mimic individual diving or aggregation parameters in the determination of animal density in this estimation, the vertical stratification of marine mammals based on known or reasonably assumed diving behavior was integrated into the density estimates used.

The marine mammal abundance estimates used for the ARA and GOM were obtained from Stock Assessment Reports for the Atlantic and the Gulf of Mexico ecosystem areas (Waring *et al.* 2012, 2013, 2014, and 2015), and the best scientific information available to SEFSC staff. We note abundances for cetacean stocks in western North Atlantic U.S. waters are the combined estimates from surveys conducted by the NMFS Northeast Fisheries Science Center (NEFSC) from central Virginia to

the lower Bay of Fundy and surveys conducted by the SEFSC from central Virginia to central Florida. The SEFSC primary area of research is south of central Virginia. Therefore, densities are based on abundance estimates from central Virginia to central Florida and are reported in the stock assessment report for each stock. For example, the fin whale abundance estimate for the stock is 1,618. However, most of those animals occur in the northeast with only about 23 individuals in the southeast where SEFSC would occur. Therefore, an abundance estimate of 23 was used to estimate density. Density estimates in areas where a species is known to occur, but where published density data is absent, were calculated based on values published for the species in adjacent regions by analogy and SEFSC expertise. For example, in the CRA there are records of marine mammal species occurrence (*e.g.,* Mignucci-Giannoni 1998, Roden and Mullin 2000). However, area specific abundance estimates are unavailable so the density estimates for the GOMRA were used as proxies where appropriate to estimate acoustic take in the CRA. There are a number of caveats associated with these estimates:

(1) They are often calculated using visual sighting data collected during one season rather than throughout the year. The time of year when data were collected and from which densities were estimated may not always overlap with the timing of SEFSC fisheries surveys (detailed previously in *Detailed Description of Activities*).

(2) The densities used for purposes of estimating acoustic exposures do not take into account the patchy distributions of marine mammals in an ecosystem, at least on the moderate to fine scales over which they are known to occur. Instead, animals are considered evenly distributed throughout the assessed area, and seasonal movement patterns are not taken into account.

In addition, and to account for at least some coarse differences in marine mammal diving behavior and the effect this has on their likely exposure to these kinds of often highly directional sound sources, a volumetric density of marine mammals of each species was determined. This value is estimated as the abundance averaged over the two-dimensional geographic area of the surveys and the vertical range of typical habitat for the population. Habitat ranges were categorized in two generalized depth strata (0–200 m and 0 to greater than 200 m) based on gross differences between known generally surface-associated and typically deep-diving marine mammals (*e.g.,* Reynolds and Rommel, 1999; Perrin *et al.,* 2009). Animals in the shallow-diving stratum were assumed, on the basis of empirical measurements of diving with monitoring tags and reasonable assumptions of behavior based on other indicators, to spend a large majority of their lives (*i.e.,* greater than 75 percent) at depths shallower than 200 m. Their volumetric density and thus exposure to sound is therefore limited by this depth boundary. In contrast, species in the deeper-diving stratum were assumed to regularly dive deeper than 200 m and spend significant time at these greater depths. Their volumetric density, and thus potential exposure to sound at or above the 160 dB rms threshold, is extended from the surface to the depth at which this received level condition occurs (*i.e.,* corresponding to the 0 to greater than 200 m depth stratum).

The volumetric densities are estimates of the three-dimensional distribution of animals in their typical depth strata. For shallow-diving species, the volumetric density is the area density divided by 0.2 km (*i.e.,* 200 m). For deeper diving species, the volumetric density is the area density divided by a nominal value of 0.5 km (*i.e.,* 500 m). The two-dimensional and resulting three-dimensional (volumetric) densities for each species in each ecosystem area are provided in Table 10.

TABLE 10—ABUNDANCES AND VOLUMETRIC DENSITIES CALCULATED FOR EACH SPECIES IN SEFSC RESEARCH AREAS USED IN TAKE ESTIMATION

Species [1]	Abundance	Typical dive depth strata		Continental shelf area [2] density (#/km^2)	Offshore area [3] density (#/km^2)	Continental shelf area volumetric density (#/km^3)	Offshore area volumetric density (#/km^3)
		0–200 m	>200 m				
Atlantic Research Area [4]							
Fin whale	23	X			0.00005		0.00025
Sperm whale	695		X		0.00148		0.00296
Pygmy/dwarf sperm whales [5].	2,002		X		0.00426		0.00852
False killer whale	442	X			0.00094		0.00470
Beaked whales [5]	3,163		X		0.00673		0.01346
Risso's dolphin	3,053	X			0.00650		0.03248
Short-finned pilot whale	16,964		X		0.03610		0.07219
Short-beaked common dolphin.	2,993	X			0.00637		0.03184
Atlantic spotted dolphin	17,917	X		0.39209	0.03812	1.96043	0.19062
Pantropical spotted dolphin.	3,333	X			0.00709		0.03546
Striped dolphin	7,925	X			0.01686		0.08431
Rough-toothed dolphin	271	X			0.00058		0.00288
Bottlenose dolphin	50,766 (offshore); 31,212 (cont. shelf).	X		0.25006	0.10802	1.25028	0.54010
Gulf of Mexico Research Area							
Bryde's whale	33	X			0.00011		0.00054
Sperm whale	763		X		0.00438		0.00876
Pygmy/dwarf sperm whales [5].	184		X		0.01857		0.00101
Pygmy killer whale	152	X			0.00080		0.00400

TABLE 10—ABUNDANCES AND VOLUMETRIC DENSITIES CALCULATED FOR EACH SPECIES IN SEFSC RESEARCH AREAS USED IN TAKE ESTIMATION—Continued

Species [1]	Abundance	Typical dive depth strata		Continental shelf area [2] density (#/km^2)	Offshore area [3] density (#/km^2)	Continental shelf area volumetric density (#/km^3)	Offshore area volumetric density (#/km^3)
		0–200 m	>200 m				
False killer whale	Unk	X			0.00086		0.00432
Beaked whales [5 6]	149		X		0.00925		0.00081
Melon-headed whale	2,235	X			0.00487		0.02434
Risso's dolphin	2,442	X			0.00523		0.02613
Short-finned pilot whale	2,415		X		0.00463		0.00925
Atlantic spotted dolphin [7].	37,611	X		0.09971	unk	0.49854	Unk
Pantropical spotted dolphin.	50,880	X			0.09412		0.47062
Striped dolphin	1,849	X			0.00735		0.03677
Rough-toothed dolphin	624	X		0.00401	0.00664	0.02006	0.03322
Clymene dolphin [8]	129	X			0.00907		0.04537
Spinner dolphin	11,441	X			0.01888		0.09439
Bottlenose dolphin	5,806 (oceanic); 51,192 (cont. shelf).	X		0.29462	0.02347	1.47311	0.11735
Caribbean Research Area [9]							
Sperm whale	763		X	na	0.00438	na	0.008761
Pygmy/dwarf sperm whales [5 6].	186		X	na	0.01857	na	0.00101
Killer whale	184	X		na	0.00000	na	0
Pygmy killer whale	152	X		na	0.00080	na	0.003998
False killer whale	Unk	X		na	0.00086	na	0.004324
Beaked whales [5 6]	149		X	na	0.00925	na	0.00081
Melon-headed whale	2,235	X		na	0.00487	na	0.024343
Risso's dolphin	2,442	X		na	0.00523	na	0.026132
Short-finned pilot whale	2,415		X	na	0.00463	na	0.009255
Pantropical spotted dolphin.	50,880	X		na	0.09412	na	0.470615
Striped dolphin	1,849	X		na	0.00735	na	0.036771
Fraser's dolphin		X		na	0.00000	na	0
Rough-toothed dolphin	624	X		na	0.00664	na	0.03322
Clymene dolphin	129	X		na	0.00907	na	0.045365
Spinner dolphin	11,441	X		Na	0.01888	na	0.094389
Bottlenose dolphin	5,806 (oceanic); 51,192 (cont. shelf).	X		Na	0.02347	na	0.117349

[1] Those species known to occur in the ARA and GOMRA with unknown volumetric densities have been omitted from this table. Those omitted include: For the ARA—North Atlantic right whale, blue whale, sei whale, minke whale, humpback whale, melon-headed whale, killer whale, pygmy killer whale, long-finned pilot whale, Fraser's dolphin, spinner dolphin, Clymene dolphin, harbor porpoise, gray seal, and harbor seal; for the GOMRA—killer whale, Fraser's dolphin, humpback whale and minke whale. This does not mean they were all omitted for take as proxy species provided in this table were used to estimate take, where applicable.

[2] Continental shelf area means 0–200 m bottom depth.

[3] Offshore area means 200 m bottom depth.

[4] Abundances for cetacean stocks in western North Atlantic U.S. waters are the combined estimates from surveys conducted by the NEFSC from central Virginia to the lower Bay of Fundy and surveys conducted by the SEFSC from central Virginia to central Florida. The SEFSC primary area of research is south of central Virginia. Therefore, acoustic take estimates are based on abundance estimates from central Virginia to central Florida and are reported in the stock assessment report for each stock. However, these acoustic takes are compared to the abundance for the entire stock.

[5] Density estimates are based on the estimates of dwarf and pygmy sperm whale SAR abundances and the combined abundance estimates of all beaked whales (Mesoplodon spp. + Cuvier's beaked whale). These groups are cryptic and difficult to routinely identify to species in the field.

[6] Data from acoustic moorings in the Gulf of Mexico suggest that both beaked whales and dwarf/pygmy sperm whales are much more abundant than visual surveys suggest. Therefore, acoustic take estimates for these groups were based on abundance estimates extrapolated from acoustic mooring data (DWH–NRDAT 2016).

[7] The most reasonable estimate Atlantic spotted dolphin abundance is in the Gulf of Mexico is based on ship surveys of continental shelf waters conducted from 2000–2001. In the Gulf of Mexico, the continental shelf is the Atlantic spotted dolphin's primary habitat. Ship surveys have not been conducted in shelf waters since 2001.

[8] Three previous abundance estimates for the Clymene dolphin in the Gulf of Mexico were based on surveys conducted over several years, and estimates ranged from 5,000 to over 17,000 dolphins. The current estimate is based on one survey in 2009 from the 200 m isobaths to the EEZ and is probably negatively biased.

[9] Estimates for the CRA are based on proxy values taken from the GOMRA where available and appropriate. Species omitted due to lack of data were humpback whale, minke whale, Bryde's whale, and Atlantic spotted dolphin.

Using area of ensonification and volumetric density to estimate exposures—Estimates of potential incidents of Level B harassment (*i.e.,* potential exposure to levels of sound at or exceeding the 160 dB rms threshold) are then calculated by using (1) the combined results from output characteristics of each source and identification of the predominant sources in terms of acoustic output; (2) their relative annual usage patterns for

each operational area; (3) a source-specific determination made of the area of water associated with received sounds at either the extent of a depth boundary or the 160 dB rms received sound level; and (4) determination of a volumetric density of marine mammal species in each area. Estimates of Level B harassment by acoustic sources are the product of the volume of water ensonified at 160 dB rms or higher for the predominant sound source for each portion of the total line-kilometers for which it is used and the volumetric density of animals for each species. However, in order to estimate the additional volume of ensonified water in the deep stratum, the SEFSC first subtracted the cross-sectional ensonified area of the shallow stratum (which is already accounted for) from that of the deep stratum. Source- and stratum-specific exposure estimates are the product of these ensonified volumes and the species-specific volumetric densities (Table 11). The general take estimate equation for each source in each depth statrum is density * (ensonified volume * linear kms). If there are multiple sources of take in both depth stata, individual take estimates were summed. To illustrate, we use the ME70 and the pantropical spotted dolphin, which are found only in the 0–200 m depth stratum, as an example:

(1) ME70 ensonified volume (0–200 m) = 0.0201 km^2.

(2) Total Linear kms = 1794 km (no pantropical spotted dolphins are found on the shelf so those trackline distances are not included here).

(3) Pantropical spotted dolphin density (0–200 m) = 0.47062 dolphins/km^3.

(4) Estimated exposures to sound ≥ 160 dB rms = 0.47062 pantropical spotted dolphin/km^3 * (0.0201 km^2 * 1794 km) = 16.9 (rounded up) = 17 estimated pantropical spotted dolphin exposures to SPLs ≥ 160 dB rms resulting from use of the ME70.

TABLE 11—ESTIMATED SOURCE-, STRATUM-, AND SPECIES-SPECIFIC ANNUAL ESTIMATES OF LEVEL B HARASSMENT

Species [1]	Estimated level B harassment (#s of animals) in 0–200 m dive depth stratum			Estimated level B harassment in >200 m dive depth stratum		Total calculated take
	EK60	ME70	EQ50	EK60	EQ50	
Atlantic Continental Shelf						
Bottlenose dolphin	67.00	21.43	21.43	0.00	0.00	110
Atlantic Offshore						
Fin whale	0.02	0.00	0.00	0.00	0.00	1
Sperm whale	0.18	0.02	0.01	1.75	0.00	2
Pygmy/dwarf sperm whales	0.52	0.06	0.02	5.03	0.00	6
False killer whale	0.29	0.03	0.01	0.00	0.00	1
Beaked whales	0.83	0.09	0.03	7.95	0.00	9
Risso's dolphin	2.00	0.21	0.08	0.00	0.00	3
Short-finned pilot whale	4.43	0.48	0.17	42.65	0.00	48
Short-beaked common dolphin	1.96	0.21	0.07	0.00	0.00	3
Atlantic spotted dolphin	11.71	1.26	0.45	0.00	0.00	14
Pantropical spotted dolphin	2.18	0.23	0.08	0.00	0.00	3
Striped dolphin	5.18	0.56	0.20	0.00	0.00	6
Rough-toothed dolphin	0.18	0.02	0.01	0.00	0.00	1
Bottlenose dolphin	33.18	3.57	1.27	0.00	0.00	39
Gulf of Mexico Continental Shelf						
Atlantic spotted dolphin	161.80	12.95	22.75	0.00	0.00	198
Bottlenose dolphin	269.16	21.55	37.84	0.00	0.88	329
Gulf of Mexico Offshore						
Bryde's whale	0.23	0.02	0.01	0.00	0.00	1
Sperm whale	1.58	00.15	0.06	15.04	0.06	17
Pygmy/dwarf sperm whales	0.38	0.04	0.01	3.66	0.01	5
Pygmy killer whale	0.79	0.07	0.03	0.00	0.00	1
False killer whale	1.63	0.15	0.06	0.00	0.00	2
Beaked whales	0.31	0.03	0.01	2.93	0.01	4
Melon-headed whale	11.55	1.09	0.41	0.00	0.00	13
Risso's dolphin	15.78	1.49	0.55	0.00	0.00	18
Short-finned pilot whale	4.99	0.47	0.18	0.00	0.00	4
Pantropical spotted dolphin	179.45	16.97	6.31	0.00	0.00	203
Striped dolphin	14.02	1.33	0.49	0.00	0.00	16
Rough-toothed dolphin	3.23	0.30	0.11	0.00	0.00	4
Clymene dolphin	0.67	0.06	0.02	0.00	0.00	1
Spinner dolphin	59.13	5.59	2.08	0.00	0.00	67
Bottlenose dolphin	44.75	4.23	1.57	0.00	0.00	51
Caribbean Offshore						
Sperm whale	0.18	0.01	0.00	1.66	0.00	2
Pygmy/dwarf sperm whales	0.38	0.04	0.01	3.66	0.01	5
Pygmy killer whale	0.09	0.00	0.00	0.00	0.00	1
False killer whale	0.19	0.00	0.00	0.00	0.00	1

TABLE 11—ESTIMATED SOURCE-, STRATUM-, AND SPECIES-SPECIFIC ANNUAL ESTIMATES OF LEVEL B HARASSMENT—Continued

Species [1]	Estimated level B harassment (#s of animals) in 0–200 m dive depth stratum			Estimated level B harassment in >200 m dive depth stratum		Total calculated take
	EK60	ME70	EQ50	EK60	EQ50	
Beaked whales	0.31	0.03	0.01	2.93	0.01	4
Melon-headed whale	1.34	0.03	0.01	0.00	0.00	2
Risso's dolphin	1.83	0.04	0.02	0.00	0.00	2
Short-finned pilot whale	0.58	0.01	0.01	0.00	0.00	1
Pantropical spotted dolphin	20.80	0.50	0.23	0.00	0.00	22
Striped dolphin	1.63	0.04	0.02	0.00	0.00	2
Rough-toothed dolphin	1.47	0.04	0.02	0.00	0.00	1
Clymene dolphin	0.08	0.05	0.02	0.00	0.00	1
Spinner dolphin	6.85	0.16	0.07	0.00	0.00	8
Bottlenose dolphin	5.19	0.12	0.06	0.00	0.00	6

[1] Those species known to occur in the ARA and GOMRA with unknown volumetric densities have been omitted from this table. Those omitted include: For the ARA—North Atlantic right whale, blue whale, sei whale, minke whale, humpback whale, melon-headed whale, killer whale, pygmy killer whale, long-finned pilot whale, Fraser's dolphin, spinner dolphin, Clymene dolphin, harbor porpoise, gray seal, and harbor seal; for the GOMRA—killer whale, Fraser's dolphin, humpback whale and minke whale. This does not mean they were all omitted for take as proxy species provided in this table were used to estimate take, where applicable.

In some cases, the calculated Level B take estimates resulted in low numbers of animals which are known to be gregarious or travel in group sizes larger than the calculated take estimate. In those cases, we have adjusted the requested take to reflect those groups sizes (see take column in Table 12).

TABLE 12—CALCULATED AND AUTHORIZED LEVEL B TAKE ESTIMATES

Common name	MMPA stock	Calculated take	Avg. group size [1]	Authorized take
Fin whale	Western North Atlantic	1	2	4
Blue whale	Western North Atlantic	N/A [2]	2	4
N. Atlantic right whale	Western North Atlantic	N/A [2]	2	4
Sei whale	Western North Atlantic	N/A [1]	2	4
Bryde's whale	Northern Gulf of Mexico	1	2	4
Humpback whale	Gulf of Maine		2	4
Sperm whale	North Atlantic	2	2.1	4
	Northern Gulf of Mexico	17	2.6	17
	Puerto Rico and US Virgin Islands	4	unk	4
Pygmy/dwarf sperm whale [1]	Western North Atlantic	6	1.9	10
	Northern Gulf of Mexico	5	2	6
	Northern Gulf of Mexico (CRA)	5	2	6
Beaked whale [2]	Western North Atlantic	9	2.3	9
	Northern Gulf of Mexico (GOMRA)	4	2	4
	Northern Gulf of Mexico (CRA)	4	2	4
Melon-headed whales	Northern Gulf of Mexico	13	99.6	100
Risso's dolphin	Western North Atlantic	3	15.4	15
	Northern Gulf of Mexico	18	10.2	18
	Puerto Rico and U.S. Virgin Island	2	10.2	10
Short-finned pilot whales	Western North Atlantic	48	16.6	48
	Northern Gulf of Mexico	6	24.9	25
	Puerto Rico and U.S. Virgin Islands	1	unk	20
Common dolphin	Western North Atlantic	3	267.2	267
Atlantic spotted dolphin	Western North Atlantic	14	37	37
	Northern Gulf of Mexico	198	22	198
	Puerto Rico and U.S. Virgin Islands	unk	unk	50
Pantropical spotted dolphin	Western North Atlantic	4	77.5	78
	Northern Gulf of Mexico	203	71.3	203
Striped dolphin	Western North Atlantic	6	74.6	75
	Northern Gulf of Mexico	16	46.1	46
Bottlenose dolphin	Western North Atlantic (offshore)	39	11.8	39
	Western North Atlantic (coastal/continental shelf)	110	10	110
	Northern Gulf of Mexico (coastal)	N/A [3]	10	350 [3]
	Northern Gulf of Mexico (continental shelf)	329	10	350
	Northern Gulf of Mexico (oceanic)	51	20.6	100
	Puerto Rico and U.S. Virgin Islands	6	unk	50
Rough-toothed dolphin	Western North Atlantic	1	8	10
	Northern Gulf of Mexico	4	14.1	20
Clymene dolphin	Western North Atlantic	20	110	110
	Northern Gulf of Mexico	1	89.5	100
Spinner dolphin	Western North Atlantic	unk	unk	100
	Northern Gulf of Mexico	16	151.5	200

TABLE 12—CALCULATED AND AUTHORIZED LEVEL B TAKE ESTIMATES—Continued

Common name	MMPA stock	Calculated take	Avg. group size [1]	Authorized take
	Puerto Rico and U.S. Virgin Islands	n/a	unk	50
Pygmy killer whale	Northern Gulf of Mexico	1	18.5	20
False killer whale	Western North Atlantic	1	unk	20
	Northern Gulf of Mexico	n/a	27.6	28
Harbor porpoise	Gulf of Maine/Bay of Fundy	n/a	8 [4]	16

[1] Groups sizes based on Fulling *et. al.,* 2003; Garrison *et al.,* 2011; Mullin *et al.,* 2003; and Mullin *et al.,* 2004.
[2] Take estimates are based on take calculations using fin whales as a proxy.
[3] We note the SEFSC's application did not request take, by Level B harassment, of bottlenose dolphins belonging to coastal stocks. However, because surveys occur using scientific sonar in waters where coastal dolphins may occur, we are proposing to issue the same amount of Level B take as requested for the continental shelf stock.
[4] The American Cetacean Society reports average group size of harbor porpoise range from 6 to 10 individuals. We propose an average group size of 8 for the ARA which is likely conservative given the low density of animals off North Carolina. Given the short and confined spatio-temporal scale of SEFSC surveys in North Carolina during winter months, we assume two groups per year could be encountered.

Mitigation

In order to issue an incidental take authorization under Section 101(a)(5)(A or D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, ''and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking'' for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), and 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.

SEFSC Mitigation for Marine Mammals and Their Habitat

The SEFSC has invested significant time and effort in identifying technologies, practices, and equipment to minimize the impact of the proposed activities on marine mammal species and stocks and their habitat. The mitigation measures discussed here have been determined to be both effective and practicable and, in some cases, have already been implemented by the SEFSC. In addition, the SEFSC is actively conducting research to determine if gear modifications are effective at reducing take from certain types of gear. Any potentially effective and practicable gear modification mitigation measures will be discussed as research results are available as part of the adaptive management strategy included in this rule. As for other parts of this rule, all references to the SEFSC, unless otherwise noted, include requirements for all partner institutions identified in the SEFSC's application.

Coordination and communication—When SEFSC survey effort is conducted aboard NOAA-owned vessels, there are both vessel officers and crew and a scientific party. Vessel officers and crew are not composed of SEFSC staff, but are employees of NOAA's Office of Marine and Aviation Operations (OMAO), which is responsible for the management and operation of NOAA fleet ships and aircraft and is composed of uniformed officers of the NOAA Commissioned Corps as well as civilians. The ship's officers and crew provide mission support and assistance to embarked scientists, and the vessel's Commanding Officer (CO) has ultimate responsibility for vessel and passenger safety and, therefore, decision authority. When SEFSC-funded surveys are conducted aboard cooperative platforms (*i.e.,* non-NOAA vessels), ultimate responsibility and decision authority again rests with non-SEFSC personnel (*i.e.,* vessel's master or captain). Decision authority includes the implementation of mitigation measures (*e.g.,* whether to stop deployment of trawl gear upon observation of marine mammals). The scientific party involved in any SEFSC survey effort is composed, in part or whole, of SEFSC staff and is led by a Chief Scientist (CS). Therefore, because the SEFSC—not OMAO or any other entity that may have authority over survey platforms used by the SEFSC—is the applicant to whom any incidental take authorization issued under the authority of these regulations would be issued, we require that the SEFSC take all necessary measures to coordinate and communicate in advance of each specific survey with OMAO, and other relevant parties, to ensure that all mitigation measures and monitoring requirements described herein, as well as the specific manner of implementation and relevant event-contingent decision-making processes, are clearly understood and agreed-upon. This may involve description of all required measures when submitting cruise instructions to OMAO or when completing contracts with external entities. The SEFSC will coordinate and conduct briefings at the outset of each survey and, as necessary, between ship's crew (CO/master or designee(s), as appropriate) and scientific party in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures. SEFSC will also coordinate as necessary on a daily basis during survey cruises with OMAO personnel or other relevant personnel on non-NOAA platforms to ensure that requirements, procedures, and decision-making processes are understood and

properly implemented. The CS will be responsible for coordination with the Officer on Deck (OOD; or equivalent on non-NOAA platforms) to ensure that requirements, procedures, and decision-making processes are understood and properly implemented.

For fisheries research being conducted by partner entities, it remains the SEFSC's responsibility to ensure those partners are communicating and coordinating with the SEFSC, receiving all necessary marine mammal mitigation and monitoring training, and implementing all required mitigation and monitoring in a manner compliant with the rule and LOA. The SEFSC will incorporate specific language into its contracts that specifies training requirements, operating procedures, and reporting requirements for protected species that will be required for all surveys conducted by research partners, including those conducted on chartered vessels. To facilitate this requirement, SEFSC would be required to hold at least one training per year with at least one representative from each partner institution (preferably CSs of the fishery independent surveys discussed in this rule) to review the mitigation, monitoring and reporting requirements. The SEFSC would also provide consistent, timely support throughout the year to address any questions or concerns researchers may have regarding these measures.

SEFSC would also be required to establish and maintain cooperating partner working group(s) to identify circumstances of a take should it occur and any action necessary to avoid future take. Each working group shall consist of at least one SEFSC representative knowledgeable of the mitigation, monitoring and reporting requirements contained within these regulations, one or more research institution or SEFSC representative(s) (preferably researcher(s) aboard vessel when take or risk of take occurred), one or more staff from NMFS Southeast Regional OPRDivision, and one or more staff from NMFS OPR. At the onset of these regulations, SEFSC shall maintain the recently established SCDNR working group to identify actions necessary to reduce the amount of take from SCDNR trawling. If a partner takes more than one marine mammal within 5-years, other working groups shall be established to identify circumstances of marine mammal take and necessary action to avoid future take. Each working group shall meet at least once annually. The SEFSC will maintain a centralized repository for all working group findings to facilitate sharing and coordination.

While at sea, best professional judgement is used to determine if a marine mammal is at risk of entanglement/hooking and, if so, what type of actions should be taken to decrease risk of interaction. To improve judgement consistency across the region, the SEFSC will initiate a process for SEFSC and partner institution FPCs, SWLs, scientists, and vessel captains and crew to communicate with each other about their experiences with protected species interactions during research work, with the goal of improving decision-making regarding avoidance of adverse interactions. The SEFSC will host at least one training annually (may be combined with other training requirements) to inform decision-makers of various circumstances that may arise during surveys, necessary action, and follow-up coordination and reporting of instances of take or possible take. The intent of this new training program would be to draw on the collective experience of people who have been making those decisions, provide a forum for the exchange of information about what went right and what went wrong, and try to determine if there are any rules-of-thumb or key factors to consider that would help in future decisions regarding avoidance practices. The SEFSC would coordinate, not only among its staff and vessel captains and crew, but also with those from other fisheries science centers, research partners, the Southeast Regional Office, and other institutions with similar experience.

The SEFSC will coordinate with the local Southeast Regional Stranding Coordinator and the NMFS Stranding Coordinator for any unusual protected species behavior and any stranding, beached live/dead, or floating protected species that are encountered during field research activities. If a large whale is alive and entangled in fishing gear, the vessel will immediately call the U.S. Coast Guard at VHF Ch. 16 and/or the appropriate Marine Mammal Health and Stranding Response Network for instructions. All entanglements (live or dead) and vessel strikes must be reported immediately to the NOAA Fisheries Marine Mammal Stranding Hotline at 1–877–433–8299.

General Fishing Gear Measures

The following measures describe mitigation application to all SEFSC surveys while measures specific to gear types follow. SEFSC will take all necessary measures to avoid marine mammal interaction with fishing gear used during fishery research surveys. This includes implementing the move-on rule (when applicable), meaning delaying setting gear when marine mammals are observed at or approaching the sampling site, and are deemed to be at-risk of becoming entangled or hooked on any type of fishing gear, and immediately pulling gear from the water when marine mammals are deemed to be at-risk of becoming entangled or hooked on any type of fishing gear. SEFSC will, at all times, monitor for any unusual circumstances that may arise at a sampling site and use best professional judgment to avoid any potential risks to marine mammals during use of all research equipment.

In some cases, marine mammals may be attracted to the vessel during fishing. To avoid increased risk of interaction, the SEFSC will conduct fishery research sampling as soon as practicable upon arriving at a sampling station and prior to conducting environmental sampling. If fishing operations have been suspended because of the presence of marine mammals, SEFSC may resume fishing operations when interaction with marine mammals is deemed unlikely. SEFSC may use best professional judgment in making this determination. SEFSC shall coordinate with all research partners, at least once annually, to ensure mitigation, monitoring and reporting requirements, procedures and decision-making processes contained within the regulations and LOA are understood. All vessels must comply with applicable and relevant take reduction plans, including any required soak time limits and gear length restrictions.

Trawl Mitigation Measures

The SEFSC and research partners use a variety of bottom trawl gears for different research purposes. These trawl types include various shrimp trawls (otter, western jib, mongoose, Falcon), high-opening bottom trawls, and flat net bottom trawls (see Table 1–1 and Appendix A in the DPEA). The SEFSC and its research partners also use modified beam trawls and benthic trawls pulled by hand that are not considered to pose a risk to protected species due to their small size and very short tow durations. Therefore, these smaller, hand pulled trawls are not subject to the mitigation measures provided here.

The following mitigation measures apply for trawl surveys:

- Limit tow times to 30 minutes (except for sea turtle research trawls);
- open codend close to deck/sorting table during haul back to avoid damage to animals that may be caught in gear

and empty gear as quickly as possible after retrieval haul back;

- delay gear deployment if marine mammals are believed to be at-risk of interaction;
- retrieve gear immediately if marine mammals is believed to be entangled or at-risk of entanglement;
- implement marine mammal mitigation measures included in the NMFS ESA Scientific Research permit under which a survey may be operating;
- dedicated marine mammal observations shall occur at least 15 minutes to beginning of net deployment; this watch may include approach to the sampling station;
- at least one scientist will monitor for marine mammals while the trawl is deployed and upon haul-back;
- minimize ''pocketing'' in areas of the net where dolphin depredation evidence is commonly observed;
- continue investigation into gear modifications (*e.g.,* stiffening lazy lines) and the effectiveness of gear modification; and
- reduce vessel speed and/or implement appropriate course alteration.

In 2008, standard tow durations for fishery bottom trawl surveys were reduced from 55 minutes to 30 minutes or less at target depth (excluding deployment and retrieval time). These short tow durations decrease the opportunity for curious marine mammals to find the vessel and investigate. Tow times are less than the 55 minute tow time restriction required for commercial shrimp trawlers not using turtle excluder devices (TEDs) (50 CFR 223.206). The resulting tow distances are typically one to two nm or less, depending on the survey and trawl speed. Short tow times reduce the likelihood of entangling protected species.

The move-on rule will be applied to all oceanic deep water trawls if sightings occur anywhere around vessel (within 2 nm) during a 30 minute pre-gear deployment monitoring timeframe. Vessels will move away if animals appear at risk or trawling will be delayed until marine mammals have not been sighted for 30 minutes or otherwise determined to no longer be at risk. If animals are still at risk after moving or 30 minutes have lapsed, the vessel will move again or the station will be skipped.

Bottom trawl surveys conducted for purposes of researching gears designed to reduce sea turtle interaction (*e.g.,* turtle exclusion device (TED) testing) and develop finfish bycatch mitigation measures for commercial trawl fisheries may have tow times of up to 4 hours. These exceptions to the short tow duration protocols are necessary to meet research objectives. TEDs are used in nets that are towed in excess of 55 minutes as required by 50 CFR 223.206. When research objectives prevent the installation of TEDs, tow time limits will match those set by commercial fishing regulations such as the skimmer trawl fishery which has a 55 minute tow time limit. This research is covered under the authority of the ESA and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226). The SEFSC began using skimmer trawls in their TED testing in 2012. Mitigation measures in Scientific Research permit 20339, issued May 23, 2017, include:

- Trawling must not be initiated when marine mammals (except dolphins or porpoises) are observed within the vicinity of the research, and the marine mammals must be allowed to either leave or pass through the area safely before trawling is initiated;
- Researchers must make every effort to prevent interactions with marine mammals, and researchers must be aware of the presence and location of these animals at all times as they conduct trawling activities;
- During skimmer trawl surveys, a minimum of two staff, one on each side (port/starboard) of the vessel, must inspect the gear every 5 minutes to monitor for the presence of marine mammals;
- Prior to retrieving the skimmer trawl tail bags, the vessel must be slowed from the active towing speed to 0.5–1.0 kn;
- If a marine mammal enters the net, becomes entangled or dies, researchers must (a) Stop trawling activities and immediately free the animal, (b) notify the appropriate NMFS Regional Stranding Coordinator as soon as possible and (c) report the incident (permitted activities will be suspended until the Permits Division has granted approval to continue research); and
- Video monitoring of the TED must be used when trawling around Duck, North Carolina, to reduce take of Atlantic sturgeon (although this requirement is not geared toward marine mammals, the camera feed can be used to observe marine mammals to inform decisions regarding implementing mitigation).

The SEFSC also holds an ESA-research permit to assess sea turtle abundance, stock identification, life history, and impacts of human activities; determine sea turtle movements, fine-scale habitat characteristics and selection, and delineation of foraging and nursery areas; and examine how sea turtle distributions correlate with temporal trends and environmental data (Scientific Research Permit 16733–04). That research permit includes a number of marine mammal conditions that must be followed and are incorporated into this rule by reference:

- Trawl tow times must not exceed 30 minutes (bottom time) except in cases when the net is continuously monitored with a real-time video camera or multi-beam sonar system;
- Haul back must begin once a sea turtle or marine mammal enters the net regardless of time limits;
- Seine net pulls must not exceed 45 minutes as part of a 2-hour deployment;
- Nets must not be put in the water and trawls must not be initiated when marine mammals are observed within the vicinity of the research;
- Marine mammals must be allowed to either leave or pass through the area safely before net setting or trawling is initiated;
- Researchers must make every effort to prevent interactions with marine mammals;
- Researchers must be aware of the presence and location of these animals at all times as they conduct activities;
- During skimmer trawl surveys, a minimum of two staff, one on each side (port/starboard) of the vessel, must inspect the gear every five minutes to monitor for the presence of marine mammals;
- Prior to retrieving the skimmer trawl tail bags, the vessel must be slowed from the active towing speed to 0.5–1.0 kn;
- Should marine mammals enter the research area after the seine or tangle nets have been set, the lead line must be raised and dropped in an attempt to make marine mammals in the vicinity aware of the net;
- If marine mammals remain within the vicinity of the research area, tangle or seine nets must be removed; and
- If a marine mammal enters the trawl net, becomes entangled or captured, researchers must stop activities and immediately free the animal, notify the NMFS Southeast Regional Stranding Coordinator as soon as possible, report the incident within 2 weeks and, in addition to the written report, the Permit Holder must contact the Permits Division.

Other mitigation measures are included in research permit 16733–04 that are designed for sea turtles but also have benefits to minimizing entanglement of marine mammals. These include:

• Highly visible buoys must be attached to the float line of each net and be spaced at intervals of 10 mor less. Nets must be checked at intervals of less than 30 minutes, and more frequently whenever turtles or other organisms are observed in the net. If water temperatures are ≤ 10oC or ≥ 30oC, nets must be checked at less than 20-minute intervals (''net checking'' is defined as a complete and thorough visual check of the net either by snorkeling the net in clear water or by pulling up on the top line such that the full depth of the net is viewed along the entire length). The float line of all nets must be observed at all times for movements that indicate an animal has encountered the net (when this occurs the net must be immediately checked). During diver-assisted gear evaluations (SEFSC Small Turtle TED Testing and Gear Evaluations), dive teams are deployed on the trawls while they are being towed. During this research, divers actively monitor the gear for protected species interactions and use emergency signal floats to notify the vessel if an interaction occurs. When the signal float is deployed, the vessel terminates the tow and slows the gear down to a minimal forward speed of less than 0.5 knots which allows divers to assist the protected species to escape.

Live feed video or sonar monitoring of the trawl may be used in lieu of tow time limits. This mitigation measure is also used in addition to TEDs during some projects. Video or sonar feeds are monitored for the duration of the tow. If a TED is not installed in the trawl and a protected species is observed in the trawl then the tow is immediately terminated. If a TED is installed and a marine mammal is observed to have difficulty escaping through the TED opening, or the individual is lost from the video or sonar feed then the tow is immediately terminated. For all trawl types, the lazy line is a source of entanglement. In particular, dolphins like to rub the line. Loose lines are prone to create a half-hitch around their tail. Therefore, to mitigate this type of interaction, the SEFSC Harvesting Systems Unit (HSU) has conducted limited research examining the potential use of lazy lines constructed of alternative materials designed to reduce marine mammal entanglement with respect to material, thickness, and stiffness. Polyester rope, also known as Dacron, may be a suitable alternative to traditionally used polypropylene. Polyester rope is UV and abrasion resistant and has less elasticity than nylon but does not lose strength when wet. Polyester, like polypropylene, does not absorb water but has a higher specific gravity (1.38), which causes it to sink. Polyester can be constructed using a process that results in a medium or hard lay rope that is stiff, avoids hockling (a twist in the line which gets caught in a block), and is self-coiling when loaded or unloaded off a capstan or gear hauler. The high specific gravity of this type of rope may pose a snagging or hang-up hazard when used as a lazy line in trawl operations. However, the smooth feel of the rope compared to polypropylene may reduce the attractiveness of the line to the rubbing behavior of bottlenose dolphin.

In 2007, the HSU conducted preliminary NOAA diver assisted trials with High Density Polyethylene (HDPE) rope as a replacement for traditional polypropylene. Compared to polypropylene, HDPE rope has similar properties including negligible water absorption, UV resistance, and low specific gravity, which allows it to float. However, HDPE rope may be constructed with a harder lay than traditional polypropylene rope. Divers found that half-hitching the line was more difficult than traditional polypropylene line. However, operational trials were not conducted to examine performance and usability aboard the vessel during extended fishing operations.

Another alternative may be replacement of the lazy line with ⅜ in. stainless steel cable or replacement of the aft portion of the lazy line with ⅜ in. stainless steel cable. Replacement of the entire lazy line with cable would require block replacement and the use of dedicated winches for hauling the gear. Replacing the aft portion of the lazy line, where bottlenose dolphins typically interact with the line, would not require any changes as long as the rope to cable connection is able to smoothly pass through existing blocks. However, each of these changes would result in sinking and potential snagging or hang-up hazards. These modifications are also not without consequences. Lazy line modifications may require vessel equipment changes (*e.g.,* blocks on research vessels) or may change the effectiveness of the catch, precluding the comparison of new data with long-term data sets. In 2017, the HSU conducted a follow-up study, funded by NMFS Office of Science and Technology, to further investigate gear modification and the potential effectiveness at reducing dolphin entanglement.

The following summarizes HSU's 2017 research efforts on shrimp trawl gear modification which was carried out to inform the development of this rule (the full report can be found at *https://www.fisheries.noaa.gov/node/23111*). Gearhart and Hathaway (2018) provide the following summary of research methods and findings: From June 9–22, 2017, HSU conducted gear evaluations in Panama City, Florida, with various lazy lines and configurations. In addition to traditional polypropylene, three types of 3 strand rope were examined; Samson Ultra-Blue Medium Hard Lay (MHL); Samson SSR 100 MHL; and Samson XLR. Vertical and horizontal profiles of each rope type were measured with and without a ''sugar line'' attached in a twin-rigged trawl configuration. In addition, dolphin interactions were simulated by NMFS divers with an aluminum dolphin fluke model. Results indicate that the vertical profiles were reduced and horizontal profiles increased for all rope types when a 25 ft (7.6 m) ''sugar line'' was added. Due to differences in elasticity when compared to polypropylene, the alternative rope types experienced greater tension with vertical profiles flattening, while the polypropylene rope maintained vertical relief. Results of simulated dolphin interactions were inconclusive with divers able to introduce half-hitch loops around the model fluke with both polypropylene and the stiffest alternative rope, Samson SSR 100 MHL. However, divers commented that it was more difficult to introduce the loop in the stiffer Samson SSR 100 MHL than the polypropylene line and more difficult to introduce the loop along the outer portion of the lazy line with the sugar line attached, due to the increased tension on the line. Use of an alternative stiffer line with low stretch in combination with a short sugar line may reduce the potential for bottlenose dolphin takes on lazy lines. However, additional usability research is needed with these alternative rope types to see how they perform under commercial conditions. Finally, more directed dolphin/lazy line interaction behavior research is needed to better understand the modes of interaction and provide conservation engineers with the knowledge required to better formulate potential solutions.

Given the report's results and recommendations, NMFS is not requiring the SEFSC implement lazy line modifications at this time. However, as an adaptive management strategy, NMFS will be periodically assessing lazy line modification as a potential mitigation measure in this and future regulations. NMFS will continue to work with the SEFSC to determine if gear modifications such as stiffer lazy

lines are both warranted and practicable to implement. Should the SEFSC volunteer to modify trawl lazy lines, NMFS will work with the researchers to identify any potential benefits and costs of doing so.

In addition to interactions with the lazy line, the SEFSC has identified that holes in trawl nets resulting from dolphin depredation are most numerous around net ''pockets'' where fish congregate. Reinforcing these more vulnerable sections of the net could help reduce entanglement. Similar to lazy line modification investigations, this potential mitigation measure will be further examined to determine its effectiveness and practicability. The regulations provide that ''pocketing'' of the net should be minimized.

Finally, marine mammal monitoring will occur during all trawls. Bottlenose dolphins are consistently interacting with research trawls in the estuary and nearshore waters and are seemingly attracted to the vessel, with most dolphins converging around the net during haul-back (SCDNR Working Group, pers. comm., February 2, 2016). This makes it difficult to ''lose'' dolphins, even while moving stations. Due to the known persistent behavior of dolphins around trawls in the estuary and nearshore waters, the move-on rule will not be required for such surveys. However, the CS and/or vessel captain will be required to take immediate action to reduce dolphin interaction should animals appear to be at risk or are entangled in the net. For skimmer trawl research, both the lazy line and net can be monitored from the vessel. However, this is not possible for bottom trawls. Therefore, for bottom trawls, researchers should use best professional judgement to determine if gear deployment should be delayed or hauled. For example, the SCDNR has noted one instance upon which dolphins appeared distressed, evident by the entire group converging on the net during haul-back. They quickly discovered a dolphin was entangled in the net. This, and similar types of overt distress behaviors, should be used by researchers monitoring the net to identify potential entanglement, requiring the net be hauled-in immediately and quickly.

Pelagic trawls conducted in deep water (500–800 m deep) are typically mid-water trawls and occur in oceanic waters where marine mammal species diversity is greater when compared to the coast or estuaries. Oceanic species often travel in very large groups and are less likely to have prior encounters and experience with trawl gear than inshore bottlenose dolphins. For these trawls, a dedicated marine mammal observer would observe around the vessel for no less than 30 minutes prior to gear deployment. If a marine mammal is observed within 2 nm of the vessel, gear deployment would be delayed until that animal is deemed to not be at risk of entanglement (*e.g.,* the animal is moving on a path away from the vessel) or the vessel would move to a location absent of marine mammals and deploy gear. If trawling operations have been delayed because of the presence of protected species, the vessel resumes trawl operations (when practicable) only when these species have not been sighted within 30 minutes or are determined to no longer be at risk (*e.g.,* moving away from deployment site). If the vessel moves, the required 30-minute monitoring period begins again. In extreme circumstances, the survey station may need to be cancelled if animals (*e.g.,* delphinids) follow the vessel. In addition to implementing the ''move-on'' rule, all trawling would be conducted first to reduce the opportunity to attract marine mammals to the vessel. However, the order of gear deployment is at the discretion of the FPC or SWL based on environmental conditions. Other activities, such as water sampling or plankton tows, are conducted in conjunction with, or upon completion of, trawl activities.

Once the trawl net is in the water, the officer on watch, FPC or SWL, and/or crew standing watch continue to monitor the waters around the vessel and maintain a lookout for protected species as far away as environmental conditions allow. If protected species are sighted before the gear is fully retrieved, the most appropriate response to avoid incidental take is determined by the professional judgment of the FPC or SWL, in consultation with the officer on watch. These judgments take into consideration the species, numbers, and behavior of the animals, the status of the trawl net operation (net opening, depth, and distance from the stern), the time it would take to retrieve the net, and safety considerations for changing speed or course. Most marine mammals have been caught during haul-back operations, especially when the trawl doors have been retrieved and the net is near the surface and no longer under tension. In some situations, risk of adverse interactions may be diminished by continuing to trawl with the net at depth until the protected species have left the area before beginning haul-back operations. In other situations, swift retrieval of the net may be the best course of action. The appropriate course of action to minimize the risk of incidental take of protected species is determined by the professional judgment of the FPC or SWL based on all situation variables, even if the choices compromise the value of the data collected at the station. Care is taken when emptying the trawl, including opening the codend as close as possible to the deck of the checker (or sorting table) in order to avoid damage to protected species that may be caught in the gear but are not visible upon retrieval. The gear is emptied as quickly as possible after retrieval in order to determine whether or not protected species are present.

Seine Nets

The SEFSC will implement the following mitigation measures when fishing with seine nets (*e.g.,* gillnets, trammel nets):

- Conduct gillnet and trammel net research activities during daylight hours only;
- Limit soak times to the least amount of time required to conduct sampling;
- Conduct dedicated marine mammal observation monitoring beginning 15 minutes prior to deploying the gear and continue through deployment and haulback;
- Hand-check the net every 30 minutes if soak times are longer than 30 minutes or immediately if disturbance is observed;
- Pull gear immediately if disturbance in the nets is observed;
- Reduce net slack and excess floating and trailing lines;
- Repair damaged nets prior to deploying; and
- Delay or pull all gear immediately and implement the move-on rule if marine mammal is at-risk of entanglement.

The dedicated observation will be made by scanning the water and marsh edge (if visible when working in estuarine waters) 360 degrees around the vessel where the net would be set. If a marine mammal is sighted during this observation period, nets would not be deployed until the animal has left the area, is on a path away from where the net would be set, or has not been re-sighted within 15 minutes. Alternatively, the research team may move the vessel to an area clear of marine mammals. If the vessel moves, the 15 minute observation period is repeated. Monitoring by all available crew would continue while the net is being deployed, during the soak, and during haulback.

If marine mammals are sighted in the peripheral sampling area during active netting, the SEFSC will raise and lower the net leadline. If marine mammals do

not immediately depart the area and the animal appears to be at-risk of entanglement (*e.g,* interacting with or on a path towards the net), the SEFSC will delay or pull all gear immediately and, if required, implement the move-on rule if marine mammal is at-risk of entanglement.

If protected species are not sighted during the 15 minute observation period, the gear may be set. Waters surrounding the net and the net itself would be continuously monitored during the soak. If protected species are sighted during the soak and appear to be at risk of interaction with the gear, then the gear is pulled immediately. If fishing operations are halted, operations resume when animal(s) have not been sighted within 15 minutes or are determined to no longer be at risk, as determined by the judgment of the FPC or SWL. In other instances, the station is moved or cancelled. If any disturbance in the gear is observed in the gear, it is immediately checked or pulled.

Hook and Line Gear Mitigation

In addition to the general mitigation measures listed above, the SEFSC will implement the following mitigation measures:

- Monitor area for marine mammals and, if present, delay setting gear until the animal is deemed not at risk.
- Immediately reel in lines if marine mammals are deemed to be at risk of interacting with gear.
- Follow existing Dolphin Friendly Fishing Tips: *http://sero.nmfs.noaa.gov/protected_resources/outreach_and_education/documents/dolphin_friendly_fishing_tips.pdf.*
- Not discard leftover bait overboard while actively fishing.
- Inspect tackles daily to avoid unwanted line breaks.

When fishing with bottom or pelagic longlines, the SEFSC will: (1) Limit longline length and soak times to the minimum amount possible; (2) deploy longline gear first (after required monitoring) prior to conducting environmental sampling; (3) if any marine mammals are observed, delay deploying gear unless animal is not at risk of hooking; (4) pull gear immediately and implement the move-on rule if any marine mammal is hooked or is at risk of being hooked; (5) deploy longline gear prior to environmental sampling; and (6) avoid chumming (*i.e.,* baiting water). More detail on these measures are described below.

Prior to arrival on station (but within 0.5 nautical mile), the officer, crew members, and scientific party on watch visually scan for protected species for 30 minutes prior to station arrival for pelagic longline surveys and 15 minutes prior for other surveys. Binoculars will be used as necessary to survey the area while approaching and upon arrival at the station, while the gear is deployed, and during haulback. Additional monitoring is conducted 15 minutes prior to setting longline gear by members of the scientific crew that monitor from the back deck while baiting hooks. If protected species are sighted prior to setting the gear or at any time the gear is in the water, the bridge crew and SWL are alerted immediately. Environmental conditions (*e.g.,* lighting, sea state, precipitation, fog, etc.) often limit the distance for effective visual monitoring of protected species. If marine mammals are sighted during any monitoring period, the ''move-on'' rule, as described in the trawling mitigation section above would be implemented. If longline operations have been delayed because of the presence of protected species, the vessel resumes longline operations only when these species have not been sighted within 15 minutes or otherwise determined to no longer be at risk. The risk decision is at the discretion of the FPC or SWL and is dependent on the situation. After the required monitoring period, longline gear is always the first equipment or fishing gear to be deployed when the vessel arrives on station.

If marine mammals are detected during setting operations or while the gear is in the water and are considered to be at risk (*e.g.,* moving towards deployment site, displaying behaviors of potentially interacting with gear, etc.), the FPC or SWL in conjunction with the officer on watch may halt the setting operation or call for retrieval of gear already set. The species, number, and behavior of the protected species are considered along with the status of the ship and gear, weather and sea conditions, and crew safety factors when making decisions regarding gear deployment delay or retrieval.

There are also a number of standard measures designed to reduce hooking potential and minimize injury. In all pelagic longline sets, gangions are 110 percent as long as the drop line depth. Therefore, this gear configuration allows a potentially hooked marine mammal to reach the surface. SEFSC longline protocols specifically prohibit chumming, thereby reducing any attraction. Further, no stainless steel hooks are used, so that in the event a hook can not be retrieved from an animal, it will corrode. Per PLTRP, the SEFSC pelagic longline survey uses the Pelagic Longline Marine Mammal Handling and Release Guidelines for any pelagic longline sets made within the Atlantic EEZ. These procedures would also be implemented in the GOMRA and CRA.

Other gears—The SEFSC deploys a wide variety of gear to sample the marine environment during all of their research cruises. Many of these types of gear (*e.g.,* chevron fish trap, eel traps, dip nets, video cameras and ROV deployments) are not considered to pose any risk to marine mammals due to their size, deployment methods, or location, and therefore are not subject to mitigation. However, at all times when the SEFSC is conducting survey operations at sea, the OOD and/or CS and crew will monitor for any unusual circumstances that may arise at a sampling site and use best professional judgment to avoid any potential risks to marine mammals during all vessel operation and use of research equipment.

Electrofishing—Electrofishing occurs on small vessels and operates with a 3,000 watt pulsed direct current for 15 minutes. The electric field is less than 20 feet (6 m) around the electrofishing vessel. Before the electrofishing vessel begins operating, a dedicated marine mammal observer would scan the surrounding waters for at least 15 minutes prior to fishing. If a marine mammal is observed within 50 m of the vessel or on a path toward the vessel, electrofishing would be delayed. Fishing would not begin until the animal is outside of the 50 m safety zone or on a consistent path away from the vessel. Alternatively, if animals do not leave the area, the vessel could move to another sampling station. If the vessel moves, the 15 minutes observation period is repeated. During electrofishing, the research crew would also monitor for marine mammals. If animals are observed within or on a path toward the 50 m safety zone, electrofishing would be terminated and not resume until the animal is clear of and on a path away from the 50 m safety zone. All samples collected during electrofishing are to remain on the vessel and not discarded until all electrofishing is completed to avoid attracting protected species.

Vessel speed—Vessel speed during active sampling is less than 5 kn (average 2–3 kn). Transit speeds to and from sampling sites vary from 6–14 kn but average 10 kn. These low vessel speeds minimize the potential for ship strike (see Potential Effects of Specified Activities on Marine Mammals and Their Habitat for an in-depth discussion of ship strikes). At any time during a survey or in transit, if a crew member standing watch or dedicated marine mammal observer sights marine

mammals that may intersect with the vessel course, that individual will immediately communicate the presence of marine mammals to the bridge for appropriate course alteration or speed reduction, if possible, to avoid incidental collisions.

While transiting in areas subject to the North Atlantic ship strike rule, all SEFSC- affiliated research vessels (NOAA vessels, NOAA chartered vessels, and research partner vessels) will abide by the required speed restrictions and sighting alert protocols. The ship strike rule for the southeast U.S. seasonal management area (SMA) requires that, from November 15 through April 15, all vessels 65 feet (20 m) or longer must slow to 10 kn or less in the right whale calving and nursery grounds which are bounded to the north by latitude 31°27′ N, to the south by 29°45′ N, and to the east by 80°51′36″ W. Mid-Atlantic SMAs include several port or bay entrances from northern Georgia to Rhode Island between November 1 and April 30. In addition, dynamic management areas (DMAs) are temporary areas created around right whale sightings, the size of which depends on the number of whales sighted. Voluntary speed reductions may apply when no SMA is in effect. All NOAA research vessels operating in North Atlantic right whale habitat participate in the Right Whale Early Warning System.

SEFSC research vessel captains and crew watch for marine mammals while underway during daylight hours and take necessary actions to avoid them. There are currently no Marine Mammal Observers (MMOs) aboard the vessels dedicated to watching for marine mammals to minimize the risk of collisions, although the large NOAA vessels (*e.g.,* NOAA Ship *Pisces*) operated by the NOAA Office of Marine and Aviation Operations (OMAO) include one bridge crew dedicated to watching for obstacles at all times, including marine mammals. At any time during a survey or in transit, any bridge personnel that sights marine mammals that may intersect with the vessel course immediately communicates their presence to the helm for appropriate course alteration or speed reduction as soon as possible to avoid incidental collisions, particularly with large whales (*e.g.,* North Atlantic right whales).

The Right Whale Early Warning System is a multi-agency effort that includes the SEFSC, the Florida Fish and Wildlife Conservation Commission (FWCC), U.S. Coast Guard, U.S. Navy, and volunteer observers. Sightings of the critically endangered North Atlantic right whale are reported from aerial surveys, shipboard surveys, whale watch vessels, and opportunistic sources (U.S. Coast Guard, commercial ships, fishing vessels, and the general public). Whale sightings are reported in real time to the Right Whale Early Warning System network and information is disseminated to mariners within a half hour of a sighting. The program was designed to reduce collisions between ships and North Atlantic right whales by alerting mariners to the presence of the whales in near real time. Under the rule, all NOAA-affiliated vessels operating in North Atlantic right whale habitat will be required to participate in the Right Whale Early Warning System.

Acoustic and Visual Deterrent Devices—Acoustic and visual deterrents include, but are not limited; to pingers, recordings of predator vocalizations, light sticks, and reflective twine/rope. Pingers are underwater sound-emitting devices attached to gear that have been shown to decrease the probability of interactions with certain species of marine mammals. Pingers have been shown to be effective in deterring some marine mammals, particularly harbor porpoises, from interacting with gillnet gear (Nowacek *et al.* 2007, Carretta and Barlow 2011). Multiple studies have reported large decreases in harbor porpoise mortality (approximately 80 to 90 percent) in bottom-set gillnets (nets composed of vertical panes of netting, typically set in a straight line and either anchored to the bottom or drifting) during controlled experiments (*e.g.,* Kraus *et al.,* 1997; Trippel *et al.,* 1999; Gearin *et al.,* 2000). Using commercial fisheries data rather than a controlled experiment, Palka *et al.* (2008) reported that harbor porpoise bycatch rates in the northeast U.S gillnet fishery when fishing without pingers was about two to three times higher compared to when pingers were used. After conducting a controlled experiment in a California drift gillnet fishery during 1996–97, Barlow and Cameron (2003) reported significantly lower bycatch rates when pingers were used for all cetacean species combined, all pinniped species combined, and specifically for short-beaked common dolphins (85 percent reduction) and California sea lions (69 percent reduction). While not a statistically significant result, catches of Pacific white-sided dolphins (which are historically one of the most frequently captured species in SEFSC surveys; see Table 4) were reduced by 70 percent. Carretta *et al.* (2008) subsequently examined 9 years of observer data from the same drift gillnet fishery and found that pinger use had eliminated beaked whale bycatch. Carretta and Barlow (2011) assessed the long-term effectiveness of pingers in reducing marine mammal bycatch in the California drift gillnet fishery by evaluating fishery data from 1990–2009 (with pingers in use beginning in 1996), finding that bycatch rates of cetaceans were reduced nearly fifty percent in sets using a sufficient number of pingers. However, in a behavioral response study investigating bottlenose dolphin behavior around gillnets outfitted with acoustic alarms in North Carolina, there was no significant difference in number of dolphins or closest approach between nets with alarms and nets without alarms (Cox *et al.,* 2003). Studies of acoustic deterrents in a trawl fishery in Australia concluded that pingers are not likely to be effective in deterring bottlenose dolphins, as they are already aware of the gear due to the noisy nature of the fishery (Stephenson and Wells 2008, Allen *et al.* 2014). Acoustic deterrents were also ineffective in reducing bycatch of common dolphins in the U.K. bass pair trawl fishery (Mackay and Northridge 2006).

The use and effectiveness of acoustic deterrent devices in fisheries in which bottlenose dolphins have the potential to interact has been approached with caution. Two primary concerns expressed with regard to pinger effectiveness in reducing marine mammal bycatch relate to habituation (*i.e.,* marine mammals may become habituated to the sounds made by the pingers, resulting in increasing bycatch rates over time; Dawson, 1994; Cox *et al.,* 2001; Carlström *et al.,* 2009) and the ''dinner bell effect'' (Dawson, 1994; Richardson *et al.,* 1995), which implies that certain predatory marine mammal species may come to associate pingers with a food source (*e.g.,* fish caught in nets), with the result that bycatch rates may be higher in nets with pingers than in those without.

The BDTRP, after years of directed investigation, found that pingers are not effective at deterring bottlenose dolphins from depredating on fish captured by trawls and gillnets. During research driven by the BDTRT efforts to better understand the effectiveness of pingers on bottlenose dolphins, one became entangled and drowned in a net outfitted with a pinger. Dolphins can become attracted to the sound of the pinger because they learn it signals the presence of fish (*i.e.,* the ''dinner bell effect''), raising concerns about potential increased entanglement risks (Cox *et al.,* 2003; Read *et al.,* 2004 and 2006; and Read and Waples 2010). Due to the lack of evidence that pingers are effective at

deterring bottlenose dolphins coupled with the potential dinner-bell effect, the BDTRP does not recommend them for use in SEFSC for bottlenose dolphins.

The effectiveness of acoustic and visual deterrents for species encountered in the ARA, GOMRA, and CRA is uncertain. Therefore, the SEFSC will not be required to outfit gear with deterrent devices but is encouraged to undertake investigations on the efficacy of these measures where unknown (*i.e.,* not for surveys in which bottlenose dolphins are primary bycatch) in order to minimize the potential for takes.

Disentanglement Handling Procedures—The SEFSC will implement a number of handling protocols to minimize the potential harm to marine mammals that are incidentally taken during the course of fisheries research activities. In general, protocols have already been prepared for use on commercial fishing vessels. Although commercial fisheries are known to take a larger number of marine mammals than fisheries research, the nature of entanglements are similar. Therefore, the SEFSC would adopt commercial fishery disentanglement protocols, which are expected to increase post-release survival. Handling or disentangling marine mammals carries inherent safety risks, and using best professional judgment and ensuring human safety is paramount.

Captured live or injured marine mammals are released from research gear and returned to the water as soon as possible with no gear or as little gear remaining on the animal as possible. Animals are released without removing them from the water if possible, and data collection is conducted in such a manner as not to delay the release of the animal(s) or endanger the crew. SEFSC is responsible for training SEFSC and partner researchers on how to identify different species; handle and bring marine mammals aboard a vessel; assess the level of consciousness; remove fishing gear; and return marine mammals to water. Human safety is always the paramount concern.

At least two persons aboard SEFSC ships and one person aboard smaller vessels, including vessels operated by partners where no SEFSC staff are present, will be trained in marine mammal handling, release, and disentanglement procedures. If a marine mammal is entangled or hooked in fishery research gear and discovered alive, the SEFSC or affiliate will follow safe handling procedures. To facilitate this training, SEFSC would be required to ensure relevant researchers attend the NMFS Highly Migratory Species/Protected Species Safe Handling, Release, and Identification Workshop *www.nmfs.noaa.gov/sfa/hms/compliance/workshops/protected_species_workshop/index.html* or other similar training. The SEFSC shall provide SEFSC scientists and partner institutions with the Protected Species Safe Handling and Release Manual (see Appendix D is SEFSC's application) and advise researchers to follow this manual, in addition to lessons learned during training, should a marine mammal become entangled during a survey. For those scientists conducting longline surveys, the SEFSC shall provide training on the Pelagic Longline Take Reduction Team Marine Mammal Handling and Release Guidelines.

Based on our evaluation of the SEFSC's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the mitigation measures provide the means of 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 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.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) require that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

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 action area (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

The SEFSC plans to make more systematic its training, operations, data collection, animal handling and sampling protocols, etc. in order to improve its ability to understand how mitigation measures influence interaction rates and ensure its research operations are conducted in an informed manner and consistent with lessons learned from those with experience operating these gears in close proximity to marine mammals. We propose the monitoring requirements described below.

Marine mammal watches are a standard part of conducting fisheries research activities and are implemented as described previously in the Mitigation section. Dedicated marine mammal observations occur as described (1) for some period prior to deployment of most research gear; (2) throughout deployment and active fishing of all research gears; (3) for some period prior to retrieval of gear; and (4) throughout retrieval of research gear. Observers should record the species and estimated number of animals present and their behaviors, which may be valuable information towards an understanding of whether certain species may be attracted to vessels or certain survey gears. Separately, on white boats, marine mammal watches are conducted by watch-standers (those navigating the vessel and other crew; these will typically not be SEFSC personnel) at all times when the vessel is being operated. The primary focus for this type of watch is to avoid striking marine mammals and to generally avoid navigational hazards. These watch-standers typically have other duties associated with navigation and other vessel operations and are not required to record or report data to the scientific party on marine mammal sightings, except when gear is being deployed or retrieved.

Training

The SEFSC anticipates that additional information on practices to avoid marine mammal interactions can be gleaned from training sessions and more systematic data collection standards. The SEFSC will conduct annual trainings for all CS and other personnel who may be responsible for conducting dedicated marine mammal visual observations to explain mitigation measures and monitoring and reporting requirements, mitigation and monitoring protocols, marine mammal identification, recording of count and disturbance observations (relevant to AMLR surveys), completion of datasheets, and use of equipment. Some of these topics may be familiar to SEFSC staff, who may be professional biologists. The SEFSC shall determine the agenda for these trainings and ensure that all relevant staff have necessary familiarity with these topics. The first such training will include three primary elements:

First, the course will provide an overview of the purpose and need for the authorization, including mandatory mitigation measures by gear and the purpose for each, and species that the SEFSC is authorized to incidentally take. Second, the training will provide detailed descriptions of reporting, data collection, and sampling protocols. This portion of the training will include instruction on how to complete new data collection forms such as the marine mammal watch log, the incidental take form (*e.g.,* specific gear configuration and details relevant to an interaction with protected species), and forms used for species identification and biological sampling. The biological data collection and sampling training module will include the same sampling and necropsy training that is used for the Southeast Regional Observer training.

The SEFSC will also dedicate a portion of training to discussion of best professional judgment (which is recognized as an integral component of mitigation implementation; see Mitigation), including use in any incidents of marine mammal interaction and instructive examples where use of best professional judgment was determined to be successful or unsuccessful. We recognize that many factors come into play regarding decision-making at sea and that it is not practicable to simplify what are inherently variable and complex situational decisions into rules that may be defined on paper. However, it is our intent that use of best professional judgment be an iterative process from year to year, in which any at-sea decision-maker (*i.e.,* responsible for decisions regarding the avoidance of marine mammal interactions with survey gear through the application of best professional judgment) learns from the prior experience of all relevant SEFSC personnel (rather than from solely their own experience). The outcome should be increased transparency in decision-making processes where best professional judgment is appropriate and, to the extent possible, some degree of standardization across common situations, with an ultimate goal of reducing marine mammal interactions. It is the responsibility of the SEFSC to facilitate such exchange.

Handling Procedures and Data Collection

Improved standardization of handling procedures was discussed previously in the Mitigation section. SEFSC believes that implementing these protocols will benefit animals through increased post-release survival. In addition, SEFSC believes that adopting these protocols for data collection will also increase the information on which ''serious injury'' determinations (NMFS, 2012a, b) are based and improve scientific knowledge about marine mammals that interact with fisheries research gears and the factors that contribute to these interactions. SEFSC personnel will be provided standard guidance and training regarding handling of marine mammals, including how to identify different species, bring an individual aboard a vessel, assess the level of consciousness, remove fishing gear, return an individual to water and log activities pertaining to the interaction.

The SEFSC will record interaction information on either existing data forms created by other NMFS programs or will develop their own standardized forms. To aid in serious injury determinations and comply with the current NMFS Serious Injury Guidelines, researchers will also answer a series of supplemental questions on the details of marine mammal interactions.

Finally, for any marine mammals that are killed during fisheries research activities, when practicable, scientists will collect data and samples pursuant to Appendix D of the SEFSC DEA, ''Protected Species Handling Procedures for SEFSC Fisheries Research Vessels.''

SEFSC Reporting

As is normally the case, SEFSC will coordinate with the relevant stranding coordinators for any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that are encountered during field research activities. The SEFSC will follow a phased approach with regard to the cessation of its activities and/or reporting of such events, as described in the regulatory text following this preamble. In addition, CS (or cruise leader) will provide reports to SEFSC leadership and to the OPR. As a result, when marine mammals interact with survey gear, whether killed or released alive, a report provided by the CS will fully describe any observations of the animals, the context (vessel and conditions), decisions made and rationale for decisions made in vessel and gear handling. The circumstances of these events are critical in enabling the SEFSC and OPR to better evaluate the conditions under which takes are most likely occur. We believe in the long term this will allow the avoidance of these types of events in the future.

The SEFSC will submit annual summary reports to OPR including:

(1) Annual line-kilometers surveyed during which the EK60, ME70, SX90 (or equivalent sources) were predominant (see ''Estimated Take'' for further discussion), specific to each region;

(2) Summary information regarding use of all trawl, net, and hook and line gear, including number of sets, tows, hook hours, etc., specific to each research area and gear;

(3) Accounts of all incidents of marine mammal interactions, including circumstances of the event and descriptions of any mitigation procedures implemented or not implemented and why;

(4) Summary information related to any disturbance of marine mammals and distance of closest approach;

(5) A written description of any mitigation research investigation efforts and findings (*e.g.,* lazy line modifications);

(6) A written evaluation of the effectiveness of SEFSC mitigation strategies in reducing the number of marine mammal interactions with survey gear, including best professional judgment and suggestions for changes to the mitigation strategies, if any;

(7) Details on marine mammal-related training taken by SEFSC and partner scientists; and

(8) A summary of meeting(s) and workshop(s) outcomes with any partner working group, including, the South Carolina Department of Natural Resources, designed to reduce the number of marine mammal interactions.

The period of reporting will be annually, beginning one year post-issuance of any LOA, and the report must be submitted not less than ninety days following the end of a given year.

Submission of this information is in service of an adaptive management framework allowing NMFS to make appropriate modifications to mitigation and/or monitoring strategies, as necessary, during the 5-year period of validity for these regulations and LOA.

Should an incidental take occur, the SEFSC, or affiliated partner involved in the taking, shall follow the NMFS Final Take Reporting and Response Procedures, dated January 15, 2016. NMFS has established a formal incidental take reporting system, the PSIT database, requiring that incidental takes of protected species be reported within 48 hours of the occurrence. The PSIT generates automated messages to NMFS leadership and other relevant staff, alerting them to the event and to the fact that updated information describing the circumstances of the event has been inputted to the database. The PSIT and CS reports represent not only valuable real-time reporting and information dissemination tools but also serve as an archive of information that may be mined in the future to study why takes occur by species, gear, region, etc.

The SEFSC will also collect and report all necessary data, to the extent practicable given the primacy of human safety and the well-being of captured or entangled marine mammals, to facilitate serious injury (SI) determinations for marine mammals that are released alive. The SEFSC will require that the CS complete data forms and address supplemental questions, both of which have been developed to aid in SI determinations. The SEFSC understands the critical need to provide as much relevant information as possible about marine mammal interactions to inform decisions regarding SI determinations. In addition, the SEFSC will perform all necessary reporting to ensure that any incidental M/SI is incorporated as appropriate into relevant SARs.

Negligible Impact Analysis and Determination

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 mortality, serious injury, and Level A or Level B harassment, we consider other factors, such as the likely nature of any behavioral responses (*e.g.,* intensity, duration), the context of any such responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of 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, and specific consideration of take by M/SI previously authorized for other NMFS research activities).

We note here that the takes from potential gear interactions enumerated below could result in non-serious injury or no injury, but their worst potential outcome (M/SI) is analyzed for the purposes of the negligible impact determination.

We discuss here the connection, and differences, between the legal mechanisms for authorizing incidental take under section 101(a)(5) for activities such as the SEFSC fishery research activities, and for authorizing incidental take from commercial fisheries. In 1988, Congress amended the MMPA's provisions for addressing incidental take of marine mammals in commercial fishing operations. Congress directed NMFS to develop and recommend a new long-term regime to govern such incidental taking (see MMC, 1994). The need to develop a system suited to the unique circumstances of commercial fishing operations led NMFS to suggest a new conceptual means and associated regulatory framework. That concept, PBR, and a system for developing plans containing regulatory and voluntary measures to reduce incidental take for fisheries that exceed PBR were incorporated as sections 117 and 118 in the 1994 amendments to the MMPA. In *Conservation Council for Hawaii* v. *National Marine Fisheries Service,* 97 F. Supp.3d 1210 (D. Haw. 2015), which concerned a challenge to NMFS' regulations and LOAs to the Navy for activities assessed in the 2013–2018 HSTT MMPA rulemaking, the Court ruled that NMFS' failure to consider PBR when evaluating lethal takes in the negligible impact analysis under section 101(a)(5)(A) violated the requirement to use the best available science.

PBR is defined in section 3 of the MMPA as ''the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population'' (OSP) and, although not controlling, can be one measure considered among other factors when evaluating the effects of M/SI on a marine mammal species or stock during the section 101(a)(5)(A) process. OSP is defined in section 3 of the MMPA as ''the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.'' Through section 2, an overarching goal of the statute is to ensure that each species or stock of marine mammal is maintained at or returned to its OSP.

PBR values are calculated by NMFS as the level of annual removal from a stock that will allow that stock to equilibrate within OSP at least 95 percent of the time, and is the product of factors relating to the minimum population estimate of the stock (N_{min}), the productivity rate of the stock at a small population size, and a recovery factor. Determination of appropriate values for these three elements incorporates significant precaution, such that application of the parameter to the management of marine mammal stocks may be reasonably certain to achieve the goals of the MMPA. For example, calculation of the minimum population estimate (N_{min}) incorporates the level of precision and degree of variability associated with abundance information, while also providing reasonable assurance that the stock size is equal to or greater than the estimate (Barlow *et al.,* 1995), typically by using the 20th percentile of a log-normal distribution of the population estimate. In general, the three factors are developed on a stock-specific basis in consideration of one another in order to produce conservative PBR values that appropriately account for both imprecision that may be estimated, as well as potential bias stemming from lack of knowledge (Wade, 1998).

Congress called for PBR to be applied within the management framework for commercial fishing incidental take under section 118 of the MMPA. As a result, PBR cannot be applied appropriately outside of the section 118 regulatory framework without

consideration of how it applies within the section 118 framework, as well as how the other statutory management frameworks in the MMPA differ from the framework in section 118. PBR was not designed and is not used as an absolute threshold limiting commercial fisheries. Rather, it serves as a means to evaluate the relative impacts of those activities on marine mammal stocks. Even where commercial fishing is causing M/SI at levels that exceed PBR, the fishery is not suspended. When M/SI exceeds PBR in the commercial fishing context under section 118, NMFS may develop a take reduction plan, usually with the assistance of a take reduction team. The take reduction plan will include measures to reduce and/or minimize the taking of marine mammals by commercial fisheries to a level below the stock's PBR. That is, where the total annual human-caused M/SI exceeds PBR, NMFS is not required to halt fishing activities contributing to total M/SI but rather utilizes the take reduction process to further mitigate the effects of fishery activities via additional bycatch reduction measures. In other words, under section 118 of the MMPA, PBR does not serve as a strict cap on the operation of commercial fisheries that may incidentally take marine mammals.

Similarly, to the extent PBR may be relevant when considering the impacts of incidental take from activities other than commercial fisheries, using it as the sole reason to deny (or issue) incidental take authorization for those activities would be inconsistent with Congress's intent under section 101(a)(5), NMFS' long-standing regulatory definition of ''negligible impact,'' and the use of PBR under section 118. The standard for authorizing incidental take for activities other than commercial fisheries under section 101(a)(5) continues to be, among other things that are not related to PBR, whether the total taking will have a negligible impact on the species or stock. Nowhere does section 101(a)(5)(A) reference use of PBR to make the negligible impact finding or authorize incidental take through multi-year regulations, nor does its companion provision at 101(a)(5)(D) for authorizing non-lethal incidental take under the same negligible-impact standard. NMFS' MMPA implementing regulations state that take has a negligible impact when it does not ''adversely affect the species or stock through effects on annual rates of recruitment or survival''—likewise without reference to PBR. When Congress amended the MMPA in 1994 to add section 118 for commercial fishing, it did not alter the standards for authorizing non-commercial fishing incidental take under section 101(a)(5), implicitly acknowledging that the negligible impact standard under section 101(a)(5) is separate from the PBR metric under section 118. In fact, in 1994 Congress also amended section 101(a)(5)(E) (a separate provision governing commercial fishing incidental take for species listed under the ESA) to add compliance with the new section 118 but retained the standard of the negligible impact finding under section 101(a)(5)(A) (and section 101(a)(5)(D)), showing that Congress understood that the determination of negligible impact and application of PBR may share certain features but are, in fact, different.

Since the introduction of PBR in 1994, NMFS had used the concept almost entirely within the context of implementing sections 117 and 118 and other commercial fisheries management-related provisions of the MMPA. Prior to the Court's ruling in *Conservation Council for Hawaii* v. *National Marine Fisheries Service* and consideration of PBR in a series of section 101(a)(5) rulemakings, there were a few examples where PBR had informed agency deliberations under other MMPA sections and programs, such as playing a role in the issuance of a few scientific research permits and subsistence takings. But as the Court found when reviewing examples of past PBR consideration in *Georgia Aquarium* v. *Pritzker,* 135 F. Supp. 3d 1280 (N.D. Ga. 2015), where NMFS had considered PBR outside the commercial fisheries context, ''it has treated PBR as only one 'quantitative tool' and [has not used it] as the sole basis for its impact analyses.'' Further, the agency's thoughts regarding the appropriate role of PBR in relation to MMPA programs outside the commercial fishing context have evolved since the agency's early application of PBR to section 101(a)(5) decisions. Specifically, NMFS' denial of a request for incidental take authorization for the U.S. Coast Guard in 1996 seemingly was based on the potential for lethal take in relation to PBR and did not appear to consider other factors that might also have informed the potential for ship strike in relation to negligible impact (61 FR 54157; October 17, 1996).

The MMPA requires that PBR be estimated in SARs and that it be used in applications related to the management of take incidental to commercial fisheries (*i.e.,* the take reduction planning process described in section 118 of the MMPA and the determination of whether a stock is ''strategic'' as defined in section 3). But nothing in the statute requires the application of PBR outside the management of commercial fisheries interactions with marine mammals. Nonetheless, NMFS recognizes that as a quantitative metric, PBR may be useful as a consideration when evaluating the impacts of other human-caused activities on marine mammal stocks. Outside the commercial fishing context, and in consideration of all known human-caused mortality, PBR can help inform the potential effects of M/SI requested to be authorized under 101(a)(5)(A). As noted by NMFS and the U.S. Fish and Wildlife Service in our implementation regulations for the 1986 amendments to the MMPA (54 FR 40341, September 29, 1989), the Services consider many factors, when available, in making a negligible impact determination, including, but not limited to, the status of the species or stock relative to OSP (if known); whether the recruitment rate for the species or stock is increasing, decreasing, stable, or unknown; the size and distribution of the population; and existing impacts and environmental conditions. In this multi-factor analysis, PBR can be a useful indicator for when, and to what extent, the agency should take an especially close look at the circumstances associated with the potential mortality, along with any other factors that could influence annual rates of recruitment or survival.

When considering PBR during evaluation of effects of M/SI under section 101(a)(5)(A), we first calculate a metric for each species or stock that incorporates information regarding ongoing anthropogenic M/SI from all sources into the PBR value (*i.e.,* PBR minus the total annual anthropogenic mortality/serious injury estimate in the SAR), which is called ''residual PBR.'' (Wood *et al.,* 2012). We first focus our analysis on residual PBR because it incorporates anthropogenic mortality occurring from other sources. If the ongoing human-caused mortality from other sources does not exceed PBR, then residual PBR is a positive number, and we consider how the anticipated or potential incidental M/SI from the activities being evaluated compares to residual PBR using the framework in the following paragraph. If the ongoing anthropogenic mortality from other sources already exceeds PBR, then residual PBR is a negative number and we consider the M/SI from the activities being evaluated as described further below.

When ongoing total anthropogenic mortality from the applicant's specified activities does not exceed PBR and

residual PBR is a positive number, as a simplifying analytical tool, we first consider whether the specified activities could cause incidental M/SI that is less than 10 percent of residual PBR (the ''insignificance threshold,'' see below). If so, we consider M/SI from the specified activities to represent an insignificant incremental increase in ongoing anthropogenic M/SI for the marine mammal stock in question, that alone (*i.e.,* in the absence of any other take) will not adversely affect annual rates of recruitment and survival. As such, this amount of M/SI would not be expected to affect rates of recruitment or survival in a manner resulting in more than a negligible impact on the affected stock unless there are other factors that could affect reproduction or survival, such as Level A and/or Level B harassment, or other considerations such as information that illustrates the uncertainty involved in the calculation of PBR for some stocks. In a few prior incidental take rulemakings, this threshold was identified as the ''significance threshold,'' but it is more accurately labeled an insignificance threshold. Thus, we use that terminology here, as we did in the AFTT Proposed and Final Rules (83 FR 57076; November 14, 2018). Assuming that any additional incidental take by Level A or Level B harassment from the activities in question would not combine with the effects of the authorized M/SI to exceed the negligible impact level, the anticipated M/SI caused by the activities being evaluated would have a negligible impact on the species or stock. However, M/SI above the 10 percent insignificance threshold does not indicate that the M/SI associated with the specified activities is approaching a level that would necessarily exceed negligible impact. Rather, the 10 percent insignificance threshold is meant only to identify instances where additional analysis of the anticipated M/SI is not required because the negligible impact standard clearly will not be exceeded on that basis alone.

Where the anticipated M/SI is near, at, or above residual PBR, consideration of other factors (positive or negative), including those outlined above, as well as mitigation is especially important to assessing whether the M/SI will have a negligible impact on the species or stock. PBR is a conservative metric and not sufficiently precise to serve as an absolute predictor of population effects upon which mortality caps would appropriately be based. For example, in some cases stock abundance (which is one of three key inputs into the PBR calculation) is underestimated because marine mammal survey data within the U.S. EEZ are used to calculate the abundance, even when the stock range extends well beyond the U.S. EEZ. An underestimate of abundance could result in an underestimate of PBR. Alternatively, we sometimes may not have complete M/SI data beyond the U.S. EEZ to compare to PBR, which could result in an overestimate of residual PBR. The accuracy and certainty around the data that feed any PBR calculation, such as the abundance estimates, must be carefully considered to evaluate whether the calculated PBR accurately reflects the circumstances of the particular stock. M/SI that exceeds PBR may still potentially be found to be negligible in light of other factors that offset concern, especially when robust mitigation and adaptive management provisions are included.

In *Conservation Council for Hawaii* v. *NMFS,* 97 F.Supp.3d 1210 (D. Haw. 2015), which involved the challenge to NMFS' issuance of LOAs to the Navy in 2013 for activities in the HSTT Study Area, the Court reached a different conclusion, stating, ''Because any mortality level that exceeds PBR will not allow the stock to reach or maintain its OSP, such a mortality level could not be said to have only a 'negligible impact' on the stock.'' As described above, the Court's statement fundamentally misunderstands the two terms and incorrectly indicates that these concepts (PBR and ''negligible impact'') are directly connected, when in fact nowhere in the MMPA is it indicated that these two terms are equivalent.

Specifically, PBR was designed as a tool for evaluating mortality and is defined as the number of animals that can be removed while ''allowing that stock to reach or maintain its [OSP].'' OSP is defined as a population that falls within a range from the population level that is the largest supportable within the ecosystem to the population level that results in maximum net productivity, and thus is an aspirational management goal of the overall statute with no specific timeframe by which it should be met. PBR is designed to ensure minimal deviation from this overarching goal, with the formula for PBR typically ensuring that growth towards OSP is not reduced by more than 10 percent (or equilibrates to OSP 95 percent of the time). As PBR is applied by NMFS, it provides that growth toward OSP is not reduced by more than 10 percent, which certainly allows a stock to ''reach or maintain its [OSP]'' in a conservative and precautionary manner—and we can therefore clearly conclude that if PBR were not exceeded, there would not be adverse effects on the affected species or stocks. Nonetheless, it is equally clear that in some cases the time to reach this aspirational OSP level could be slowed by more than 10 percent (*i.e.,* total human-caused mortality in excess of PBR could be allowed) without adversely affecting a species or stock through effects on its rates of recruitment or survival. Thus, even in situations where the inputs to calculate PBR are thought to accurately represent factors such as the species' or stock's abundance or productivity rate, it is still possible for incidental take to have a negligible impact on the species or stock even where M/SI exceeds residual PBR or PBR.

As noted above, in some cases the ongoing human-caused mortality from activities other than those being evaluated already exceeds PBR. Therefore, residual PBR is negative. In these cases (specifically two GoM BSE stocks: Mississippi Sound and Mobile Bay), any additional mortality, no matter how small, and no matter how small relative to the mortality caused by other human activities, would result in greater exceedance of PBR. PBR is helpful in informing the analysis of the effects of mortality on a species or stock because it is important from a biological perspective to be able to consider how the total mortality in a given year may affect the population. However, section 101(a)(5)(A) of the MMPA indicates that NMFS shall authorize the requested incidental take from a specified activity if we find that ''the total of such taking [*i.e.,* from the specified activity] will have a negligible impact on such species or stock.'' In other words, the task under the statute is to evaluate the applicant's anticipated take in relation to their take's impact on the species or stock, not other entities' impacts on the species or stock. Neither the MMPA nor NMFS' implementing regulations call for consideration of other unrelated activities and their impacts on the species or stock. In fact, in response to public comments on the implementing regulations, NMFS explained that such effects are not considered in making negligible impact findings under section 101(a)(5). However, the extent to which a species or stock is being impacted by other anthropogenic activities is not ignored. Such effects are reflected in the baseline of existing impacts as reflected in the species' or stock's abundance, distribution, reproductive rate, and other biological indicators.

NMFS guidance for commercial fisheries provides insight when evaluating the effects of an applicant's incidental take as compared to the

incidental take caused by other entities. Parallel to section 101(a)(5)(A), section 101(a)(5)(E) of the MMPA provides that NMFS shall allow the incidental take of ESA-listed endangered or threatened marine mammals by commercial fisheries if, among other things, the incidental M/SI from the commercial fisheries will have a negligible impact on the species or stock. As discussed earlier, the authorization of incidental take resulting from commercial fisheries and authorization for activities other than commercial fisheries are under two separate regulatory frameworks. However, when it amended the statute in 1994 to provide a separate incidental take authorization process for commercial fisheries, Congress kept the requirement of a negligible impact determination for ESA-listed species, thereby applying the standard to both programs. While the structure and other standards of the two programs differ such that evaluation of negligible impact under one program may not be fully applicable to the other program (*e.g.,* the regulatory definition of ''negligible impact'' at 50 CFR 216.103 applies only to activities other than commercial fishing), guidance on determining negligible impact for commercial fishing take authorizations can be informative when considering incidental take outside the commercial fishing context. In 1999, NMFS published criteria for making a negligible impact determination pursuant to section 101(a)(5)(E) of the MMPA in a notice of proposed permits for certain fisheries (64 FR 28800; May 27, 1999). Criterion 2 stated ''If total human-related serious injuries and mortalities are greater than PBR, and fisheries-related mortality is less than 0.1 PBR, individual fisheries may be permitted if management measures are being taken to address non-fisheries-related serious injuries and mortalities. When fisheries-related serious injury and mortality is less than 10 percent of the total, the appropriate management action is to address components that account for the major portion of the total.'' This criterion addresses when total human-caused mortality is exceeding PBR, but the activity being assessed is responsible for only a small portion of the mortality. In the SEFSC proposed rule, NMFS' description of how we consider PBR in the section 101(a)(5) authorization process did not include consideration of this scenario. However, the analytical framework we use here appropriately incorporates elements of the one developed for use under section 101(a)(5)(E). And because the negligible impact determination under section 101(a)(5)(A) focuses on the activity being evaluated, it is appropriate to utilize the parallel concept from the framework for section 101(a)(5)(E).

Accordingly, we are using a similar criterion in our negligible impact analysis under section 101(a)(5)(A) to evaluate the relative role of an applicant's incidental take when other sources of take are causing PBR to be exceeded, but the take of the specified activity is comparatively small. Where this occurs, we may find that the impacts of the taking from the specified activity may (alone) be negligible, even when total human-caused mortality from all activities exceeds PBR if (in the context of a particular species or stock) the authorized mortality or serious injury would be less than or equal to 10 percent of PBR and management measures are being taken to address serious injuries and mortalities from the other activities (*i.e.,* other than the specified activities covered by the incidental take authorization under consideration). We must also determine, though, that impacts on the species or stock from other types of take (*i.e.,* harassment) caused by the applicant do not combine with the impacts from mortality or serious injury to result in adverse effects on the species or stock through effects on annual rates of recruitment or survival.

As discussed above, however, while PBR is useful in informing the evaluation of the effects of M/SI in section 101(a)(5)(A) determinations, it is just one consideration to be assessed in combination with other factors. It is not determinative including because, as explained above, the accuracy and certainty of the data used to calculate PBR for the species or stock must be considered. And we reiterate the considerations discussed above for why it is not appropriate to consider PBR an absolute cap in the application of this guidance. Accordingly, we use PBR as a trigger for concern while also considering other relevant factors to provide a reasonable and appropriate means of evaluating the effects of potential mortality on rates of recruitment and survival, while acknowledging that it is possible to exceed PBR (or exceed 10 percent of PBR in the case where other human-caused mortality is exceeding PBR but the specified activity being evaluated is an incremental contributor, as described in the last paragraph) by some small amount and still make a negligible impact determination under section 101(a)(5)(A).

Our evaluation of the M/SI for each of the species and stocks for which mortality or serious injury could occur follows. All mortality authorized for some of the same species or stocks over the next several years pursuant to our final rulemaking for the NMFS Southwest and Pacific Islands Fisheries Science Centers has been incorporated into the residual PBR.

We first consider maximum potential incidental M/SI for each stock (Table 13 and 14) in consideration of NMFS's threshold for identifying insignificant M/SI take (10 percent of residual PBR (69 FR 43338; July 20, 2004)). By considering the maximum potential incidental M/SI in relation to residual PBR and ongoing sources of anthropogenic mortality, we begin our evaluation of whether the potential incremental addition of M/SI through SEFSC research activities may affect the species' or stock's annual rates of recruitment or survival. We also consider the interaction of those mortalities with incidental taking of that species or stock by harassment pursuant to the specified activity.

We methodically examined each stock above the insignificance threshold to determine if the amount and degree of authorized taking would have effects to annual rates of recruitment or survival (*i.e.,* have a negligible impact on the species or stock). These rates are inherently difficult to quantify for marine mammals because adults of long-lived, birth-pulse populations (*e.g.,* many cetaceans, polar bears and walrus) may not breed every year because of parental care, long gestation periods or nutritional constraints (Taylor *et al.,* 1987). Therefore, we pursued a combination of quantitative and qualitative analyses to inform our determinations.

First, we compiled data to assess the baseline population status of each stock for which the SEFSC is requesting take. These data were pulled from the most recent SARs (Hayes *et al.,* 2017) and, where information was unknown or undetermined in the SARs, we consulted marine mammal experts at the SEFSC and on TRTs to fill data gaps to the best of our ability based on the best available science. Data pulled from these sources include population size and demographics (where known), PBR, known mortality and serious injury from commercial and recreational fishing and other human-caused sources (*e.g.,* direct shootings), stock trends (*i.e.,* declining, stable, or increasing), threats, and other sources of potential take M/SI (*e.g.,* MMPA 101(a)(5)(A or D) applications and scientific research permit applications). In addition, we looked at ongoing management actions (*e.g.,* TRT gear restrictions) to identify

where efforts are being focused and are successful at reducing incidental take.

Estuarine and Coastal Bottlenose Dolphins

For estuarine bottlenose dolphin stocks, reaching our negligible impact determination required a hard examination of the status of each of the 7 ARA and 11 GOMRA stocks for which we authorized take. We recognize that PBR is technically undetermined for many stocks because abundance data is more than 8 years old. Therefore, we consulted with marine mammal experts at the SEFSC to derive best estimates of PBR based on the available data. Overall, PBR is low (less than one animal) because stock sizes are generally small (tens to hundreds) in southeast estuaries (with notable exceptions such as Mississippi Sound and Mobile Bay). Stock sizes are expected to be small because the abundance of a dolphin stock in an estuary is bounded by the capabilities of the bays and estuarine systems to support that stock (*i.e.,* carrying capacity of the system) due to the residential nature of these stocks, among other things. With respect to rates of annual M/SI, we note some fisheries in the GoM (*e.g.,* shrimp fishery) do not have full observer coverage. Estimates of take from these fisheries are both extrapolated and aggregated to the state level. Thus, calculating total M/SI rates from commercial fisheries applicable to any given stock, rather than all stocks within a state, not possible.

We approached the issue of outdated abundance information by working closely with SEFSC experts and have developed estimated abundance data and PBR values. The resulting values follow the general trend of small stock sizes and are very conservative in some cases. For example, recent abundance surveys in Barataria Bay and Terrebonne Bay revealed stock numbers were in the thousands compared to the previously estimated populations of approximately 200–300 animals (Hayes *et al.,* 2018). In addition, three stocks, including the Perdido Bay stock have population estimates showing zero. However, it is well documented that dolphins inhabit these areas. We also consulted with the NMFS Southeast Regional Office (SERO) bottlenose dolphin conservation coordinator to better understand the nature of the takes identified in the SARs M/SI values (*i.e.,* the source of take such as commercial fishery or research). That is, if we relied solely on the SAR annual M/SI values reported in the SARs and added the authorized M/SI take to these numbers, we would be double-counting M/SI as some takes were attributed to the research for which we are proposing to authorize take. Therefore, where M/SI takes were contributed to SEFSC research, we have adjusted annual M/SI values from Table 3b above so as not to ''double count'' potential take. Table 13 reflects these adjustments.

In the ARA, the amount of take from all M/SI (both authorized here and other sources) does not exceed PBR. M/SI take for ARA stocks is below the insignificance threshold (10 percent r-PBR) except for the Northern South Carolina Estuarine, Northern Georgia/Southern South Carolina Estuarine, Central Georgia Estuarine, and Southern Georgia Estuarine stocks (Table 13). Authorized M/SI take for the latter two stocks are only slightly above the insignificance threshold (11.76 and 10.35 percent, respectively). The authorized take for the Northern Georgia/Southern South Carolina stock constitutes 28.57 percent of r-PBR. Sources of anthropogenic mortality for this stock include hook and line and crab pot/trap fisheries. The authorized M/SI take (0.2/year) of the Northern South Carolina stock is 50 percent of PBR. However, considering an average of one animal every 5 years is taken in commercial fisheries (likely gillnet or crab pot/trap), the authorized take and annual M/SI constitute 100 percent of r-PBR. The Northern South Carolina Estuarine System stock is delimited as dolphins inhabiting estuarine waters from Murrells Inlet, South Carolina, southwest to Price Inlet, South Carolina, the northern boundary of Charleston Estuarine System stock. The region has little residential, commercial, and industrial development and contains the Cape Romain National Wildlife Refuge. As such, the stock is not facing heavy anthropogenic pressure, and there are no identified continuous indirect stressors threatening the stock.

For the nine estuarine stocks in the GOMRA for which we are proposing to authorize take by M/SI, take is below the insignificance threshold (10 percent r-PBR) for four stocks: Mobile Bay, Terrebonne Bay/Timbalier Bay; St. Vincent Sound/Apalachicola Bay/St. George Sound, and Apalachee Bay. As described above, we have updated the population estimate and PBR of the Mobile Bay stock in this final rule to reflect data presented in the DWH Trustees quantification of injury report (DWH MMIQT 2015), which more accurately describes the Mobile Bay stock abundance than the proposed rule as that estimate was based on outdated (1991) survey data. The authorized M/SI take for three coastal stocks are also below the insignificance threshold. The authorized M/SI take for four BSE stocks are between 14 and 40 percent r-PBR. Ongoing M/SI take attributed to the Mississippi Sound stock is already above PBR in absence of the authorized M/SI take. (Table 13).

TABLE 13—SUMMARY INFORMATION OF ESTUARINE AND COASTAL BOTTLENOSE DOLPHIN STOCKS RELATED TO SEFSC AUTHORIZED M/SI TAKE IN THE ARA, GOMRA, AND CRA

Stock	Stock abundance (N_{best})	M/SI take (annual)	PBR	Annual M/SI	NEFSC authorized take by M/SI (annual)	r-PBR [2]	M/SI take/r-PBR (%) [3]
Atlantic							
Northern South Carolina Estuarine Stock.	[1] 50	0.2	[1] 0.4	0.2	0	0.2	100.00.
Charleston Estuarine System Stock	[1] 289	0.2	[1] 2.8	0.2	0	2.6	7.69.
Northern Georgia/Southern South Carolina Estuarine.	[1] 250	0.2	[1] 2.1	1.4	0	0.7	28.57.
Central Georgia Estuarine	192	0.2	1.9	0.2	0	1.7	11.76.
Southern Georgia Estuarine	194	0.2	1.9	0	0	1.9	10.53.
Jacksonville Estuarine System	[1] 412	0.2	[1] 3.9	1.2	0	2.7	7.41.
Florida Bay	[1] 514	0.2	[1] 4.5	0	0	4.5	4.44.
South Carolina/Georgia Coastal	6,027	0.6	46	1.0–1.4	0	44.6–45	1.35.
Northern Florida Coastal	877	0.6	6	0.6	0	5.4	11.11.

TABLE 13—SUMMARY INFORMATION OF ESTUARINE AND COASTAL BOTTLENOSE DOLPHIN STOCKS RELATED TO SEFSC AUTHORIZED M/SI TAKE IN THE ARA, GOMRA, AND CRA—Continued

Stock	Stock abundance (N_{best})	M/SI take (annual)	PBR	Annual M/SI	NEFSC authorized take by M/SI (annual)	r-PBR [2]	M/SI take/r-PBR (%) [3]
Central Florida Coastal	1,218	0.6	9.1	0.2	0	8.9	6.74.
Northern Migratory Coastal	6,639	0.6	48	6.1–13.2	1.6	33.2–43.5	0.4–0.6.
Southern Migratory Coastal	3,751	0.6	23	14.3	1.6	7.1	8.45.
Gulf of Mexico							
Terrebonne Bay, Timbalier Bay	3,870	0.2	27	0.2	0	26.8	0.75.
Mississippi River Delta	332	0.2	1.4	[4] 0	0	1.4	14.29.
Mississippi Sound, Lake Borgne, Bay Boudreau [5].	3,046	.02 (M/SI), 0.2 (Level A).	23	310	0	−287	Neg.
Mobile Bay, Bonsecour Bay	1,393	0.2	[6] 13	[5] 0.8	0	12.2	1.6.
St. Andrew Bay	199	0.2	1.5	0.2	0	1.3	15.4.
St. Joseph Bay	142	0.2	1.0	0	0	1.0	20.0.
St. Vincent Sound, Apalachicola Bay, St. George Sound.	439	0.2	[1] 3.91	0	0	3.91	5.12.
Apalachee Bay	491	0.2	[1] 3.61	0	0	3.61	5.54.
Waccasassa Bay, Withlacoochee Bay, Crystal Bay.	[1] 100	0.2	[1] 0.5	0	0	0.5	40.00.
Northern Gulf of Mexico Western Coastal Stock.	20,161	0.6	175	0.6	0	174.4	0.34.
Northern Gulf of Mexico Northern Coastal Stock.	7,185	0.6	60	0.4	0	59.6	1.01.
Northern Gulf of Mexico Eastern Coastal Stock.	12,388	0.6	111	1.6	0	109.4	0.55.

[1] For many estuarine stocks, the draft 2019 SAR has unknown abundance estimates and undetermined PBRs. Where this occurred, we used either the most recent estimates (even if more than 8 years old) or we consulted with SEFSC marine mammal experts for best judgement (pers. comm., K. Mullin).

[2] r-BPR = PBR—(annual M/I + NEFSC authorized take). For example, for the southern migratory coastal stock r-PBR = 23 − (14.3 + 1.6).

[3] Values in the column reflect what the take represents as a percentage of r-PBR. The insignificance threshold is 10 percent.

[4] The annual M/SI in the draft 2019 SAR is 0.2 for the Mississippi River stock. However, the takes considered were from gillnet fishery research. Therefore, we reduced M/SI to 0.

[5] The annual M/SI in the draft 2019 SAR is 1.0. However, one take used in those calculations is from fisheries research for which we propose to authorize take. Therefore, we reduced M/SI to 0.8.

[6] PBR for the Mobile Bay stock was derived from the lower 95 percent confidence interval presented in DHW MIQTT 2015 (N_{min} = 1252). We calculated PBR as 1252 * 0.02 * 0.4 = 13.

For the Mississippi Sound stock, we evaluated various aspects of stock status and considered the amount of SEFSC M/SI compared to PBR. As described above, we may find that the impacts of the taking from the specified activity may be negligible even when total human-caused mortality from all activities exceeds PBR if (in the context of a particular species or stock) the authorized mortality or serious injury would be less than or equal to 10 percent of PBR and management measures are being taken to address serious injuries and mortalities from the other activities (*i.e.,* other than the specified activities covered by the incidental take authorization under consideration). In this case, authorized M/SI take is less than 10 percent of PBR and management actions are in place to address M/SI from other sources. According to this stock's 2017 SAR, the mean annual fishery-related mortality and serious injury during 2012–2015 for observed fisheries and strandings and at-sea observations identified as fishery-caused related is 1.0. Additional mean annual mortality and serious injury during 2011–2015 due to other human-caused actions (fishery research, sea turtle relocation trawling, gunshot wounds, and DWH oil spill) is 309 with the majority sourced from DWH. Projected annual M/SI over the next 5 years from commercial fishing and DWH are 6 and 1539 (or 1.2 and 308, annually), respectively.

Management and research actions, including ongoing health assessments and Natural Resource Damage Plan efforts designed to restore injury to the stock, are anticipated to improve the status of the stock moving forward. In June 2017, the Deepwater Horizon (DWH) oil spill Natural Resource Damage Assessment (NRDA) Trustees (Trustees) released a ''Strategic Framework for Marine Mammal Restoration Activities.'' The framework outlines the following general actions:

- Implement an integrated portfolio of restoration approaches to restore injured Bay, Sound, and Estuary (BSE); coastal; shelf; and oceanic marine mammals across the diverse habitats and geographic ranges they occupy.
- Identify and implement restoration activities that mitigate key stressors to support resilient populations. Collect and use monitoring information, such as population and health assessments and spatiotemporal distribution information.
- Identify and implement actions that support ecological needs of the stocks; improve resilience to natural stressors; and address direct human-caused threats such as bycatch in commercial fisheries, vessel collisions, noise, industrial activities, illegal feeding and harassment, and hook-and-line fishery interactions.

NMFS is also currently investigating a number of actions to reduce both intentional and incidental mortality and serious injury for all GOM BSE stocks, including Mississippi Sound and Mobile Bay. These efforts include working collaboratively with shrimp fishermen to explore ways to modify fishing gear that would reduce bycatch of dolphins; enhancing observer coverage & data collection on shrimp

trawls; working collaboratively to reduce dolphin mortality from intentional mortality (gunshot, arrows) and illegal feeding activities by enhancing state law enforcement and conducting outreach; and building capacity and preparedness of the marine mammal stranding network.

Further, marine mammal population modeling indicates dolphin populations should begin recovery nine years post spill (NRDA Trustees, 2016; DWH MMIQT 2015). Applying that model to the Mississippi Sound stock, we should begin to see the population recover during the life of the regulations. Moreover, we note the three research-related mortalities discussed in the SAR for this stock are from the specified activities for which we have authorized take. Therefore, the authorized take would not be in addition to, but would account for, these research-related takes.

In addition to quantitative comparisons between the issued amount of M/SI take to PBR and r-PBR, we consider qualitative information such as population dynamics and context to determine if the authorized amount of take of estuarine and coastal bottlenose dolphins in the ARA and GOMRA would adversely affect a stock through effects of annual rates of recruitment and survival. Marine mammals are K-selected species, meaning they have few offspring, long gestation and parental care periods, and reach sexual maturity later in life. Therefore, between years, reproduction rates vary based on age and sex class ratios. As such, population dynamics is a driver when looking at reproduction rates. We focus on reproduction here because we conservatively consider inter-stock reproduction is the primary means of recruitment for these stocks. We note this is a conservative assumption, as some individuals are known to travel, and there is some mixing between the estuarine stocks and adjacent coastal stocks (Hayes *et al,* 2017). Given reproduction is the primary means of recruitment and females play a significantly larger role in their offspring's reproductive success (also known as Bateman's Principle), the mortality of females rather than males is, in general, more likely to influence recruitment rate. Several studies have purported that male bottlenose dolphins are more likely to engage in depredation or related behaviors with trawls and recreational fishing (Corkeron *et al.,* 1990; Powell & Wells, 2011) or become entangled in gear (Reynolds *et al.,* 2000; Adimey *et al.,* 2014). Male bias has also been reported for strandings with evidence of fishery interaction (Stolen *et al.,* 2007; Fruet *et al.,* 2012; Adimey *et al.,* 2014) and for *in situ* observations of fishery interaction (Corkeron *et al.,* 1990; Finn *et al.,* 2008; Powell & Wells, 2011). Byrd and Hohn (2017) examined stranding data to determine whether there was differential risk of bycatch based on sex and age class from gillnet fisheries in North Carolina. They found more males than females stranded. However, the relative gillnet bycatch risk was not different for males and females. In summary, these data suggest the risk of gear interaction from trawls and hook and line is likely higher for males, while gillnet interactions may pose equal risk for males and females. For this rulemaking, the majority of historical gear interactions are from trawls. Therefore, we believe males (which are less likely to influence recruitment rate) are more likely at risk than females.

Understanding the population dynamics of each bottlenose dolphin stock considered in this rulemaking is not possible as the data simply do not exist for each stock. Therefore, we considered a well-studied population, the Sarasota Bay stock, as a proxy for assessing population dynamics of other estuarine stocks throughout the ARA and GOMRA. The Sarasota Bay stock is the most data rich population of bottlenose dolphins in the United States. The Sarasota Bay Research Program (SBRP) possesses 40 years of data on the resident dolphin population. Research topics include, but are not limited to, population structure and dynamics, health and physiology, and human interaction and impacts.

The Sarasota Bay stock demonstrates high recruitment and survival rates. Wells *et al.* (2014) found 83 percent (95 percent CI = 0.52 to 0.99) of detected pregnancies were documented as resulting in live births. Eight of the 10 calves (80 percent) resulting from documented pregnancies survived through the calendar year of their birth and, therefore, were considered to have been successfully recruited into the Sarasota Bay bottlenose dolphin population. This value compares favorably with the 81 percent first year survival reported by Wells & Scott (1990) for Sarasota Bay bottlenose dolphins. Thus, approximately 66 percent of documented pregnancies led to successful recruitment. Mann *et al.* (2000) found dolphin interbirth intervals for surviving calves are between 3 and 6.2 years, resulting in annual variability in reproductive rates.

With respect to survival, Wells and Scott (1990) calculated a mean annual survival rate of Sarasota Bay dolphins at 96.2 percent. In comparison, a mark-recapture study of dolphins near Charleston, South Carolina reported an apparent annual survival rate of 95.1 percent (95 percent CI: 88.2–100) (Speakman *et al.,* 2010). In summary, survival rate and reproductive success of the Sarasota Bay stock is high and, except for those stocks for which we know individual marine mammal health and reproductive success are compromised from the Deepwater Horizon oil spill (*e.g.,* Mississippi Sound stock), we consider estuarine bottlenose stocks in the ARA and GOMRA to have similar rates of recruitment and survival.

For stocks that are known to be experiencing levels of stress from fishing and other anthropogenic sources, we look toward the ongoing management actions and research designed to reduce those pressures when considering our negligible impact determination. Overall, many estuarine bottlenose dolphin stocks are facing anthropogenic stressors such as commercial and recreational fishing, coastal development, habitat degradation (*e.g.,* oil spills, harmful algal blooms), and directed violence (intentional killing/injury) and have some level of annual M/SI. NOAA, including the SEFSC, is dedicated to reducing fishery take, both in commercial fisheries and research surveys. For example, the Atlantic BDTRT is in place to decrease M/SI in commercial fisheries and scientists at NOAA's National Center for Coastal Ocean Science (NCCOS) in Charleston, South Carolina, are undertaking research and working with local fishermen to reduce crab pot/trap and trawling entanglement (*e.g.,* McFee *et al.,* 2006, 2007; Greenman and McFee, 2014). In addition, through this rulemaking, the SEFSC has invested in developing measures that may be adopted by commercial fisheries to reduce bycatch rates, thereby decreasing the rate of fishing-related M/SI. For example, in 2017, the SEFSC executed the previously described Lazy Line Modification Mitigation Work Plan (see Potential Effects of Specified Activities on Marine Mammals and Their Habitat section) and is investigating the feasibility of applying gear modifications to select research trawl surveys. Also, as a result of this rulemaking process, the SEFSC has a heightened awareness of the risk of take and a commitment to not only implement the mitigation measures in this rulemaking but to develop additional mitigation measures beyond this rule that they find effective and practicable. Because all NMFS Science Centers are dedicated to decreasing gear

interaction risk, each Science Center is also committed to sharing information about reducing marine mammal bycatch, further educating fishery researchers on means by which is to make best professional judgements and minimize risk of take.

Region-wide, Gulf of Mexico states, in coordination with Federal agencies, are taking action to recover from injury sustained during the DWH spill. Funds from the spill have been allocated specifically for marine mammal restoration to the Florida, Alabama, Mississippi, Louisiana, Texas, Open Ocean, and Region-wide Trustee Implementation Groups (TIGs). As described above, in June 2017, the Trustees released their Strategic Framework for Marine Mammal Restoration Activities. The framework includes a number of marine mammal restoration goals (listed above) which would improve marine mammal populations over the course of the regulations by, among other things, increasing marine mammal resilience to natural stressors and addressing direct human-caused threats such as bycatch in commercial fisheries, vessel collisions, noise, industrial activities, illegal feeding and harassment, and hook-and-line fishery interactions. The Alabama TIG has made the most progress on executing this strategic framework. In 2018, the Alabama TIG committed to three projects designed to restore marine mammals: (1) Enhancing Capacity for the Alabama Marine Mammal Stranding Network; (2) Assessment of Alabama Estuarine Bottlenose Dolphin Populations & Health (including the Mobile Bay stock); and (3) Alabama Estuarine Bottlenose Dolphin Protection: Enhancement & Education.

Since publication of the proposed rule, an unusual mortality event (UME) has been declared for dolphins in the Gulf of Mexico, including BSE dolphins. We consider this UME in the context of our negligible impact determination since it was (a) recent, (b) is ongoing, and (c) most notably impacted BSE stocks (*e.g.,* Mobile Bay) for which we authorized M/SI take. Elevated bottlenose dolphin strandings have been occurring in the Northern Gulf of Mexico including Louisiana (n = 114), Mississippi (n = 139), Alabama (n = 58), and the panhandle of Florida (Alabama border through Franklin County; n = 38) since February 1, 2019. As of January 2, 2020, these 342 dolphin stranding rate is approximately three times higher than the average. The UME investigation is ongoing and, to date, no specific causes have been identified. However, a number of the stranded dolphins have had visible skin lesions that are consistent with freshwater exposure. During the spring season, it is not uncommon to see a reduction of salinity in bays, sounds, and estuaries and also an increase in dolphins (both live free swimming and stranded) exhibiting visible skin lesions consistent with low salinity exposure. These freshets may be a result of local rainfall and/or watershed flow from upstream snow melt or flood events emptying into the bays, sounds and estuaries of the Gulf of Mexico. Last year (2019) was an especially wet year with high levels of rainfall in addition to the opening of the spillways due to the extreme flooding upstream (*e.g.,* the Bonnet-Carre spillway was open 76 days (January–June 11, 2019) affecting areas east of the Mississippi River outflow). The majority of strandings associated with this UME occurred prior to July with the stranding rate decreasing over the last several months. For example, of the total 342 strandings since February 1, 2019, 289 occurred prior to July 5, 2019 (5 months). Between July 5, 2019 and October 3, 2019 (3 months), there were 28 strandings and between October 4, 2019 and January 2, 2020 (3 months), there were 25 strandings. Therefore, although the UME is ongoing, the rate of mortality is decreasing.

For all estuarine stocks, 0.2 M/SI annually means the potential for one mortality in 1 of the 5 years and zero mortalities in 4 of those 5 years. Therefore, the SEFSC would not be contributing to the total human-caused mortality at all in 4 of the 5, or 80 percent, of the years covered by this rule. That means that even if a dolphin from any estuarine stock were to be killed or seriously injured as a result of fisheries research, in 4 of the 5 years there could be no effect on annual rates of recruitment or survival from SEFSC-caused M/SI. Additionally, as noted previously, the loss of a male, which we have demonstrated is more likely when trawling is the cause of take, would have far less, if any, effect on annual rates of recruitment or survival. As described above, male bias has been documented for strandings with evidence of fishery interaction (most notably trawls), and the majority of work assessed under this rule is trawling. Therefore, there is likely a greater than 50 percent chance a male could be taken, further decreasing the likelihood of impact on annual rates of recruitment or survival.

In situations like this where potential M/SI take is fractional (*e.g.,* 0.2 per year), consideration must be given to the lessened impacts anticipated due to the absence of M/SI in four of the years and due to the fact that a single M/SI from gear interaction is more likely to be male. Lastly, we reiterate that PBR is a conservative metric and also not sufficiently precise to serve as an absolute predictor of population effects upon which mortality caps would appropriately be based. This is especially important given the minor difference between zero and one across the 5-year period covered by this rule, which is the smallest distinction possible when considering mortality. Wade (1998), authors of the paper from which the current PBR equation is derived, note (on page 29) that ''Estimating incidental mortality in one year to be greater than the PBR calculated from a single abundance survey does not prove the mortality will lead to depletion; it identifies a population worthy of careful future monitoring and possibly indicates that mortality-mitigation efforts should be initiated.''

Offshore Pelagic Stocks

For all offshore pelagic stocks where PBR is known, except for gray seal, the level of taking is less than 10 percent of r-PBR after considering other sources of human-caused mortality (Table 14). Again, for those stocks with total incidental M/SI take less than the significance threshold (*i.e.,* ten percent of residual PBR), we consider the effects of the specified activity to represent an insignificant incremental increase in ongoing anthropogenic M/SI and need not consider other factors in making a negligible impact determination except in combination with additional incidental take by acoustic harassment.

TABLE 14—SUMMARY INFORMATION OF PELAGIC STOCKS RELATED TO AUTHORIZED M/SI TAKE TO THE SEFSC IN THE ARA, GOMRA, AND CRA

Species	Stock	M/SI take (annual)	PBR	Annual M/SI (SAR)	NEFSC author-ized take by M/SI (annual)	r-PBR	MI/SI take/ r-PBR (%)
Risso's dolphin	Western North Atlantic	0.2	126	49.9	0.6	75.5	0.26.
	N. Gulf of Mexico	0.2	16	7.9	0	8.1	2.47.
	Puerto Rico/USVI	0.2	15	0.5	0	14.5	1.38.
Melon headed whale	N. Gulf of Mexico	0.6	13	0	0	13	4.62.
Short-finned pilot whale	Western North Atlantic	0.2	236	168	0	68	0.29.
	N. Gulf of Mexico	0.2	15	0.5	0	14.5	1.38.
	Puerto Rico/USVI	0.2	unk	unk	0	unk	unk.
Common dolphin	Western North Atlantic	0.8	557	406	1.4	149.6	0.53.
Atlantic spotted dolphin	Western North Atlantic	0.8	316	0	0.4	315.6	0.25.
	N. Gulf of Mexico	0.8	undet	42	0	unk	unk.
	Puerto Rico/USVI	0.2	unk	unk	0	unk	unk.
Pantropical spotted dolphin	Western North Atlantic	0.2	17	0	0	17	1.18.
	N. Gulf of Mexico	0.8	407	4.4	0	402.6	0.20.
Striped dolphin	Western North Atlantic	0.6	428	0	0	428	0.14.
	N. Gulf of Mexico	0.6	10	0	0	10	6.00.
Spinner dolphin	Western North Atlantic	0	unk	0	0	unk.	
	N. Gulf of Mexico	0.6	62	0	0	62	0.
	Puerto Rico/USVI	0	unk	unk	0	unk	0.
Rough-toothed dolphin	Western North Atlantic	0	1.3	0	0	1.3	0.
	N. Gulf of Mexico	0.2	3	0.8	0	2.2	9.09.
Bottlenose dolphin	Western North Atlantic Offshore	0.8	561	39.4	1.6	520	0.15.
	N. Gulf of Mexico Oceanic	0.8	60	0.4	0	59.6	1.34.
	N. Gulf of Mexico Continental Shelf.	0.8	469	0.8	0	468.2	0.17.
	Puerto Rico/USVI	0.2	unk	0	0	unk	unk.
Harbor porpoise	Gulf of Maine/Bay of Fundy	0.2	706	437	0	269	0.07.
Unidentified delphinid	Western North Atlantic	0.2			0.6	n/a	n/a.
	N. Gulf of Mexico	0.2			0	n/a	n/a.
	Puerto Rico/USVI	0.2			0	n/a	n/a.
Harbor seal	Western North Atlantic	0.2	2,006	389	12	1,605	0.01.
Gray seal	Western North Atlantic	0.2	1,389	5,688		−4,299	Neg.

Gray seals are the only stock where, at first look, annual M/SI is above PBR (but the authorized M/SI is less than 10 percent of PBR) (Table 14). However, the minimum abundance estimate provided in the SAR is based on the U.S. population estimate of 23,158 and does not include the Canada population. The total estimated Canadian gray seal population in 2016 was estimated to be 424,300 (95 percent CI = 263,600 to 578,300) (DFO 2017). This would be acceptable except that the annual M/SI rate of 5,688 includes M/SI from both the U.S. and Canada populations. Therefore, we should compare population to population. The draft 2018 SAR indicates the annual M/SI for the U.S. population is 878. That equates to an r-PBR of 511. Considering the SEFSC is requesting one take, by M/SI, of gray seal over 5 years (or 0.2 animals per year), this results in a percentage of 0.003, well under the 10 percent insignificance threshold. Further, given the authorized M/SI take of one animal over 5 years, this amount of take can be considered discountable given the large population size.

We note that for all stocks, we have conservatively considered in this analysis that any gear interaction would result in mortality or serious injury when it has been documented that some gear interactions may result in Level A harassment (injury) or no injury at all, as serious injury determinations are not made in all cases where the disposition of the animal is ''released alive'' and, in some cases, animals are disentangled from nets without any injury observations (*e.g.,* no wounds, no blood in water, etc).

Level B Take From Acoustic Sources

As described in greater depth previously, we do not believe that SEFSC use of active acoustic sources has the likely potential to result in Level A harassment, serious injury, or mortality. In addition, for the majority of species, the annual take by Level B harassment is very low in relation to the population abundance estimate (less than one percent). We have produced what we believe to be precautionary estimates of potential incidents of Level B harassment (Table 12). The procedure for producing these estimates, described in detail in *Estimated Take Due to Acoustic Harassment,* represents NMFS' best effort towards balancing the need to quantify the potential for occurrence of Level B harassment due to production of underwater sound with a general lack of information related to the specific way that these acoustic signals, which are generally highly directional and transient, interact with the physical environment and to a meaningful understanding of marine mammal perception of these signals and occurrence in the areas where the SEFSC operates. The sources considered here have moderate to high output frequencies (10 to 180 kHz), generally short ping durations, and are typically focused (highly directional with narrow beam width) to serve their intended purpose of mapping specific objects, depths, or environmental features. In addition, some of these sources can be operated in different output modes (*e.g.,* energy can be distributed among multiple output beams) that may lessen the likelihood of perception by and potential impacts on marine mammals in comparison with the quantitative

estimates that guide our take authorization.

As described previously, there is some minimal potential for temporary effects to hearing capabilities within specific frequency ranges for select marine mammals, but most effects would likely be limited to temporary behavioral disturbance. If individuals are in close proximity to active acoustic sources, they may temporarily increase swimming speeds (presumably swimming away from the source) and surface time or decrease foraging effort (if such activity were occurring). These reactions are considered to be of low severity due to the short duration of the reaction. Individuals may move away from the source if disturbed. However, because the source is itself moving and because of the directional nature of the sources considered here, it is unlikely any temporary displacement from areas of significance would occur, and any disturbance would be of short duration. In addition, because the SEFSC survey effort is widely dispersed in space and time, repeated exposures of the same individuals would be very unlikely. For these reasons, we do not consider the level of take by acoustic disturbance to represent a significant additional population stressor when considered in context with the level of take by M/SI for any species. Further, we note no take by harassment is for estuarine bottlenose dolphins. Therefore, only M/SI is incorporated into our negligible impact analysis for those stocks. For Level B take of coastal stocks in both the ARA and GOMRA, it is not possible to quantify take per stock given overlap in time and space. However, we consider the anticipated amount of take to have the potential to occur from some combination of coastal stocks.

Summary of Negligible Impact Determination for SEFSC

In summary, we consider the authorization would not impact annual rates of recruitment or survival of any of the stocks considered here because: (1) The possibility of injury, serious injury, or mortality from the use of active acoustic devices may reasonably be considered discountable; (2) the anticipated incidents of Level B harassment from the use of active acoustic devices consist of, at worst, temporary and relatively minor modifications in behavior; (3) the predicted number of incidents of potential mortality are at insignificant levels (*i.e.,* below ten percent of residual PBR) for select stocks; (4) consideration of more detailed data for gray seals do not reveal cause for concern; (5) for stocks above the insignificance threshold, the loss of one animal over 5 years, especially if it is male (the sex more likely to interact with trawls), is not likely to contribute to measurable changes in annual rates of recruitment or survival; (7) many stocks are subjected to ongoing management actions designed to improve stock understanding and reduce sources of M/SI from other anthropogenic stressors (*e.g.,* BDTRT management actions, pelagic longline TRT); (8) the efforts by the DHW Trustees are designed to restore for injury, including addressing ongoing stressors such as commercial fishery entanglement which would improve stock conditions; (9) implementation of this rule would build upon research designed to reduce fishery related mortality (*e.g.,* NCCOS crab pot/trap and trawl interaction research; HSU lazy line research); (10) the presumed efficacy of the planned mitigation measures in reducing the effects of the specified activity to the level of least practicable adverse impact, and (11) M/SI is more likely to be attributed to males and M/SI for all BSE stocks is the lowest level practicable (1 over 5 years) with no M/SI occurring in 4 of those 5 years.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from SEFSC fisheries research activities will have a negligible impact on affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Small Numbers Analysis—SEFSC

The total amount of take authorized for all estuarine and coastal bottlenose dolphin stocks is less than one percent of each estuarine stock and less than 12 percent of all coastal stocks (Table 15; we note this 12 percent is conservatively high because it considers that all Level B take would come from any given single stock). For pelagic stocks, the total amount of take is less than 13 percent of the estimated population size (Table 16).

TABLE 15—AMOUNT OF AUTHORIZED TAKE OF ESTUARINE AND COASTAL BOTTLENOSE DOLPHIN STOCKS IN THE ARA AND GOMRA RELATED TO STOCK ABUNDANCE

Stock	Stock abundance (N_{best})	Level B take	M/SI take (annual)	Take % population
Atlantic				
Northern South Carolina Estuarine Stock	50	0	0.2	0.40
Charleston Estuarine System Stock	289		0.2	0.07
Northern Georgia/Southern South Carolina Estuarine System Stock	250		0.2	0.08
Central Georgia Estuarine System	192		0.2	0.10
Southern Georgia Estuarine System Stock	194		0.2	0.10
Jacksonville Estuarine System Stock	412		0.2	0.05
Florida Bay Stock	514		0.2	0.04
South Carolina/Georgia Coastal Stock	6,027		0.6	0.01
Northern Florida Coastal Stock	877	110	0.6	12.61
Central Florida Coastal Stock	1,218		0.6	9.08
Northern Migratory Coastal Stock	6,639		0.6	1.67

TABLE 15—AMOUNT OF AUTHORIZED TAKE OF ESTUARINE AND COASTAL BOTTLENOSE DOLPHIN STOCKS IN THE ARA AND GOMRA RELATED TO STOCK ABUNDANCE—Continued

Stock	Stock abundance (N_{best})	Level B take	M/SI take (annual)	Take % population
Southern Migratory Coastal Stock	3,751		0.6	2.95
Gulf of Mexico				
Terrebonne Bay, Timbalier Bay	100	0	0.2	0.20
Mississippi River Delta	332		0.2	0.06
Mississippi Sound, Lake Borgne, Bay Boudreau	3,046		0.2 (M/SI), 0.2 (Level A).	0.01
Mobile Bay, Bonsecour Bay	1,393		0.2	0.16
St. Andrew Bay	124		0.2	0.16
St. Joseph Bay	152		0.2	0.13
St. Vincent Sound, Apalachicola Bay, St. George Sound	439		0.2	0.05
Apalachee Bay	491		0.2	0.04
Waccasassa Bay, Withlacoochee Bay, Crystal Bay	100		0.2	0.20
Northern Gulf of Mexico Western Coastal Stock	20,161	350	0.6	1.74
Northern Gulf of Mexico Northern Coastal Stock	7,185		0.6	4.88
Northern Gulf of Mexico Eastern Coastal Stock	12,388		0.6	2.83

TABLE 16—AMOUNT OF AUTHORIZED TAKE OF PELAGIC STOCKS IN THE ARA, GOMRA, AND CRA TO THE SEFSC RELATED TO STOCK ABUNDANCE

Species	Stock	Abundance (N_{best})	Level B take (annual)	M/SI take (annual)	Total take % population
N. Atlantic right whale	Western North Atlantic	451	4	0	0.89
Fin whale	Western North Atlantic	1,618	4	0	0.25
Sei whale	Western North Atlantic	357	4	0	1.12
Blue whale	Western North Atlantic	33	4	0	12
Humpback whale	Gulf of Maine	896	4	0	0.45
Minke whale	Western North Atlantic	2,591	4	0	0.15
Bryde's whale	Northern Gulf of Mexico	33	4	0	12.12
Sperm whale	North Atlantic	2,288	4	0	0.17
	Northern Gulf of Mexico	763	17	0	2.23
	Puerto Rico/USVI	unk	4	0	unk.
Risso's dolphin	Western North Atlantic	18,250	15	0.2	0.08
	N. Gulf of Mexico	2,442	10	0.2	0.42
	Puerto Rico/USVI	21,515	10	0.2	0.05
Kogia	Western North Atlantic	3,785	10	0	0.26
	N. Gulf of Mexico	186	12	0	6.45
Beaked whales	Western North Atlantic	7,092	9	0	0.13
	N. Gulf of Mexico	149	8	0	5.37
Melon headed whale	N. Gulf of Mexico	2,235	100	0.6	4.50
Short-finned pilot whale	Western North Atlantic	28,924	48	0.2	0.17
	N. Gulf of Mexico	2,415	25	0.2	1.04
	Puerto Rico/USVI	unk	20	0.2	unk.
Common dolphin	Western North Atlantic	70,184	268	0.8	0.38
Atlantic spotted dolphin	Western North Atlantic	44,715	37	0.8	0.08
	N. Gulf of Mexico	unk	198	0.8	unk.
	Puerto Rico/USVI	unk	50	0.2	unk.
Pantropical spotted dolphin	Western North Atlantic	3,333	78	0.2	2.35
	N. Gulf of Mexico	50,807	203	0.8	0.40
Striped dolphin	Western North Atlantic	54,807	75	0.6	0.14
	N. Gulf of Mexico	1,849	46	0.6	2.52
Spinner dolphin	Western North Atlantic	unk	100	0	unk.
	N. Gulf of Mexico	11,441	200	0.6	1.75
	Puerto Rico/USVI	unk	50	0	unk.
Rough-toothed dolphin	Western North Atlantic	136	10	0	7.35
	N. Gulf of Mexico	624	20	0.2	3.24
Bottlenose dolphin	Western North Atlantic Offshore	77,532	39	0.8	0.05
	N. Gulf of Mexico Oceanic	5,806	100	0.8	1.74
	N. Gulf of Mexico Continental Shelf	51,192	350	0.8	0.69
	Puerto Rico/USVI	unk	50	0.2	unk.
Harbor porpoise	Gulf of Maine/Bay of Fundy	79,833	0	0.2	0.00
Unidentified delphinid	Western North Atlantic	n/a	0	0.2	n/a
	N. Gulf of Mexico			0.2	
	Puerto Rico/USVI			0.2	
Harbor seal	Western North Atlantic	75,834	0	0.2	0.00
Gray seal	Western North Atlantic	27,131	0	0.2	0.00

The majority of stocks would see take less than 5 percent of the population taken with the greatest being 12.12 percent from Bryde's whales in the Gulf of Mexico. However, this is assuming all takes came from the same stock of beaked whales which is unlikely. Where stock numbers are unknown, we would expect a similar small amount of take relative to population sizes.

Based on the analysis contained herein of the proposed activity (including the mitigation and monitoring measures) and the authorized take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by the issuance of regulations to the SEFSC. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Adaptive Management

The regulations governing the take of marine mammals incidental to SEFSC fisheries research survey operations contain an adaptive management component which is both valuable and necessary within the context of 5-year regulations for activities that have been associated with marine mammal mortality. The use of adaptive management allows OPR to consider new information from different sources to determine (with input from the SEFSC regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). The coordination and reporting requirements in this rule are designed to provide OPR with data to allow consideration of whether any changes to mitigation and monitoring is necessary. OPR and the SEFSC will meet annually to discuss the monitoring reports and current science and whether mitigation or monitoring modifications are appropriate. Decisions will also be informed by findings from any established working groups, investigations into gear modifications and dolphin-gear interactions, new stock data, and coordination efforts between all NMFS Fisheries Science Centers. Mitigation measures could be modified if new data suggest that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable. In addition, any M/SI takes by the SEFSC and affiliates are required to be submitted within 48 hours to the PSIT database and OPR will be made aware of the take. If there is an immediate need to revisit monitoring and mitigation measures based on any given take, OPR and SEFSC would meet as needed.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring reports, as required by MMPA authorization; (2) results from general marine mammal and sound research; (3) 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; and (4) findings from any mitigation research (*e.g.,* gear modification). In addition, developments on the effectiveness of mitigation measures as discovered through research (*e.g.,* stiffness of lazy lines) will inform adaptive management strategies. Finally, the SEFSC–SCDNR working group is investigating the relationships between SCDNR research surveys and marine mammal takes. Any report produced by that working group will inform improvements to marine mammal monitoring and mitigation.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

Accordingly, NMFS prepared a PEA to consider the environmental impacts associated with the issuance of the regulations and LOA to SEFSC. Subsequently, NMFS issued the Final PEA for Fisheries and Ecosystem Research Conducted and Funded by the Southeast Fisheries Science Center and signed a Finding of No Significant Impact (FONSI) on March 23, 2020. The documents can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Endangered Species Act (ESA)

On May 9, 2016, NMFS SERO issued a Biological Opinion on Continued Authorization and Implementation of National Marine Fisheries Service's Integrated Fisheries Independent Monitoring Activities in the Southeast Region (Biological Opinion). The Biological Opinion found independent fishery research is not likely to adversely affect the following ESA-listed species: Blue whales, sei whales, sperm whales, fin whales, humpback whales, North Atlantic right whales, gulf sturgeon and all listed corals in the action area. NMFS amended this Biological Opinion on June 4, 2018, updating marine mammal hearing group frequency ranges based on the best available science, adding evaluation of the effects of this proposed action on the Gulf of Mexico Bryde's whale, and including NMFS' issuance of regulations and a LOA to SEFSC as part of the proposed action. Similar to the previous finding, the amended Biological Opinion concluded SEFSC independent fishery research is not likely to adversely affect listed marine mammals or adversely modify critical habitat.

Classification

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this rule is not significant.

Pursuant to section 605(b) of 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 rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The SEFSC is the sole entitiy that would be subject to the requirements in these regulations, and the SEFSC is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

The rule for the SEFSC does not contain a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act (PRA) because the applicant is a Federal agency.

List of Subjects in 50 CFR Part 219

Endangered and threatened species, Fish, Marine mammals, Reporting and recordkeeping requirements, Wildlife.

Dated: April 10, 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 219 is amended as follows:

PART 219—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 219 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Add subpart H to read as follows:

Subpart H—Taking Marine Mammals Incidental to Southeast Fisheries Science Center Fisheries Research in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea

Sec.

219.71 Specified activity and specified geographical region.
219.72 Effective dates.
219.73 Permissible methods of taking.
219.74 Prohibitions.
219.75 Mitigation requirements.
219.76 Requirements for monitoring and reporting.
219.77 Letters of Authorization.
219.78 Renewals and modifications of Letters of Authorization.
219.79–219.80 [Reserved]

Subpart H—Taking Marine Mammals Incidental to Southeast Fisheries Science Center Fisheries Research in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea

§ 219.71 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the National Marine Fisheries Service's (NMFS) Southeast Fisheries Science Center (SEFSC) and those persons it authorizes or funds to conduct fishery-independent research surveys on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to SEFSC and partner research survey program operations. Hereafter, ''SEFSC'' refers to both the SEFSC and all designated partners.

(b) The taking of marine mammals by the SEFSC and partners may be authorized in a 5-year Letter of Authorization (LOA) only if it occurs during fishery research surveys in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea and their associated estuaries.

§ 219.72 Effective dates.

This subpart is effective from June 5, 2020, through June 5, 2025.

§ 219.73 Permissible methods of taking.

Under an LOA issued pursuant to §§ 216.106 of this chapter and 219.77, the Holder of the LOA (hereinafter ''SEFSC'') may incidentally, but not intentionally, take marine mammals within the areas described in § 219.71 by Level A harassment, serious injury, or mortality associated with fisheries research gear including trawls, gillnets, and hook and line, and Level B harassment associated with use of active acoustic systems provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the relevant LOA.

§ 219.74 Prohibitions.

Notwithstanding takings contemplated in § 219.73 and authorized by an LOA issued under §§ 216.106 of this chapter and 219.77, no person in connection with the activities described in § 219.71 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under §§ 216.106 of this chapter and 219.77;

(b) Take any marine mammal species or stock not specified in the LOA;

(c) Take any marine mammal in any manner other than as specified in the LOA; and

(d) Take a marine mammal specified in an LOA in numbers exceeding those authorized.

§ 219.75 Mitigation requirements.

When conducting the activities identified in § 219.71, the mitigation measures contained in any LOA issued under §§ 216.106 of this chapter and 219.77 must be implemented. These mitigation measures must include but are not limited to:

(a) *General conditions.* (1) SEFSC must take all necessary measures to coordinate and communicate in advance of each specific survey with the National Oceanic and Atmospheric Administration's (NOAA) Office of Marine and Aviation Operations (OMAO) or other relevant parties on non-NOAA platforms to ensure that all mitigation measures and monitoring requirements described herein, as well as the specific manner of implementation and relevant event-contingent decision-making processes, are clearly understood and agreed upon;

(2) SEFSC must coordinate and conduct briefings at the outset of each survey and as necessary between ship's crew (Commanding Officer/master or designee(s), as appropriate) and scientific party in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;

(3) SEFSC must coordinate, on an annual basis, with all partners to ensure that marine mammal-related requirements, procedures, and decision-making processes are understood and properly implemented.

(4) SEFSC must establish and maintain cooperating partner working group(s) to identify circumstances of a take should it occur and any action necessary to avoid future take.

(i) Working groups must be established if a partner takes more than one marine mammal within 5 years to identify circumstances of marine mammal take and necessary action to avoid future take. Each working group must meet at least once annually.

(ii) Each working group must consist of at least one SEFSC representative knowledgeable of the mitigation, monitoring and reporting requirements contained within these regulations, one or more research institution or SEFSC representative(s) (preferably researcher(s) aboard vessel when take or risk of take occurred), one or more staff from NMFS Southeast Regional Office Protected Resources Division, and one or more staff from NMFS Office of Protected Resources.

(5) When deploying any type of sampling gear at sea, SEFSC must at all times monitor for any unusual circumstances that may arise at a sampling site and use best professional judgment to avoid any potential risks to marine mammals during use of all research equipment.

(6) SEFSC must implement handling and/or disentanglement protocols that must be provided to survey personnel. During fishery surveys where there is a potential for take, at least two persons aboard SEFSC ships and one person aboard smaller vessels, including vessels operated by partners where no SEFSC staff are present, must be trained in marine mammal handling, release, and disentanglement procedures.

(7) For research surveys using gear that has the potential to hook or entangle a marine mammal in open-ocean waters (as defined from the coastline seaward), the SEFSC must implement move-on rule mitigation protocol upon observation of any marine mammal other than dolphins and porpoises attracted to the vessel (see specific gear types below for marine mammal monitoring details). Specifically, if one or more marine mammals (other than dolphins and porpoises) are observed near the sampling area and are considered at risk of interacting with the vessel or research gear, or appear to be approaching the vessel and are considered at risk of interaction, SEFSC must either remain onsite or move on to another sampling location. If remaining onsite, the set must be delayed until the animal(s) depart or appear to no longer be at risk of interacting with the vessel or gear. At such time, the SEFSC may deploy gear. The SEFSC must use best professional judgment, in accordance with this

paragraph, in making decisions related to deploying gear.

(8) Vessels Operation—While transiting in areas subjected to the North Atlantic right whale ship strike rule, all SEFSC-affiliated research vessels (NOAA vessels, NOAA chartered vessels, and research partner vessels) must abide by the required speed restrictions and sighting alert protocols. All NOAA research vessels operating in North Atlantic right whale habitat participate in the Right Whale Early Warning System.

(9) The SEFSC must avoid baiting the waters (*i.e,* chumming) during all surveys.

(b) *Trawl survey mitigation.* In addition to the general conditions provided in § 219.75(a), the following measures must be implemented during trawl surveys:

(1) SEFSC must conduct fishing operations as soon as practicable upon arrival at the sampling station and, if practicable, prior to other environmental sampling;

(2) The SEFSC must limit tow times to 30 minutes (except for sea turtle research trawls);

(3) The SEFSC must, during haul back, open cod end close to deck/sorting table to avoid damage to animals that may be caught in gear and empty gear as quickly as possible after retrieval haul back;

(4) The SEFSC must delay gear deployment if any marine mammals are believed to be at risk of interaction;

(5) The SEFSC must retrieve gear immediately if any marine mammals are believed to be entangled or at risk of entanglement;

(6) Dedicated marine mammal observations must occur at least 15 minutes prior to the beginning of net deployment when trawling occurs in waters less than 200 meters in depth. If trawling occurs in waters deeper than 200 m, dedicated marine mammal observations must occur at least 30 minutes prior to net deployment. This watch may include approach to the sampling station within 0.5 nm. Marine mammal watches should be conducted by systematically scanning the surrounding waters and marsh edge (if visible) 360 degrees around the vessel. If dolphin(s) are sighted and believed to be at-risk of interaction (*e.g.,* moving in the direction of the vessel/gear; moms/calves close to the gear; etc.), gear deployment should be delayed until the animal(s) are no longer at risk or have left the area on their own. If species other than dolphins are sighted, trawling must not be initiated and the marine mammal(s) must be allowed to either leave or pass through the area safely before trawling is initiated. All marine mammal sightings must be logged and reported per § 219.76 of this subpart.

(7) The SEFSC must retrieve gear immediately if marine mammals are believed to be captured/entangled in a net or associated gear (*e.g.,* lazy line) and follow disentanglement protocols;

(8) The SEFSC must minimize ''pocketing'' in areas of trawl nets where dolphin depredation evidence is commonly observed;

(9) When conducting research under an ESA section 10(a)(1)(A) scientific research permit issued by NMFS, all marine mammal mitigation and monitoring protocol contained within that permit must be implemented;

(10) SEFSC must implement standard survey protocols to minimize potential for marine mammal interactions, including maximum tow durations at target depth and maximum tow distance, and must carefully empty the trawl as quickly as possible upon retrieval. Trawl nets must be cleaned prior to deployment; and

(11) The SEFSC must continue investigation into gear modifications (*e.g.,* stiffening lazy lines) and the effectiveness of gear modification at avoiding entanglement, as funding allows.

(c) *Seine net and gillnet survey mitigation.* In addition to the general conditions provided in paragraph (a) of this section, the following measures must be implemented during seine and gillnet surveys:

(1) Conduct gillnet and trammel net research activities during daylight hours only.

(2) Limit soak times to the least amount of time required to conduct sampling;

(3) Conduct dedicated marine mammal observation monitoring beginning 15 minutes prior to deploying the gear and continue through deployment and haulback;

(4) Hand-check the net every 30 minutes if soak times are longer than 30 minutes or immediately if disturbance is observed;

(5) Reduce net slack and excess floating and trailing lines;

(6) Repair damaged nets prior to deploying;

(7) Delay setting net if a marine mammal is deemed to be at-risk of entanglement;

(8) Pull net immediately if a marine mammal is entangled and follow disentanglement procedures; and

(9) If marine mammals are sighted in the sampling area during active netting, the SEFSC must raise and lower the net leadline. If marine mammals do not immediately depart the area and the animal appears to be at-risk of entanglement (*e.g.,* interacting with or on a path towards the net), the SEFSC must delay or pull all gear immediately.

(d) *Hook and line (including longline) survey mitigation.* In addition to the General Conditions provided in paragraph (a) of this section, the following measures must be implemented during hook and line surveys:

(1) SEFSC must deploy hook and line gear as soon as is practicable upon arrival at the sampling station.

(2) SEFSC must initiate marine mammal observations (visual observation) no less than 30 minutes prior to gear deployment if sampling is conducted in waters greater than 200 m. If sampling in water less than 200 m, the SEFSC must initiate marine mammal observations no less than 15 minutes prior to setting gear. Observations must be conducted by scanning the surrounding waters with the naked eye and range-finding binoculars (or monocular) when longlines exceed observation distances using the naked eye. During nighttime operations, visual observation must be conducted using available vessel lighting.

(3) SEFSC must implement the move-on rule mitigation protocol, as described in paragraph (a)(7) of this section.

(4) SEFSC must maintain visual monitoring effort, where practicable, during the entire period of gear deployment and retrieval. If marine mammals are sighted before the gear is fully deployed or retrieved, SEFSC must take the most appropriate action to avoid marine mammal interaction. SEFSC may use best professional judgment in making this decision.

(5) If gear deployment or fishing has been suspended because of the presence of marine mammals, SEFSC may resume such operations when practicable only when the animals are believed to have departed the area in accordance with the move-on rule as described in paragraph (a)(7) of this section. If longline operations have been delayed because of the presence of protected species, the vessel resumes longline operations only when these species have not been sighted within 15 minutes if in less than 200 m or 30 minutes if greater than 200 m of water, or otherwise determined to no longer be at risk. SEFSC may use best professional judgment in making this decision.

(6) SEFSC must implement standard survey protocols, including maximum soak durations and limiting longline length to that necessary.

(7) For pelagic, surface longlines, gangion length must allow hooked

animals to reach the surface. SEFSC must immediately reel in lines if marine mammals are deemed to be at risk of interacting with gear.

(8) SEFSC must follow existing Dolphin Friendly Fishing Tips available at *http://sero.nmfs.noaa.gov/protected_resources/outreach_and_education/documents/dolphin_friendly_fishing_tips.pdf.*

(9) SEFSC must not discard leftover bait overboard while actively fishing.

(10) SEFSC must inspect tackles daily to avoid unwanted line breaks.

(11) Pull gear immediately if a marine mammal is hooked and follow disentanglement procedures.

(12) Avoid using stainless steel hooks.

(13) For pelagic longline surveys in the Atlantic Ocean, follow the Pelagic Longline Take Reduction Plan and Longline Marine Mammal Handling and Release Guidelines.

(d) *Electrofishing.* (1) SEFSC must implement marine mammal monitoring 15 minutes prior to the onset of electrofishing (this can include approach to the survey site). If the vessel moves to another survey site, the 15 minutes observation period must be repeated.

(2) SEFSC must implement a 50-m safety zone. If a marine mammal is observed within 50 m of the vessel or on a path toward the vessel, electrofishing must be delayed. Electrofishing must not begin until the animal is outside of the 50 m safety zone or on a consistent path away from the vessel.

(3) All samples collected during electrofishing must remain on the vessel and not be discarded until all electrofishing is completed to avoid attracting protected species.

§ 219.76 Requirements for monitoring and reporting.

(a) *Compliance coordination.* SEFSC must designate a compliance coordinator who is responsible for ensuring and documenting compliance with all requirements of any LOA issued pursuant to §§ 216.106 of this chapter and 219.77 and for preparing for any subsequent request(s) for incidental take authorization. All partners must report to this SEFSC-based compliance coordinator.

(b) *Visual monitoring program.* (1) Marine mammal visual monitoring must occur prior to deployment of trawl, net, and hook and line gear, respectively; throughout deployment of gear and active fishing of research gears (not including longline soak time); prior to retrieval of longline gear; and throughout retrieval of all research gear.

(2) When vessels are transiting, the SEFSC must maintain marine mammal observations to avoid ship strike.

(c) *Training.* (1) SEFSC must conduct annual training for all SEFSC and affiliate chief scientists and other personnel who may be responsible for conducting dedicated marine mammal visual observations to explain mitigation measures, by gear and the purpose for each measure, and monitoring and reporting requirements in the LOA, mitigation and monitoring protocols, and marine mammal identification and species that the SEFSC is authorized to incidentally take. SEFSC may determine the agenda for these trainings.

(2) The training must provide detailed descriptions of reporting, data collection, and sampling protocols. This portion of the training will include instruction on how to complete new data collection forms such as the marine mammal watch log, the incidental take form (*e.g.,* specific gear configuration and details relevant to an interaction with protected species), and forms used for species identification and biological sampling. The biological data collection and sampling training module will include the same sampling and necropsy training that is used for the Southeast Regional Observer training.

(3) SEFSC must also dedicate a portion of training to discussion of best professional judgment, including use in any incidents of marine mammal interaction and instructive examples where use of best professional judgment was determined to be successful or unsuccessful.

(4) SEFSC must coordinate with NMFS' Office of Science and Technology to ensure training and guidance related to handling procedures and data collection is consistent with other fishery science centers.

(d) *Handling procedures and data collection.* (1) SEFSC must implement standardized marine mammal handling, disentanglement, and data collection procedures. These standard procedures will be subject to approval by NMFS' Office of Protected Resources (OPR).

(2) For any marine mammal interaction involving the release of a live animal, SEFSC must collect necessary data to facilitate a serious injury determination.

(3) SEFSC must provide its relevant personnel with standard guidance and training regarding handling of marine mammals, including how to identify different species, bring an individual aboard a vessel, assess the level of consciousness, remove fishing gear, return an individual to water, and log activities pertaining to the interaction.

(4) At least two persons aboard SEFSC ships and one person aboard smaller vessels, including vessels operated by partners where no SEFSC staff are present, must be trained in marine mammal handling, release, and disentanglement procedures.

(5) SEFSC must record such data on standardized forms, which will be subject to approval by OPR. SEFSC must also answer a standard series of supplemental questions regarding the details of any marine mammal interaction.

(6) For any marine mammals that are killed during fisheries research activities, when practicable, scientists will collect data and samples pursuant to Appendix D of the SEFSC DEA, ''Protected Species Handling Procedures for SEFSC Fisheries Research Vessels.

(e) *Reporting.* (1) The SEFSC must follow protocol for reporting incidental takes:

(i) The SEFSC must notify the Southeast Marine Mammal Stranding Network (877–433–8299) immediately following the incidental take of a marine mammal. For injured/uninjured marine mammals, priority should be to release the animal before notifying the Stranding Network.

(ii) The SEFSC must report all marine mammal gear interaction to NMFS's Protected Species Incidental Take (PSIT) database within 48 hours of occurrence and must provide supplemental information to OPR and SERO upon request. Information related to marine mammal interaction (animal captured or entangled in research gear) must include details of research survey, monitoring conducted prior to interaction, full descriptions of any observations of the animals, the context (vessel and conditions), decisions made, and rationale for decisions made in vessel and gear handling.

(2) The SEFSC must submit a draft annual report to NMFS OPR. The period of reporting must be annual, beginning one year post-issuance of any LOA and the report must be submitted not less than ninety days following the end of a given year.

(i) SEFSC must provide a final report within thirty days following resolution of comments on the draft report.

(ii) These reports must contain, at minimum, the following:

(A) Annual line-kilometers and locations surveyed during which the EK60, ME70, and EQ50 (or equivalent sources) operating below 200 kHz were predominant and associated pro-rated estimates of actual take;

(B) Summary information regarding use of all trawl, gillnet, and hook and line gear, including location, number of

sets, hook hours, tows, etc., specific to each gear;

(C) Accounts of surveys where marine mammals were observed during sampling but no interactions occurred;

(D) All incidents of marine mammal interactions, including circumstances of the event and descriptions of any mitigation procedures implemented or not implemented and why and, if released alive, serious injury determinations;

(E) Summary information related to any disturbance of marine mammals and distance of closest approach;

(F) A written evaluation of the effectiveness of SEFSC mitigation strategies in reducing the number of marine mammal interactions with survey gear, including gear modifications and best professional judgment and suggestions for changes to the mitigation strategies, if any;

(G) A summary of all relevant training provided by SEFSC and any coordination with NMFS Office of Science and Technology and the SERO;

(H) A summary of meeting(s) and workshop(s) outcomes with any partner working group, including, the South Carolina Department of Natural Resources, designed to reduce the number of marine mammal interactions; and

(I) A written description of any mitigation research investigation efforts and findings (*e.g.,* lazy line modifications).

(f) *Reporting of injured or dead marine mammals.* (1) In the unanticipated event that the activity defined in § 219.71(a) clearly causes the take of a marine mammal in a prohibited manner, SEFSC personnel engaged in the research activity must immediately cease such activity until such time as an appropriate decision regarding activity continuation can be made by the SEFSC Director (or designee). The incident must be reported immediately to OPR and SERO. OPR and SERO will review the circumstances of the prohibited take and work with SEFSC to determine what measures are necessary to minimize the likelihood of further prohibited take. The immediate decision made by SEFSC regarding continuation of the specified activity is subject to OPR concurrence. The report must include the information included in paragraph (f)(2) of this section.

(2) SEFSC or partner must report all injured or dead marine mammals observed during fishery research surveys that are not attributed to the specified activity to the Southeast Regional Stranding Coordinator within 24 hours. If the discovery is made by a partner, the report must also be submitted to the SEFSC Environmental Compliance Coordinator. The following information must be provided:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) Description of the incident including, but not limited to, monitoring prior to and occurring at time of incident;

(iii) Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility);

(iv) Description of all marine mammal observations in the 24 hours preceding the incident;

(v) Species identification or description of the animal(s) involved;

(vi) Status of all sound source or gear used in the 24 hours preceding the incident;

(vii) Water depth;

(viii) Fate of the animal(s) (*e.g.* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared, etc.); and

(ix) Photographs or video footage of the animal(s).

(3) In the event of a ship strike of a marine mammal by any SEFSC or partner vessel involved in the activities covered by the authorization, SEFSC or partner must immediately report the information in paragraph (f)(2) of this section, as well as the following additional information:

(i) Vessel's speed during and leading up to the incident;

(ii) Vessel's course/heading and what operations were being conducted;

(iii) Status of all sound sources in use;

(iv) Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;

(v) Estimated size and length of animal that was struck; and

(vi) Description of the behavior of the marine mammal immediately preceding and following the strike.

§ 219.77 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, SEFSC must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, SEFSC must apply for and obtain a modification of the LOA as described in § 219.78.

(d) The LOA must set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(e) Issuance of the LOA must be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(f) Notice of issuance or denial of an LOA must be published in the **Federal Register** within 30 days of a determination.

§ 219.78 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 219.77 for the activity identified in § 219.71(a) must be renewed or modified upon request by the applicant, provided that:

(1) The specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), and

(2) OPR determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For an LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), OPR may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 of this chapter and 219.77 for the activity identified in § 219.71(a) may be modified by OPR under the following circumstances:

(1) *Adaptive management.* OPR may modify or augment the existing mitigation, monitoring, or reporting measures (after consulting with SEFSC regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, OPR will publish notification of proposed LOA in the **Federal Register** and solicit public comment.

(ii) [Reserved]

(2) *Emergencies.* If OPR 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 219.77, an LOA may be modified without prior notice or opportunity for public comment. Notification would be published in the **Federal Register** within 30 days of the action.

§§ 219.79–219.80 [Reserved]

[FR Doc. 2020–07933 Filed 5–5–20; 8:45 am]

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Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1
Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2020–0051, Sequence No. 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2020–06; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2020–06. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

DATES: For effective date see the separate documents, which follow.

ADDRESSES: The FAC, including the SECG, is available via the internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755.

RULE LISTED IN FAC 2020–06

Item	Subject	FAR case	Analyst
I	Revocation of Executive Order on Nondisplacement of Qualified Workers	2020–001	Delgado.
II	Applicability of Inflation Adjustments of Acquisition-Related Thresholds	2018–007	Delgado.
III	Tax on Certain Foreign Procurement	2016–013	Delgado.
IV	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2020–06 amends the FAR as follows:

Item I—Revocation of Executive Order on Nondisplacement of Qualified Workers (FAR Case 2020–001)

This final rule removes subpart 22.12, entitled ''Nondisplacement of Qualified Workers Under Service Contracts'', and a related contract clause, from the FAR. The final rule applies to service contracts which succeed a contract for performance by service employees of the same or similar work at the same location. It removes a requirement for service contractors and their subcontractors to offer employees of the predecessor contractor and its subcontractors a right of first refusal of employment for positions for which they are qualified. It implements Executive Order 13897 of October 31, 2019, Improving Federal Contractor Operations by Revoking Executive Order 13495. This final rule will not have a significant impact on service contractors and their subcontractors. However, as a result of eliminating the language in FAR subpart 22.12, there will be fewer requirements imposed on contractors to keep records demonstrating compliance on successor contractors.

Item II—Applicability of Inflation Adjustments of Acquisition-Related Thresholds (FAR Case 2018–007)

This final rule makes inflation adjustments of statutory acquisition-related thresholds under 41 U.S.C. 1908 applicable to existing contracts and subcontracts in effect on the date of the adjustment. It implements section 821 of the National Defense Authorization Act for Fiscal Year 2018.

This final rule will not have a significant economic impact on a substantial number of small entities.

Item III—Tax on Certain Foreign Procurement (FAR Case 2016–013)

This final rule withholds a 2 percent tax on contract payments made by the United States (U.S.) Government to foreign persons pursuant to certain contracts. This rule applies to Federal Government contracts for goods or services that are awarded to foreign persons. It implements the Department of the Treasury final regulations published in the **Federal Register** at 81 FR 55133 on August 18, 2016, under section 5000C of the Internal Revenue Code relating to the 2 percent tax on payments made by the U.S. Government to foreign entities pursuant to certain contracts.

This final rule will not have a significant economic impact on a substantial number of small entities.

Item IV—Technical Amendments

Editorial changes are made at FAR 4.1102, 19.102, 25.301–1, 25.301–4, 52.219–28, 52.223–15, and 52.225–19.

Federal Acquisition Circular (FAC) 2020–06 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2020–06 is effective May 6, 2020 except for Items I, II, and III, which are effective June 5, 2020.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Kim Herrington,

Acting Principal Director, Defense Pricing and Contracting, Department of Defense.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

William G. Roets, II,

Acting Assistant Administrator, Office of Procurement, National Aeronautics and Space Administration.

[FR Doc. 2020–07107 Filed 5–5–20; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 22, and 52

[FAC 2020–06; FAR Case 2020–001; Item I; Docket No. FAR–2020–0001; Sequence No. 1]

RIN 9000–AO03

Federal Acquisition Regulation: Revocation of Executive Order on Nondisplacement of Qualified Workers

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to remove the FAR subpart on nondisplacement of qualified workers. This final rule implements an Executive order which revoked the previous Executive order on this topic.

DATES: *Effective:* June 5, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or *zenaida.delgado@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2020–06, FAR Case 2020–001.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are issuing a final rule amending the FAR to implement Executive Order (E.O.) 13897 of October 31, 2019, Improving Federal Contractor Operations by Revoking Executive Order 13495 (published in the **Federal Register** on November 5, 2019, at 84 FR 59709). E.O. 13897 revokes E.O. 13495 of January 30, 2009, Nondisplacement of Qualified Workers Under Service Contracts.

E.O. 13495 required service contractors and their subcontractors to offer employees of the predecessor contractor and its subcontractors a right of first refusal of employment for positions for which they are qualified.

This final rule amends the FAR to delete FAR subpart 22.12 in its entirety as well as the corresponding clause at FAR 52.222–17, Nondisplacement of Qualified Workers. FAR 1.106, 2.101, and clause 52.212–5 are also amended to delete references to the revoked E.O. 13495, FAR subpart 22.12, and FAR 52.222–17. Contracting officers should not take any action on any complaints filed under former FAR subpart 22.12.

The Department of Labor (DOL) rescinded its implementing regulations on January 31, 2020 (85 FR 5567).

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not add any new solicitation provisions or clauses. The FAR rule removes a requirement for service contractors and their subcontractors to offer employees of the predecessor contractor and its subcontractors a right of first refusal of employment for positions for which they are qualified.

III. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is the Office of Federal Procurement Policy statute (codified at Title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it is simply removing a requirement that has become obsolete as a result of an executive action that compelled the Federal Acquisition Regulatory Council to rescind the requirement. See section 2 of E.O. 13897.

IV. Executive Orders 12866 and 13563

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action, and therefore, this rule was not subject to the review of the Office of Information and Regulatory Affairs under section 6(b) of E.O. 12866. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies. The FAR rule information collection requirements were collected under the approval authority granted to the DOL Wage and Hour Division currently cleared by the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.,* under OMB control number 1235–0025, Nondisplacement of Qualified Workers Under Service Contracts, Executive Order 13495. The Wage and Hour Division has requested a discontinuation of this collection as a result of E.O. 13897.

List of Subjects in 48 CFR Parts 1, 2, 22, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 22, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 22, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 by removing from the table the entries ''22.12'' and ''52.222–17''.

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

■ 3. Amend section 2.101(b) in the definition ''United States'' by removing paragraph (4) and redesignating paragraphs (5) through (12) as paragraphs (4) through (11).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 22.12 [Removed and Reserved]

■ 4. Remove and reserve subpart 22.12.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Removing paragraph (c)(1) and redesignating paragraphs (c)(2) through (10) as paragraphs (c)(1) through (9); and

■ c. Removing paragraph (e)(1)(vi) and redesignating paragraphs (e)(1)(vii) through (xxiii) as paragraphs (e)(1)(vi) through (xxii).

The revision reads as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (JUN 2020)

* * * * *

52.222–17 [Removed and Reserved]

■ 6. Remove and reserve section 52.222–17.

[FR Doc. 2020–07108 Filed 5–5–20; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 5, 8, 9, 12, 13, 15, 19, 22, 25, 30, 50, and 52

[FAC 2020–06; FAR Case 2018–007; Item II; Docket No. FAR–2018–0007; Sequence No. 1]

RIN 9000–AN67

Federal Acquisition Regulation: Applicability of Inflation Adjustments of Acquisition-Related Thresholds

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act for Fiscal Year 2018 to make inflation adjustments of statutory acquisition-related thresholds applicable to existing contracts and subcontracts in effect on the date of the adjustment that contain the revised clauses in this rulemaking.

DATES: *Effective:* June 5, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or *zenaida.delgado@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2020–06, FAR Case 2018–007.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** on June 24, 2019, at 84 FR 29482, to make inflation adjustments of statutory acquisition-related thresholds under 41 U.S.C. 1908 applicable to existing contracts and subcontracts in effect on the date of the adjustment. This FAR change implements section 821 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91).

Title 41 U.S.C. 1908, Inflation adjustment of acquisition-related dollar thresholds, requires an adjustment every five years of acquisition-related thresholds for inflation using the Consumer Price Index for all urban consumers, except for the Construction Wage Rate Requirements statute (Davis-Bacon Act), Service Contract Labor Standards statute, and trade agreements thresholds. See FAR 1.109. The last FAR case that raised the thresholds for inflation was 2014–022, a final rule published on July 2, 2015, effective October 1, 2015. The next inflation adjustment under 41 U.S.C. 1908 will be implemented through FAR Case 2019–013 and planned to be effective October 1, 2020. One respondent submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments is provided as follows:

A. Summary of Changes

There are no changes as a result of comments on the proposed rule.

B. Analysis of Public Comments

Comment: One respondent supported the proposed rule and suggested to include a list, preferably in table form, of the actual calendar dates of threshold effectiveness.

Response: The Councils agree a table might be a helpful reference tool and will add one at *Acquisition.gov* under *https://www.acquisition.gov/tableofeffectivedatesforMPTandSAT.* The table will only illustrate changes to the micro-purchase and simplified acquisition thresholds, after they are implemented through the rulemaking process.

C. Other Changes

Editorial changes are made to three clauses to change the paragraph heading of ''Flowdown'' to ''Subcontracts'' in order to conform to FAR drafting conventions. See FAR clauses 52.203–16, paragraph (d); 52.215–23, paragraph (f); and 52.226–6, paragraph (e).

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not add any new solicitation provisions or clauses, or impact any existing provisions or clauses, except for the added references to acquisition-related thresholds in the FAR text.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory

alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action, and therefore, this rule was not subject to the review of the Office of Information and Regulatory Affairs under section 6(b) of E.O. 12866. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

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

VI. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule is required to implement section 821 of the National Defense Authorization Act for Fiscal Year (FY) 2018. The objective is to make inflation adjustments of statutory acquisition-related thresholds under 41 U.S.C. 1908(d) applicable to existing contracts and subcontracts in effect on the date of the adjustment that contain the revised clauses.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis.

This rule will likely affect to some extent all small business concerns that submit offers or are awarded contracts by the Federal Government.

However, this rule is not expected to have any significant economic impact on small business concerns because this rule: (1) Is not creating any new requirements with which small entities must comply, and (2) is only establishing the framework to apply the inflation adjustments of statutory acquisition-related thresholds under 41 U.S.C. 1908 to existing contracts and subcontracts in effect on the date of the adjustment. Any impact on small business concerns will be beneficial by preventing burdensome requirements from continuing to apply to smaller dollar value contracts when acquisition thresholds are increased during the period of performance.

As of September 30, 2017, there were 637,791 active entity registrations in *SAM.gov*. Of those active entity registrations, 452,310 (71 percent) completed all four modules of the registration, in accordance with FAR 52.204–7(a)(2), including Assertions (where they enter their size metrics and select their NAICS Codes) and Reps & Certs (where they certify to the information they provided and the size indicator by NAICS).

Of the possible 452,310 active *SAM.gov* entity registrations, 338,207 (75 percent) certified to meeting the size standard of small for their primary NAICS Code. Therefore, this rule may be beneficial to 338,207 small business entities that submit proposals that may now fall under the micro-purchase threshold, the simplified acquisition threshold, or other applicable acquisition thresholds (*e.g.,* contractor code of business ethics and conduct, reporting executive compensation and first-tier subcontract awards, equal opportunity for veterans) as a result of this rule.

The rule does not include additional reporting or record keeping requirements.

There are no available alternatives to the rule to accomplish the desired objective of the statute.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) does apply; however, the changes to the FAR do not impose new information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* The changes do not impose additional information collection requirements to the paperwork burden previously approved under the following OMB Control Numbers: 9000–0007, Subcontracting Plans; 9000–0018, Certification Of Independent Price Determination, Contractor Code of Business Ethics and Conduct, and Preventing Personal Conflicts of Interest; 9000–0027, Value Engineering Requirements; 9000–0193, FAR Part 9 Responsibility Matters; 9000–0091, Anti-Kickback Procedures; 9000–0097, Federal Acquisition Regulation Part 4 Requirements; 9000–0136, Commercial Item Acquisitions; 9000–0034, Examination of Records by Comptroller General and Contract Audit; 9000–0013, Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data; 9000–0048, Authorized Negotiators and Integrity of Unit Prices; 9000–0078, Certain Federal Acquisition Regulation Part 15 Requirements; 9000–0096, Patents; 9000–0045, Bid Guarantees, Performance, and Payments Bonds, and Alternative Payment Protection; 9000–0010, Progress Payments, SF 1443; 9000–0149, Subcontract Consent and Contractors' Purchasing System Review; 1235–0007, Labor Standards for Federal Service Contracts; 1235–0025, Nondisplacement of Qualified Workers Under Service Contracts, Executive Order 13495; 1250–0004, Office of Federal Contract Compliance Programs Recordkeeping and Reporting Requirements Under the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as Amended; and 1250–0005, Office of Federal Contract Compliance Programs Recordkeeping and Reporting Requirements Under Rehabilitation Act of 1973, as Amended Section 503.

List of Subjects in 48 CFR Parts 1, 5, 8, 9, 12, 13, 15, 19, 22, 25, 30, 50, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 5, 8, 9, 12, 13, 15, 19, 22, 25, 30, 50, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 5, 8, 9, 12, 13, 15, 19, 22, 25, 30, 50, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. Amend section 1.109 by—

■ a. Removing from paragraph (a) ''(CPI) for all-urban consumers'' and adding ''for All Urban Consumers (CPI–U)'' in its place;

■ b. Redesignating paragraph (d) as paragraph (e);

■ c. Adding new paragraph (d); and

■ d. Removing from the newly designated paragraph (e) ''2014–022'' and adding ''2014–022, open the docket folder, and go to the supporting documents file'' in its place.

The addition reads as follows:

1.109 Statutory acquisition-related dollar thresholds—adjustment for inflation.

* * * * *

(d) The statute, as amended by section 821 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91), requires the adjustment described in paragraph (a) of this section be applied to contracts and subcontracts without regard to the date of award of the contract or subcontract. Therefore, if a threshold is adjusted for inflation as set forth in paragraph (a) of this section, then the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment.

* * * * *

■ 3. Amend section 1.110 in the table in paragraph (c) by designating the table as table 1 and revising the entry for

''Walsh-Healey Public Contracts Act'' to read as follows:

1.110 Positive law codification.

* * * * *

(c) * * *

TABLE 1 TO PARAGRAPH (c)

Historical title of act	Division/chapter/subchapter	Title
*	*	*
Walsh-Healey Public Contracts Act	41 U.S.C. chapter 65	Contracts for Materials, Supplies, Articles, and Equipment Exceeding $10,000.

* * * * *

PART 5—PUBLICIZING CONTRACT ACTIONS

5.206 [Amended]

■ 4. Amend section 5.206 by removing from paragraph (a)(1) and (2) ''$150,000'' and adding ''the simplified acquisition threshold'' in their places, respectively.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.1104 [Amended]

■ 5. Amend section 8.1104 by removing from paragraph (e)(3) ''Exceeding $15,000''.

PART 9—CONTRACTOR QUALIFICATIONS

■ 6. Amend section 9.405–2 by revising the second sentence in the introductory text of paragraph (b) to read as follows:

9.405–2 Restrictions on subcontracting.

* * * * *

(b) * * * Contractors are prohibited from entering into any subcontract in excess of $35,000, other than a subcontract for a commercially available off-the-shelf item, with a contractor that has been debarred, suspended, or proposed for debarment, unless there is a compelling reason to do so. * * *

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.503 [Amended]

■ 7. Amend section 12.503 by removing from paragraph (a)(1) ''$15,000'' and adding ''$10,000'' in its place.

12.504 [Amended]

■ 8. Amend section 12.504 by removing from paragraph (a)(4) ''6505'' and ''$15,000'' and adding ''chapter 65'' and ''$10,000'' in their places, respectively.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 9. Amend section 13.003 by revising paragraph (b)(1) to read as follows:

13.003 Policy.

* * * * *

(b)(1) Acquisitions of supplies or services that have an anticipated dollar value above the micro-purchase threshold, but at or below the simplified acquisition threshold, shall be set aside for small business concerns (see 19.000, 19.203, and subpart 19.5).

* * * * *

13.501 [Amended]

■ 10. Amend section 13.501 by removing from paragraph (a)(2)(i) ''$150,000'' and adding ''the simplified acquisition threshold'' in its place.

PART 15—CONTRACTING BY NEGOTIATION

■ 11. Amend section 15.403–4 by adding in the introductory text of paragraph (a)(1) a new fourth sentence to read as follows:

15.403–4 Requiring certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. chapter 35).

(a)(1) * * * When a clause refers to this threshold, and if the threshold is adjusted for inflation pursuant to 1.109(a), then pursuant to 1.109(d) the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment. * * *

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

■ 12. Amend section 19.203 by revising paragraph (b) to read as follows:

19.203 Relationship among small business programs.

* * * * *

(b) *At or below the simplified acquisition threshold.* For acquisitions of supplies or services that have an anticipated dollar value above the micro-purchase threshold, but at or below the simplified acquisition threshold, the requirement at 19.502–2(a) to set aside acquisitions for small business concerns does not preclude the contracting officer from awarding a contract to a small business under the 8(a) Program, HUBZone Program, SDVOSB Program, or WOSB Program.

* * * * *

■ 13. Amend section 19.502–1 by revising paragraph (b) to read as follows:

19.502–1 Requirements for setting aside acquisitions.

* * * * *

(b) The requirement in paragraph (a) of this section does not apply to purchases at or below the micro-purchase threshold, or purchases from required sources under part 8 (*e.g.,* Committee for Purchase From People Who are Blind or Severely Disabled).

■ 14. Amend section 19.502–2 by revising the second sentence of paragraph (a) and removing from paragraph (b) introductory text ''$150,000'' and adding ''the simplified acquisition threshold'' in its place to read as follows:

19.502–2 Total small business set-asides.

(a) * * * Each acquisition of supplies or services that has an anticipated dollar value above the micro-purchase threshold, but not over the simplified acquisition threshold, shall be set aside for small business unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of fair market prices, quality, and delivery. * * *

* * * * *

19.507 [Amended]

■ 15. Amend section 19.507 by removing from the first sentence in paragraph (e) ''$150,000'' and adding ''the simplified acquisition threshold'' in its place.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.102–2 [Amended]

■ 16. Amend section 22.102–2 by removing from paragraph (c)(1)(iv) ''$15,000'' and adding ''$10,000'' in its place.

22.202 [Amended]

■ 17. Amend section 22.202 by removing from paragraph (a) '', Contracts for Materials, Supplies, Articles, and Equipment Exceeding $15,000''.

22.305 [Amended]

■ 18. Amend section 22.305 by removing from paragraph (e) '', Contracts for Materials, Supplies, Articles, and Equipment Exceeding $15,000''.

■ 19. Amend subpart 22.6 by revising the subpart heading to read as follows:

Subpart 22.6—Contracts for Materials, Supplies, Articles, and Equipment

22.602 [Amended]

■ 20. Amend section 22.602 by removing '', Contracts for Materials, Supplies, Articles, and Equipment Exceeding $15,000''.

22.610 [Amended]

■ 21. Amend section 22.610 by removing ''Exceeding $15,000''.

22.1003–3 [Amended]

■ 22. Amend section 22.1003–3 by removing from paragraph (b) '', Contracts for Materials, Supplies, Articles, and Equipment Exceeding $15,000''.

22.1003–6 [Amended]

■ 23. Amend section 22.1003–6(a) introductory text by:

■ a. Removing '', Contracts for Materials, Supplies, Articles, and Equipment Exceeding $15,000,''; and

■ b. Removing ''paragraphs (a)(1) or (a)(2) of this subsection'' and adding ''paragraph (a)(1) or (2) of this section'' in its place.

PART 25—FOREIGN ACQUISITION

25.703–4 [Amended]

■ 24. Amend section 25.703–4 by removing from paragraphs (c)(5)(ii), (c)(7)(iii), and (c)(8)(iii) ''$3,500'' and adding ''the threshold at 25.703–2(a)(2)'' in their places, respectively.

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

■ 25. Revise section 30.201–1 to read as follows:

30.201–1 CAS applicability.

(a) See 48 CFR 9903.201–1 (FAR appendix).

(b) In accordance with 41 U.S.C. 1502(b)(1)(B), the threshold for determining the tentative applicability of CAS at the contract level is the amount set forth in 10 U.S.C. 2306a(a)(1)(A)(i), as adjusted for inflation in accordance with 41 U.S.C. 1908.

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

50.103–7 [Amended]

■ 26. Amend section 50.103–7 by removing from paragraph (b) ''Exceeding $15,000''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 27. Amend section 52.202–1 by—

■ a. Revising the date of the clause;

■ b. Removing the word ''or'' at the end of paragraph (c);

■ c. Removing from paragraph (d) ''FAR Part'' and ''procedures.'' and adding ''FAR part'' and ''procedures; or'' in their places, respectively; and

■ d. Adding paragraph (e).

The revision and addition read as follows:

52.202–1 Definitions.

* * * * *

Definitions (JUN 2020)

* * * * *

(e) The word or term defines an acquisition-related threshold, and if the threshold is adjusted for inflation as set forth in FAR 1.109(a), then the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment; see FAR 1.109(d).

* * * * *

■ 28. Amend section 52.203–6 by revising the date of the clause and removing from paragraph (c) ''threshold.'' and adding ''threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.'' in its place to read as follows:

52.203–6 Restrictions on Subcontractor Sales to the Government.

* * * * *

Restrictions on Subcontractor Sales to the Government (JUN 2020)

* * * * *

■ 29. Amend section 52.203–7 by revising the date of the clause and paragraph (c)(5) and adding an undesignated parenthetical phrase at the end to read as follows:

52.203–7 Anti-Kickback Procedures.

* * * * *

Anti-Kickback Procedures (JUN 2020)

* * * * *

(c) * * *

(5) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c)(5) but excepting paragraph (c)(1) of this clause, in all subcontracts under this contract that exceed the threshold specified in Federal Acquisition Regulation 3.502–2(i) on the date of subcontract award.

(End of clause)

■ 30. Amend section 52.203–12 by revising the date of the clause, the first sentence of paragraph (g)(1), and paragraph (g)(3) to read as follows:

52.203–12 Limitation on Payments to Influence Certain Federal Transactions.

* * * * *

Limitation on Payments To Influence Certain Federal Transactions (JUN 2020)

* * * * *

(g) * * * (1) The Contractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR 52.203–11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract under this contract that exceeds the threshold specified in FAR 3.808 on the date of subcontract award.* * *

* * * * *

(3) The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract that exceeds the threshold specified in FAR 3.808 on the date of subcontract award.

* * * * *

■ 31. Amend section 52.203–13 by revising the date of the clause and removing from paragraph (d)(1) ''have a value in excess of $5.5 million'' and adding ''exceed the threshold specified in FAR 3.1004(a) on the date of subcontract award'' in its place to read as follows:

52.203–13 Contractor Code of Business Ethics and Conduct.

* * * * *

Contractor Code of Business Ethics and Conduct (JUN 2020)

* * * * *

■ 32. Amend section 52.203–14 by revising the date of the clause and the introductory text of paragraph (d) to read as follows:

52.203–14 Display of Hotline Poster(s).

* * * * *

Display of Hotline Poster(s) (JUN 2020)

* * * * *

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed the threshold specified in Federal Acquisition Regulation 3.1004(b)(1) on the date of subcontract award, except when the subcontract—

* * * * *

■ 33. Amend section 52.203–16 by revising the date of the clause, the

heading of paragraph (d), and paragraph (d)(1) to read as follows:

52.203–16 Preventing Personal Conflicts of Interest.

* * * * *

Preventing Personal Conflicts of Interest (JUN 2020)

* * * * *

(d) *Subcontracts.* * * *

(1) That exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award; and

* * * * *

■ 34. Amend section 52.203–17 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (a) ''FAR 3.908'' and adding ''Federal Acquisition Regulation (FAR) 3.908'' in its place;

■ c. Removing from paragraph (b) ''section 3.908 of the Federal Acquisition Regulation'' and adding ''FAR 3.908'' in its place; and

■ d. Removing from paragraph (c) ''threshold.'' and adding ''threshold, as defined in FAR 2.101 on the date of subcontract award.'' in its place.

The revision reads as follows:

52.203–17 Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights.

* * * * *

Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights (JUN 2020)

* * * * *

■ 35. Amend section 52.204–10 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (d)(1) introductory text ''FAR provision'' and adding ''Federal Acquisition Regulation (FAR) provision'' in its place;

■ c. Removing from paragraph (d)(2) introductory text ''contracting officer'' and ''with a value of $30,000 or more'' and adding ''Contracting Officer'' and ''valued at or above the threshold specified in FAR 4.1403(a) on the date of subcontract award'' in their places, respectively;

■ d. Removing from paragraph (d)(3) introductory text ''with a value of $30,000 or more'' and adding ''valued at or above the threshold specified in FAR 4.1403(a) on the date of subcontract award'' in its place; and

■ e. Removing from paragraph (e) ''less than $30,000'' and adding ''below the threshold specified in FAR 4.1403(a), on the date of subcontract award,'' in its place.

The revision reads as follows:

52.204–10 Reporting Executive Compensation and First-Tier Subcontract Awards.

* * * * *

Reporting Executive Compensation and First-Tier Subcontract Awards (JUN 2020)

* * * * *

■ 36. Amend section 52.209–6 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (a)(1)(i) ''FAR'' and adding ''Federal Acquisition Regulation (FAR)'' in its place;

■ c. Removing from paragraphs (b) and (c) ''$35,000'' and adding ''the threshold specified in FAR 9.405–2(b) on the date of subcontract award,'' and ''the threshold specified in FAR 9.405–2(b) on the date of subcontract award'' in their places, respectively; and

■ d. Revising paragraph (e)(1).

The revisions read as follows:

52.209–6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.

* * * * *

Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment (JUN 2020)

* * * * *

(e) * * *

(1) Exceeds the threshold specified in FAR 9.405–2(b) on the date of subcontract award; and

* * * * *

■ 37. Amend section 52.210–1 by—

■ a. Revising the date of the clause;

■ b. In paragraph (a), removing from the definition of ''Commercial item'' and ''nondevelopmental item'' the word ''Regulation'' and adding ''Regulation (FAR)'' in its place; and

■ c. Removing from the introductory text of paragraph (b) ''threshold'' and adding ''threshold, as defined in FAR 2.101 on the date of subcontract award,'' in its place.

The revision reads as follows:

52.210–1 Market Research.

* * * * *

Market Research (JUN 2020)

* * * * *

■ 38. Amend section 52.212–1 by revising the date of the clause and the first and fifth sentences of paragraph (j) to read as follows:

52.212–1 Instructions to Offerors—Commercial Items.

* * * * *

Instructions to Offerors—Commercial Items (JUN 2020)

* * * * *

(j) * * * (Applies to all offers that exceed the micro-purchase threshold, and offers at or below the micro-purchase threshold if the solicitation requires the Contractor to be registered in the System for Award Management (SAM).) * * * The suffix is assigned at the discretion of the Offeror to establish additional SAM records for identifying alternative EFT accounts (see FAR subpart 32.11) for the same entity.* * *

* * * * *

■ 39. Amend section 52.212–3 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (o)(2)(iii) ''$3,500'' and adding ''the threshold at FAR 25.703–2(a)(2)'' in its place.

The revision reads as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (JUN 2020)

* * * * *

■ 40. Amend section 52.212–5 by—

■ a. Revising paragraphs (b)(1), (2), (4), and (8), (b)(17)(i), (iv), and (v), (b)(31)(i), (b)(32)(i), (b)(33) and (44), and (c)(9);

■ b. Removing from paragraph (d) introductory text ''threshold'' and adding ''threshold, as defined in FAR 2.101, on the date of award of this contract'' in its place;

■ c. Revising paragraph (e)(1)(i);

■ d. Removing from paragraph (e)(1)(v) ''$700,000 ($1.5 million for construction of any public facility)'' and adding ''the applicable threshold specified in FAR 19.702(a) on the date of subcontract award'' in its place;

■ e. Revising paragraphs (e)(1)(i) through (x) and the first sentence of paragraph (xxi); and

■ f. In Alternate II, revising the date of the alternate, paragraphs (e)(1)(ii)(A), (E), (H), and (I), and the first sentence of paragraph (e)(1)(ii)(T).

The revisions read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

(b) * * *

____(1) 52.203–6, Restrictions on Subcontractor Sales to the Government (JUN 2020), with *Alternate I* (OCT 1995) (41 U.S.C. 4704 and 10 U.S.C. 2402).

____(2) 52.203–13, Contractor Code of Business Ethics and Conduct (JUN 2020) (41 U.S.C. 3509).

* * * * *

____(4) 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards (JUN 2020) (Pub. L. 109–282) (31 U.S.C. 6101 note).

* * * * *

____(8) 52.209–6, Protecting the Government's Interest When

Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (JUN 2020) (31 U.S.C. 6101 note).

* * * * *

____(17)(i) 52.219–9, Small Business Subcontracting Plan (JUN 2020) (15 U.S.C. 637(d)(4)).

* * * * *

____(iv) Alternate III (JUN 2020) of 52.219–9.

____(v) Alternate IV (JUN 2020) of 52.219–9.

* * * * *

____(31)(i) 52.222–35, Equal Opportunity for Veterans (JUN 2020) (38 U.S.C. 4212).

* * * * *

____(32)(i) 52.222–36, Equal Opportunity for Workers with Disabilities (JUN 2020) (29 U.S.C. 793).

* * * * *

____(33) 52.222–37, Employment Reports on Veterans (JUN 2020) (38 U.S.C. 4212).

* * * * *

____(44) 52.223–18, Encouraging Contractor Policies to Ban Text Messaging While Driving (JUN 2020) (E.O. 13513).

* * * * *

(c) * * *

____(9) 52.226–6, Promoting Excess Food Donation to Nonprofit Organizations (JUN 2020) (42 U.S.C. 1792).

* * * * *

(e)(1) * * *

(i) 52.203–13, Contractor Code of Business Ethics and Conduct (JUN 2020) (41 U.S.C. 3509).

* * * * *

(viii) 52.222–35, Equal Opportunity for Veterans (JUN 2020) (38 U.S.C. 4212).

(ix) 52.222–36, Equal Opportunity for Workers with Disabilities (JUN 2020) (29 U.S.C. 793).

(x) 52.222–37, Employment Reports on Veterans (JUN 2020) (38 U.S.C. 4212).

* * * * *

(xxi) 52.226–6, Promoting Excess Food Donation to Nonprofit Organizations (JUN 2020) (42 U.S.C. 1792). * * *

* * * * *

Alternate II (JUN 2020). * * *

* * * * *

(e)(1) * * *

(ii) * * * * *

(A) 52.203–13, Contractor Code of Business Ethics and Conduct (JUN 2020) (41 U.S.C. 3509).

* * * * *

(E) 52.219–8, Utilization of Small Business Concerns (OCT 2018) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.

* * * * *

(H) 52.222–35, Equal Opportunity for Veterans (JUN 2020) (38 U.S.C. 4212).

(I) 52.222–36, Equal Opportunity for Workers with Disabilities (JUN 2020) (29 U.S.C. 793).

* * * * *

(T) 52.226–6, Promoting Excess Food Donation to Nonprofit Organizations. (JUN 2020) (42 U.S.C. 1792). * * *

* * * * *

■ 41. Amend section 52.213–4 by—

■ a. Revising the date of the clause;

■ b. Adding a period to the end of paragraph (a)(2)(iv);

■ c. Revising paragraphs (a)(2)(viii) and (b)(1)(i) through (iv), the first sentence of paragraph (b)(1)(v), and paragraph (b)(1)(vi);

■ d. Removing from paragraph (b)(1)(xvii) introductory text ''threshold'' and adding ''threshold, as defined in FAR 2.101 on the date of award of this contract,'' in its place; and

■ e. Revising paragraphs (b)(1)(xviii) and (b)(2)(ii).

The revisions read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (JUN 2020)

(a) * * *

(2) * * *

(viii) 52.244–6, Subcontracts for Commercial Items (JUN 2020)

(b) * * *

(1) * * *

(i) 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards (JUN 2020) (Pub. L. 109–282) (31 U.S.C. 6101 note) (Applies to contracts valued at or above the threshold specified in FAR 4.1403(a) on the date of award of this contract).

(ii) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (JAN 2020) (E.O. 13126) (Applies to contracts for supplies exceeding the micro-purchase threshold, as defined in FAR 2.101 on the date of award of this contract).

(iii) 52.222–20, Contracts for Materials, Supplies, Articles, and Equipment (JUN 2020) (41 U.S.C. chapter 65) (Applies to supply contracts over the threshold specified in FAR 22.602 on the date of award of this contract, in the United States, Puerto Rico, or the U.S. Virgin Islands).

(iv) 52.222–35, Equal Opportunity for Veterans (JUN 2020) (38 U.S.C. 4212) (Applies to contracts valued at or above the threshold specified in FAR 22.1303(a) on the date of award of this contract).

(v) 52.222–36, Equal Employment for Workers with Disabilities (JUN 2020) (29 U.S.C. 793) (Applies to contracts over the threshold specified in FAR 22.1408(a) on the date of award of this contract, unless the work is to be performed outside the United States by employees recruited outside the United States). * * *

(vi) 52.222–37, Employment Reports on Veterans (JUN 2020)(38 U.S.C. 4212) (Applies to contracts valued at or above the threshold specified in FAR 22.1303(a) on the date of award of this contract).

* * * * *

(xviii) 52.226–6, Promoting Excess Food Donation to Nonprofit Organizations (JUN 2020) (42 U.S.C. 1792) (Applies to contracts greater than the threshold specified in FAR 26.404 on the date of award of this contract, that provide for the provision, the service, or the sale of food in the United States).

* * * * *

(2) * * *

(ii) 52.209–6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (JUN 2020) (Applies to contracts over the threshold specified in FAR 9.405–2(b) on the date of award of this contract).

* * * * *

■ 42. Amend section 52.214–26 by revising the date of the clause and paragraph (e) to read as follows:

52.214–26 Audit and Records—Sealed Bidding.

* * * * *

Audit and Records—Sealed Bidding (JUN 2020)

* * * * *

(e) *Subcontracts.* The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts expected to exceed the threshold for submission of certified cost or pricing data in FAR 15.403–4(a)(1) on the date of subcontract award.

* * * * *

■ 43. Amend section 52.214–27 by revising the date of the clause and paragraph (a) to read as follows:

52.214–27 Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding.

* * * * *

Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding (JUN 2020)

(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for the submission of certified cost or pricing data in Federal Acquisition Regulation (FAR) 15.403–4(a)(1) on the date of execution of the modification, except that this clause does not apply to a modification if an exception under FAR 15.403–1(b) applies.

* * * * *

■ 44. Amend section 52.214–28 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (a)(1) ''at (FAR) 48 CFR 15.403–4(a)(1)'' and adding ''in Federal Acquisition Regulation (FAR) 15.403–4(a)(1) on the date of execution of the modification'' in its place;

■ c. Removing from paragraph (b) ''at FAR 15.403–4(a)(1)'' everywhere it appears and adding ''in FAR 15.403–4(a)(1)'' in its place and adding a sentence to the end of the paragraph; and

■ d. Removing from paragraph (d) ''at FAR 15.403–4(a)(1)'' and adding ''in FAR 15.403–4(a)(1)'' in its place.

The revision and addition read as follows:

52.214–28 Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding.

* * * * *

Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding (JUN 2020)

* * * * *

(b) * * * If the threshold for submission of certified cost or pricing data specified in FAR 15.403–4(a)(1) is adjusted for inflation as set forth in FAR 1.109(a), then pursuant to FAR 1.109(d) the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment.

* * * * *

■ 45. Amend section 52.215–2 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (g) introductory text ''threshold'' and adding ''threshold, as defined in FAR 2.101 on the date of subcontract award,'' in its place.

The revision reads as follows:

52.215–2 Audit and Records—Negotiation.

* * * * *

Audit and Records—Negotiation (JUN 2020)

* * * * *

■ 46. Amend section 52.215–11 by revising the date of the clause and paragraph (a) to read as follows:

52.215–11 Price Reduction for Defective Certified Cost or Pricing Data—Modifications.

* * * * *

Price Reduction for Defective Certified Cost or Pricing Data—Modifications (JUN 2020)

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data in Federal Acquisition Regulation (FAR) 15.403–4(a)(1) on the date of execution of the modification, except that this clause does not apply to any modification if an exception under FAR 15.403–1(b) applies.

* * * * *

■ 47. Amend section 52.215–12 by revising the date of the clause and paragraphs (a) and (c) introductory text to read as follows:

52.215–12 Subcontractor Certified Cost or Pricing Data.

* * * * *

Subcontractor Certified Cost or Pricing Data (JUN 2020)

(a) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data in Federal Acquisition Regulation (FAR) 15.403–4(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data in FAR 15.403–4(a)(1), the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15–2 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403–1(b) applies. If the threshold for submission of certified cost or pricing data specified in FAR 15.403–4(a)(1) is adjusted for inflation as set forth in FAR 1.109(a), then pursuant to FAR 1.109(d) the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment.

* * * * *

(c) In each subcontract that, when entered into, exceeds the threshold for submission of certified cost or pricing data in FAR 15.403–4(a)(1), the Contractor shall insert either—

* * * * *

■ 48. Amend section 52.215–13 by—

■ a. Revising the date of the clause and paragraphs (a)(1) and (b); and

■ b. Removing from paragraph (d) ''at FAR 15.403–4'' and adding ''in FAR 15.403–4(a)(1)'' in its place.

The revisions read as follows:

52.215–13 Subcontractor Certified Cost or Pricing Data—Modifications.

* * * * *

Subcontractor Certified Cost or Pricing Data—Modifications (JUN 2020)

(a) * * *

(1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data in Federal Acquisition Regulation (FAR) 15.403–4(a)(1) on the date of execution of the modification; and

* * * * *

(b) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data in FAR 15.403–4(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data in FAR 15.403–4(a)(1), the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15–2 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403–1(b) applies. If the threshold for submission of certified cost or pricing data specified in FAR 15.403–4(a)(1) is adjusted for inflation as set forth in FAR 1.109(a), then pursuant to FAR 1.109(d) the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment.

* * * * *

■ 49. Amend section 52.215–14 by revising the date of the clause and paragraph (c) to read as follows:

52.215–14 Integrity of Unit Prices.

* * * * *

Integrity of Unit Prices (JUN 2020)

* * * * *

(c) The Contractor shall insert the substance of this clause, less paragraph (b) of this clause, in all subcontracts for other than: acquisitions at or below the simplified acquisition threshold, as defined in Federal Acquisition Regulation (FAR) 2.101 on the date of subcontract award; construction or architect-engineer services under FAR part 36; utility services under FAR part 41; services where supplies are not required; commercial items; and petroleum products.

* * * * *

■ 50. Amend section 52.215–21 by revising the date of the clause and the introductory text of paragraph (a)(1) to read as follows:

52.215–21 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications.

* * * * *

Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications (JUN 2020)

(a) * * * (1) In lieu of submitting certified cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth in Federal Acquisition Regulation (FAR) 15.403–4(a)(1) on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in paragraphs (a)(1)(i) and (ii) of this clause. If the threshold for submission of certified cost or pricing data specified in FAR 15.403–4(a)(1) is adjusted for inflation as set forth in FAR 1.109(a), then pursuant to FAR 1.109(d) the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable—

* * * * *

■ 51. Amend section 52.215–23 by—

■ a. Revising the date of the clause;

■ b. In paragraph (a), removing from the definition ''Subcontract'' the acronym ''FAR'' and adding ''Federal Acquisition Regulation (FAR)'' in its place; and

■ c. Revising paragraph (f).

The revisions read as follows:

52.215–23 Limitations on Pass-Through Charges.

* * * * *

Limitations on Pass-Through Charges (JUN 2020)

* * * * *

(f) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (f), in all cost-reimbursement subcontracts under this contract that exceed the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, except if the contract is with DoD, then insert in all cost-reimbursement subcontracts and fixed-price subcontracts, except those identified in FAR 15.408(n)(2)(i)(B)(*2*), that exceed the threshold for obtaining cost or pricing data in FAR 15.403–4(a)(1) on the date of subcontract award.

* * * * *

■ 52. Amend section 52.219–9 by—

■ a. Revising the date of the clause;

■ b. In paragraph (b), revising the definition of ''Commercial item'';

■ c. Removing from paragraph (d)(9) ''$700,000 ($1.5 million for construction of any public facility)'' and adding ''the applicable threshold specified in FAR 19.702(a) on the date of subcontract award,'' in its place;

■ d. Removing from paragraph (d)(11)(iii) introductory text ''$150,000'' and adding ''the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award'' in its place;

■ e. Removing from the first sentence of paragraph (e)(6) ''threshold'' and adding ''threshold, as defined in FAR 2.101 on the date of subcontract award,'' in its place;

■ f. Removing from paragraph (i) ''threshold in'' and adding ''threshold in FAR'' in its place;

■ g. Removing from paragraph (l)(2)(i)(C) ''$700,000 (over $1.5 million for construction of a public facility) and'' and adding ''the applicable threshold specified in FAR 19.702(a), and the contract'' in its place;

■ h. In Alternate III—

■ i. Revising the date of the alternate; and

■ ii. Removing from paragraph (l)(2)(i)(C) ''$700,000 (over $1.5 million for construction of a public facility) and'' and adding ''the applicable threshold specified in FAR 19.702(a), and the contract'' in its place; and

■ i. In Alternate IV—

■ i. Revising the date of the alternate;

■ ii. Removing from paragraph (d)(9) ''$700,000 ($1.5 million for construction of any public facility)'' and adding ''the applicable threshold specified in FAR 19.702(a) on the date of subcontract award,'' in its place; and

■ iii. Removing from paragraph (d)(11)(iii) introductory text ''$150,000'' and adding ''the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award'' in its place.

The revisions read as follows:

52.219–9 Small Business Subcontracting Plan.

* * * * *

Small Business Subcontracting Plan (JUN 2020)

* * * * *

(b) * * *

Commercial item means a product or service that satisfies the definition of commercial item in Federal Acquisition Regulation (FAR) 2.101.

* * * * *

Alternate III (JUN 2020). * * *

* * * * *

Alternate IV (JUN 2020). * * *

* * * * *

■ 53. Amend section 52.222–20 by revising the section heading, the clause heading, and the introductory text of the clause to read as follows:

52.222–20 Contracts for Materials, Supplies, Articles, and Equipment.

* * * * *

Contracts for Materials, Supplies, Articles, and Equipment (JUN 2020)

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed the threshold specified in Federal Acquisition Regulation 22.602 on the date of award of this contract, and is subject to 41 U.S.C. chapter 65, the following terms and conditions apply:

* * * * *

■ 54. Amend section 52.222–35 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (a), in the definition ''Active duty wartime or campaign badge veteran,'' ''Armed Forces service medal veteran,'' ''disabled veteran,'' ''protected veteran,'' ''qualified disabled veteran,'' and ''recently separated veteran'', the acronym ''FAR'' and adding ''Federal Acquisition Regulation (FAR)'' in its place; and

■ c. Removing from paragraph (c) ''of $150,000 or more'' and adding ''valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award,'' in its place.

The revision reads as follows:

52.222–35 Equal Opportunity for Veterans.

* * * * *

Equal Opportunity for Veterans (JUN 2020)

* * * * *

■ 55. Amend section 52.222–36 by—

■ a. Revising the date of the clause; and

■ b. Removing from the first sentence in paragraph (b) ''$15,000'' and adding ''the threshold specified in Federal Acquisition Regulation (FAR) 22.1408(a) on the date of subcontract award,'' in its place.

The revision reads as follows:

52.222–36 Equal Opportunity for Workers with Disabilities.

* * * * *

Equal Opportunity for Workers With Disabilities (JUN 2020)

* * * * *

■ 56. Amend section 52.222–37 by—
■ a. Revising the date of the clause;
■ b. Removing from paragraph (a) ''FAR'' and adding ''Federal Acquisition Regulation (FAR)'' in its place; and
■ c. Removing from paragraph (g) ''of $150,000 or more'' and adding ''valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award,'' in its place.

The revision reads as follows:

52.222–37 Employment Reports on Veterans.

* * * * *

Employment Reports on Veterans (JUN 2020)

* * * * *

■ 57. Amend section 52.223–18 by—
■ a. Revising the date of the clause; and
■ b. Removing from paragraph (d) ''threshold.'' and adding ''threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.'' in its place.

The revision reads as follows:

52.223–18 Encouraging Contractor Policies to Ban Text Messaging While Driving.

* * * * *

Encouraging Contractor Policies To Ban Text Messaging While Driving (JUN 2020)

* * * * *

■ 58. Amend section 52.225–25 by—
■ a. Revising the clause heading;
■ b. Removing from the introductory text of paragraph (c) ''accordance with'' and adding ''accordance with Federal Acquisition Regulation (FAR)'' in its place; and
■ c. Removing from paragraph (c)(3) ''$3,500'' and adding ''the threshold at FAR 25.703–2(a)(2)'' in its place.

52.225–25 Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certifications.

* * * * *

Prohibition on Contracting With Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certifications (JUN 2020)

* * * * *

■ 59. Amend section 52.226–6 by revising the section heading, the date of the clause, and paragraph (e) to read as follows:

52.226–6 Promoting Excess Food Donation to Nonprofit Organizations.

* * * * *

Promoting Excess Food Donation to Nonprofit Organizations (JUN 2020)

* * * * *

(e) *Subcontracts.* The Contractor shall insert this clause in all contracts, task orders, delivery orders, purchase orders, and other similar instruments that exceed the threshold specified in Federal Acquisition Regulation 26.404 on the date of subcontract award with its subcontractors or suppliers, at any tier, who will perform, under this contract, the provision, service, or sale of food in the United States.

* * * * *

■ 60. Amend section 52.227–1 by revising the date of the clause and paragraph (b) to read as follows:

52.227–1 Authorization and Consent.

* * * * *

Authorization and Consent (JUN 2020)

* * * * *

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts that are expected to exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation (FAR) 2.101 on the date of subcontract award. However, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, does not affect this authorization and consent.

* * * * *

■ 61. Amend section 52.227–2 by revising the date of the clause and paragraph (c) to read as follows:

52.227–2 Notice and Assistance Regarding Patent and Copyright Infringement.

* * * * *

Notice and Assistance Regarding Patent and Copyright Infringement (JUN 2020)

* * * * *

(c) The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that are expected to exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation (FAR) 2.101 on the date of subcontract award.

* * * * *

■ 62. Amend section 52.227–3 in Alternate III by revising the date of the alternate and removing from the undesignated paragraph ''threshold'' and adding ''threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award,'' in its place to read as follows:

52.227–3 Patent Indemnity.

* * * * *

Alternate III (JUN 2020). * * *

* * * * *

■ 63. Amend section 52.228–15 by revising the date of the clause and the introductory text of paragraph (b) to read as follows:

52.228–15 Performance and Payment Bonds—Construction.

* * * * *

Performance and Payment Bonds—Construction (JUN 2020)

* * * * *

(b) *Amount of required bonds.* Unless the resulting contract price is valued at or below the threshold specified in Federal Acquisition Regulation 28.102–1(a) on the date of award of this contract, the successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:

* * * * *

■ 64. Amend section 52.230–1 by—
■ a. Revising the introductory text and the date of the provision;
■ b. Removing from paragraph (a) ''$750,000'' and ''Chapter'' and adding ''the lower CAS threshold specified in Federal Acquisition Regulation (FAR) 30.201–4(b)'' and ''chapter'' in their places, respectively; and
■ d. Revising the undesignated parenthetical paragraph following paragraph (c)(1).

The revisions read as follows:

52.230–1 Cost Accounting Standards Notices and Certification.

As prescribed in 30.201–3(a), insert the following provision:

Cost Accounting Standards Notices and Certification (JUN 2020)

* * * * *

(c) * * *

(Disclosure must be on Form No. CASB DS–1 or CASB DS–2, as applicable. Forms may be obtained from the cognizant ACO or Federal official.)

* * * * *

■ 65. Amend section 52.230–2 by—
■ a. Revising the date of the clause; and
■ b. Removing from paragraph (d) ''Regulation shall'' and ''$750,000'' and adding ''Regulation (FAR) shall'' and ''the lower CAS threshold specified in FAR 30.201–4(b) on the date of subcontract award'' in their places, respectively.

The revision read as follows:

52.230–2 Cost Accounting Standards.

* * * * *

Cost Accounting Standards (JUN 2020)

* * * * *

■ 66. Amend section 52.230–3 by—
■ a. Revising the date of the clause;
■ b. Removing from paragraph (d)(1) ''subsection'' and ''Regulation shall''

and adding ''section'' and ''Regulation (FAR) shall'' in their places, respectively; and

■ c. Revising paragraph (d)(2).

The revisions read as follows:

52.230–3 Disclosure and Consistency of Cost Accounting Practices.

* * * * *

Disclosure and Consistency of Cost Accounting Practices (JUN 2020)

* * * * *

(d) * * *

(2) The requirement in this paragraph (d) shall apply only to negotiated subcontracts in excess of the lower CAS threshold specified in FAR 30.201–4(b) on the date of subcontract award.

* * * * *

■ 67. Amend section 52.230–4 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (d)(1) ''FAR'' and adding ''Federal Acquisition Regulation (FAR)'' in its place; and

■ c. Revising paragraph (d)(2).

The revisions read as follows:

52.230–4 Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns.

* * * * *

Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns (JUN 2020)

* * * * *

(d) * * *

(2) The requirement in this paragraph (d) shall apply only to negotiated subcontracts in excess of the lower CAS threshold specified in FAR 30.201–4(b) on the date of subcontract award.

* * * * *

■ 68. Amend section 52.230–5 by revising the date of the clause and paragraph (d)(2) to read as follows:

52.230–5 Cost Accounting Standards—Educational Institution.

* * * * *

Cost Accounting Standards—Educational Institution (JUN 2020)

* * * * *

(d) * * *

(2) The requirement in this paragraph (d) shall apply only to negotiated subcontracts in excess of the lower CAS threshold specified in Federal Acquisition Regulation (FAR) 30.201–4(b) on the date of subcontract award; and

* * * * *

■ 69. Amend section 52.232–16 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (a)(1) ''FAR'' and adding ''Federal Acquisition Regulation (FAR)'' in its place; and

■ c. In Alternate III—

■ i. Revising the date of the alternate; and

■ ii. Removing from paragraph (n) ''threshold.'' and adding ''threshold, as defined in FAR 2.101 on the date of individual order award.'' in its place.

The revisions read as follows:

52.232–16 Progress Payments.

* * * * *

Progress Payments (JUN 2020)

* * * * *

Alternate III (JUN 2020). * * *

* * * * *

■ 70. Amend section 52.244–2 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraphs (c)(2)(i) and (ii) ''threshold'' and adding ''threshold, as defined in FAR 2.101 on the date of subcontract award,'' in their places; and

■ c. In Alternate I—

■ i. Revising the date of the alternate; and

■ ii. Removing from paragraph (e)(2) ''threshold'' and ''paragraphs (e)(1)(i) through (e)(1)(iv)'' and adding ''threshold, as defined in FAR 2.101 on the date of subcontract award,'' and ''paragraphs (e)(1)(i) through (iv)'' in their places, respectively.

The revisions read as follows:

52.244–2 Subcontracts.

* * * * *

Subcontracts (JUN 2020)

* * * * *

Alternate I (JUN 2020). * * *

* * * * *

■ 71. Amend section 52.244–6 by—

■ a. Revising the date of the clause;

■ b. In paragraph (a), revising the definition ''Commercial item'' and ''commercially available off-the-shelf item'';

■ c. Revising the first sentence in paragraph (c)(1)(i);

■ d. Removing from paragraph (c)(1)(vii) ''$700,000 ($1.5 million for construction of any public facility)'' and adding ''the applicable threshold specified in FAR 19.702(a) on the date of subcontract award'' in its place; and

■ e. Revising paragraphs (c)(1)(x), (xi), and (xii).

The revisions read as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

Subcontracts for Commercial Items (JUN 2020)

(a) * * *

Commercial item and *commercially available off-the-shelf item* have the meanings contained in Federal Acquisition Regulation (FAR) 2.101.

* * * * *

(c)(1) * * *

(i) 52.203–13, Contractor Code of Business Ethics and Conduct (Jun 2020) (41 U.S.C. 3509), if the subcontract exceeds the threshold specified in FAR 3.1004(a) on the date of subcontract award, and has a performance period of more than 120 days.

* * *

* * * * *

(x) 52.222–35, Equal Opportunity for Veterans (Jun 2020) (38 U.S.C. 4212(a)).

(xi) 52.222–36, Equal Opportunity for Workers with Disabilities (Jun 2020) (29 U.S.C. 793).

(xii) 52.222–37, Employment Reports on Veterans (Jun 2020) (38 U.S.C. 4212).

* * * * *

■ 72. Amend section 52.246–26 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (g)(1)(iii) ''threshold'' and adding ''threshold, as defined in FAR 2.101 on the date of subcontract award,'' in its place.

The revision reads as follows:

52.246–26 Reporting Nonconforming Items.

* * * * *

Reporting Nonconforming Items (JUNE 2020)

* * * * *

■ 73. Amend section 52.248–1 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (i)(5) ''subsection'' and ''Regulation'' and adding ''section'' and ''Regulation (FAR)'' in their places, respectively; and

■ c. Revising the first sentence of paragraph (1).

The revisions read as follows:

52.248–1 Value Engineering.

* * * * *

Value Engineering (JUN 2020)

* * * * *

(l) *Subcontracts.* The Contractor shall include an appropriate value engineering clause in any subcontract-valued at or above the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, and may include one in subcontracts of lesser value. * * *

* * * * *

[FR Doc. 2020–07109 Filed 5–5–20; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 12, 25, 29, and 52

[FAC 2020–06; FAR Case 2016–013; Item III; Docket No. FAR–2016–0013; Sequence No. 1]

RIN 9000–AN38

Federal Acquisition Regulation; Tax on Certain Foreign Procurement

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to withhold a 2 percent tax on contract payments made by the United States Government to foreign persons pursuant to certain contracts. This rule applies to Federal Government contracts for goods or services that are awarded to foreign persons.

DATES: *Effective:* June 5, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or *zenaida.delgado@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2020–06, FAR Case 2016–013.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule on September 20, 2019, at 84 FR 49498, to implement the Department of the Treasury final regulations published in the **Federal Register** at 81 FR 55133 on August 18, 2016, under section 5000C of the Internal Revenue Code relating to the 2 percent tax on payments made by the United States (U.S.) Government to foreign entities pursuant to certain contracts. This final rule only addresses the collection of the section 5000C tax from contract payments on certain foreign contracts by withholding up to 2 percent of the payment. The agency merely withholds the tax for the Internal Revenue Service (IRS). All substantive issues regarding the underlying section 5000C tax, *e.g.,* the imposition of, and exemption from the tax, are matters under the jurisdiction of the IRS. FAR 29.204 and 29.402–3 give more information on the contracts that are covered, and exemptions or exceptions that might apply. No public comments were submitted in response to the proposed rule.

On January 2, 2011, section 301 of the James Zadroga 9/11 Health and Compensation Act of 2010, Public Law 111–347 (the Act), added section 5000C to the Internal Revenue Code (Code). Title 26 U.S.C. 5000C, Imposition of tax on certain foreign procurement, and its implementing regulations at 26 CFR 1.5000C–1 through 1.5000C–7, imposed, unless exempted, a 2 percent excise tax on the amount of a specified Federal procurement payment on any foreign person receiving such payment. Title 26 CFR 1.5000C–1(c) defines the term specified Federal procurement payment as any payment made pursuant to a contract with the U.S. Government for goods or services if the goods are manufactured or produced, or the services are provided, in any country that is not a party to an international procurement agreement with the United States (see FAR 25.003 for the definitions of ''World Trade Organization Government Procurement Agreement (WTO GPA) country'' and ''Free Trade Agreement country'', per the IRS definition at § 1.5000C–1(a)(8)). Section 301(a)(3) of the Act provides that section 5000C applies to payments received pursuant to contracts entered into on and after the date of enactment of the Act, January 2, 2011. Additionally, section 301(c) of the Act states that this section and the amendments made by it must be applied in a manner consistent with U.S. obligations under international agreements. Section 5000C(d)(1) provides that the amount deducted and withheld under chapter 3 shall be increased by the amount of tax imposed under 26 U.S.C. 5000C.

DoD, GSA, and NASA issued a final rule under FAR Case 2011–011, Unallowability of Costs Associated With Foreign Contractor Excise Tax, amending the FAR to disallow the cost associated with the 2 percent excise tax on certain foreign procurements. The final rule was published in the **Federal Register** at 78 FR 6189 on January 29, 2013.

II. Discussion and Analysis

There are no changes from the proposed rule made in the final rule.

Acquiring agencies are required to withhold the excise tax under 26 U.S.C. 5000C. The exemptions from the withholding in the IRS regulations at 26 CFR 1.5000C–1(d)(1) through (4) are captured under the new provision prescription at FAR 29.402–3(a). If any of the conditions listed at FAR 29.402–3(a) are met, the payments under the contract will not be subject to the withholding. The remaining exemptions in that paragraph (d), at 26 CFR 1.5000C–1(d)(5) through (7), must be claimed by the offeror by submitting an IRS Form W–14 with the offer. If no exemption applies or is claimed, contractors will be subject to the tax and will be required to complete IRS Form W–14, and submit this form with each voucher or invoice for the agency to withhold the tax as appropriate.

This FAR final rule covers withholding, not the imposition of the tax, which was implemented in the IRS regulation.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

Pursuant to 41 U.S.C. 1905–1907, a provision of law is not applicable to: Contracts or subcontracts in amounts not greater than the simplified acquisition threshold (SAT)(as defined in FAR 2.101); and the acquisition of commercial items, including COTS items. However, the provision of law is applicable when the law (i) contains criminal or civil penalties; (ii) specifically refers to 41 U.S.C. 1905–1907 and states that the law applies to contracts or subcontracts in amounts not greater than the SAT, or the acquisition of commercial items including COTS items; (iii) the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT and for acquisition of commercial items; or the Administrator for Federal Procurement Policy makes a written determination that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items from this law. United States tax laws in Title 26 of the United States Code contain criminal and civil penalties; thus, commercial items, including commercially available off-the-shelf items, are subject to the new provision and clause unless otherwise exempted.

The new provision and clause are not applicable to acquisitions using simplified acquisition procedures that do not exceed the simplified acquisition threshold because the IRS regulations at 26 CFR 1.5000C–1(d)(1) exempted them from the tax—see the prescriptions at FAR 29.402–3(a)(1) and (b)(1).

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, this rule was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

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

VI. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule is required to implement a final rule issued by the Department of the Treasury (published at 81 FR 55133) that implements section 301 of the James Zadroga 9/11 Health and Compensation Act of 2010, Public Law 111–347 (the Act), adding section 5000C to the Internal Revenue Code (Code). 26 U.S.C. 5000C, Imposition of tax on certain foreign procurement, and its implementing regulations at 26 CFR 1.5000C–1 through 1.5000C–7, imposed, unless exempted, a 2 percent excise tax of the amount of a specified Federal procurement payment on any foreign person receiving such payment.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis.

The rule will apply to Federal Government contracts that are awarded to foreign persons for goods or services, if the goods are manufactured or produced or the services are provided in any country that is not a party to an international procurement agreement with the United States (see FAR 25.003 for the definitions of ''World Trade Organization Government Procurement Agreement (WTO GPA) country'' and ''Free Trade Agreement country''). Federal Procurement Data System data for FY 2018 was obtained for contracts valued over $250,000 awarded to foreign vendors. There were 7,518 total awards, 7,349 were to large vendors; 169 were to small vendors. Of these, 1,358 were unique large foreign entities while 10 were unique small foreign entities for a total of 1,368 unique foreign entities. Accordingly, the rule is not expected to have a significant economic impact on a substantial number of small entities based in the United States.

The rule contains an information collection requirement that requires the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. chapter 35). However, the paperwork burden was previously approved for the IRS regulations under OMB Control Number 1545–2263, Tax on Certain Foreign Procurement.

There are no available alternatives to the rule to accomplish the desired objective of the statute.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) does apply. However, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved for the IRS, Department of the Treasury regulations under the Office of Management and Budget Control Number 1545–2263, Tax on Certain Foreign Procurement (see 80 FR 22449, April 22, 2015 and 82 FR 41310 at 41312, August 30, 2017).

List of Subjects in 48 CFR Parts 1, 12, 25, 29, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 12, 25, 29, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 12, 25, 29, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. In section 1.106, amend the table by adding entries for ''52.229–11'' and ''52.229–12'' in numerical order to read as follows: 1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB control No.
* * * * *	
52.229–11	1545–2263
52.229–12	1545–2263
* * * * *	

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Amend section 12.301 by redesignating paragraph (d)(12) as paragraph (d)(13) and adding a new paragraph (d)(12) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(d) * * *

(12) Insert the provision at 52.229–11, Tax on Certain Foreign Procurements—Notice and Representation, in solicitations as prescribed in 29.402–3(a). The representation in the provision at 52.229–11 is not in the System for Award Management.

* * * * *

PART 25—FOREIGN ACQUISITION

■ 4. Add section 25.1003 to read as follows:

25.1003 Tax on certain foreign procurements.

See 29.204 for the imposition of the tax on certain foreign procurements pursuant to the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347), 26 U.S.C. 5000C, and its implementing regulations at 26 CFR 1.5000C–1 through 1.5000C–7.

PART 29—TAXES

■ 5. Add section 29.204 to read as follows:

29.204 Federal excise tax on specific foreign contract payments.

(a) Title 26 U.S.C. 5000C and its implementing regulations at 26 CFR 1.5000C–1 through 1.5000C–7 require acquiring agencies to collect this excise tax via withholding on applicable contract payments (see 29.402–3, 31.205–41(b)(8)). Agencies merely withhold the tax (section 5000C tax) for the Internal Revenue Service (IRS). All substantive issues regarding the underlying section 5000C tax, *e.g.,* the imposition of, and exemption from the tax, are matters under the jurisdiction of the IRS. The contracting officer will refer all questions relating to the interpretation of the IRS regulations to *https://www.irs.gov/help/tax-law-questions.*

(b) In accordance with the clause 52.229–12, Tax on Certain Foreign Procurements, contractors that are subject to the section 5000C tax will complete IRS Form W–14, Certificate of Foreign Contracting Party Receiving Federal Procurement Payments, and submit this form with each voucher or

invoice. In the absence of a completed IRS Form W–14 accompanying a payment request, the default withholding percentage is 2 percent for the section 5000C withholding for that payment request. Information about IRS Form W–14 is available via the internet at *www.irs.gov/w14.*

(c)(1) Exemptions from the withholding in the IRS regulations at 26 CFR 1.5000C–1(d)(1) through (4) are captured under the provision prescription at 29.402–3(a) (*i.e.,* the contracting officer will not include the provision when one of the 29.402–3(a) exceptions applies).

(2) The exemptions at 26 CFR 1.5000C–1(d)(5) through (7) must be claimed by the offeror when it submits an IRS Form W–14 with the offer. If not submitted with the offer, exemptions will not be applied to the contract.

(3) Any exemption claimed and self-certified on the IRS Form W–14 is subject to audit by the IRS. Any disputes regarding the imposition and collection of the section 5000C tax are adjudicated by the IRS as the section 5000C tax is a tax matter, not a contract issue.

(d) The exemptions in 29.201 through 29.302 do not apply to this section 5000C tax.

(e) Additional information about this excise tax on specific foreign contract payments is available via the internet at *https://www.irs.gov/government-entities/excise-tax-on-specified-federal-foreign-procurement-payments.*

■ 6. Add section 29.402–3 to read as follows:

29.402–3 Tax on certain foreign procurements.

(a) Insert the provision at 52.229–11, Tax on Certain Foreign Procurements—Notice and Representation, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, unless one of the following exceptions applies:

(1) Acquisitions using simplified acquisition procedures that do not exceed the simplified acquisition threshold (as defined in 2.101).

(2) Emergency acquisitions using the emergency acquisition flexibilities defined in part 18.

(3) Acquisitions using the unusual and compelling urgency authority per 6.302–2.

(4) Contracts with a single individual for personal services that will not exceed the simplified acquisition threshold on an annual calendar year basis for all years of the contract.

(5) Acquisitions if the requiring activity identifies that the requirement is for certain foreign humanitarian assistance contracts which are payments made by the U.S. Government agencies pursuant to a contract with a foreign contracting party to obtain goods or services described in or authorized under 7 U.S.C. 1691, *et seq.,* 22 U.S.C. 2151, *et seq.,* 22 U.S.C 2601 *et seq.,* 22 U.S.C. 5801 *et seq.,* 22 U.S.C. 5401 *et seq.,* 10 U.S.C. 402, 10 U.S.C. 404, 10 U.S.C. 407, 10 U.S.C. 2557, and 10 U.S.C. 2561.

(b) Insert the clause at 52.229–12, Tax on Certain Foreign Procurements, in—

(1) Solicitations that contain the provision at 52.229–11, Tax on Certain Foreign Procurements—Notice and Representation; and

(2) Resultant contracts in which the contractor has indicated that it was a foreign person in solicitation provision 52.229–11, Tax on Certain Foreign Procurements—Notice and Representation.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Amend section 52.212–5 by redesignating paragraphs (b)(55) through (62) as paragraphs (b)(56) through (63) and adding a new paragraph (b)(55) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

(b) * * *

___ (55) 52.229–12, Tax on Certain Foreign Procurements (JUN 2020).

* * * * *

■ 8. Add sections 52.229–11 and 52.229–12 to read as follows:

52.229–11 Tax on Certain Foreign Procurements—Notice and Representation.

As prescribed in 29.402–3(a), insert the following provision:

Tax on Certain Foreign Procurements—Notice and Representation (JUN 2020)

(a) *Definitions.* As used in this provision—

Foreign person means any person other than a United States person.

Specified Federal procurement payment means any payment made pursuant to a contract with a foreign contracting party that is for goods, manufactured or produced, or services provided in a foreign country that is not a party to an international procurement agreement with the United States. For purposes of the prior sentence, a foreign country does not include an outlying area.

United States person as defined in 26 U.S.C. 7701(a)(30) means—

(1) A citizen or resident of the United States;

(2) A domestic partnership;

(3) A domestic corporation;

(4) Any estate (other than a foreign estate, within the meaning of 26 U.S.C. 701(a)(31)); and

(5) Any trust if—

(i) A court within the United States is able to exercise primary supervision over the administration of the trust; and

(ii) One or more United States persons have the authority to control all substantial decisions of the trust.

(b) Unless exempted, there is a 2 percent tax of the amount of a specified Federal procurement payment on any foreign person receiving such payment. See 26 U.S.C. 5000C and its implementing regulations at 26 CFR 1.5000C–1 through 1.5000C–7.

(c) Exemptions from withholding under this provision are described at 26 CFR 1.5000C–1(d)(5) through (7). The Offeror would claim an exemption from the withholding by using the Department of the Treasury Internal Revenue Service Form W–14, Certificate of Foreign Contracting Party Receiving Federal Procurement Payments, available via the internet at *www.irs.gov/w14.* Any exemption claimed and self-certified on the IRS Form W–14 is subject to audit by the IRS. Any disputes regarding the imposition and collection of the 26 U.S.C. 5000C tax are adjudicated by the IRS as the 26 U.S.C. 5000C tax is a tax matter, not a contract issue. The IRS Form W–14 is provided to the acquiring agency rather than to the IRS.

(d) For purposes of withholding under 26 U.S.C. 5000C, the Offeror represents that—

(1) It [__]is [__]is not a foreign person; and

(2) If the Offeror indicates ''is'' in paragraph (d)(1) of this provision, then the Offeror represents that—I am claiming on the IRS Form W–14 [____] a full exemption, or [____] partial or no exemption [*Offeror shall select one*] from the excise tax.

(e) If the Offeror represents it is a foreign person in paragraph (d)(1) of this provision, then—

(1) The clause at FAR 52.229–12, Tax on Certain Foreign Procurements, will be included in any resulting contract; and

(2) The Offeror shall submit with its offer the IRS Form W–14. If the IRS Form W–14 is not submitted with the offer, exemptions will not be applied to any resulting contract and the Government will withhold a full 2 percent of each payment.

(f) If the Offeror selects ''is'' in paragraph (d)(1) and ''partial or no exemption'' in paragraph (d)(2) of this provision, the Offeror will be subject to withholding in accordance with the clause at FAR 52.229–12, Tax on Certain Foreign Procurements, in any resulting contract.

(g) A taxpayer may, for a fee, seek advice from the Internal Revenue Service (IRS) as to the proper tax treatment of a transaction. This is called a private letter ruling. Also, the IRS may publish a revenue ruling, which is an official interpretation by the IRS of the Internal Revenue Code, related statutes, tax treaties, and regulations. A revenue ruling is the conclusion of the IRS on how the law is applied to a specific set of facts. For questions relating to the interpretation of the IRS regulations go to *https://www.irs.gov/help/tax-law-questions.*

(End of provision)

52.229–12 Tax on Certain Foreign Procurements.

As prescribed in 29.402–3(b), insert the following clause:

Tax on Certain Foreign Procurements (JUN 2020)

(a) *Definitions.* As used in this clause—

Foreign person means any person other than a United States person.

United States person, as defined in 26 U.S.C. 7701(a)(30), means—

(1) A citizen or resident of the United States;

(2) A domestic partnership;

(3) A domestic corporation;

(4) Any estate (other than a foreign estate, within the meaning of 26 U.S.C. 7701(a)(31)); and

(5) Any trust if—

(i) A court within the United States is able to exercise primary supervision over the administration of the trust; and

(ii) One or more United States persons have the authority to control all substantial decisions of the trust.

(b) This clause applies only to foreign persons. It implements 26 U.S.C. 5000C and its implementing regulations at 26 CFR 1.5000C–1 through 1.5000C–7.

(c)(1) If the Contractor is a foreign person and has only a partial or no exemption to the withholding, the Contractor shall include the Department of the Treasury Internal Revenue Service Form W–14, Certificate of Foreign Contracting Party Receiving Federal Procurement Payments, with each voucher or invoice submitted under this contract throughout the period in which this status is applicable. The excise tax withholding is applied at the payment level, not at the contract level. The Contractor should revise each IRS Form W–14 submission to reflect the exemption (if any) that applies to that particular invoice, such as a different exemption applying. In the absence of a completed IRS Form W–14 accompanying a payment request, the default withholding percentage is 2 percent for the section 5000C withholding for that payment request. Information about IRS Form W–14 and its separate instructions is available via the internet at *www.irs.gov/w14.*

(2) If the Contractor is a foreign person and has indicated in its offer in the provision 52.229–11, Tax on Certain Foreign Procurements—Notice and Representation, that it is fully exempt from the withholding, and certified the full exemption on the IRS Form W–14, and if that full exemption no longer applies due to a change in circumstances during the performance of the contract that causes the Contractor to become subject to the withholding for the 2 percent excise tax then the Contractor shall—

(i) Notify the Contracting Officer within 30 days of a change in circumstances that causes the Contractor to be subject to the excise tax withholding under 26 U.S.C. 5000C; and

(ii) Comply with paragraph (c)(1) of this clause.

(d) The Government will withhold a full 2 percent of each payment unless the Contractor claims an exemption. If the Contractor enters a ratio in Line 12 of the IRS Form W–14, the result of Line 11 divided by Line 10, the Government will withhold from each payment an amount equal to 2 percent multiplied by the contract ratio. If the Contractor marks box 9 of the IRS Form W–14 (rather than completes Lines 10 through 12), the Contractor must identify and enter the specific exempt and nonexempt amounts in Line 15 of the IRS Form W–14; the Government will then withhold 2 percent only from the nonexempt amount. See the IRS Form W–14 and its instructions.

(e) Exemptions from the withholding under this clause are described at 26 CFR 1.5000C–1(d)(5) through (7). Any exemption claimed and self-certified on the IRS Form W–14 is subject to audit by the IRS. Any disputes regarding the imposition and collection of the 26 U.S.C. 5000C tax are adjudicated by the IRS as the 26 U.S.C. 5000C tax is a tax matter, not a contract issue.

(f) Taxes imposed under 26 U.S.C. 5000C may not be—

(1) Included in the contract price; nor

(2) Reimbursed.

(g) A taxpayer may, for a fee, seek advice from the Internal Revenue Service (IRS) as to the proper tax treatment of a transaction. This is called a private letter ruling. Also, the IRS may publish a revenue ruling, which is an official interpretation by the IRS of the Internal Revenue Code, related statutes, tax treaties, and regulations. A revenue ruling is the conclusion of the IRS on how the law is applied to a specific set of facts. For questions relating to the interpretation of the IRS regulations go to *https://www.irs.gov/help/tax-law-questions.*

(End of clause)

[FR Doc. 2020–07110 Filed 5–5–20; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 19, 25, and 52

[FAC 2020–06; Item IV; Docket No. FAR–2020–0052; Sequence No. 1]

Federal Acquisition Regulation; Technical Amendments

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make needed editorial changes.

DATES: *Effective:* May 6, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Lois Mandell, Regulatory Secretariat Division (MVCB), 1800 F Street NW, 2nd Floor, Washington, DC 20405, 202–501–4755. Please cite FAC 2020–06, Technical Amendments.

SUPPLEMENTARY INFORMATION: In order to update certain elements in 48 CFR parts 4, 19, 25, and 52 this document makes editorial changes to the FAR.

List of Subjects in 48 CFR parts 4, 19, 25, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 19, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 19, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

4.1102 [Amended]

■ 2. Amend section 4.1102 by removing from paragraph (a)(3)(ii) ''*http://aoprals.state.gov/Web920/danger__pay__all.asp*'' and adding ''*https://aoprals.state.gov/*'' in its place.

PART 19—SMALL BUSINESS PROGRAMS

19.102 [Amended]

■ 3. Amend section 19.102 by removing from paragraph (a)(1) ''*https://www.sba.gov/content/table-small-business-size-standards*'' and adding ''*https://www.sba.gov/document/support—table-size-standards*'' in its place.

PART 25—FOREIGN ACQUISITION

25.301–1 [Amended]

■ 4. Amend section 25.301–1 by removing from paragraph (a)(2)(i) ''*http://aoprals.state.gov/Web920/danger__pay__all.asp*'' and adding ''*https://aoprals.state.gov/*'' in its place.

25.301–4 [Amended]

■ 5. Amend section 25.301–4 by removing from paragraph (b)(1) ''*http://aoprals.state.gov/Web920/danger__pay__all.asp*'' and adding ''*https://aoprals.state.gov/*'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Amend section 52.219–28 by revising the date of the clause and removing from paragraph (d) ''*http://*

www.sba.gov/content/table-small-business-size-standards'' and adding ''*https://www.sba.gov/document/support--table-size-standards*'' in its place to read as follows:

52.219–28 Post-Award Small Business Program Rerepresentation.

* * * * *

Post-Award Small Business Program Rerepresentation MAY 2020

* * * * *

■ 7. Amend section 52.223–15 by revising the date of the clause and removing from paragraph (d)(2) ''*http://www1.eere.energy.gov/femp/procurement/eep__requirements.html*'' and adding ''*https://www.energy.gov/eere/femp/energy-efficient-products-and-energy-saving-technologies*'' in its place to read as follows:

52.223–15 Energy Efficiency in Energy-Consuming Products.

* * * * *

Energy Efficiency in Energy-Consuming Products MAY 2020

* * * * *

■ 8. Amend section 52.225–19 by revising the date of the clause and removing from paragraphs (b)(1)(ii)(A) and (q)(2)(i) ''*http://aoprals.state.gov/Web920/danger__pay__all.asp*'' and adding ''*https://aoprals.state.gov/*'' in their places, respectively, to read as follows:

52.225–19 Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States.

* * * * *

Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States MAY 2020

* * * * *

[FR Doc. 2020–07111 Filed 5–5–20; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2020–0051, Sequence No. 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2020–06; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2020–06, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2020–06, which precedes this document. These documents are also available via the internet at *http://www.regulations.gov.*

DATES: May 6, 2020.

ADDRESSES: The FAC, including the SECG, is available via the internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2020–06 and the FAR Case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755.

RULE LISTED IN FAC 2020–06

Item	Subject	FAR Case	Analyst
I	Revocation of Executive Order on Nondisplacement of Qualified Workers	2020–001	Delgado.
*II	Applicability of Inflation Adjustments of Acquisition-Related Thresholds	2018–007	Delgado.
*III	Tax on Certain Foreign Procurement	2016–013	Delgado.
IV	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2020–06 amends the FAR as follows:

Item I—Revocation of Executive Order on Nondisplacement of Qualified Workers (FAR Case 2020–001)

This final rule removes subpart 22.12, entitled ''Nondisplacement of Qualified Workers Under Service Contracts'', and a related contract clause, from the FAR. The final rule applies to service contracts which succeed a contract for performance by service employees of the same or similar work at the same location. It removes a requirement for service contractors and their subcontractors to offer employees of the predecessor contractor and its subcontractors a right of first refusal of employment for positions for which they are qualified. It implements Executive Order 13897 of October 31, 2019, Improving Federal Contractor Operations by Revoking Executive Order 13495. This final rule will not have a significant impact on service contractors and their subcontractors. However, as a result of eliminating the language in FAR subpart 22.12, there will be fewer requirements imposed on contractors to keep records demonstrating compliance on successor contractors.

Item II—Applicability of Inflation Adjustments of Acquisition-Related Thresholds (FAR Case 2018–007)

This final rule makes inflation adjustments of statutory acquisition-related thresholds under 41 U.S.C. 1908 applicable to existing contracts and subcontracts in effect on the date of the adjustment. It implements section 821 of the National Defense Authorization Act for Fiscal Year 2018.

This final rule will not have a significant economic impact on a substantial number of small entities.

Item III—Tax on Certain Foreign Procurement (FAR Case 2016–013)

This final rule withholds a 2 percent tax on contract payments made by the United States (U.S.) Government to foreign persons pursuant to certain contracts. This rule applies to Federal

Government contracts for goods or services that are awarded to foreign persons. It implements the Department of the Treasury final regulations published in the **Federal Register** at 81 FR 55133 on August 18, 2016, under section 5000C of the Internal Revenue Code relating to the 2 percent tax on payments made by the U.S. Government to foreign entities pursuant to certain contracts.

This final rule will not have a significant economic impact on a substantial number of small entities.

Item IV—Technical Amendments

Editorial changes are made at FAR 4.1102, 19.102, 25.301–1, 25.301–4, 52.219–28, 52.223–15, and 52.225–19.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2020–07112 Filed 5–5–20; 8:45 am]

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